TC02-176

KC | HB
RW is Comm Atty on this one - no $

TC02-176

DOCKET NO. ______

In the Matter of IN THE MATTER OF THE PETITION FOR ARBITRATION ON BEHALF OF WWC LICENSE L.L.C. WITH CERTAIN INDEPENDENT LOCAL EXCHANGE COMPANIES

Public Utilities Commission of the State of South Dakota

DATE			MEMORANDA
10	31	02	Filed and Docketed;
11	7	02	Weekly Filing;
11	22	02	Petition to Intervene by PrairieWave;
11	25	02	Response to Petition for Arbitration of Rural Telephone Companies;
11	27	02	WWC's Opposition to PrairieWave's Petition to Intervene;
12	3	02	Order Admitting Philip Schenkenberg + [illegible] as Nonresident Attorneys;
12	18	02	Motion for Leave to Amend Petition to Intervene;
12	18	02	Amended Petition for Leave to Intervene by PrairieWave;
12	18	02	Stipulation for Scheduling Order;
1	3	03	Order Granting Intervention; Order Assessing Filing Fee; Order Adopting Stipulated Procedural Schedule; and Order for and Notice of Hearing;
1	14	03	Direct Pre-Filed Testimony of Larry Thompson on behalf of the RTCs;
1	14	03	Direct Pre-Filed Testimony of Robert C. Schoonmaker on behalf of the RTCs;
1	14	03	Direct Pre-Filed Testimony of Douglas Meredith on behalf of the RTCs;
1	15	03	Direct Testimony of Ron Williams on behalf of Western Wireless (Public Version and Confidential Version
1	23	03	Letter Amending Scheduling Order;
2	6	03	Supplemental Direct Pre-Filed Testimony of Douglas Meredith on behalf of Beresford, East Plains, Roberts Co, RC Comm, Splitrock & Stockholm
2	7	03	Western Wireless' Motion to Compel Responses to Discovery Requests;
2	7	03	Affidavit of Philip R. Schenkenberg in Support of Western Wireless Motion to Compel
2	14	03	Pre-Filed Rebuttal Testimony of Robert C. Schoonmaker on behalf of the RTCs
2	14	03	Pre-Filed Rebuttal Testimony of Douglas Meredith on behalf of the RTCs
2	14	03	Pre-Filed Rebuttal Testimony of Larry Thompson on behalf of the RTCs;
2	18	03	Letter Withdrawing Motion to Compel;
2	19	03	Rebuttal Testimony of Ron Williams;
2	19	03	Rebuttal Testimony of Brian F. Pitkin;

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA—SMEAD [illegible] 4130

2/19/03	Rebuttal Testimony of Steven E. Turner;
2/21/03	Surrebuttal Testimony of Ron Williams;
2/21/03	Pre-Filed Surrebuttal Testimony of Douglas Meredith on behalf of the RTCs;
2/21/03	Pre-Filed Surrebuttal Testimony of Robert C. Schoonmaker on behalf of the RTCs
2/21/03	Pre-Filed Surrebuttal Testimony of Larry Thompson on behalf of the RTCs;
2/24/03	Western Wireless' Motion to Compel and to Extend Time for Filing Surrebuttal Testimony
2/28/03	Pre-Filed Supplemental Rebuttal Testimony of Larry Thompson on behalf of the RTCs;
3/3/03	Supplemental Surrebuttal Testimony of Ron Williams;
3/3/03	Surrebuttal Testimony of Brian Pitkin;
3/3/03	Surrebuttal Testimony of Steven E. Turner;
2/25/04	Order Dismissing and Closing Docket;
2/25/04	Docket Closed.

TC02-176

2200 FIRST NATIONAL BANK BUILDING
332 MINNESOTA STREET
SAINT PAUL, MINNESOTA 55101
TELEPHONE (651) 223-6600
FACSIMLE (651) 223-6450

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

WRITER'S DIRECT DIAL
(651) 223-6578
WRITER'S E-MAIL
pschenkenberg@briggs.com

October 30, 2002

VIA FEDERAL EXPRESS

South Dakota Public Utilities Commission
First Floor - Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Petition of WWC License L.L.C. for Arbitration Under the Telecommunications Act of 1996

Dear Sir/Madam:

Enclosed for filing in connection with the above matter please find an original and ten copies of the Petition for Arbitration of WWC License, L.L.C.

By copy of this letter, all Respondent Independent Local Exchange Carriers listed on Exhibit 1 to the Arbitration Petition are being served in this matter.

Very truly yours,

Philip R. Schenkenberg

PRS/smo
Enclosures
cc: Richard D. Coit, Esq. (via Federal Express)
South Dakota Local Telephone Companies (via U.S. mail)
Talbot J. Wieczorek, Esq.
Ron Williams

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

PETITION OF WWC LICENSE L.L.C	)	
FOR ARBITRATION UNDER THE	)	**Docket No. _____**
TELECOMMUNICATIONS ACT OF 1996	)	

PETITION FOR ARBITRATION OF WWC LICENSE L.L.C.

COMES NOW, WWC License L.L.C. ("Western Wireless"), and files this Petition with the South Dakota Public Utilities Commission ("Commission") to arbitrate the unresolved issues remaining after negotiations for an interconnection agreement between Western Wireless and the independent local exchange companies ("ILECs") listed on Exhibit 1, pursuant to SDCL § 49-31-81, Commission Rule 20:10:32:29, and Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) ("Act"). In support of its Petition, Western Wireless states as follows:

1. Western Wireless is a commercial mobile radio service ("CMRS") provider providing service throughout South Dakota under the trade name CellularOne. Western Wireless holds licenses to provide cellular telecommunications service in South Dakota 1, 2, 3, 4, 5, 6, 7, 8, and 9 Rural Service Areas ("RSAs") and the Rapid City and Sioux Falls Metropolitan Service Areas ("MSAs") within the State of South Dakota. The negotiations with the ILECs, who were all represented by common counsel, proceeded with the understanding that a standard interconnection agreement would be used to govern interconnection and reciprocal compensation between Western Wireless and the ILECs, although each agreement could contain different rates or additional provisions as necessary to address unique issues. Because all of the issues

negotiated with the ILECs are the same and negotiations were held with the ILECs' common attorney, a single Petition for Arbitration is being filed.

2. Exhibit 2 is the Interconnection Agreement negotiated to date by Western Wireless and the ILECs, setting forth the agreed-upon terms and conditions of service, along with the unresolved issues. Western Wireless has approved interconnection agreements on file with each of the ILECs. Western Wireless gave each ILEC notice of intent to renegotiate on November 21, 2001. The parties subsequently agreed to extend the arbitration window three times, first until June 5-30, second to August 18-September 12, and finally from October 6-31.

Parties and Their Representatives

3. Pursuant to Commission Rule 20:10:32:29(1), the parties are as follows:

Petitioner: WWC License L.L.C.
c/o Gene DeJordy, Vice President of Regulatory Affairs
and Ron Williams, Director-Industry Relations
3650 – 131st Avenue S.E.
Suite 400
Bellevue, Washington 98006
Telephone: 425-586-8736
Fax: 425-586-8118

Western Wireless is represented by:

Talbot J. Wieczorek
Gunderson, Palmer, Goodsell & Nelson, LLP
440 Mount Rushmore Road
3rd and 4th Floors
P.O. Box 8045
Rapid City, South Dakota 57709-8045
Telephone: 605-342-1078
Fax: 605-342-9503

Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone: 651-223-6600
Fax: 651-223-6540

Respondents: Respondents are the ILECs listed in Exhibit 1.

The ILECs have been jointly represented by:

Richard D. Coit
South Dakota Independent Telephone Coalition, Inc.
207 E. Capitol Ave.
Suite 206
P.O. Box 57
Pierre, South Dakota 57501
Telephone: (605) 224-7629
Fax: (605) 224-1637

Summary of the Negotiation History

4. On November 21, 2001, Western Wireless commenced negotiations with each ILEC for new interconnection agreements to govern the transport and termination of telecommunications traffic between Western Wireless and the ILEC. A copy of the form of letter transmitted to each ILEC is attached as Exhibit 3. Western Wireless included with this correspondence a proposed new form of agreement. Western Wireless followed up on its request in January 2002, and arranged conference calls between the parties on January 29 and February 15. On April 19, Mr. Coit sent the ILECs' first substantive response, a redline of Western Wireless' proposed new agreement.

5. Additional negotiations followed, and the parties agreed to extend the arbitration window three times to allow further time for negotiations. A copy of the most recent agreement to extend the arbitration window is attached as Exhibit 4. Pursuant to the last such agreement, the arbitration window opened October 6, 2002, and closes October 31, 2002. Based on this arbitration window, negotiations are deemed to have commenced on May 24, 2002.

6. On June 20, 2002, the ILECs committed to producing cost studies compliant with the Federal Communications Commission's ("FCC") total element long run incremental cost ("TELRIC") cost methodology. By mid-October, the ILECs had not produced cost studies, and a

number of issues remained open. Western Wireless thus filed this Petition as allowed in the Act and South Dakota law. Western Wireless has also given notice of termination to each ILEC, so that the existing interconnection agreements will terminate on December 31, 2002. The arbitrated agreements that are approved pursuant to this proceeding will replace those agreements.

Unresolved Issues to be Arbitrated

7. Pursuant to Commission Rule 20:10:32:29, subdivisions (3), (4) and (6), the agreed-to contract language, unresolved issues, and proposed contract language are set forth below and in the interconnection agreement attached as Exhibit 2 to this Petition.

8. The Act and the FCC's rules impose interconnection and compensation obligations on LECs and CMRS providers, and establish standards to apply to interconnection arbitration proceedings. In particular, the following sections of the Act and FCC rules govern the interconnection arrangements between the ILECs and Western Wireless:

- Section 251(a) of the Act requires all telecommunications carriers, including both CMRS carriers and local exchange companies, "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."

- Section 251(b)(5) of the Act imposes on all local exchange companies the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

- Section 252(d)(2)(A) of the Act provides that "for the purposes of compliance by incumbent local exchange carriers with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

- FCC Rule 20.11(a) provides that "a local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable."

- FCC Rule 20.11(b)(1) requires that "a local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier."

- FCC Rule 51.701(e) defines the reciprocal compensation required by the Act to mean an arrangement "in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."

- FCC Rule 51.701(b) imposes reciprocal compensation obligations on "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter."

- FCC Rule 51.703(a) states that "each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier."

- FCC Rule 51.703(b) provides that "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

- The FCC has forbidden the imposition of access charges as compensation for the transport and termination of telecommunications traffic subject to reciprocal compensation: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, ¶ 1043, 11 FCC Rcd 15499 (1996) (*"Local Competition Order"*).

- FCC Rule 51.711(a) provides:

> Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.
>
> (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than a incumbent LEC assesses upon an incumbent LEC for transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

- FCC Rule 51.711(a)(3) provides:

> Where the switch of a carrier other than the incumbent LEC serves a geographical area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

9. In spite of these federal mandates, the ILECs have insisted throughout the negotiation of an interconnection agreement that they do not have an obligation to pay reciprocal compensation for land-to-mobile traffic that originates and terminates within the same MTA. The ILECs also have failed to propose transport and termination rates that comply with the FCC's pricing standards. In addition, there are other miscellaneous issues that remain unresolved.

10. **Unresolved Issue No. 1 (Scope of Reciprocal Compensation Obligations): What traffic is subject to reciprocal compensation in accordance with the FCC's rules?**

a. The Act and the FCC rules require all telecommunications carriers to negotiate arrangements for reciprocal compensation for the transport and termination of telecommunications traffic. Section 51.701(b)(2) of the FCC rules defines the term "telecommunications traffic" to mean "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." 51 C.F.R. § 701(b)(2). The ILECs agree that mobile-to-land traffic that originates within the same MTA is subject to reciprocal compensation, but take the position that they should pay reciprocal compensation only when land-to-mobile traffic both originates and terminates within their local calling scope, not the MTA. If land-to-mobile traffic originates or terminates outside an ILEC's local calling scope, then the ILEC claims it has the right to charge switched access rates. The ILECs' position is contrary to FCC rules governing reciprocal compensation.

b. Under FCC Rule 51.701(b)(2), the MTA determines what traffic is subject to reciprocal compensation. The FCC has reiterated this MTA requirement in its *Local Competition Order*: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges." *Local Competition Order*, ¶ 1043. The Commission should resolve this issue by ordering that all traffic originated and terminated within an MTA is subject to reciprocal compensation.

11. **Unresolved Issue No. 2 (Delivery of Land-To-Mobile Traffic): What obligations do the ILECs have to deliver traffic subject to reciprocal compensation to Western Wireless' network?**

Issue No. 2a: Are the ILECs prohibited from collecting access charges from any telecommunications carrier on land-to-mobile calls that originate and terminate in the same MTA?

a. Today, ILEC customers can make land-to-mobile intraMTA calls only by using the services of their presubscribed interexchange carrier, unless Western Wireless establishes an NPA/NXX within an ILEC's rate center. As a result, the ILECs are collecting access charges on this traffic, and customers are paying per-minute usage charges or long distance rates. FCC Rule 51.703(b) prohibits a LEC from collecting charges from any carrier for intraMTA land-to-mobile traffic. Instead, the FCC requires that a LEC deliver intraMTA land-to-mobile calls to the other carrier's network without charge. The Commission should order that this land-to-mobile traffic must be delivered to Western Wireless' network without payment of access charges by any carrier.

Issue No. 2b: If Western Wireless establishes a direct connection with an ILEC, should the ILEC deliver all land-to-mobile intraMTA traffic to Western Wireless over those direct facilities.

b. As discussed above, the ILECs have the obligation to deliver intraMTA calls to Western Wireless within the MTA without charge. If Western Wireless establishes a direct connection with an ILEC, the ILEC should deliver all intraMTA traffic to Western Wireless over those facilities. The ILECs take the position that traffic to Western Wireless' NPA/NXXs should be toll calls subject to access charges, and that their customers are required to utilize an interexchange carrier.

12. **Unresolved Issue No. 3 (Rates For Reciprocal Compensation): What rates can be adopted for the transport and termination of intraMTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?**

a. The applicable statutes and rules require that rates for transport and termination of telecommunications traffic be reciprocal and symmetrical. 47 C.F.R. § 51.711. Rates for the transport and termination of telecommunications traffic must be set based on: 1) the forward looking costs of transport and termination on the ILEC's network, 2) default proxy rates, or 3) bill-and-keep. 47 C.F.R. § 51.705. If forward-looking rates are proven by the ILEC, those rates apply reciprocally – *i.e.*, Western Wireless charges the ILEC at the same rates when it terminates land-to-mobile intraMTA traffic. Section 252(d)(2)(A) of the Act provides that:

> for the purposes of compliance by incumbent local exchange carriers with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier, and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls. (emphasis added).

b. Today, Western Wireless exchanges traffic with the ILECs under previously-negotiated voluntary agreements containing rates that are not based upon the ILECs' "additional costs of terminating" traffic. In this arbitration, however, the Commission must establish reciprocal compensation arrangements consistent with the statutory mandate of Section 252(d)(2)(A). During these negotiations, the ILECs have offered only their existing rates, and have not justified those rates based on any standards in the Act or the FCC's Rules. In this proceeding, the burden of proof is on the ILECs. Unless the ILECs propose and prove rates on a company-by-company basis that are consistent with the pricing standards in the Act, a bill-and-keep compensation mechanism should apply to the exchange of all intraMTA traffic. Such a bill-and-keep arrangement would constitute an appropriate and lawful arrangement for the exchange of traffic subject to reciprocal compensation.

13. **Unresolved Issue No. 4 (Symmetrical Compensation at a Tandem Rate): Is Western Wireless entitled to be compensated at the tandem interconnection rate as required by 47 C.F.R. § 51.711(a) if its switch serves an area greater than the geographical area served by the ILECs' tandem switch?**

a. Transport and termination rates must be based upon a reasonable approximation of the "additional costs" of terminating calls under 47 U.S.C. § 252(d)(2)(A)(ii). In implementing this statutory mandate, the FCC promulgated rules establishing symmetrical reciprocal compensation rates for the transport and termination of local traffic. FCC Rule 51.711(a) provides:

> Rates for transport and termination of telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c) of this section.
>
> (1) For purposes of this subpart, symmetrical rates are rates that a carrier other than a incumbent LEC assesses upon an incumbent LEC for

> transport and termination of telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

47 C.F.R. § 51.711(a). Recognizing that a competitive carrier may serve a geographical area equal to or greater than the area served by an incumbent LEC, the FCC adopted a rule that requires a competitive carrier to be compensated at the incumbent LEC's tandem interconnection rate even if interconnection (and the compensation to the incumbent LEC) is at an incumbent LEC's end office:

> Where the switch of a carrier other than the incumbent LEC serves a geographical area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

47 C.F.R. § 51.711(a)(3).

b. To this point, the ILECs have failed to propose separate rates for "tandem" or Type 2A interconnection, versus "end office" or Type 2B interconnection. Separate Type 2A and Type 2B rates are required under the FCC's rules. If a Type 2A rate is established for any particular ILEC, Western Wireless will be entitled to that rate on all land-to-mobile calls because its switch serves a geographical area equal to or greater than the area served by any of the ILECs' tandem switches.

c. Accordingly, if bill-and-keep is not adopted, Western Wireless is entitled to collect from the ILECs the full Type 2A tandem rate, which consists of the tandem switching, tandem transport, and local switching, for all land-to-mobile traffic subject to reciprocal compensation.

14. **Unresolved Issue No. 5 (Application of Tariffs): Should interstate tariffs govern Western Wireless' purchase of access services and facilities from an ILEC?**

a. During negotiations, the parties did not resolve the source of pricing for interconnection facilities and access services. Under FCC rules, the ILECs are required

to price interconnection facilities for CMRS providers at the lowest rates that are economically reasonable. 47 C.F.R. § 20.11(a). In addition, CMRS-LEC traffic is regulated pursuant to federal law, and is not intrastate traffic. Western Wireless asserts that interstate tariffs, not intrastate tariffs, should govern the pricing of interconnection facilities and the purchase of access services.

15. **Unresolved Issue No. 6 (Local Numbers): May Western Wireless have numbers rated as local to an ILEC's end office without establishing a direct interconnection to that end office?**

a. Western Wireless is licensed to provide wireless service within the ILECs' certificated areas. To best serve customers in South Dakota, Western Wireless wants to offer consumers access to phone numbers that are local to the landline rate center. The ILECs claim such an arrangement requires a direct connection to the ILEC end office. However, it is inefficient and impractical for Western Wireless and the ILECs to establish direct connections to all ILEC end offices. To provide the greatest consumer benefit, Western Wireless should be entitled to obtain numbers which would be rated as local to an ILEC end office without establishing a direct connection. This would simply require the ILEC to program its switch to recognize the calls as local, and to send those calls to Western Wireless' point of interconnection at the nearest Qwest tandem switch. By establishing these local numbers, land-to-mobile calls would be efficiently routed, and landline customers would not incur unnecessary toll usage charges.

16. **Unresolved Issue No. 7 (Allocation of Billing Costs): Can an ILEC charge Western Wireless for billing costs incurred by the ILEC?**

a. The ILECs propose language that would allow them to charge Western Wireless for costs incurred by the ILEC to bill reciprocal compensation. The Commission should reject the ILECs' proposed language and require each Party to be responsible for its own billing costs.

17. **Unresolved Issue No. 8 (Standard of Service): Whether the ILECs must provide services at least equal in quality and performance to that which the party provides to itself. (Section 3.4.1.)**

18. **Unresolved Issue No. 9 (Usage Levels): What usage levels should be considered de minimus and subjected to "bill and keep" treatment. (Section 5.2.)**

a. The Parties agree that the when the traffic volume between Western Wireless and an ILEC is below a certain level, the costs of billing outweigh the financial benefits of doing so. Western Wireless proposes that any traffic volume less than 4,000 minutes of use per month or 12,000 minutes of use per quarter should be considered de minimus and subjected to "bill and keep" treatment. The ILECs propose 1,000 minutes of use per month, or 3,000 minutes of use per quarter.

19. **Unresolved Issue No. 10 (Access to Numbering Resources): Whether Western Wireless should have access to numbering resources consistent with 47 U.S.C. § 251(b)(3). (Section 7.4.)**

20. **Unresolved Issue No. 11 (Dialing Parity): Should Western Wireless' numbers rated out of an ILEC end office receive the same dialing treatment as other numbers within that local calling area or extended area service area? (Section 7.5.)**

21. Unresolved Issue No. 12 (Procedure for Renegotiation): What procedure should apply if a Party seeks to renegotiate the Agreement at the end of a term? (Section 12.2.4.)

22. Unresolved Issue No. 13 (Reciprocal Compensation Credit Factor): What reciprocal compensation factor should be established for land-to-mobile Traffic? (Appendix A, Section 4.)

23. Unresolved Issue No. 14 (Shared Facility Factor): What shared facility factor should be established for two-way trunks used for direct interconnection? (Appendix A, Section 4.)

24. Unresolved Issue No. 15 (Transit Rates): What are the appropriate rates for transiting services provided by an ILEC? (Appendix A, Section 7.)

25. Unresolved Issue No. 16 (Carrier Specific Information): Whether each final Agreement should include ILEC-specific information related to exchanges, numbers, CLLI codes, tandem switches, and local calling areas. (Appendix B.)

Request For Relief

Western Wireless respectfully requests that the Commission:

1. Arbitrate the unresolved issues between Western Wireless and the ILECs;

2. Issue an Order approving the Agreement attached as Exhibit 2 hereto, to be effective January 1, 2003, modified to reflect Western Wireless' position with respect to the unresolved issues; and

3. Issue such other orders as are just and proper.

Respectfully submitted,

Dated: Oct. 29, 2002

Talbot J. Wieczorek
GUNDERSON, PALMER, GOODSELL
& NELSON, LLP
440 Mount Rushmore Road
3rd and 4th Floors
P.O. Box 8045
Rapid City, South Dakota 57709-8045
Telephone: (605) 342-1078
Fax: (605) 342-9503

Philip R. Schenkenberg, Esq.
BRIGGS AND MORGAN, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone No. (651) 223-6600
Fax No.: (651) 223-6450

Attorneys for Petitioner
WWC License L.L.C.

CERTIFICATE OF MAILING

I hereby certify that a copy of the above and foregoing PETITION FOR ARBITRATION OF WWC LICENSE L.L.C. was served this 30th day of October, 2002 by Federal Express upon:

Richard D. Coit
South Dakota Independent Telephone Coalition, Inc.
207 E. Capitol Ave.
Suite 206
Pierre, South Dakota 57501

and by United States mail with postage prepaid thereon to the following:

Armour Independent Telephone Co. c/o Richard Freemark, Local Manager P.O. Box 460 Hartford, SD 57033-0460	Baltic Telecom Coop. c/o Don Snyders, General Manager P.O. Box 307 Baltic, SD 57003
Beresford Municipal Telephone Co. c/o Wayne Akland, General Manager 101 North Third Street Beresford, SD 57004	Bridgewater-Canistota Independent Telephone c/o Richard Freemark, Local Manager P.O. Box 460 Hartford, SD 57033-0460
Brookings Municipal Telephone d/b/a Swiftel Communications c/o Craig Osvog, General Manager P.O. Box 588 Brookings, SD 57006	City of Faith Telephone c/o Shane Ayres, Finance Officer P.O. Box 368 Faith, SD 57626
Cheyenne River Sioux Tribal Telephone Authority c/o J.D. Williams, General Manager P.O. Box 810 Eagle Butte, SD 57625	East Plains Telecom, Inc. c/o Don Snyders, General Manager P.O. Box 307 Baltic, SD 57003
Fort Randall Telephone Company c/o Bruce Hanson, General Manager 909 Willmar Avenue S.W. Willmar, MN 56201	Golden West Telecommunications Cooperative c/o George Strandell, Interim Manager P.O. Box 411 Wall, SD 57790
Interstate Telecommunications Cooperative c/o Jery Heiberger, General Manager P.O. Box 920 Clear Lake, SD 57226	James Valley Telecommunications c/o Doug Eidahl, General Manager P.O. Box 260 Groton, SD 57445-0260
Jefferson Telephone Company c/o General Manager P.O. Box 128 Jefferson, SD 57038	Kadoka Telephone Company c/o Pat Morse, President/General Manager P.O. Box 220 Kadoka, SD 57543

Kennebec Telephone Company c/o Rod Bowar, General Manager P.O. Box 158 Kennebec, SD 57544	McCook Cooperative Telephone Company c/o Bryan Roth, General Manager P.O. Box 630 Salem, SD 57058
Midstate Communications, Inc. c/o Mark Benton, General Manager P.O. Box 48 Kimball, SD 57355	Mt. Rushmore Telephone Company c/o Bruce Hanson, General Manager P.O. Box 800 Clara City, MN 56222
RC Communications, Inc. c/o Pamela Harrington, General Manager P.O. Box 196 New Effington, SD 57255	Roberts County Telephone Coop. Association c/o Pamela Harrington, General Manager P.O. Box 196 New Effington, SD 57255
Sancom, Inc. c/o General Manager 308 S. Dumont Street Woonsocket, SD 57385	Sioux Valley Telephone Co. c/o Dennis Law, General Manager P.O. Box 98 Dell Rapids, SD 57022
Splitrock Telecom Cooperative c/o Don Snyders, General Manager P.O. Box 349 Garretson, SD 57030	Splitrock Properties c/o Don Snyders, General Manager P.O. Box 349 Garretson, SD 57030
Stockholm-Strandburg Telephone Co. c/o Marjorie Nowick P.O. Box 20 Stockholm, SD 57264	Sully Buttes Telephone Coop., Inc. c/o Randy Houdek, General Manager P.O. Box 157 Highmore, SD 57345
Tri-County Telcom, Inc. c/o John Pudwill, Jr., General Manager P.O. Box 304 Emery, SD 57332	Union Telephone Company c/o Richard Freemark, Local Manager P.O. Box 460 Hartford, SD 57033-0460
Valley Telecommunications Coop. c/o Dianna Quaschnick, General Manager P.O. Box 7 Herried, SD 57632	Venture Communications Cooperative c/o Randy Houdek, General Manager P.O. Box 157 Highmore, SD 57345
Vivian Telephone Company d/b/a Golden West Telecommunications c/o George Strandell, Interim Manager P.O. Box 411 Wall, SD 57790	West River Cooperative Telephone Co. c/o Jerry Reisenauer, General Manager P.O. Box 39 Bison, SD 57620-0039

West River Telecommunications Cooperative c/o Albert (Mick) Grosz, General Manager P.O. Box 467 Hazen, ND 58545	Western Telephone Company c/o Harold A. Brown, General Manager P.O. Box 128 Faulkton, SD 57438

Philip R. Schenkenberg

Exhibit 1 to Arbitration Petition

RESPONDENT INDEPENDENT LOCAL EXCHANGE CARRIERS
Amour Independent Telephone Co.
Baltic Telecom Coop.
Beresford Municipal Telephone Co.
Bridgewater-Canistota Independent Telephone
Brookings Municipal Telephone/Swittel Communications
City of Faith Telephone
Cheyenne River Sioux Tribal Telephone Authority
East Plains Telecom, Inc.
Fort Randall Telephone Company
Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative, Inc.
James Valley Telecommunications
Jefferson Telephone Company
Kadoka Telephone Company
Kennebec Telephone Company
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
RC Communications, Inc.
Roberts County Telephone Coop. Association
Sancom, Inc.
Sioux Valley Telephone Co.
Splitrock Telecom Coop., Inc.
Splitrock Properties
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telecommunications, Inc.
Union Telephone Co.
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Company

Exhibit 2 to Arbitration Petition

RECIPROCAL INTERCONNECTION, TRANSPORT AND TERMINATION AGREEMENT

This Reciprocal Interconnection, Transport and Termination Agreement ("Agreement") is entered into as of the _____day of _____, 2002, by and between _____ ("the Telephone Company"), and WWC License L.L.C. ("the CMRS Provider"). The Telephone Company and the CMRS Provider are each individually a "Party" and are together the "Parties" to this Agreement.

WHEREAS, the Telephone Company is an Incumbent Local Exchange Carrier which assets it is operating as a Rural Telephone Company in the State of South Dakota;

WHEREAS, the CMRS Provider is licensed by the Federal Communications Commission ("FCC") as a Commercial Mobile Radio Service Provider;

WHEREAS, the Telephone Company and the CMRS Provider desire to establish arrangements between one another for the exchange of telecommunications traffic between their respective networks for the benefit of the Parties and their customers.

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996.

WHEREAS, the Parties also wish to establish an arrangement that compensates the Telephone Company for transiting traffic (when applicable) that originates on CMRS Provider's network and terminates on a Third Party Provider's network;

WHEREAS, the Parties agree that their entry into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters related to the same types of arrangements covered in this Agreement, and;

NOW, THEREFORE, in consideration of the foregoing and the undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Telephone Company and the CMRS Provider agree as follows:

This Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider.

Except as otherwise expressly provided for herein, this Agreement does not obligate either Party to provide arrangements or transport or terminate traffic not specifically provided for herein. Except as otherwise expressly provided for herein, this Agreement has no effect on the definition of End User services that either Party offers to its End User Customers, the services either Party chooses to offer to its respective End User Customers, the rate levels or rate structures that either Party charges its End Users for services, or the manner in which either Party provisions or routes the services either Party provides to its respective End User Customers.

This Agreement is not, however, intended to address any issues or disagreements that may exist between the Parties concerning the interpretation and application of provisions found in 47 U.S.C. § 332(c) and whether CMRS Provider, in providing certain wireless communications services, is subject to Commission regulation, including, but not limited to regulations requiring providers of local exchange type services to seek a certificate of authority from the Commission prior to offering such services.

Further, this agreement does not address the additional service obligations imposed on incumbent local exchange carriers pursuant to 47 U.S.C. § 251(c) and is based on a request for services pursuant to 47 U.S.C. §§ 251(a) and 251(b). By this Agreement neither Party waives any rights it may have under the Federal Act or rules of the FCC, under state statute, or pursuant to rules of the Commission. Such rights may include CMRS Provider's right to request a review of the rural telephone company exemption provided for under 47 U.S.C. § 251(f) and South Dakota Codified Laws § 49-31-79 and Telephone Company's right to seek to maintain the exemption.

1.0 Definitions

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms may be defined elsewhere in this Agreement, as well. Terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the effective date of this Agreement.

"Act" means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended.

"Cell Site" means the location of radio transmitting and receiving facilities associated with the origination and termination of wireless traffic to a wireless End User.

"Commercial Mobile Radio Service" or "CMRS" has the meaning given to the term in the Act.

"Commission" means the South Dakota Public Utilities Commission.

"Conversation Time" means the time (in full second increments) that both Parties' equipment is used for a call, measured from the receipt of answer supervision to disconnect supervision.

"EAS Service Area" means a group of two or more exchanges, as defined in the Telephone Company's local exchange tariff or as implemented through Telephone Company practice, among which a Telephone Company Customer may make landline-to-landline calls without incurring a toll charge.

"End Office" means a local Telephone Company switching point where the Telephone Company customer station loops are terminated for purposes of interconnection to each other and to the network.

"End User" means, whether or not capitalized, any business, residential or governmental Customer of services provided by a Party, and includes the term "Customer". More specific meanings of either of such terms are dependent upon the context in which they appear in the Agreement and the provisions of the Act.

"FCC" means the Federal Communications Commission.

"Incumbent Local Exchange Carrier or Incumbent LEC" has the meaning given the term in the Act.

"Indirectly Connected" refers to a network arrangement in which the networks of the Parties are connected through a Third Party Provider's facilities.

"Interconnection" refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telecommunications.

"Inter-exchange Carrier" or "IXC" means a telecommunications carrier that provides toll telephone service, as the latter term is defined in the Act.

"InterLATA Service" has the meaning given the term in the Act.

"InterMTA traffic" means all wireless to wireline and wireline to wireless calls, which originate in one MTA and terminate in another MTA based on the location of the connecting cell site serving the wireless end user and the location of the end office serving the wireline end user.

Issue	Western Wireless' Position	ILECs' Position
Definition of Local Traffic (Petition, Issue No. 1)	"'Local Traffic:' means wireless to wireline and wireline to wireless traffic exchanged between the CMRS Provider and the Telephone Company that, at the beginning of the call, originates and terminates within the same MTA based on the location of the connecting cell site serving the wireless end user and the location of the end office serving the wireline end user."	Definition of Local Traffic should exclude traffic routed to an interexchange carrier.

"Mobile Switching Center" or "MSC" means a CMRS Provider's facilities and related equipment used to route, transport and switch commercial mobile radio service traffic to and from and among its end Users and other telecommunications carriers.

"Major Trading Area" or "MTA" has the meaning given to the term in 47 CFR Section 24.202(A).

"NXX", "NXX Code", "Central Office Code", or "CO Code" is the 3-digit switch indicator that is defined by the D, E, and F digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 telephone numbers.

"Party" means either the CMRS Provider or the Telephone Company, and "Parties" means the CMRS Provider and the Telephone Company.

"Point of Interconnection " or "POI" means a physical location where the Telephone Company and the CMRS Provider interconnect their respective networks thereby establishing the technical interface and points for operational division of responsibility.

"Tandem" means a switching system that, through a trunk-to-trunk connection, provides a concentration and distribution function for originating or terminating traffic between end offices, other tandems and Third Party Providers'.

"Telecommunications" has the meaning given in the Act.

"Telecommunications Carrier" has the meaning given in the Act.

"Termination" means the switching of Traffic at the terminating carrier's end office switch, or equivalent facilities, and delivery of such traffic to the called party.

"Third Party Provider" shall mean any facilities-based telecommunications carrier, including, without limitation, Interexchange Carriers, independent telephone companies, competitive local exchange carriers, or CMRS Providers that carries transiting traffic. The term shall not mean resellers of a LEC's local exchange services or resellers of a CMRS Provider's services.

"Traffic" includes Local Traffic, InterMTA Traffic, and Transiting Traffic.

"Transiting Traffic" means traffic between two carriers, carried by a Third Party Provider that neither originates nor terminates that traffic on its network while acting as an intermediary.

"Transport" means the transmission of traffic from the POI between the two Parties or from the interconnection point of the Third Party Provider and a Party to the Party's switch that directly serves the called party. In the case of a Type 2A connection Transport includes Tandem Switching.

"Trunk Group" means a set of trunks of common routing, origin and destinations, and which serve a like purpose or function.

"Trunk Side" means a Party's connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example another Telephone Company to CMRS Provider switch. Trunk Side connections offer those transmission and signaling features appropriate for the connections of switching entities.

2.0 Description of Traffic

2.1 This agreement applies both to Local and to interMTA traffic originated by the End User subscribers of one Party and terminated to end-user subscribers of the other Party which is (a) delivered over facilities owned or controlled by the Parties, which directly interconnect the Parties or, (b) indirectly connected, i.e., delivered over a Third Party Provider's transiting facilities. Local Traffic is subject to only the local Transport and Termination charges as described in Appendix A.

Issue	Western Wireless' Position	ILECs' Position
Application of Tariffs (Petition, Issue No. 5)	"InterMTA Traffic is subject to Telephone Company's interstate access charges."	"InterMTA Traffic is subject to Telephone Company's interstate or intrastate access charges."

2.2 The Parties recognize that the Federal Communications Commission issued its Order on Remand and Report and Order on Intercarrier Compensation for ISP-bound Traffic in its Docket No. 96-98 on April 27, 2001, and that Telephone Company and various other parties have filed appeals of that Order. The Parties agree that ISP-bound traffic between them, if any, is presently de minimus. If a Party has reason to believe that enhanced service and Internet traffic is not de minimus, that Party may reopen negotiations to determine an appropriate method for identifying such traffic, and, so long as the FCC Order referred to above is final and outstanding, such traffic above a de minimus level shall be transported and terminated in accord with the interim compensation regime established by the FCC in the Order. If Telephone Company elects to invoke the rate cap for ISP-bound traffic established in the FCC's Order on Remand and Report and Order on Intercarrier Compensation for ISP-bound Traffic in its Docket No. 96-98 with respect to any telecommunications carrier, the Telephone Company and the CMRS Provider will begin exchanging all Local Traffic at the capped rate on the effective date of the implementation of the rate cap.

3.0 Direct Interconnection of the Party's Facilities Where a Third Party Provider Is Not Utilized

This Section describes the network architecture with which the Parties to this Agreement may interconnect their respective networks for the Transport and Termination of Telecommunications.

3.1 Interconnection Facilities

3.1.1 Type 1 Interconnection: Facilities which provide line side connections between a Telephone Company end office and the CMRS Provider's POI within that end office boundary. Type 1 facilities provide the capability to receive calls from subscribers served only by that Telephone Company end office and other end offices in the EAS Service Area, unless the Parties otherwise agree.

3.1.2 Type 2A Interconnection: Facilities which provide a trunk side connection between a Telephone Company Tandem and the CMRS Provider's POI within the wire center boundary of the tandem switch.

3.1.3 Type 2B Interconnection: Upon mutual agreement of the Parties, Type 2B facilities may be either One-Way or Two-Way facilities which provide a trunk side connection from a CMRS Provider's POI to a Telephone Company end office. The POI must be located within the Telephone Company's end office exchange boundary. Type 2B facilities provide the capability to access subscribers served only by that Telephone Company end office and other end offices in the EAS Service Area, unless the Parties otherwise agree.

3.1.4 The Parties shall provide each other a forecast of projected mobile to land or land to mobile usage for each point of interconnection when significant changes in traffic patterns are anticipated. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic. Upon mutual agreement of the Parties, Type 1 and Type 2A facilities may be either one-way or two-way. Type 2B facilities are restricted to one-way mobile to land, except as otherwise mutually agreed to by the Parties. When both Parties agree to utilize two way facilities, charges will be shared by the Parties on a proportional percentage basis as specified in Appendix A. The Parties shall review actual minutes transported on shared two way facilities and modify the percentages specified in Appendix A six months from the Effective Date of this Agreement and every twelve months thereafter. The modified percentages shall be used to true-up, on a going forward basis, the charges between the Parties.

3.2 Facility Locations

3.2.1 Technical Feasibility

3.2.1.1 The CMRS Provider may interconnect with the Telephone Company's network at the locations listed in Appendix B to deliver traffic to the Telephone Company for transport and termination by the Telephone Company on its network. Appendix D contains the CMRS Provider's initial POI. The CMRS Provider and Telephone Company may establish additional POI's, from time to time, in accordance with this Agreement.

3.2.2 Incumbent LEC Requirement

3.2.2.1 The Parties acknowledge that the services provided by Telephone Company under this Agreement are provided pursuant to the Telephone Company's obligations falling under 47 U.S.C. § 251(a) and 251(b) and that terms and conditions specified in this Agreement do not apply to the provision of services or facilities by the Telephone Company in those areas where the Telephone Company is not the incumbent LEC.

3.3 Additional Interconnection Methods Available to the CMRS Provider

3.3.1 The CMRS Provider may provide its own facilities and transport for the delivery of traffic from its MSC (or other mutually agreed upon point on the CMRS Provider's network) to the interconnection point on the Telephone Company's network. Alternatively, the CMRS Provider may purchase an entrance facility and transport from a Third Party Provider or from the Telephone Company for the delivery of such traffic.

Issue	Western Wireless' Position	ILECs' Position
Application of Tariffs (Petition, Issue No. 5)	"Rates for entrance facilities and transport purchased from the Telephone Company are specified in the Telephone Company's Interstate Access Service Tariff."	"Rates for entrance facilities and transport purchased from the Telephone Company are specified in the Telephone Company's Intrastate Access Service Tariff."

3.3.2 The Parties may share the Telephone Company's interconnection facilities at the rates specified in applicable tariffs. Charges will be shared by the Parties based on their proportional (percentage) use of such facilities as specified in Appendix A.

3.4 Technical Requirements and Standards

3.4.1

Issue	Western Wireless Position	ILECS' Position
Standard of Service (Petition, Issue No. 8)	"Each Party will provide the services in this Agreement to the other Party under reasonable and non-discriminatory conditions and at a standard that is at least equal in quality and performance to that which the Party provides *to itself or* to other connecting carriers. Either Party may request, and the other Party will provide, to the extent technically feasible, services at a higher or lesser standard, provided however, that any such requests shall be considered a special request, and will be handled on a case-by-case basis."	"Each Party will provide the services in this Agreement to the other Party under reasonable and non-discriminatory conditions and at a standard that is at least equal in quality and performance to that which the Party provides to other connecting carriers. Either Party may request, and the other Party will provide, to the extent technically feasible, services at a higher or lesser standard, provided however, that any such requests shall be considered a special request, and will be handled on a case-by-case basis."

3.4.2 Nothing in this Agreement will limit either Party's ability to modify its network, including, without limitation, the incorporation of new equipment and new software. Each Party will provide the other Party reasonable written notice, of any such modifications to its network, which will materially impact the other Party's service. Each Party will be solely responsible, at its own expense, for the

overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required as a consequence of this Agreement, including, without limitation, changes in facilities, operations or procedures, minimum network protection criteria, or operating or maintenance characteristics of facilities.

4.0 Transmission and Routing of Traffic

This Section provides the terms and conditions for the exchange of traffic between the Parties' respective networks for the transmission and routing by the Parties of wireless Traffic.

4.1 Mobile to Land Traffic – Directly Interconnected

4.1.1 The CMRS Provider shall be responsible for the delivery of Traffic from its Network to the appropriate Point of Interconnection on the Telephone Company's network, as set forth in Appendix B, for the Transport and Termination of such traffic by the Telephone Company to one of its End Users.

4.1.2 If the CMRS Provider chooses to use the Telephone Company's services or facilities, not otherwise covered under this Agreement, appropriate tariff rates will apply.

4.2 Land to Mobile Traffic – Directly Interconnected

4.2.1 The Telephone Company shall be responsible for the delivery of traffic from its End Users connected to its network to the appropriate Point of Interconnection (within the serving wire center boundary of the end office in which the tandem, providing Type 2A Interconnection, is located, or within the serving wire center boundary of the end office providing Type 1 and/or Type 2B Interconnection) on the CMRS Provider's network for the Transport and Termination of such traffic by the CMRS Provider to an End User.

4.2.2

Issue	Western Wireless' Position	ILECs' Position
Delivery of Land-to-Mobile Traffic (Petition, Issue No. 2b)	"Telephone Company agrees to deliver all originating intraMTA traffic bound for CMRS Provider to the direct connection(s)."	Requirement should not be imposed – calls should be toll calls subject to access charges.

4.3 Mobile to Land and Land to Mobile Traffic - Indirectly Connected via a Third Party Provider.

4.3.1 Mobile to Land Traffic – Indirectly Connected

As an alternative to routing traffic covered by this Agreement through a Point of Interconnection, the CMRS Provider may choose to deliver traffic from its network to a Third Party Provider and thus be indirectly connected with the Telephone Company for the delivery of traffic originated on the CMRS Providers' network by the CMRS Providers' End Users. As an alternative to routing traffic covered by this Agreement through a Point of Interconnection, the Telephone Company may choose to deliver traffic from its network to a Third Party Provider

and thus be indirectly connected with the CMRS Provider for the delivery of traffic originated by End Users connected to the Telephone Company's network.

4.3.2

Issue	Western Wireless' Position	ILECs' Position
Delivery of Land-to-Mobile Traffic (Petition, Issue Nos. 2b and 6)	"Telephone Company agrees that originating traffic destined to a CMRS Provider NXX rated out of one of the Telephone Company's rate centers will be dialed as local and delivered to CMRS Provider via indirect connections through the LATA tandem operator when no direct connection exists."	Requirement should not be imposed.

5.0 Transport and Termination Compensation

5.1 Rates - The CMRS Provider and the Telephone Company shall reciprocally and symmetrically compensate one another for Local Traffic terminated on either Party's network. The rates at which the Parties shall compensate each other for the Transport and Termination of Traffic are set forth below.

5.1.1 Each Party's access charges apply to the termination of InterMTA traffic.

5.1.2 The rates and rate elements applicable to Local Traffic are set forth in Appendix A.

5.1.3 If Telephone Company performs Transit Services, CMRS Provider shall compensate Telephone Company for originated Transit Traffic at the Transit Rate set forth in Appendix A. Any billing to CMRS Provider for Transit Services shall be limited to the intermediate Transit Services from Telephone Company to the terminating carrier. Telephone Company shall separately identify the amount of usage associated with the Transit Traffic on any billing to CMRS Provider. Telephone Company shall provide to CMRS Provider the identity of the terminating carrier, and the exchanges and route miles associated with any Transit Services which may be provided under this Agreement.

5.1.4 The Transport and Termination Services or Transit Services provided hereunder are intended for wireless to wireline or wireline to wireless, but not wireline to wireline communications. Such services will not be used to terminate other types of traffic on Telephone Company's network (such as wireline originated traffic) and services used in violation hereof shall constitute a breach of this Agreement. In addition to any other remedies available, the Party whose services have been improperly used shall be entitled to recover the appropriate charges for such traffic for the entire period of misuse.

5.2 De Minimus Traffic. In the event the Traffic terminated on the Parties' respective networks is de minimus such that the total minutes for which either Party is entitled to compensation is less than _____ minutes of use for a three month period (or _____ minutes of use for a one month period if the Telephone Company or the CMRS Provider bills monthly), the Parties agree that the only compensation for that Traffic will be in the form of the reciprocal Transport and Termination services provided by the other Party, i.e., Traffic will be exchanged on a bill and keep basis, and no billings will be issued by either Party.

Issue	Western Wireless' Position	ILECs' Position
Usage Levels Considered de Minimus (Petition, Issue No. 9)	4,000 minutes of use per month 12,000 minutes of use per quarter	1,000 minutes of use per month 3,000 minutes of use per quarter

5.3 Conversation Time - For purposes of billing compensation, billed minutes will be based upon Conversation Time. Conversation Time will be determined (a) from actual usage recordings by the Parties or (b) records of terminating traffic provided by the Third Party Provider.

5.4 Measuring calls as Local traffic – In order to measure whether traffic exchanged between the Parties networks is Local traffic for purposes of calculating reciprocal compensation, the Parties agree as follows: for Telephone Company, the origination or termination point of a call shall be the Telephone Company's end office which serves, respectively, the calling or called End User. For CMRS Provider, the origination or termination point of a call shall be the connecting cell site, which serves, respectively, the calling or called party at the time the call begins.

6.0 Transmission and Routing of Other Types of Traffic

The Parties agree that this Agreement does not provide for the exchange of 911/E911 traffic and that if such service is requested by the CMRS Provider that the Parties will negotiate a separate Agreement for such traffic.

Other ancillary traffic including wireless traffic destined for ancillary services including, but not limited to, directory assistance, operator call termination (busy line interrupt and verify), 800/888, LIDB, and information services requiring special billing will be exchanged and charged in accordance with the appropriate tariffs, local or switched access.

7.0 Responsibilities of the Parties:

7.1 Verification Reviews

7.1.1 The Parties will be responsible for the accuracy and quality of the data as submitted to the other Party. Upon reasonable written notice, either Party or its authorized representative shall have the right to conduct a review and verification of the other Party's data to give assurances of compliance with the provisions of this Agreement. The review will consist of an examination and verification of data involving records, systems, procedures and other information related to the services performed by the Party as related to settlement charges or payments made in connection with this Agreement. Each Party, whether or not in connection with an on-site verification review, shall maintain reasonable records for a minimum of twelve (12) months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement.

7.1.2 Either Party's right to access information for verification review purposes is limited to data not in excess of twelve (12) months in age. Once specific data has been reviewed and verified, it is unavailable for future reviews. Any items not reconciled at the end of a review will, however, be subject to a follow-up review effort. Any retroactive adjustments required subsequent to previously reviewed

and verified data will also be subject to follow-up review. Information of the Party involved with a verification review shall be subject to the confidentiality provisions of this Agreement.

7.1.3 The Party requesting a verification review shall fully bear its costs associated with conducting a review. The Party being reviewed will provide access to required information, as outlined in this section, at no charge to the reviewing Party. Should the reviewing Party request information or assistance beyond that reasonably required to conduct such a review, the Party being reviewed may, at its option, decline to comply with such request or may bill actual costs incurred in complying subsequent to the concurrence of the reviewing Party.

7.2 Billing

7.2.1 For directly connected arrangements between the Parties, the Parties shall issue bills to each other based on actual usage recordings. For arrangements involving a Third Party Provider, the Parties shall issue a bill based on the best information available to the billing Party including, but not limited to, records of terminating traffic created by the billing Party.

7.2.2 When a Third Party Provider indirect connect arrangement is used by the either Party to deliver traffic to the other Party the terminating Party may use its terminating records or usage reports and/or records (such as a CTUSR) generated by a Third Party Provider whose network is used to indirectly connect the traffic as the basis for billing the originating Party.

7.2.3 For billing purposes, if either Party is unable to classify on an automated basis the traffic delivered by CMRS Provider as local traffic or interMTA traffic, CMRS Provider will provide Telephone Company with a Percent InterMTA Use (PIU) factor, which represents the estimated portion of interMTA traffic delivered by CMRS provider. The PIU factor will be provided and updated on a semi-annual basis to commence six (6) months after approval of this Agreement.

If CMRS Provider is unable to determine the amount of wireline to wireless traffic received from Telephone Company for termination, a Reciprocal Compensation Credit shall be calculated and applied to the billing from Telephone Company to provide compensation for such traffic. The amount of this credit shall be determined by applying the Reciprocal Compensation Credit formula set forth in Appendix A. The Reciprocal Compensation Credit will appear on the monthly or quarterly bill issued by Telephone Company as a credit against amounts due and payable from CMRS Provider to Telephone Company. Should traffic patterns change so that more wireline to wireless traffic is being terminated by CMRS Provider, the Reciprocal Compensation Credit formula shall be change to reflect the increase. The amended Reciprocal Compensation Credit formula shall be based on the results of a traffic study conducted for a representative sample of calls within the Telephone Company's service area. If the Parties are unable to reach agreement on the adequacy of the sample, the methodology for the traffic study, or the appropriate percentages to be used, either Party may request resolution of the dispute by the Commission.

7.2.4 The Parties shall pay each other for all charges in accordance with the rates set forth in Appendix A of this agreement. Such payments are to be received within 30 days from the receipt of the billing statement. Undisputed charges, not paid within the 30 days from the receipt of the billing statement may be subject to a late charge at the rate of 1.5% per month or the maximum amount allowed by

law. The Party collecting revenues shall be responsible for reporting and remitting all applicable taxes associated therewith.

7.2.5

Issue	Western Wireless' Position	ILECs' Position
Allocation of Costs of Billing (Petition, Issue No. 7)	"Each Party is responsible for its own costs of billing the other Party."	"Both Parties should bear the expense of terminating usage data reports received from Qwest based on the ratio of originating traffic."

7.2.6 If either Party disputes a billing statement issued by the other Party, the disputing Party shall notify the billing Party in writing regarding the nature and the basis of the dispute within thirty (30) days of the receipt of the statement. The Parties shall diligently work toward resolution of all billing issues.

7.3 Network Maintenance and Management for Direct Interconnection

The Parties will work cooperatively to install and maintain reliable network facilities. The Parties will exchange appropriate information to achieve this desired reliability, subject to the confidentiality provisions herein.

7.3.1 Party shall provide a 24-hour contact number for network traffic management issues to the other's surveillance management center. A fax number must also be provided to facilitate notifications for planned mass calling events.

7.3.2 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to other carriers or to either Party's subscribers. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

7.3.3 Use of the CMRS Providers' facilities, or that of a third party in conjunction with any of the Telephone Company's facilities, shall not materially interfere with or impair service over any facilities of the Telephone Company, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carrier over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, the Party whose facilities are being used may discontinue or refuse service to the other Party if the Party using the facilities violates this provision; provided, that such termination of service will be limited to the facilities being used that is subject of the violation.

7.3.4 Maintenance of Service Charge - When one Party reports trouble to the other Party for clearance and no trouble is found in the second Party's network, the reporting Party shall be responsible for payment of a Maintenance of Service Charge for the period of time when the second Party's personnel are dispatched. In the event of an intermittent service problem that is eventually found to be in the second Party's network, the reporting Party shall receive a credit for any Maintenance of Service Charges applied in conjunction with this service problem.

If a Party reports trouble to the other Party for clearance and the other Party's personnel are not allowed access to the reporting Party's premises, the Maintenance of Service Charge will apply for the time that the non-reporting

Party's personnel are dispatched; provided that the Party's have arranged a specific time for the service visit.

7.4

Issue	Western Wireless' Position	ILECs' Position
Access to Numbering Resources (Petition, Issue No. 10)	"Access to Numbering Resources - The CMRS Provider shall have access to numbering resources in the same fashion as they are provided to other Telecommunications Carriers."	Requirement should not be imposed.

7.5 Local Dialing Parity - The Telephone Company agrees that local dialing parity will be available to the CMRS Provider in accordance with the law to the same extent as it is available to other Telecommunications Carriers. The Telephone Company will not be responsible for Local Exchange Routing Guide ("LERG") entry.

Issue	Western Wireless' Position	ILECs' Position
Non-Discriminatory Dialing (Petition, Issue No. 11)	"CMRS Provider's NXXs rated out of a Telephone Company end office should receive the same dialing treatment as other numbers in the local or extended area service area of the Telephone Company of the Telephone Company end office rate center."	Requirement should not be imposed.

8.0 Liability and Indemnification

8.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, functions, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the Interconnection, functions, products and services provided by the other Party, its agents, subcontractors, or others retained by such parties.

8.2 Each Party shall be indemnified and held harmless by the other Party against claims, losses, suits, demands, damages, costs, expenses, including reasonable attorney's fees ("Claims"), asserted, suffered, or made by third parties arising from (i) any act or omission of the indemnifying Party in connection with its performance or non-performance under this Agreement; (ii) actual or alleged infringement by the indemnifying Party of any patent, trademark, copyright, service mark, trade name, trade secret or intellectual property right (now known or later developed), and (iii) provision of the indemnifying Party's services or equipment, including but not limited to claims arising from the provision of the indemnifying Party's services to its End Users (e.g., claims for interruption of service, quality of service or billing disputes). Each Party shall also be indemnified and held harmless by the other Party against Claims of persons for services furnished by the indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.

8.3 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or loss arising from the Indemnifying Party's use of Interconnection, functions, products and services provided under this Agreement involving:

8.3.1 any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its Customer's use.

8.3.2 any claims, demands or suits that asserts any claim for libel, slander, infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the other Party's employees and equipment associated with the provision of any service herein. The foregoing includes any Claims or Losses arising from disclosure of any Customer-specific information associated with either the originating or terminating numbers used to provision Interconnection, functions, products or services provided hereunder and all other Claims arising out of any act or omission of the Customer in the course of using any Interconnection, functions, products or services provided pursuant to this Agreement.

8.3.3 any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA).

8.4 Neither Party makes any warranty, express or implied, concerning either Party's (or any third party's) rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with either Party's right to interconnect. Nothing in this Section will be deemed to supersede or replace any other agreements, if any, between the Parties with respect to either party's intellectual property or contract rights.

8.5 Each Party ("Indemnifying Party") shall reimburse the other Party ("Indemnified Party") for damages to the Indemnified Party's equipment, Interconnection trunks and other property utilized to provide Interconnection hereunder caused by the negligence or willful act of the Indemnifying Party, its agents, subcontractors or Customer or resulting from the Indemnifying Party's improper use of the Indemnified Party's equipment, Interconnection trunks or other property, or due to malfunction of any functions, products, services or equipment of the Indemnifying Party or of any other party that have been provided to the Indemnifying Party. Upon reimbursement for damages, the Indemnified Party will cooperate with the Indemnifying Party in prosecuting a claim against the person causing such damage. The Indemnifying Party shall be subrogated to the right of recovery by the Indemnified Party for the damages to the extent of such payment.

8.6 Indemnification Procedures

8.6.1 Whenever a claim shall arise for indemnification, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.

8.6.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.

8.6.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.

8.6.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such Claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

8.6.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.

8.6.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

8.6.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

8.6.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

8.6.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 9.

8.7 Apportionment of Fault. Except for losses alleged or claimed by a Customer of either Party and except as otherwise provided in specific appendices, in the case of any loss alleged or claimed by a third party arising out of the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this Section shall be limited to, that portion of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

8.7.1 The Parties are not liable for any act or omission of other Providers.

8.7.2 Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

8.8 NO CONSEQUENTIAL DAMAGES

NEITHER THE TELEPHONE COMPANY NOR THE CMRS PROVIDER SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTIES LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE) OR (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT PROXIMATELY CAUSED BY THE TELEPHONE COMPANY'S OR THE CMRS PROVIDER'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED HEREIN.

8.9 RELEASES

In resolution of the Parties rights, and in further consideration of this Agreement, each Party releases, acquits and discharges the other Party of and from any claim, debt, demand, liability, action or cause of action arising from or relating to the payment of money for the transport and termination of traffic prior to the Effective Date of this Agreement:

9.0 Confidentiality and Proprietary Information

9.1 For the purposes of this Agreement, Confidential Information ("Confidential Information") means confidential or proprietary technical or business information given by one Party (the "Discloser") to the other (the "Recipient"). All information which is disclosed by one Party to the other in connection with this Agreement, during negotiations and the term of this Agreement will not be deemed Confidential Information to the Discloser and subject to this Section 9, unless the confidentiality of the information is confirmed in writing by the Discloser prior to disclosure. The Recipient agrees (i) to use Confidential Information only for the purpose of performing under this Agreement, (ii) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (iii) to safeguard it from unauthorized use or discloser using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such discloser must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosures and nonuse comparable in scope to the terms of this section.

9.2 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.

9.3 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement; the Recipient shall certify destruction by written letter to the Discloser. If either Party loses or makes an unauthorized disclosure of the Party's Confidential Information, it will notify such other Party immediately and use its best efforts to retrieve the lost or wrongfully disclosed information.

9.4 The Recipient shall have no obligation to safeguard Confidential Information: (i) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (ii) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (iii) after it is rightfully acquired by the Recipient free of restrictions on its discloser; (iv) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, as long as, in the absence of an applicable protective order, the Discloser has been previously notified by the Recipient in time sufficient for the Recipient to undertake all lawful measures to avoid disclosing such confidential information and for Discloser to have reasonable time to seek or negotiate a protective order before or with any applicable mediator, arbitrator, state or regulatory body or a court.

9.5 The Parties recognize that an individual End User may simultaneously seek to become or be a Customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from End Users or sources other than the Discloser.

9.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.

9.7 No license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue or the disclosure of any Confidential Information.

Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

10.0 Finality of Disputes

No claims shall be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence which gives rise to the dispute, or beyond the applicable statute of limitations, whichever is shorter.

11.0 Intervening Law

11.1 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations, orders or guidelines that subsequently may be prescribed by any federal or state government authority with jurisdiction. To the extent required or permitted by any such subsequently prescribed law, rule, regulation, order or guideline, the Parties agree to negotiate in good faith toward an agreement to modify, in writing, any affected term or condition of this Agreement to bring them into compliance with such law, rule, regulation, order or

guideline. Upon failure to reach agreement to implement a change in laws, rules, regulations, orders or guidelines, either Party may seek arbitration before any regulatory authority with jurisdiction.

11.2 Each Party shall comply with all federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

12.0 Miscellaneous Provisions

12.1 Effective Date - This Agreement shall be effective on _____, subject to approval by the Commission. The Parties shall work cooperatively and take all steps necessary and proper to expeditiously prosecute a joint application before the Commission seeking approval of this Agreement pursuant to the provisions of 47 U.S.C. § 252. Each Party shall be responsible for its own costs and expenses incurred in obtaining approval of this Agreement from the Commission.

12.2 Term and Termination

12.2.1 This Agreement shall remain in effect for two (2) years after the effective date of this Agreement. The Agreement shall automatically renew for additional one (1) year terms, unless either Party gives the other Party written notice of intent to terminate at least sixty (60) days prior to the expiration date of the initial or renewed term.

12.2.2 Upon termination or expiration of this agreement in accordance with this Section, above:

(a) Each Party shall continue to comply with its obligations set forth in Section Confidentiality and

(b) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement; and upon termination or expiration of this Agreement, each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement or place disputed amounts into an escrow account.

(c) Each Party 's indemnification obligations shall survive.

12.2.3 Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party, provided however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) days of receipt of written notice thereof.

12.2.4 If upon expiration or termination either Party requests the negotiation of a successor agreement, during the period of negotiation of the successor agreement each Party shall continue to perform its obligations and provide the services described herein until such time as the successor agreement becomes effective. If the Parties are unable to negotiate a successor agreement within the statutory time frame set for negotiations under the Act, then either Party has the right to submit this matter to the Commission for resolution pursuant to the statutory rules for arbitration under the Act.

Issue	Western Wireless' Position	ILECs' Position
Procedure for Renegotiation (Petition, Issue No. 12)	"The rates, term, and conditions applying during the interim period between the termination of this contract and the effective date of the successor contract shall be trued-up to be consistent with the rates, terms and conditions of the successor agreement."	Unknown.

12.3 Binding Effect - This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

12.4 Assignment - Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned; provided, that either Party may assign its rights and delegate its benefits, and delegate its duties and obligations under this Agreement without the consent of the other Party to a parent, one hundred (100) per cent owned affiliate or subsidiary of that Party for the continued provisioning of the telecommunications service under this Agreement.

12.5 Third Party Beneficiaries - This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

12.6 Force Majeure - Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable commercial efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

12.7 DISCLAIMER OF WARRANTIES - THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES OR FACILITIES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

12.8 Survival of Obligations - Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

12.9 Waiver - The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times in full force and effect.

12.10 Patents, Trademarks and Trade Names

12.10.1 With respect to claims of patent infringement made by third persons, the Parties shall defend, indemnify, protect and save harmless the other from and against all claims arising out of the improper combining with or use by the indemnifying Party of any circuit, apparatus, system or method provided by that Party or its subscribers in connection with the Interconnection arrangements furnished under this Agreement.

12.10.2 No license under patents is granted by either Party to the other, or shall be implied or arise by estoppel with respect to any circuit, apparatus, system, or method used by either Party in connection with any Interconnection Arrangements or services furnished under this Agreement.

12.10.3 Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent prior written consent of the other Party.

12.11 Relationship of the Parties

12.11.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

12.11.2 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party.

12.11.3 Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

12.11.4 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

12.11.5 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party.

12.12 Services - Each Party is solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.

12.13 Notices - Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally; on the date receipt is acknowledged in writing by the recipient if delivered by regular mail; or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission as reflected in the facsimile confirmation sheet. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section.

NOTICE CONTACT	Telephone Company CONTACT	CMRS Provider CONTACT
NAME/TITLE		**Regulatory Department cc Engineering Dept.**
STREET ADDRESS		3650 131st Ave. SE
CITY, STATE, ZIP CODE		Bellevue, WA 98006
TELEPHONE NUMBER		425-586-8700
FAX NUMBER		425-586-8118

12.14 Expenses - Except as specifically set out in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

12.15 Headings - The headings in this Agreement are inserted for convenience and identification only and will not be considered in the interpretation of this Agreement.

12.16 Governing Law – For all claims under this Agreement, that are based upon issues within the jurisdiction of the FCC or governed by federal law, the Parties agree that the remedies for such claims shall be governed by the FCC and the Act. For all claims under this agreement that are based upon issues within the jurisdiction of the Commission or governed by state law, the Parties agree that the jurisdiction for all such claims shall be with such Commission, and the remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of South Dakota without reference to conflict of law provisions.

12.17 Multiple Counterparts - This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one and the same document.

12.18 Complete Terms - This Agreement together with its appendices and exhibits constitutes the entire agreement regarding the exchange and compensation for Local Traffic between the Parties and supersedes all prior discussions, representations or oral understandings reached between the Parties. Appendices and exhibits referred to herein are deemed attached hereto and incorporated by reference. Neither Party shall be bound by any amendment, modification or additional terms unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.

12.19 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

12.20 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties.

12.21 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives.

The Telephone Company	The CMRS Provider
BY:_____	BY:_____
(Signature)	(Signature)
NAME:_____	NAME:_____
(Printed)	(Printed)
TITLE:_____	TITLE:_____
DATE:_____	DATE:_____

APPENDIX A

1.0 MOBILE TO LAND DIRECT INTERCONNECTION RATES PER MINUTE OF USE

TYPE 2A $.____ TYPE 1 $.___ TYPE 2B $.___

Issue	Western Wireless' Position	ILECS' Position
Rates for Reciprocal Compensation (Petition, Issue Nos. 3, 4)	Rates should be based on an ILEC's additional costs of transport and termination on a forward looking basis.	Rates should be based on forward looking cost of transport and termination. Termination cost should include loop allocation. A cost study is being developed.

2.0 LAND TO MOBILE DIRECT INTERCONNECTION RATES PER MINUTE OF USE

TYPE 2A $.___ TYPE 1 $.___ TYPE 2B $.____

Issue	Western Wireless' Position	ILECs' Position
Rates for Reciprocal Compensation (Petition, Issue Nos. 3, 4)	Western Wireless is entitled to symmetrical compensation, and will charge the ILEC's rate for transport and termination of land-to-mobile traffic. If a Type 2A rate is established for an ILEC, Western Wireless charges the Type 2A rate on all land-to-mobile calls.	Rates should be symmetrical to mobile-to-land rates.

3.0 RECIPROCAL COMPENSATION FOR TRANSPORT AND TERMINATION OF TRAFFIC EXCHANGED THROUGH AN INDIRECT INTERCONNECTION

$.____ per minute of use

Issue	Western Wireless' Position	ILECs' Position
Rates for Reciprocal Compensation (Petition, Issue Nos. 3, 4)	Rates must be reciprocal and based on an ILEC's additional costs of transport and termination on a forward looking basis.	Rates should be based on forward looking cost of transport and termination. Termination cost should include loop allocation. A cost study is being developed.

4.0 Reciprocal Compensation Credit Factor:

Issue	Western Wireless' Position	ILECs' Position
Reciprocal Compensation Credit Factor (Petition, Issue No. 13)	Traffic ratio should be determined in this proceeding based on standards in Section 7.2.3.	Unknown

5.0 To the extent CMRS Provider requires facilities referenced in 3.1, such facilities will be made available and the price will be based upon the applicable tariff.

6.0 SHARED FACILITY

SHARED FACILITY FACTOR – CMRS Provider __%
SHARED FACILITY FACTOR – Telephone Company __%

Issue	Western Wireless' Position	ILECs' Position
Shared Facility Factor (Petition, Issue No. 14)	The shared facility factor should initially be set at the reciprocal compensation credit factor, and would be subject to adjustment in accordance with Section 3.1.4.	Unknown

7.0 TRANSIT RATE

Issue	Western Wireless' Position	ILECs' Position
Transit Rates (Petition, Issue No. 15)	Transit rates should be a by-product of the final rates established in this proceeding, using switching cost elements specific to each of those ILECs that provides transit service.	Unknown

APPENDIX B

CARRIER INTERCONNECTION DATA

Exchange Name	NPA/NXX(s)	CLLI	Tandem(s)	Local Calling Area & EAS Exchange(s)

* Must include POI locations with any LATA tandem trunk facilities and/or local interconnection facilities with other carriers.

Issue	Western Wireless' Position	ILECs' Position
Telephone Company Information (Petition, Issue No. 16)	Final agreements should include the above ILEC-specific information	Unknown

Exhibit 3 to Arbitration Petition

Western Wireless.

November 20, 2001

Via Facsimile and U.S. Mail

General Manager
Western Telephone Company
111 9th Ave.
Faulkton, SD 57438-0128

Re: Request for Renegotiation of Interconnection Agreement, Pursuant to Section 252 of the Communications Act of 1934, as amended, 47 U.S.C. Section 252

Dear General Manager:

Western Wireless Corporation ("Western Wireless") hereby requests, pursuant to Section 252 of the Communications Act of 1934, as amended, 47 U.S.C. Section 252, that Western Telephone Company enter into negotiations with Western Wireless to establish a new interconnection agreement in South Dakota for the transport and termination of telecommunications traffic between our companies. The term of our current interconnection agreement expires on January 1, 2002; at which time Western Wireless request that the agreement stay in effect on a month-to-month basis until such time as a new agreement is entered into.

Attached hereto is a proposed interconnection agreement to govern the interconnection and exchange of telecommunications traffic between our networks. Upon your review of this proposed agreement, please contact me at your earliest convenience to discuss further. I can be reached by phone at 425-586-8055, or by facsimile at 425-586-8118, or by email at gene.dejordy@wwireless.com.

Sincerely,

Gene DeJordy, Esq.
Vice President of Regulatory Affairs

cc: Richard D. Coit, SDITC
Enclosures

Western Wireless Corporation 3650 131st Avenue SE, Suite 400 Bellevue, WA 98006 Office (425) 586-8700 Fax (425) 586-8666

Exhibit 4 to Arbitration Petition

Western Wireless.

September 11, 2002

Via Facsimile and U.S. Mail

Richard D. Coit
South Dakota Telecommunications Association
320 East Capitol Avenue
P.O. Box 57
Pierre, South Dakota 57501-0057

Re: Arbitration Window for Renegotiation of Interconnection Agreement Pursuant to Section 252 of the Communications Act of 1934, as amended, 47 U.S.C. Section 252

Dear Mr. Coit:

Western Wireless Corporation ("Western Wireless") and the South Dakota independent local exchange carriers ("SD ILECs") identified below have been engaged in the negotiation of new interconnection agreements pursuant to Section 252 of the Communications Act of 1934, as amended, 47 U.S.C. Section 252. Western Wireless and SD ILECs hereby agree that the dates that either party may petition the appropriate state commission for arbitration of any open issues under Section 252 (b)(1) of the Telecommunications Act of 1996 shall be October 5, 2002 through October 31, 2002.

Parties: Western Wireless Corporation

SD ILECs:
Armour Independent Telephone Co.
Baltic Telecom Coop.
Beresford Municipal Telephone Co.
Bridgewater-Canistota Independent Telephone
Brookings Municipal Telephone/Swittel Communications
City of Faith Telephone
Cheyenne River Sioux Tribal Telephone Authority
Dakota Community Telephone
East Plains Telecom, Inc.
Fort Randall Telephone Company
Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative, Inc.
James Valley Telecommunications
Jefferson Telephone Company
Kadoka Telephone Company
Kennebec Telephone Company

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J. D. Williams, General Manager

Western Wireless Corporation 3650 131st Avenue SE, Suite 400 Bellevue, WA 98006 Office (425) 586-8700 Fax (425) 586-8666

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J. D. Williams, General Manager

Western Wireless Corporation 3650 131st Avenue SE, Suite 400 Bellevue, WA 98006 Office (425) 586-8700 Fax (425) 586-8666

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J. D. Williams, General Manager

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J. D. Williams, General Manager

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J. D. Williams, General Manager

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: Shane Ayers
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J. D. Williams, General Manager

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager
Brookings Municipal Telephone/
Swiftel Communications

By: _____
J. D. Williams, General Manager

McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
Roberts County Telephone Coop. Association
RC Communications, Inc.
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm Strandburg Telephone Co.
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Coop.
Venture Communications, Inc.
Vivian Telephone Company, d/b/a Golden West Telecommunications
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Comp

Arbitration Window
Under Section 252(b)(1) of the Act: October 6, 2002 through October 31, 2002

By: _____
Richard D. Coit
SDTA

By: _____
Gene A. DeJordy, Esq.
Vice President, Western Wireless

By: _____
Richard Freemark, Local Manager
Armour Independent Telephone Co.
Bridgewater-Canistota Independent Tele.
Kadoka Telephone Co.
Union Telephone Co.

By: _____
Don Snyders, General Manager
Baltic Telecom Coop.
East Plains Telecom, Inc.
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.

By: _____
Wayne Akland, General Manager
Beresford Municipal Telephone Co.

By: _____
Shane Ayers, Finance Officer
City of Faith Telephone

By: _____
Craig Osvog, General Manager

By: _____
J.D. Williams, General Manager
Cheyenne River Sioux Tribal
Telephone Authority

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company
Mt. Rushmore Telephone

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: George Strandell
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West ~~Telecommunications~~ COMMUNICATIONS, INC.

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
Georgo Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co,

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: Pamela Harrington
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: Harold Nowick
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

Brookings Municipal Telephone/
Swiftel Communications

By: _____
William Heaston, General Counsel
Dakota Community Telephone

By: _____
George Strandell, General Manager
Golden West Telecommunications Coop.
Vivian Telephone Company, d/b/a
Golden West Telecommunications

By: _____
Doug Eidahl, General Manager
James Valley Telecommunications

By: _____
Thomas Connors, General Manager
Long Lines

By: _____
Mark Benton, General Manager
Midstate Communications, Inc.

By: _____
Gene Kroell, General Manager
Santel Communications

By: _____
Harold Nowick, General Manager
Stockholm Strandburg Telephone Co.

Cheyenne River Sioux Tribal
Telephone Authority

By: _____
Bruce Hanson, General Manager
Ft. Randall Telephone Company

By: _____
Jerry Heiberger, General Manager
Interstate Telecommunications
Cooperative, Inc.

By: _____
Rod Bowar, General Manager
Kennebec Telephone Company

By: _____
Bryan Roth, General Manager
McCook Cooperative Telephone Co.

By: _____
Pamela Harrington, General Manager
Roberts County Telephone Coop. Assn.
RC Communications, Inc.

By: _____
Dennis Law, General Manager
Sioux Valley Telephone Co.

By: _____
Randy Houdek, General Manager
Sully Buttes Telephone Coop., Inc.

By: _____
John Pudwill, Jr. General Manager
Tri-County Telcom, Inc.

By: _____
Dianna Quaschnick, General Manager
Valley Telecommunications Coop.

By: _____
Jerry Reisenauer, General Manager
West River Cooperative Telephone Co.

By: _____
Mick Grosz, General Manager
West River Telecommunications Coop

By: _____
Harold Brown, General Manager
Western Telephone Company

By: _____
John Pudwill, Jr. General Manager
Tri-County Telcom, Inc.

By: Dianna Quaschnick
Dianna Quaschnick, General Manager
Valley Telecommunications Coop.

By: _____
Jerry Reisenauer, General Manager
West River Cooperative Telephone Co.

By: _____
Mick Grosz, General Manager
West River Telecommunications Coop

By: _____
Harold Brown, General Manager
Western Telephone Company

By: _____
John Pudwill, Jr. General Manager
Tri-County Telcom, Inc.

By: _____
Jerry Reisenauer, General Manager
West River Cooperative Telephone Co.

By: _____
Harold Brown, General Manager
Western Telephone Company

By: _____
Dianna Quaschnick, General Manager
Valley Telecommunications Coop.

By: _____
Mick Grosz, General Manager
West River Telecommunications Coop

By: _____
John Pudwill, Jr. General Manager
Tri-County Telcom, Inc.

By: _____
Dianna Quaschnick, General Manager
Valley Telecommunications Coop.

By: _____
Jerry Reisenauer, General Manager
West River Cooperative Telephone Co.

By: _____
Mick Grosz, General Manager
West River Telecommunications Coop

By: _____
Harold Brown, General Manager
Western Telephone Company

By: _____
John Pudwill, Jr. General Manager
Tri-County Telcom, Inc.

By: _____
Dianna Quaschnick, General Manager
Valley Telecommunications Coop.

By: _____
Jerry Reisenauer, General Manager
West River Cooperative Telephone Co.

By: _____
Mick Grosz, General Manager
West River Telecommunications Coop

By: _____
Harold Brown, General Manager
Western Telephone Company

By: _____
John Pudwill, Jr. General Manager
Tri-County Telecom, Inc.

By: _____
Dianna Quaschnick, General Manager
Valley Telecommunications Coop.

By: _____
Jerry Reisenauer, General Manager
West River Cooperative Telephone Co.

By: _____
Mick Grosz, General Manager
West River Telecommunications Coop

By: _____
Harold Brown, General Manager
Western Telephone Company

By: _____
Rick Hilderbrand, Dir. of Operations
Kadoka Telephone Company

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of October 31, 2002 through November 6, 2002

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT02-044 In the Matter of the Complaint filed by Sandy Fenhaus on behalf of Headlines Academy, Inc., Rapid City, South Dakota, against McLeodUSA Telecommunications Services, Inc. Regarding a Contract Dispute.

The Complainant's representative alleges that Headlines Academy, Inc. (Complainant) was informed by McLeodUSA Telecommunications Services, Inc. (McLeod) that Complainant's contract with McLeod had expired. As a result, Complainant's representative believed Complainant was free to switch to another service provider, as it was under no contractual obligation to stay with McLeod. Complainant did switch to another service provider and McLeod then billed it $3,066.60 for termination liability. Complainant's representative request that Complainant not be charged the $3,066.60.

Staff Analyst: Amy Kayser
Staff Attorney: Karen Cremer
Date Docketed: 11/05/02
Intervention Deadline: NA

TELECOMMUNICATIONS

TC02-176 In the Matter of the Petition for Arbitration on behalf of WWC License L.L.C. with Certain Independent Local Exchange Companies.

On October 31, 2002, WWC License, L.L.C. (Western Wireless), a commercial mobile radio service provider operating under the trade name CellularOne, filed for the Commission to arbitrate the unresolved issues remaining after negotiations for an interconnection agreement between Western Wireless and the small independent, cooperative, and municipal local exchange companies failed to reach agreement. The unresolved issues are: Scope of Reciprocal Compensation Obligations; Delivery of Land-To-Mobile Traffic; Rates For Reciprocal Compensation; Symmetrical Compensation at a Tandem Rate; Application of Tariffs; Local Numbers; Allocation of Billing Costs; Standard of Service; Usage Levels; Access to Numbering Resources; Dialing Parity; Procedure for Renegotiation; Reciprocal Compensation Credit Factor; Shared Facility Factor; Transit Rates; and Carrier Specific Information. A non-petitioning party may respond to the petition for arbitration and provide additional information by November 25, 2002.

Staff Analyst: Harlan Best
Staff Attorney: Karen Cremer
Date Docketed: 10/31/02
Response by non-petitioning parties due: 11/25/02

TC02-177 In the Matter of the Filing by Midcontinent Communications, Inc. for Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company Specific Cost-Based Switched Access Rates.

On November 1, 2002, Midcontinent Communications filed a request for approval of revised switched access rates with continued consideration of ARSD 20:10:27:11 being waived. Midcontinent was granted a waiver of ARSD 20:10:27:11 in its original filing on October 20, 2000. The Applicant has also requested a waiver of ARSD 20:10:27:12. Midcontinent intends to mirror the switched access tariffed rates of Qwest.

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 11/01/02
Intervention Deadline: 11/22/02

TC02-178 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and AT&T Communications of the Midwest, Inc.

On November 4, 2002, the Commission received a filing regarding Amendment No. 4 to the Interconnection Agreement between AT&T Communications of the Midwest, Inc. (AT&T) and Qwest Corporation (Qwest). According to the parties, the filing is a Negotiated Agreement between AT&T and Qwest to amend an Agreement approved by the Commission effective March 4, 1999, in Docket No. TC96-184. The Amendment is made in order to add terms, conditions and rates for Local Switching and Unbundling Network Elements Combinations as set forth in Attachments 1, 2 and 3 and Exhibits A, B, and C attached to the Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than November 25, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 11/04/02
Initial Comments Due: 11/25/02

TC02-179 In the Matter of the Filing of an Agreement between Qwest Corporation, Including its Controlled Affiliates and McLeodUSA Telecommunications Services, Inc., Including McLeodUSA Incorporated and its Controlled Affiliates.

On October 15, 2002, Qwest Corporation (Qwest) submitted a copy of a contract dated September 19, 2002, between Qwest Corporation, including its controlled affiliates (collectively QC) and McLeodUSA Telecommunications Services, Inc., including McLeodUSA Incorporated and its controlled affiliates (collectively McLeod) with the Commission. The contract regards resolution of disputes and claims between QC and McLeod arising under certain Interconnection Agreements in 14 states, billing disputes and the SMDR function of Centrex Plus service. Based on Qwest's

interpretation of the Federal Communications Commission's Order released October 4, 2002, in WC Docket No. 02-089, the contract was not filed pursuant to section 252(e) of the 1996 Telecommunications Act, and was submitted by Qwest as an informational filing. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than November 19, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Staff Analyst: Heather Forney
Date Docketed: 11/06/02
Initial Comments Due: 11/19/02

TC02-180 In the Matter of the Filing of an Agreement between Qwest Communications Corporation, Including its Controlled Affiliates and McLeodUSA Telecommunications Services, Inc., Including McLeodUSA Incorporated and its Controlled Affiliates.

On October 15, 2002, Qwest Corporation (Qwest) submitted a copy of a contract dated September 19, 2002, between Qwest Communications Corporation, including its controlled affiliates (collectively QCC) and McLeodUSA Telecommunications Services, Inc., including McLeodUSA Incorporated and its controlled affiliates (collectively McLeod) with the Commission. The contract regards resolution of disputes and claims between QCC and McLeod arising under two separate 10/02/00 Purchase Agreements and a 12/31/01 Confidential Billing Settlement Agreement. Based on Qwest's interpretation of the Federal Communications Commission's Order released October 4, 2002, in WC Docket No. 02-089, the contract was not filed pursuant to section 252(e) of the 1996 Telecommunications Act, and was submitted by Qwest as an informational filing. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than November 19, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Staff Analyst: Heather Forney
Date Docketed: 11/06/02
Initial Comments Due: 11/19/02

HYNES & MCCAULLEY LAW FIRM

A PROFESSIONAL LIMITED LIABILITY COMPANY

Matthew S. McCaulley
matt@sdlawfirm.com

122 SOUTH PHILLIPS AVENUE, SUITE 250
SIOUX FALLS, SD 57104-6706
PHONE: (605) 332-0500
FAX: (605) 332-2525
www.sdlawfirm.com

Thomas P. Hynes
tom@sdlawfirm.com
Of Counsel

November 22, 2002

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

Re: Petition to Intervene by PrairieWave Community Telephone, Inc. (TC 02-176)

Dear Ms. Elofson:

On behalf of PrairieWave Community Telephone, Inc., enclosed for filing are an original and ten (10) copies of the above referenced complaint. The petition is being served on the parties listed on the enclosed certificate of service.

Thank you for your time and attention to this matter and please contact me if you have any additional questions or concerns.

Sincerely,

Matthew McCaulley
Attorney at Law

MM/sem
enclosures: as stated
cc: Philip R. Schenkenberg

Elec.
Received NOV 22 2002

RECEIVED
NOV 25 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF:

DOCKET No. TC02-176

PETITION OF WWC LICENSE L.L.C.)
FOR ARBITRATION UNDER THE)
TELECOMMUNICATIONS ACT OF 1996)

PETITION TO INTERVENE
BY PRAIRIEWAVE
COMMUNITY TELEPHONE, INC.

Pursuant to ARSD 20:10:01:15.02 (1998), PrairieWave Community Telephone, Inc. ("PrairieWave") respectfully petitions the Commission for leave to intervene in the above captioned matter. In support of its petition to intervene, PrairieWave states as follows:

1. PrairieWave, f/k/a Dakota Community Telephone, Inc. is an incumbent local exchange carrier ("ILEC"), as defined by the Federal Telecommunications Act of 1996 ("The Act").

2. As an ILEC, PrairieWave is a member of the South Dakota Telephone association ("SDTA") that is comprised of the small rural ILECs in the state of South Dakota.

3. Dakota Community Telephone, Inc. negotiated and executed an agreement with Western Wireless for Interconnection over four years ago. Because of the passage of time, the interconnection agreement is outdated and needs to be renegotiated.

4. Western Wireless has requested arbitration for all but one member of the SDTA – with PrairieWave being the sole SDTA member excluded from the arbitration. Although PrairieWave has been excluded from the arbitration, the position of PrairieWave is identical to the other SDTA members participating in the arbitration.

5. The exclusion of PrairieWave from the arbitration will necessitate a separate proceeding between Western Wireless and PrairieWave. Furthermore, the separate proceeding would require a separate agreement and therefore a separate proceeding before the Commission for issues identical to those involved in the arbitration proceeding.

6. The needless redundancy of a separate proceeding would further be complicated by the required cost study – which may or may not be the cost study from the arbitration proceeding. In event cost study for the separate proceeding is the cost study developed in this proceeding, PrairieWave would then be bound and affected either favorably or adversely with respect to the cost study in which it was not allowed to participate.

7. The exclusion of PrairieWave from the arbitration, resulting in a separate and redundant proceeding for issues identical to those addressed in the arbitration with other SDTA

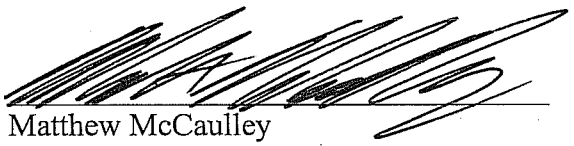
members, is wholly unnecessary, would constitute an excessive waste of time, and would results in a needless diversion of resources of the Commission and the parties involved.

WHEREFORE, PrairieWave respectfully petitions the Commission for leave to intervene in this matter and participate in the arbitration.

Dated this 22nd day of November, 2002.

Respectfully submitted,

PrairieWave Communications, Inc.

By: 

Matthew McCaulley
Attorney at Law
122 South Phillips Avenue Suite 250
Sioux Falls, SD 57104
605-332-0500
matt@sdlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document and ten copies on the following person by US Mail:

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

I further certify that I have this day served the foregoing document on the following person by US Mail:

Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 First National Bank Bldg.
332 Minnesota Street
St. Paul, Minnesota 55101-1396
pschenkenberg@briggs.com

Dated on this 22nd day of November, 2002.

Matthew McCaulley, Attorney at Law
On behalf of PrairieWave Communications, Inc.

Meyer & Rogers
ATTORNEYS AT LAW
P.O. BOX 1117 • 320 EAST CAPITOL • PIERRE, SOUTH DAKOTA 57501-1117 • TELEPHONE 605-224-7889 • FACSIMILE 605-224-9060

November 25, 2002

BRIAN B. MEYER
DARLA POLLMAN ROGERS

Ms. Deb Elofson, Executive Director
SD Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Petition for Arbitration of Western Wireless (PUC Docket TC02-176)

Dear Ms. Elofson:

Enclosed herewith you will find the original and ten (10) copies of a Response to the Petition for Arbitration submitted by Western Wireless.

This response is provided on behalf of all the Rural Telephone Companies that are listed on Exhibit 1 to the Western Wireless Petition as "Respondent Independent Local Exchange Carriers."

The Response includes a certificate of service verifying mailing of the same to the attorneys and other representatives of Western Wireless. In addition, a copy of the same has been mailed to William P. Heaston, the attorney for Prairie Wave Communications.

Thank you for your assistance in this matter. If there are any questions, please give me a call.

Sincerely,

Brian B. Meyer
Attorney for RTCs

BBM/rdc

Encls.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

Petition of WWC License L.L.C.	)	
For Arbitration Under the	)	**Docket No. TC02-176**
Telecommunications Act of 1996	)	

RESPONSE TO PETITION FOR ARBITRATION OF RURAL TELEPHONE COMPANIES

On October 31, 2002, WWC License L.L.C. ("WWC") filed a Petition for Arbitration with this Commission seeking arbitration of certain unresolved issues relating to a request made to rural telephone companies throughout South Dakota for new interconnection and reciprocal transport and termination arrangements. Listed on Exhibit 1 to the WWC Petition, as "Respondent Independent Local Exchange Carriers," are those rural telephone companies that have received the WWC interconnection request. Pursuant to 47 U.S.C. § 252(b)(3), SDCL § 49-31-81 and ARSD § 20:10:32:30, these rural telephone companies, by and through their attorneys, submit the following response:

1. As indicated in the WWC Petition for Arbitration, each of the local exchange carriers identified below received from WWC a request to enter into negotiations to "establish a new interconnection agreement in South Dakota for the transport and termination of telecommunications traffic . . .." ("Exhibit 3" to WWC Petition):

Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Company
Bridgewater-Canistota Independent Telephone
Brookings Municipal Telephone/Swiftel Communications
Cheyenne River Sioux Tribal Telephone Authority
East Plains Telecom, Inc.
Faith Municipal Telephone Company
Fort Randall Telephone Company

Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative, Inc.
James Valley Telecommunications
Jefferson Telephone Company (Long Lines)
Kadoka Telephone Company
Kennebec Telephone Company
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
RC Communications, Inc.
Roberts County Telephone Coop. Association
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Coop., Inc.
Splitrock Properties, Inc.
Stockholm-Strandburg Telephone Company
Sully Buttes Telephone Coop., Inc.
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Cooperative
Vivian Telephone Company d/b/a Golden West Communications
West River Cooperative Telephone Company
West River Telecommunications Cooperative
Western Telephone Company

The requests for negotiations were received from WWC toward the end of November 2001, on or about November 21st, or shortly thereafter.

2. All of the above referenced local exchange carriers are rural telephone companies as defined in 47 U.S.C. § 153(37). As such, these companies (hereinafter collectively referenced as "RTCs") fall under the exemption established under 47 U.S.C. § 251(f) and SDCL § 49-31-79. The effect of this exemption is to remove rural telephone companies from the various interconnection obligations found in Section 251(c) of the Federal Communications Act (hereinafter referenced as "the Act" or "Federal Act"). The exemption from these obligations may be terminated through State Commission action, but only after a bona fide request is made for interconnection services under Section 251(c) and only after notice and an opportunity for hearing. Termination of the exemption requires a finding that the request is not unduly

economically burdensome, the request is technically feasible, and the request is consistent with universal service principles and provisions set forth in 47 U.S.C. § 254. (See SDCL § 49-31-79 and 47 U.S.C. § 251(f)(1)(B).)

In addition to the initial letter from WWC requesting negotiations, each of the RTCs received a subsequent letter from WWC clarifying that the request for negotiations did not extend to any of the interconnection obligations found under 47 U.S.C. § 251(c) -- that it was "only intended to address the interconnection obligations under Section 251(a) and (b) of the Act and the procedures for negotiation, arbitration, and approval of agreements under Section 252 of the Act." (A sample of the letter used by WWC for this purpose is attached hereto as Exhibit A).

3. Each of the RTCs currently has in place with WWC a "Reciprocal Transport and Termination Agreement" approved by this Commission. Orders approving these agreements were issued by this Commission on or about May 23, 2000. On or about October 29, 2002, WWC sent to each of the RTCs a "Notice of Termination" pertaining to the current traffic exchange agreements. WWC indicated in its Notice that it would be terminating each of the existing interconnection agreements effective upon the completion of current negotiations or upon arbitration of a new interconnection agreement. It was further indicated that WWC would consider any rate change made as part of a new interconnection agreement effective January 1, 2003. (A sample of the Notice of Termination letter used by WWC is attached hereto as Exhibit B).

4. Each of the above referenced RTCs is a member of the South Dakota Telecommunications Association (SDTA). Soon after making its request to each of the RTCs for new interconnection arrangements, WWC contacted SDTA and inquired as to whether the association would be assisting with negotiations. SDTA indicated that it would be interested in

negotiating with WWC toward a standard interconnection and reciprocal transport and termination agreement that could be offered to the SDTA membership. SDTA informed WWC that any agreement terms reached through negotiations with SDTA would be presented to its membership in the form of a standard interconnection agreement and that individual company members would have the discretion to accept or reject it, or to offer different rates, terms and/or conditions to account for their unique circumstances. With this condition in mind, WWC and SDTA proceeded with interconnection negotiations.

5. Beginning in January 2002, and continuing into the month of September 2002, SDTA and WWC engaged in negotiations via teleconference in an attempt to resolve numerous issues raised by the request for interconnection and transport and termination services. A proposed "Reciprocal Interconnection, Transport and Termination Agreement" was also exchanged and revisions to the agreement were made by both WWC and SDTA on several occasions. The intent of these revisions was to bring unresolved issues into focus and to facilitate further discussion. During this period of negotiation, WWC and the RTCs agreed on three different occasions to extend the timeline for negotiations. As WWC states in its Petition, the most recent agreement extended the end of the arbitration window provided for under 47 U.S.C. § 252(b)(1) to October 31, 2002. Based on this last extension agreement, the interconnection negotiations between WWC and the RTCs were deemed to have commenced on May 24, 2002.

6. The negotiations between WWC and SDTA produced agreement on certain issues relating to contract language, but to this point many of the more significant issues remain unresolved. WWC in its Petition for Arbitration has presented sixteen (16) issues for arbitration by the Commission. The RTCs agree that these issues presented by WWC should be arbitrated and, further, note that there are two additional issues needing resolution. These additional issues

are raised by the proposed agreement language, but are not directly presented in the WWC Petition.

7. In paragraph 3 of its Petition, WWC provides information regarding the parties and their representatives in this matter. As a clarification, even though SDTA (formerly SDITC) was involved in the negotiation process on behalf of the above listed RTCs, the requests for negotiations were made to the RTCs directly, not SDTA. Accordingly, SDTA is not a party to this arbitration process. The following attorneys represent the RTCs jointly and individually in this process:

Brian B. Meyer
Meyer and Rogers
P.O. Box 1117
320 East Capitol Ave.
Pierre, SD 57501-1117
Telephone: 605-224-7889
Facsimile: 605-224-9060

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens, Duffy and Prendergast
2120 L. St. NW, Suite 300
Washington, D.C. 20037
Telephone: 202-659-0830
Facsimile: 202-828-5568

Richard D. Coit
P.O. Box 57
320 East Capitol Ave.
Pierre, SD 57501
Telephone: 605-224-7629
Facsimile: 605-224-1637

8. Pursuant to the provisions of ARSD § 20:10:32:30, the RTCs provide additional information below relating to each of the issues presented in the WWC Petition. This additional information is intended to further explain and clarify the RTCs' positions on such issues. Also, those issues not included in the WWC list of issues, but brought into contention by the proposed

agreement language, are raised in this response and information regarding the RTCs' position on each of these additional issues is also provided.

9. As a threshold matter, the RTCs take issue with a list of "federal mandates" which WWC sets out in its Petition and which it claims have not been complied with by the RTCs.[1] WWC cites broadly to various sections of the Federal Communications Act, from FCC rules, and from decisions construing those rules and statutes; these mainly concern reciprocal compensation requirements, including rates and traffic, which are subject to the reciprocal compensation requirement.[2]

10. The RTCs will discuss the relevant statutes and/or FCC rules, and their application to the specific issues at hand, in following sections of this pleading. The RTCs are constrained to point out, however, that WWC's laundry list of relevant statutes and FCC rules is highly selective and misleading. For instance, WWC initially cites to Section 251(a) of the Federal Act for the proposition that "telecommunications carriers, including local exchange companies and CMRS carriers, are required to interconnect directly or indirectly" with other such carriers.[3] Reference to this section was apparently intended as a backdrop for WWC's arguments concerning the consequences of its unilateral decision not to establish direct connections with the RTCs. WWC's desire to require the RTCs to rate WWC's customer numbers as local, even where they are distantly located at a tandem switch (i.e., interconnected on an indirect basis), and thus not local, is one such example.[4] However, the FCC's decision finding that the telecommunications carrier (the RTC here) providing direct or indirect interconnections is

[1] Western Wireless Petition, pp. 4-6.
[2] *Id.*
[3] Western Wireless Petition, p. 4.
[4] Western Wireless Petition, p.11.

entitled to make that choice, is strikingly absent from WWC's laundry list.[5] WWC has no right to unilaterally dictate the direct or indirect method of interconnection.

11. Likewise absent is any acknowledgement, much less discussion, of Section 251(g) of the Federal Act which relates to which traffic is subject to reciprocal compensation. This is despite WWC's citation to two statutory provisions (47 U.S.C. § 251(b) and 47 U.S.C. § 252(d)(2)) and FCC rules (47 C.F.R. §§ 20.11(b)(1), 51.701(e), 51.701(b), 51.703(g) and 51.703(b)) which WWC claims the RTCs have violated: "In spite of these [the cited statutes and FCC rules] federal mandates, the ILECs have insisted throughout the negotiations of an 'interconnection' agreement that they do not have an obligation to pay reciprocal compensation for land-to-mobile traffic that originates and terminates within the same MTA."[6]

12. As WWC well knows, this Commissioner's construction of Section 251(g) of the Federal Act is critical to the determination of what traffic is subject to reciprocal compensation. The FCC has characterized Section 251(g) as a "carve out" section to preserve the access charge regime which existed prior to the Federal Act.[7] The FCC has interpreted this section to preserve

---

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, (released August 8, 1996), 11 FCC Rcd 15499 at para. 997("*Local Competition Order*").

[6] Western Wireless Petition, p. 9.

[7] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, paras. 34-40 (FCC 01-131)(Rel. April 27, 2001).

(Continues on next page)

Section 251(g) provides that

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

not only the interstate access charge mechanism for traffic handled by interexchange carrier (IXCs), but for intrastate interexchange traffic, as well.[8]

13. The question of whether the RTCs may unilaterally strip-off CMRS-bound traffic that would ordinarily be handled as a call by an IXC, is certainly more complex than the "federal mandates" listed in WWC's Petition. For instance, how does WWC's position square with dialing parity obligations of the RTCs required under Section 251(b)(3) of the Federal Act and subject to South Dakota Public Utilities Commission jurisdiction? What are the obligations of the RTCs to transport traffic out of their local exchange areas and what are the rights of IXCs under state and federal laws?

14. As is evident, WWC has run from these important issues in constructing its "federal mandates", which avoid any even-handed discussion of the relevant law. The RTCs thus respectfully urge that no weight be accorded this portion of WWC's Petition, as a full and fair discussion of the relevant law will follow from this response, the testimony of both parties, and post-hearing legal briefs.

15. This response now turns to the issues as set forth in WWC's Petition. For ease of reference, each issue will be numbered and stated as it is set forth in the WWC Petition. However, the RTCs submit that the issues identified by WWC are incomplete and thus do not fully reflect the issues that should be arbitrated. For these issues, the RTCs will reference them as an additional unresolved issue followed by the appropriate letter of the alphabet; e.g.,

---

and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

[8] *Local Competition Order* at 15869.

"Additional Unresolved Issue A (Applicable Statute of Limitations)

What Statute of Limitations Should Apply for Services Provided Pursuant to the Interconnection Agreement?" The RTCs will submit their proposed contract language for each issue raised in this arbitration in the initial brief, filed at the end of the case.

Unresolved Issue No. 1 (Scope of Reciprocal Compensation Obligations)
What traffic is subject to reciprocal compensation in accordance with the FCC's rules?

16. The RTCs dispute WWC's position that reciprocal compensation must be paid by the RTCs on all calls that originate and terminate within the "Metropolitan Trade Area" (MTA), including calls that are carried by an IXC. According to WWC, the FCC has found that "traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges."[9] WWC asks the Commission to resolve this issue by ordering that all traffic that originates and terminates within an MTA is subject to reciprocal compensation.

17. Three MTAs cover a portion of South Dakota -- the Denver MTA, the Minneapolis MTA and the Des Moines MTA. The MTAs are shown in Exhibit C, hereto. To the best of the RTCs' knowledge and belief, WWC's indirect interconnection point is at the Qwest switch in Sioux Falls, South Dakota, which is in the Minneapolis MTA. WWC's NPA/NXXs associated with this indirect interconnection reside at Qwest's rate center in Sioux Falls. WWC's indirect interconnection point and its NPA/NXXs are outside of the service territories of the RTCs.

18. Pursuant to the dialing parity and equal access obligations of the RTCs, calls routed between the service territories of the RTCs or outside of the state of South Dakota are routed to the presubscribed toll carrier selected by the customer as either an intrastate or interstate toll

call.[10] Because WWC's NPA/NXXs reside outside of the service territory of the RTCs, calls to be terminated by WWC are routed by the RTC to the customer's presubscribed toll carrier.

19. Section 251(b)(5) of the Act requires local exchange carriers (LECs) to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Under this section, an originating carrier must pay compensation to the terminating carrier when the terminating carrier's facilities are used to terminate calls from the originating carrier. Section 251(g), however, excludes "exchange access, information access and exchange service for such access"[11] provided to IXCs and information service providers from the reciprocal compensation requirements of section 251(b)(5).

20. In the circumstance at issue here, the RTC routes traffic to the IXC designated by the end user customer, based on the RTC's dialing parity and equal access obligations. The dialing parity and equal access obligations require the RTC to route toll calls to the presubscribed IXC selected by the customer. In this scenario, the RTC provides an access service to the IXC and the IXC transports the call to the wireless provider, WWC, for termination.

21. The FCC specifically found that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport and termination of interstate or intrastate interexchange traffic.[12] According to the FCC,

> [a]ccess 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. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must

---

[9] Western Wireless Petition, page 7, *citing Local Competition Order*, ¶ 1043.
[10] Except in cases where there is an extended area service arrangement.
[11] 47 U.S.C. § 251(g).
[12] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, *First Report and Order*, (*Local Competition Order*), 11 FCC Rcd 15499 (1996).

> pay both LECs for originating and terminating access service. By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call.[13]

In the *ISP Reciprocal Compensation Order*, the FCC found that the telecommunications subject to sections 251(b)(5) and 251(d)(2) are all such telecommunications not excluded by section 251(g). The FCC further found, however, that section 251(g) excludes "exchange access, information access and exchange services for such access" provided to IXCs and information service providers from the reciprocal compensation requirements of Section 251(b)(5). [14] Thus, IXC-carried traffic is subject to access charges, not reciprocal compensation.

22. In addition, the FCC has found that CMRS providers have the right to be compensated for such traffic via the access charge regime. In the *Sprint PCS Declaratory Ruling*, the FCC recognized that CMRS carriers have the right to seek access charges from IXCs for IXC traffic that is exchanged through LEC facilities.[15] Thus, it is clear that when a LEC routes a call to an IXC for termination to a CMRS provider, the CMRS provider's remedy to obtain compensation is to seek terminating access charges from the IXC.

Unresolved Issue No. 2 (Delivery of Land-to-Mobile Traffic)
What obligations do the ILECs (RTCs) have to deliver traffic subject to reciprocal compensation to WWC's network?

Issue No. 2(a): Are the ILECs (RTCs) prohibited from collecting access charges from any telecommunications carrier on land-to-mobile calls that originate and terminate in the same MTA?

---

[13] *Id.* at 16013 (para. 1034).
[14] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, para. 34 (FCC 01-131)(Rel. April 27, 2001), remanded in WorldCom v. FCC, et al., No. 01-1218 (D.C. Cir.)(May 3, 2002).
[15] *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, at ¶¶ 7 and 9 (FCC 02-203)(rel. July 3, 2002) (*Sprint PCS Declaratory Ruling*).

23. WWC acknowledges that because it has not established an NPA/NXX within the RTCs' rate centers, land-to-mobile calls are routed to the RTCs customers' presubscribed interexchange carriers; the RTCs collect access charges on this traffic; and the customers are charged toll rates. WWC apparently alleges that this is prohibited by FCC rule section 51.703(b), which prohibits a LEC from collecting charges from any carrier for intraMTA land-to-mobile traffic. WWC argues that the FCC requires that LECs deliver intraMTA land-to-mobile calls to the other carrier's network without charge. Thus, WWC asks the Commission to order that land-to-mobile traffic routed to an IXC must be delivered to WWC's network "without payment of access charges by any carrier.[16]"

24. WWC's position is based upon an exaggerated interpretation of the law and should be rejected. As discussed in Unresolved Issue No. 1, the RTCs are required to route toll calls to the presubscribed carrier designated by the customer, pursuant to their dialing parity and equal access obligations. Moreover, the FCC has found that LECs can charge access charges for exchange access services and that such services are exempt from the section 251(b)(5) reciprocal compensation requirements. Thus, compensation for IXC-carried traffic continues to be governed by the access charge regime and reciprocal compensation is not applicable.

Issue No. 2(b): If WWC established a direct connection with an ILEC, should the ILEC deliver all land-to-mobile intraMTA traffic to WWC over those direct facilities?

25. Two issues are raised by WWC's Petition on this issue. First, does WWC have an independent right to "establish a direct connect with an ILEC" as at least implicitly assumed in its statement of the issue? Second, do the RTCs have the obligation to deliver intraMTA calls to WWC "without charge" as claimed by WWC? The answer to both questions is "no."

[16] Western Wireless Petition, p. 7.

26. As to the first issue, this response has previously discussed the FCC's finding that telecommunications companies who "provide" interconnection enjoy the choice of method, i.e. direct or indirect interconnection.[17] Thus, WWC has no right to unilaterally dictate the direct or indirect method of interconnection in the first instance.

27. As to the second issue – whether the RTCs are required to deliver all intraMTA traffic routed to WWC "without charge" – WWC mistakes the RTCs ' position and misstates the law.

28. Specifically, WWC states the RTCs ' position to be that "... traffic to WWC's NPA/NXXs should be toll calls subject to access charges . . .".[18] This statement is overbroad and incorrect. The RTCs do not contend that all traffic to WWC NXXs should be handled as toll calls where WWC has a direct connection to a RTC. The determining question is whether the call would normally be handled as a toll call or as a local call. The existence of wide area calling complicates this discussion to some degree, as discussed later in this response, but suffice it to say that the RTCs do not claim that truly local calls to local WWC NXXs should be treated as toll.

29. By the same token, not "all" intraMTA traffic should be delivered to WWC without charge, and here it is wrong on the law. The "obligation" to which WWC refers as requiring such is based upon its one-sided list of "federal mandates" which ignores the Section 251(g) savings clause of the Federal Act. Thus, if traffic to a WWC customer would normally be handled as a toll call by a presubscribed IXC, the RTC may not lawfully evict the IXC from its customer relationship with the end user in order to serve WWC's economic interests.

[17] *Local Competition Order*, para 997.
[18] Western Wireless Petition, p. 8.

30. WWC is free to establish its own arrangements for terminating such IXC traffic to its own end users, and the device of a direct connection does not change any of that.

Unresolved Issue No. 3 (Rates for Reciprocal Compensation)
What rates can be adopted for the transport and termination of intraMTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?

31. During negotiations conducted between WWC and the RTCs, the RTCs sought to arrive at a voluntary compensation mechanism allowed under 47 U.S.C. § 252(a) – Voluntary Negotiations. Since the parties have been unable to reach a voluntary settlement, the RTCs acknowledge their responsibility to provide rates for compensation that are consistent with the provisions of the Act, as implemented by the FCC.

32. The RTCs are preparing studies that are consistent with FCC rules governing reciprocal compensation. Once these studies are completed, the RTCs will produce them for use in this arbitration.

33. The RTCs disagree with WWC's claim that bill-and-keep is an appropriate compensation arrangement in the current proceeding. According to FCC rule, bill-and-keep is a mechanism available to a state commission "if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so." (47 CFR § 51.713(b)). The RTCs are able to demonstrate that traffic exchanged under the existing reciprocal compensation arrangement is not roughly balanced, thereby rebutting any presumption that the traffic in this proceeding satisfies the FCC's requirement.

Unresolved Issue No. 4 (Symmetrical Compensation at a Tandem Rate)
Is WWC entitled to be compensated at the tandem interconnection rate as required by 47 CFR § 51.711(a) if its switch serves an area greater than the geographical area served by the ILEC's tandem switch?

34. WWC seeks to have the option to connect at an ILEC tandem switch and be compensated pursuant to 47 CFR § 51.711(a)(3). None of the RTCs in this proceeding, however, use a tandem switch in providing their wireless termination services. Accordingly, the provisions of Section 51.711(a)(3) do not apply. The rule states "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."[19]

35. The RTCs believe that under no event shall the reciprocal compensation rate adopted in this proceeding be asymmetrical. WWC has not invoked FCC Rule section 51.711(b) and therefore is precluded in this arbitration proceeding from raising the issue of asymmetrical compensation.

Unresolved Issue No. 5 (Application of Tariffs)
Should interstate tariffs govern WWC's purchase of access services and facilities from an ILEC [RTC]?

36. WWC states in its petition that under FCC rules, the RTCs are required to price interconnection facilities "at the lowest rates that are economically reasonable."[20] Section 47 C.F.R. § 20.11(a) is cited as support for this contention. In addition, WWC alleges that CMRS-LEC traffic cannot be classified, consistent with federal law, as intrastate traffic and, therefore, interstate tariffs, not intrastate tariffs, should govern the pricing of interconnection facilities and the purchase of access services.

[19] 47 C.F.R. § 51.711(a)(3)) (Emphasis added).
[20] Western Wireless Petition, p. 11.

37. The RTCs disagree. There is absolutely no support under either federal or state law for WWC's position. The RTCs believe that access tariffs should apply to WWC's purchase of access services and facilities, but to the extent that the facilities purchased from RTCs are used for intrastate services, then intrastate tariffs specifically should apply. To the extent that WWC's facilities are used for the provision of interstate services, then interstate tariffs should apply. As is standard throughout the industry, the applicable tariff should be determined by looking to the nature of the traffic delivered over the facilities and/or services purchased.

Unresolved Issue No. 6 (Local Numbers)
May WWC have numbers rated as local to an ILEC's (RTC's) end office without establishing a direct interconnection to that office.

38. WWC claims that it wants to offer consumers access to phone numbers that are local to the landline rate center in order "to best serve customers in South Dakota..."[21]. The RTCs submit that this practice, known as "Virtual NXXs" is anything but the "best" for South Dakota consumers. It violates industry numbering guidelines requiring facilities to be in place, at or near the time of number activation when WWC has no intention of doing so;[22] it violates dialing parity and equal access requirements established pursuant to South Dakota Public Utilities Commission oversight and Section 251 (g) of the Federal Act; and it subverts legitimate rate design objectives.

39. All of those things are harmful to consumers who have a vested interest in the continuing availability of reasonably priced local telephone service in one of the most sparsely populated, hardest to serve states in the U.S. The elimination of long distance calling through WWC's false numbering scheme not only frustrates this valid universal service objective, but camouflages WWC's entry into the long distance market while eliminating consumer choice in

[21] *Id.*

the process. WWC's proposal amounts to a request that this Commission sanction the use of "Virtual" or "Phantom" NXXs. It is unlawful, inimical to the public interest and should be rejected.

Unresolved Issue No. 7 (Allocation of Billing Costs)
Can an RTC charge WWC for billing costs incurred by the RTC associated with terminated wireless traffic?

40. Depending upon how WWC terminates traffic with the RTCs, the RTCs may incur billing costs from Qwest. The provisioning of detailed wireless transit records produced by Qwest currently results in a charge per mechanized record of $0.0025. This charge is an additional cost that is billed by Qwest to the RTCs, if WWC terminates its traffic via a Qwest transit service. If WWC does not terminate its traffic through direct connections to the RTC, Qwest assesses the record charge. The RTCs submit that this cost is an additional cost associated with the exchange of traffic that should be billable to the company receiving the termination services. The charge is referenced separately from the reciprocal compensation rate because it is a per message charge – the reciprocal compensation rate is a per minute charge.

Unresolved Issue No. 8 (Standard of Service)
Whether the ILECs [RTCs] must provide services at least equal in quality and performance to that which the party provides itself?

41. The agreement language proposed by WWC in Section 3.4.1 provides in pertinent part that the RTCs provide services under the agreement "at a standard that is at least equal in quality and performance to that which the party provides to itself or to other connecting carriers." The RTCs object to this language because the standard of service contemplated falls into the category of 47 U.S.C. § 251(c) obligations under the Federal Act. It is Section 251(c)(2)(C) that requires LECs to provide network interconnection "that is at least equal in quality to that

[22] *Number Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed

provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection," and only if their rural interconnection exemption is first terminated are any of the RTCs subject to this provision. The language of this Section is clearly intended to impose an additional, higher service standard on those LECs that are subject to the additional interconnect obligations of Section 251(c) and, accordingly, unless a rural telephone company has lost its rural exemption this exact standard is not applicable. It is not right to assume, as WWC has with its proposed language, that the standards language contained in Section 251(c) is applicable to all LECs including rural telephone companies. The RTCs believe that they should only be held to a standard that requires them to provide interconnection services "under reasonable and non-discriminatory conditions" and at a standard that is at least equal in quality and performance to that which is provided to "other connecting carriers." These terms are consistent with more general standards applicable to all LECs contained in 47 U.S.C. §§ 251(b)(1) and 251(b)(3) and also in SDCL § 49-31-11.

Unresolved Issue No. 9 (Usage Levels)
What usage levels should be considered de minimus and subject to "bill-and-keep" treatment?

42. The RTCs believe that the *de minimis* threshold should be established at the break-even point at which it is cost effective to render a monthly bill. In other words, that it is appropriate to bill for termination services in those situations where the revenue generated by applying the reciprocal compensation rate is more than it costs to actually render the bill to WWC. The RTCs have currently established in other reciprocal compensation agreements a threshold for billing of 1,000 minutes of use per month or 3,000 minutes per quarter (applicable in those cases where the RTC bills for its wireless termination services on a quarterly basis). The

---

Rulemaking 15 FCC Rcd 7574, para. 97 (rel. March 31, 2000).

RTCs believe this threshold, as compared to that proposed by WWC, is more reflective of actual bill rendering costs.

Unresolved Issue No. 10 (Access to Numbering Resources)
Whether WWC should have access to numbering resources consistent with 47 U.S.C. § 251(b)(3). (Section 7.4)

43. WWC has raised the issue of access to numbering resources as an apparent stalking-horse for an attempt to obtain EAS service. As discussed in Unresolved Issue No. 11, wide area calling and EAS services are not necessary for interconnection and, therefore, do not belong in the instant arbitration proceeding.

44. In a vacuum, an issue concerning numbering resources may be appropriate if a genuine allegation has been made that the RTCs have violated 47 U.S.C. § 251(b)(3). However, no such allegation is present here. As stated in Unresolved Issue No. 11, the determination of access to and payment for wide area services should be made outside of this arbitration proceeding because it is not necessary for interconnection. Therefore, the issue of numbering resources should be eliminated.

Unresolved Issue No. 11 (Dialing Parity)

Should WWC's numbers rated out of an ILEC (RTC) end office receive the same dialing treatment as other numbers within that local calling area or extended area service area?

45. WWC here raises the question of whether it should be entitled to receive wide area calling service from the RTCs. The FCC has addressed this issue and found that wide area services "are not necessary for interconnection."[23] Thus, the FCC concluded that LECs are not

[23] *TSR Wireless LLC v. U S West Communications, Inc.*, 15 FCC Rcd 11166, 11183 (May 31, 2000). *See also, Mountain Communications, Inc. v. Qwest Communications International, Inc.* 17 FCC Rcd 2091 at para. 11.

required to provide wide area calling services. The FCC further concluded that section 51.703(b) allows a LEC to charge a CMRS carrier for wide area calling or similar services.[24]

46. RTC customers frequently pay more for local phone service as a result of the decision to implement wide area service. As noted by the FCC and numerous state commissions, the provision of wide area service impacts toll usage patterns and revenues.[25] Accordingly, it is appropriate that WWC should pay for wide area calling service where it is offered by the RTC.

47. In any event, because the FCC has found that wide area calling is not necessary for interconnection, this issue is not properly part of an interconnection arbitration proceeding and it should be eliminated.

Unresolved Issue No. 12 (Procedure for Renegotiation)
What procedure should apply if a Party seeks to renegotiate the Agreement at the end of a term (Section 12.2.4).

48. WWC proposes as additional language in Section 12.2.4 of the Agreement that "[t]he rates, term, and conditions applying during the interim period between the termination of this contract and the effective date of the successor contract shall be trued-up to be consistent with the rates, terms and conditions of the successor agreement." The RTCs oppose this additional language. There should be no true-up with respect to rates, terms, and conditions established in a subsequent, successor agreement. Allowing for the true-up as proposed by WWC undermines the arbitration process and gives parties who are unhappy with an arbitrated agreement greater incentive to seek early termination of an agreement and a re-arbitration of issues. The RTCs believe that the better approach is to apply the rates, terms, and conditions of any successor agreement only on a prospective basis.

[24] The FCC found that LECs can charge carriers for wide area calling service "or similar services." *TSR Wireless*, 15 FCC Rcd 11166, 11183.

Unresolved Issue No. 13 (Reciprocal Compensation Credit Factor)
What reciprocal compensation credit factor should be established for land-to-mobile Traffic? (Appendix A, Section 4).

49. The provisions contained in Section 7.2.3 of the agreement provide in part for the use of a "Reciprocal Compensation Credit Factor" if CMRS Provider is unable to determine the amount of wireline to wireless traffic that is received from the Telephone Company for termination. This Reciprocal Compensation Credit Factor would be applied as a credit to the Telephone Company's bill for transport and termination services in order to compensate the CMRS Provider for its services. The provisions of Section 7.2.3 further provide that the Credit Factor should be based on the results of a traffic study conducted for a representative sample of calls within the Telephone Company's service area.

50. The RTCs agree that the Reciprocal Compensation Credit Factors calculated should be company specific and are planning to propose such a factor for each RTC named in the WWC Petition.

Unresolved Issue No. 14 (Shared Facility Factor)
What shared facility factor should be established for two-way trunks used for direct interconnection? (Appendix A, Section 4).

51. The RTCs agree that the Reciprocal Compensation Credit Factor that is established could also be used as the shared facility factor applicable to two-way trunks leased for direct interconnection. The credit factor has not yet been established, however, and company specific factors will be proposed for Commission approval in this process.

[25] *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776.

Unresolved Issue No. 15 (Transit Rates)
What are the appropriate rates for transiting services provided by an ILEC? (Appendix A. Section 7)

52. None of the RTCs actually perform a "transit" function for another telecommunications carrier as the service is generally understood (the provisioning of tandem switching and common transport). The RTCs do in a limited way provide some intermediate one-way transport service, but believe that the rate for this service should be determined by separate agreement or pursuant to applicable tariffs.

Unresolved Issue No. 16 (Carrier Specific Information):

Whether each final Agreement should include ILEC [RTC] specific information related to exchanges, numbers, CLLI codes, tandem switches, and local calling areas. (Appendix B).

53. The above issue was given little attention during the negotiations process and at this point the RTCs do not have sufficient information as to the WWC position to provide a firm response. The RTCs have questions as to whether all of this information will be required in every agreement regardless of whether or not WWC is seeking direct interconnection. It would seem to be completely unnecessary in situations where the parties are exchanging traffic on only an indirect basis. In addition, the RTCs question why the information needs to be in the agreements when it is already publicly available from other sources, including the NECA and LECA tariffs, and number assignment records and the Local Exchange Routing Guide ("LERG") kept by the North American Numbering Plan Administrator ("NANPA"). Further, at least some of the information requested, including the operative NPA/NXX(s) and Local Calling Areas, are also subject to change and these changes may impose a need to formally amend the interconnection agreement. Rather than having to deal with this additional burden, the RTCs

believe WWC, like other carriers, should access the information through the available public sources.

Additional Unresolved Issue A (Statute of Limitations)
What is the applicable statute of limitations relating to claims for non-payment of transport and/or termination charges?

54. Section 10.0 of the agreement proposed by WWC states that "[n]o claims shall be brought for disputes arising from this Agreement more than twenty four months from the date of occurrence which gives rise to the dispute, or beyond the applicable statute of limitations, whichever is shorter." The RTCs believe this language should be revised so that it does not nullify the specific limitations on actions prescribed under South Dakota statutes. Current state statutes, SDCL § 15-2-3, establish a period of six years for actions made based on "a contract, obligations, or liability, express or implied . . .." The language proposed by WWC would nullify this provision and shorten the period for claims, including claims for non-payment of charges, to two years. The RTCs oppose this result.

Additional Unresolved Issue B (Identification of InterMTA traffic)
How should InterMTA traffic be identified and what charges are applicable to the same? (Section 7.2.3).

55. The process for determining the percent InterMTA use (PIU) outlined in Section 7.2.3 of the proposed agreement is not sufficient for the circumstances in South Dakota. As earlier noted herein, South Dakota is part of three Metropolitan Trade Areas or MTAs. Therefore, InterMTA traffic is significant and must be identify. In addition not only must traffic be identified as either Inter or IntraMTA, it is also necessary to identify the InterMTA traffic as inter or intrastate. This additional identification or classification of traffic is required to properly apply interstate and intrastate access charges to the InterMTA traffic carried by WWC in its capacity as an interexchange carrier.

Dated this 25th day of November, 2002.

Respectfully submitted by:
Attorneys for the RTCs

Brian B. Meyer
Meyer and Rogers
P.O. Box 1117
320 East Capitol Ave.
Pierre, SD 57501-1117

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens,
Duffy and Prendergast
2120 L. St. NW, Suite 300
Washington, D.C. 20037

Richard D. Coit
P.O. Box 57
320 East Capitol Ave.
Pierre, SD 57501

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the foregoing document were hand-delivered on the 25th day of November 2002 to:

Deb Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

A copy was sent by Federal Express to:

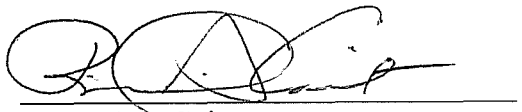
Philip R. Schenkenberg
Briggs & Morgan, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, MN 55101

A copy was sent by First Class Mail via U.S. Postal Service to:

WWC License L.L.C.
Gene DeJordy, V.P. of Reg. Affairs
Ron Williams, Dir. of Ind. Relations
3650 – 131st Ave. SE, Suite 400
Bellevue, WA 98006

Talbot J. Wieczorek
Gunderson, Palmer, Goodsell & Nelson
440 Mt. Rushmore Road, Floors 3-4
PO Box 8045
Rapid City, SD 57709-8045

William Heaston
Prairiewave Communications, Inc.
PO Box 88835
Sioux Falls, SD 57109



Richard D. Coit
PO Box 57
320 East Capitol Avenue
Pierre, South Dakota 57501-0057

EXHIBIT A

Western Wireless.

November 29, 2001

Via U.S. Mail

General Manager
Midstate Telephone Company
120 E. First St.
Kimball, SD 57355

Dear General Manager;

It has been brought to my attention that the request for renegotiation pursuant to Section 252, and the accompanying Interconnection Agreement, sent to you recently could possibly implicate the additional obligations of incumbent local exchange carriers identified in Section 251(c) of the Communications Act of 1934, as amended ("Act"). This letter is to clarify that the request for renegotiation of a new interconnection agreement is only intended to address the interconnection obligations under Section 251(a) and (b) of the Act and the procedures for negotiation, arbitration, and approval of agreements under Section 252 of the Act.

I look forward to your response to the request for renegotiation.

Sincerely,

Gene DeJordy, Esq.
Vice President of Regulatory Affairs

cc: Richard D. Coit, SDITC

EXHIBIT B

NOTICE OF TERMINATION

Western Wireless.

October 29, 2002

VIA FACSIMILE and U.S.MAIL

General Manager
Beresford Telephone
101 N 3rd Street
Beresford, SD 57004

Re: Notice of Termination of Reciprocal Compensation and Termination Agreement

Dear General Manager :

Pursuant to Section 10 of our Reciprocal Compensation and Termination Agreement, WWC License LLC (formerly known as GCC License LLC), a wholly-owned subsidiary of Western Wireless Corporation (collectively referred to as "Western Wireless") hereby notifies Beresford Telephone of its intent to terminate the above reference interconnection agreement effective upon the completion of current negotiations or possible arbitration of a new interconnection agreement. Upon entering into a new interconnection agreement through negotiations or arbitration, any rate change shall be effective January 1, 2003, and any payments made under the existing agreement after January 1, 2003 shall be trued-up based upon the rates established in a new agreement.

Should you have any questions concerning this notice, or if you would like to discuss this further, please do not hesitate to call me at 425-586-8055.

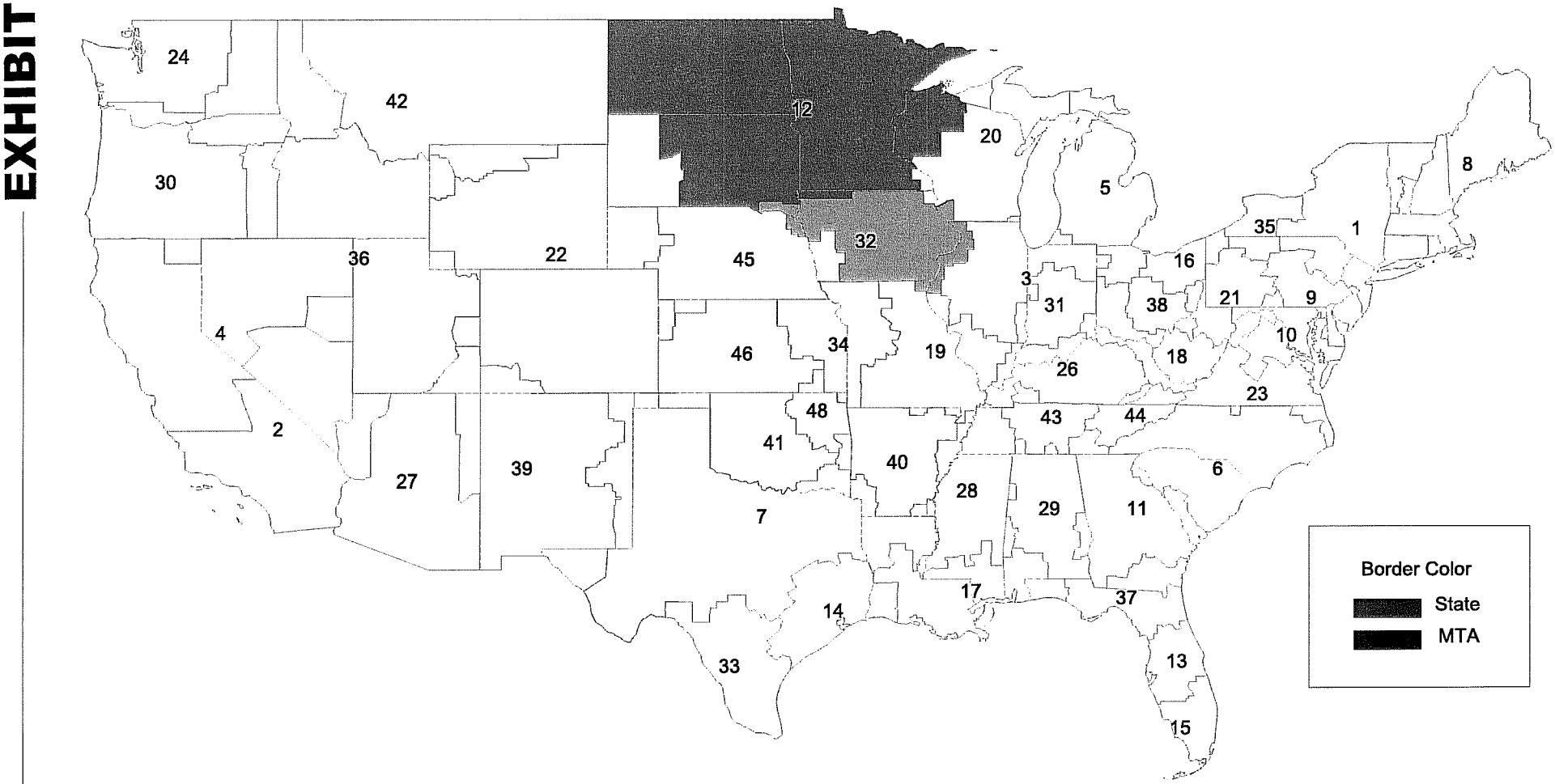
Sincerely,

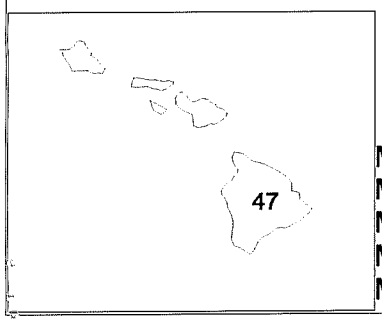
Gene DeJordy, Esq.
Vice President of Regulatory Affairs

cc: Rich Coit, SDTA
Ron Williams, Western Wireless

EXHIBIT C, p. 1

The 51 Major Trading Areas (MTAs)

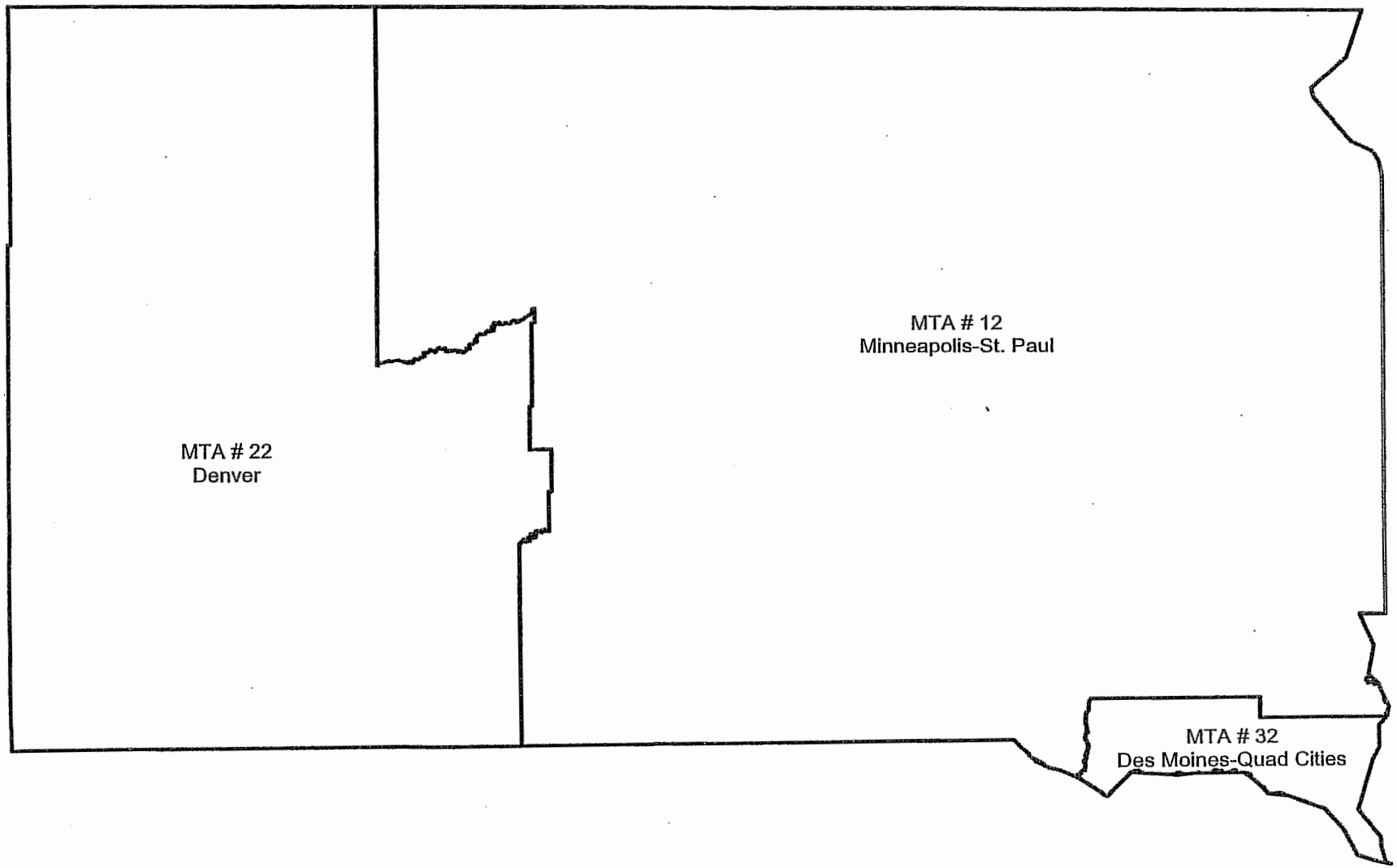




MTA-Like areas not shown:
M25 Puerto Rico & US Virgin Islands
M49 Alaska
M50 Guam and Northern Mariana Islands
M51 American Samoa

EXHIBIT C, p. 2

SOUTH DAKOTA MTA BOUNDARIES



GUNDERSON, PALMER, GOODSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON
J. CRISMAN PALMER
G. VERNE GOODSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK

AMERICAN MEMORIAL LIFE BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078 • FAX (605) 342-9503

ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA
MONTANA, WYOMING, MINNESOTA & CALIFORNIA

PAUL S. SWEDLUND
MARK J. CONNOT
JENNIFER K. TRUCANO
MARTY J. JACKLEY
DAVID E. LUST
THOMAS E. SIMMONS
TERRI LEE WILLIAMS
PAMELA SNYDER-VARNS
ROBERT C. SCREMIN
SARA FRANKENSTEIN

November 27, 2002

VIA FACSIMILE 1-605-773-3809
Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No. TC02-176
Western Wireless Corporation

Dear Ms. Elofson:

Enclosed please find the WWC License L.L.C.'s Opposition to PrairieWave Community Telephone, Inc.,'s Petition to Intervene along with the Certificate of Service.

The original plus ten copies of this document will be mailed via U.S. Postal Service to your office today.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Client

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

PETITION OF WWC LICENSE L.L.C. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)))	Docket No. TC02-176

WWC LICENSE L.L.C.'S OPPOSITION TO PRAIRIEWAVE COMMUNITY TELEPHONE, INC.'S PETITION TO INTERVENE

PrairieWave Community Telephone, Inc. ("PrairieWave") f/k/a/ Dakota Community Telephone, Inc. has petitioned the South Dakota Public Utilities Commission ("Commission") to intervene in this interconnection arbitration between WWC License L.L.C. ("Western Wireless") and a separate and differently-situated group of South Dakota incumbent local exchange carriers ("ILEC Group"). Western Wireless opposes PrairieWave's petition.

A. The Commission Does Not Have Jurisdiction to Arbitrate an Interconnection Agreement Between Western Wireless and PrairieWave

PrairieWave states its motion as a simple motion to intervene, but is actually seeking to be added as a respondent, so that it can obtain an arbitrated interconnection agreement with Western Wireless. See PrairieWave Petition, p. 1. The jurisdictional requirements to obtain an arbitrated agreement are clear, and have not been met in this case. State law provides:

> If the parties are unable to voluntarily negotiate an agreement for the interconnection or services requested, either party may petition the commission to mediate or arbitrate any unresolved issues as provided in 47 U.S.C. § 252.

SDCL 49-31-81. Section 252 provides:

> During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation [of an interconnection agreement] under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

47 U.S.C. § 252(b)(1). As noted in Western Wireless' Petition for Arbitration (and not disputed by PrairieWave), the arbitration window closed on October 31, 2002. See Western Wireless'

Arbitration Petition, p. 3. That was the last day for either party to file an arbitration petition seeking Commission resolution of open issues. Western Wireless' Petition did not name PrairieWave, and PrairieWave did not file its own petition as allowed under Section 252 and SDCL 49-31-81.

Because neither party filed an arbitration petition naming the other within the time frame required under Section 252 of the Federal Act, the Commission simply has no jurisdiction under federal or state law to arbitrate and approve an interconnection between these parties. Because PrairieWave has missed its "window" for requesting arbitration, its request to intervene should be denied.

B. PrairieWave is Not Similarly Situated With the ILEC Group

PrairieWave argues in its Petition that its position "is identical to the [ILEC Group] participating in the arbitration." PrairieWave Petition, p. 1. This statement is inaccurate. The interconnection agreement in force between Western Wireless and PrairieWave was negotiated separately with PrairieWave's predecessor, and is fundamentally different from the agreements in force between Western Wireless and the ILEC Group. First, the reciprocal compensation rates in the existing PrairieWave agreement are appropriate and have not been challenged by Western Wireless. Second, Western Wireless' existing agreements with the ILEC Group members will terminate at the end of December, while its agreement with PrairieWave has not been terminated.

PrairieWave also raises additional substantive issues not otherwise raised in this Arbitration. Western Wireless has learned through discussions with PrairieWave that it seeks to combine its various CLEC and ILEC interests under a common interconnection agreement with Western Wireless. The members of the ILEC Group are not requesting the combination of CLEC and ILEC traffic. This raises costly and legal issues for PrairieWave not otherwise part of

this proceeding. Allowing PrairieWave to intervene and obtain an arbitrated interconnection agreement would unduly complicate this expedited proceeding.

C. PrairieWave Will Not Be Prejudiced

PrairieWave suggests it will be prejudiced by being unable to participate in this proceeding. PrairieWave Petition, p. 1. As a member of the South Dakota Telephone Association ("SDTA"), it can be assured that its interests will be protected. It seems quite unlikely that a group of SDTA companies would propose a cost model that PrairieWave would object to. In addition, no duplicative proceedings will need to occur. If Western Wireless and PrairieWave negotiate to impasse, and one party files an arbitration petition, that proceeding will most likely focus on the individualized issues of PrairieWave's cost structure and traffic patterns, which will not have been litigated in this proceeding.

Further, South Dakota law protects PrairieWave from being prejudiced without the need of PrairieWave intervening. Under ARSD 20:10:32:34, PrairieWave has the right to submit comments on the arbitrated agreement prior to the Commission approving the agreement. Therefore, if PrairieWave believes any potion of the arbitrated agreement is inappropriate, it can comment accordingly at the time the agreement is submitted for approval.

CONCLUSION

If PrairieWave wishes to establish a new interconnection agreement with Western Wireless, it should initiate negotiations under the Federal Act, and can petition for arbitration of any issues that remain open at the end of the arbitration window. Because that was not done in this case, the Commission has no jurisdiction to arbitrate an interconnection agreement between Western Wireless and PrairieWave. As a result, the Commission should deny PrairieWave's petition to intervene.

Respectfully submitted,

Dated: November 27, 2002.

Talbot J. Wieczorek
GUNDERSON, PALMER, GOODSELL
& NELSON, LLP
440 Mount Rushmore Road
3rd and 4th Floors
P.O. Box 8045
Rapid City, South Dakota 57709-8045
Telephone: (605) 342-1078
Fax: (605) 342-9503

Philip R. Schenkenberg, Esq.
BRIGGS AND MORGAN, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone No. (651) 223-6600
Fax No.: (651) 223-6450
Attorneys for Petitioner
WWC License L.L.C.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

PETITION OF GCC LICENSE CORPORATION FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)))	Docket No. TC02-176

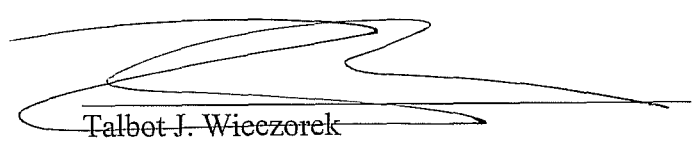
CERTFICIATE OF SERVICE

I hereby certify on the 22 day of November, 2002, I sent by first class mail, postage prepaid, a true and correct copy of **WWC License L.L.C.'s Opposition to PrairieWave Community Telephone, Inc.'s Petition to Intervene** to:

Richard D. Coit
SDTA
PO Box 57
Pierre, SD 57501

Brian B. Meyer
Meyer & Rogers
PO Box 117
Pierre, SD 57501

Matthew S. McCaulley
Hynes & McCaulley
122 S. Phillips Avenue #250
Sioux Falls, SD 57401



~~Talbot J. Wieczorek~~
GUNDERSON, PALMER, GOODSELL
& NELSON, LLP
440 Mount Rushmore Road
3rd and 4th Floors
P.O. Box 8045
Rapid City, South Dakota 57709-8045
Telephone: (605) 342-1078
Fax: (605) 342-9503

Philip R. Schenkenberg, Esq.
BRIGGS AND MORGAN, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone No. (651) 223-6600
Fax No.: (651) 223-6450
Attorneys for Petitioner
WWC License L.L.C.

CW. 02-629

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF HUGHES)

RECEIVED
DEC -3 2002
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN CIRCUIT COURT
SIXTH JUDICIAL COURT

Bar # 35

ADMISSION OF ATTORNEY MARK AYOTTE, PRO HAC VICE

ORDER

It is hereby ORDERED that the Motion for Admission for Mark Ayotte, a non-resident attorney to appear on behalf of Western Wireless Corporation, before the Public Utilities Commission and this Court relating to the matter currently filed before the Public Utilities Commission, TC02-176, is granted.

This 22 day of November, 2002.

BY THE COURT:

Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

BY: Christal L. Espeland
Clerk

(SEAL) by Sharon McEntaffer Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
NOV 22 2002
Christal L. Espeland Clerk
By _____ Deputy

Civ. 02-63

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

Bar # 02-34

ADMISSION OF ATTORNEY PHILIP SCHENKENBERG, PRO HAC VICE

ORDER

It is hereby ORDERED that the Motion for Admission for Philip Schenkenberg, a non-resident attorney to appear on behalf of Western Wireless Corporation, before the Public Utilities Commission and this Court relating to the matter currently filed before the Public Utilities Commission, TC02-176, is granted.

This 22 day of November, 2002.

BY THE COURT:

Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

BY: Christal L. Espeland
Clerk

(SEAL) by Sharon McEntaffer Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
NOV 22 2002
Christal L. Espeland Clerk
By _____ Deputy

HYNES & MCCAULLEY LAW FIRM

A PROFESSIONAL LIMITED LIABILITY COMPANY

Matthew S. McCaulley
matt@sdlawfirm.com

122 SOUTH PHILLIPS AVENUE, SUITE 250
SIOUX FALLS, SD 57104-6706
PHONE: (605) 332-0500
FAX: (605) 332-2525
www.sdlawfirm.com

Thomas P. Hynes
tom@sdlawfirm.com
Of Counsel

December 16, 2002

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

Re: TC 02-176
Motion for Leave to Amend Petition to Intervene
Amended Petition for Leave to Intervene by PrairieWave Community Telephone, Inc.

Dear Ms. Elofson:

On behalf of PrairieWave Community Telephone, Inc., enclosed for filing are an original and ten (10) copies of each of the above referenced pleadings. The pleadings are being served on the parties listed on the enclosed certificates of service.

Thank you for your time and attention to this matter and please contact me if you have any additional questions or concerns.

Sincerely,

Matthew McCaulley
Attorney at Law

MM/sem
enclosures: as stated
cc: Philip R. Schenkenberg
Talbot J. Wieczorek

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF: **DOCKET No. TC02-176**

PETITION OF WWC LICENSE L.L.C.)
FOR ARBITRATION UNDER THE)
TELECOMMUNICATIONS ACT OF 1996)

MOTION FOR LEAVE TO
AMEND PETITION TO INTERVENE

Pursuant to ARSD 20:10:01:16 (1986), PrairieWave Community Telephone, Inc. ("PrairieWave") respectfully moves the Commission for leave to amend its Petition to Intervene in the above captioned matter.

In support of this motion, PrairieWave states as follows:

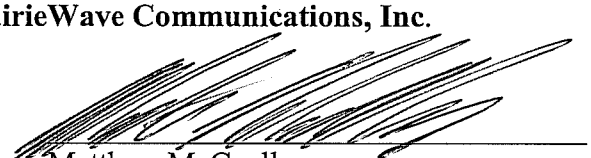
1. This motion to amend is not the result of undue delay, bad faith or dilatory motive on the part of the Petitioner.
2. The Amended Petition to Intervene, requests intervention on a more limited basis than in Petitioner's original Petition for Leave to Intervene, and does not seek to make Petitioner a party to the arbitrated interconnection agreement.

WHEREFORE, PrairieWave respectfully moves the Commission for leave to amend its Petition to Intervene in this matter.

Dated this 16th day of December, 2002.

Respectfully submitted,

PrairieWave Communications, Inc.

By: 

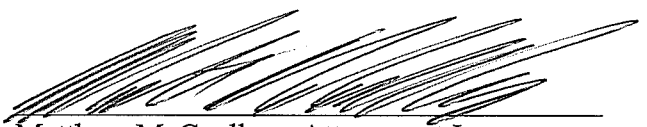
Matthew McCaulley
Attorney at Law
122 South Phillips Avenue Suite 250
Sioux Falls, SD 57104
605-332-0500
matt@sdlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following person via electronic mail, and ten copies of the foregoing document on the following person by US MAIL:

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

Dated on this 16th day of December, 2002.



Matthew McCaulley, Attorney at Law
On behalf of PrairieWave Communications, Inc.

I further certify that I have this day served the foregoing document on the following persons by electronic and US Mail:

Philip R. Schenkenberg Briggs and Morgan, P.A. 2200 First National Bank Bldg. 332 Minnesota Street St. Paul, Minnesota 55101-1396 pschenkenberg@briggs.com	Talbot Wieczorak PO Box 8045 Rapid City, SD 57709 tjw@gphnlaw.com

Dated on this 16th day of December, 2002.

Matthew McCaulley, Attorney at Law
On behalf of PrairieWave Communications, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF: **DOCKET No. TC02-176**

PETITION OF WWC LICENSE L.L.C.)	AMENDED PETITION FOR LEAVE
FOR ARBITRATION UNDER THE)	TO INTERVENE BY
TELECOMMUNICATIONS ACT OF 1996)	PRAIRIEWAVE COMMUNITY
	TELEPHONE, INC.

Pursuant to ARSD 20:10:01:15.02 (1998), PrairieWave Community Telephone, Inc. ("PrairieWave") respectfully submits this Amended Petition for Leave to Intervene in the above captioned matter. In support of this Amended Petition to Intervene, PrairieWave states as follows:

1. PrairieWave, f/k/a Dakota Community Telephone, Inc. is an incumbent local exchange carrier ("ILEC"), as defined by the Federal Telecommunications Act of 1996 ("The Act").

2. As an ILEC, PrairieWave is a member of the South Dakota Telephone association ("SDTA") that is comprised of the small rural ILECs in the state of South Dakota.

3. The Commission has jurisdiction over the Petitioner and the parties to this matter pursuant to SDCL § 49-31-3.

4. Dakota Community Telephone, Inc. negotiated and executed an agreement with Western Wireless for interconnection under the Act over four years ago. Because of the passage of time, the interconnection agreement is outdated and will be the subject of renegotiation in the near future.

5. Western Wireless has petitioned for an arbitrated interconnection agreement under the Act for all but one member of the SDTA – with PrairieWave being the sole SDTA member excluded from the arbitration.

6. The cost study developed in this matter may be the cost study used in any subsequent arbitration between Petitioner and Western Wireless. Furthermore, in approving the cost study for the pending matter, the Commission will approve certain methodology and models upon which the cost study for this matter will based.

7. In event the cost study for the separate proceeding is the cost study developed in this matter, PrairieWave would be bound and affected either favorably or adversely with respect to the cost study in which it was not allowed to participate.

8. In the event this cost study for this proceeding is not used and a second cost study is developed, such subsequent cost study may include methodology and models used in the

cost study developed in the pending matter. PrairieWave would then be bound and affected either favorably or adversely with respect to those certain components of the cost study.

9. Petitioner seeks to intervene to participate in matter captioned above, to protect its rights as Petitioner could be bound and affected either favorable or adversely with respect to this proceeding. Petitioner does not seek to be bound by an arbitration agreement to be approved by the Commission in the present proceeding.

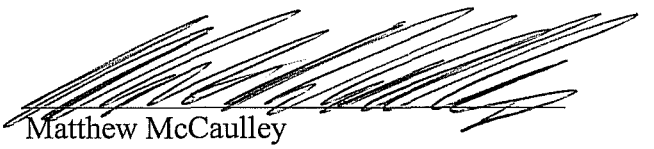
10. The cost study and the methodology, methods, and components thereof are peculiar to the Petitioner, as distinguished from an interest common to the public or to the taxpayers in general.

WHEREFORE, PrairieWave respectfully petitions the Commission for leave to intervene in this matter and participate in the arbitration.

Dated this 16th day of December, 2002.

Respectfully submitted,

PrairieWave Communications, Inc.

By: 

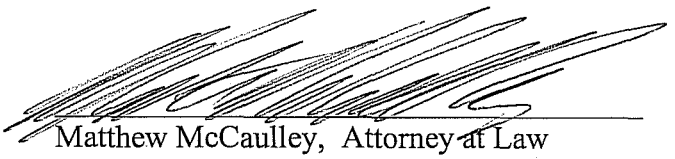
Matthew McCaulley
Attorney at Law
122 South Phillips Avenue Suite 250
Sioux Falls, SD 57104
605-332-0500
matt@sdlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following person via electronic mail, and ten copies of the foregoing document on the following person by US MAIL:

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501
debra.elofson@state.sd.us

Dated on this 16th day of December, 2002.

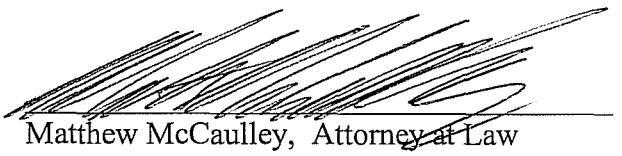


Matthew McCaulley, Attorney at Law
On behalf of PrairieWave Communications, Inc.

I further certify that I have this day served the foregoing document on the following persons by electronic and US Mail:

Philip R. Schenkenberg Briggs and Morgan, P.A. 2200 First National Bank Bldg. 332 Minnesota Street St. Paul, Minnesota 55101-1396 pschenkenberg@briggs.com	Talbot Wieczorak PO Box 8045 Rapid City, SD 57709 **tjw@gphnlaw.com**

Dated on this 16th day of December, 2002.



Matthew McCaulley, Attorney at Law
On behalf of PrairieWave Communications, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

PETITION OF WWC LICENSE L.L.C.	)	
FOR ARBITRATION UNDER THE	)	**Docket No. TC02-176**
TELECOMMUNICATIONS ACT OF 1996	)	

STIPULATION FOR SCHEDULING ORDER

WHEREAS, WWC License, L.L.C. ("Western Wireless") initiated the above action on October 31, 2002, and

WHEREAS, the responding rural telephone companies ("RTCs") filed their response on November 25, 2002, and

WHEREAS, Western Wireless and the RTCs (the "Parties") have agreed to a procedural schedule to govern the disposition of this docket.

NOW, THEREFORE, the Parties agree as follows:

1. The Public Utilities Commission of South Dakota ("Commission") is authorized to adopt the proposed Procedural Order attached hereto.

2. The Parties further agree that the approved agreements that result from this proceeding will be effective as of January 1, 2003.

Dated: Dec 16, 2002

By _____
Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101

Talbot J. Wieczorek
Gunderson, Palmer, Goodsell & Nelson, LLP
American Memorial Life Building
440 Mt. Rushmore Road
P.O. Box 8045
Rapid City, South Dakota 57709-8045

Dated: Dec 18, 2002

By _____
Brian B. Meyer
Meyer & Rogers
320 E. Capitol Avenue
P.O. Box 1117
Pierre, South Dakota

Dated: Dec 18, 2002

By _____
Richard D. Coit
South Dakota Telecommunications
Association
320 East Capitol Avenue
P. O. Box 57
Pierre, South Dakota 57501-0057

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

PETITION OF WWC LICENSE L.L.C. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)))	**Docket No. TC02-176**

STIPULATED PROCEDURAL SCHEDULE

Discovery

1. On or before December 19, 2002, the responding rural telephone companies ("RTCs") shall respond to the discovery requests served by WWC License, L.L.C. ("Western Wireless") on November 20, 2002, and shall provide Western Wireless with its cost study demonstrating proposed rates for each RTC in electronic form. The cost study shall be accompanied by all underlying data, formulae, computations, and software associated with the model. The inputs must be fully documented, and source data provided. The cost study or model must be provided in a form that allows Western Wireless to examine and modify the critical assumptions and engineering principles.

2. On or before December 27, 2002 Western Wireless shall respond to the discovery request served by the RTCs on December 2, 2002.

3. Additional discovery requests served prior to January 14, 2003, shall be responded to within 14 days of service.

4. Discovery requests relating to an adverse party's prefiled direct testimony may be served before January 22, 2003, and responses shall be due seven days after service.

5. Discovery requests relating to an adverse party's prefiled rebuttal testimony may be served between February 1, and February 14, 2003, and responses shall be due seven days after service.

6. Discovery related to a party's surrebuttal testimony shall be served within three business days after the testimony is received, with responses due four business days thereafter.

7. Discovery requests and responses shall not be filed, unless such document is introduced as a hearing exhibit.

Pre-Filed Testimony

8. On or before January 14, 2003, the parties shall serve and file direct testimony, including exhibits. The RTCs must file direct testimony sponsoring any cost study on which they will rely in this case. The inputs must be fully documented, and source data provided to Western Wireless.

9. On or before February 7, 2003, the parties shall serve and file rebuttal testimony, including exhibits. Western Wireless must file rebuttal testimony sponsoring any cost study on which it will rely in this case. Western Wireless must provide to the RTCs all underlying data, formulae, computations, and software associated with the model. The inputs must be fully documented, and source data provided. The cost study or model must be provided in a form that allows the RTCs to examine and modify the critical assumptions and engineering principles.

10. The RTCs may file surrebuttal testimony on or before February 14, 2003 limited to matters first raised by Western Wireless in rebuttal testimony.

11. Western Wireless may file its surrebuttal testimony on or before February 21 addressing matters first raised by the RTCs in surrebuttal testimony.

12. No witness shall be allowed to testify at the hearing unless that witness has prefiled testimony pursuant to this procedural schedule.

Hearing Exhibits

13. Exhibits offered through a Party's witness shall be attached to prefiled testimony. Any exhibit that may be used on cross-examination shall be disclosed to the other party on or before February 24, 2003, with a copy provided upon request.

Hearing

14. The hearing in this matter is set for March 5-7, 2003 beginning at ____ a.m., at [Location]___.

Post Hearing Briefs

15. The Parties shall simultaneously serve and file post-hearing briefs on March 19, 2003.

16. The Parties shall simultaneously serve and file post-hearing reply briefs on March 25, 2003, along with proposed contract language to implement the disputed issues.

Commission Decision

17. The commission shall issue an order resolving the issues in the arbitration on or before April 24, 2003. It is hereby stipulated and agreed by the Parties that this shall be considered the Commission's deadline pursuant to 47 U.S.C. § 252(b)(4) for purposes of this arbitration.

18. On or before May 9, 2003, the Parties shall file final, signed agreements conformed to the Commission's Order. The Commission shall approve or reject those agreements within 30 days, and if the Commission does not act within 30 days the agreements will be deemed approved pursuant to 47 U.S.C. § 252(e)(4).

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION FOR ARBITRATION ON BEHALF OF WWC LICENSE L.L.C. WITH CERTAIN INDEPENDENT LOCAL EXCHANGE COMPANIES	)	ORDER GRANTING INTERVENTION; ORDER ASSESSING FILING FEE; ORDER ADOPTING STIPULATED PROCEDURAL SCHEDULE; AND ORDER FOR AND NOTICE OF HEARING TC02-176

On October 31, 2002, WWC License L.L.C. (Western Wireless) filed a Petition for Arbitration with the Public Utilities Commission (Commission) to arbitrate the unresolved issues that remain after negotiations for an interconnection agreement between Western Wireless and the following rural telephone companies:

Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Co.
Bridgewater-Canistota Independent Telephone
Brookings Municipal Telephone d/b/a Swiftel Communications
City of Faith Telephone Company
Cheyenne River Sioux Tribe Telephone Authority
East Plains Telecom, Inc.
Fort Randall Telephone Company
Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative, Inc.
James Valley Cooperative Telephone Company
Jefferson Telephone Company n/k/a Long Lines Ltd.
Kadoka Telephone Company
Kennebec Telephone Company
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mt. Rushmore Telephone Company
RC Communications, Inc.
Roberts County Telephone Cooperative Association
Sancom, Inc. n/k/a Santel Communications Cooperative
Sioux Valley Telephone Company
Splitrock Telecom Cooperative, Inc.
Splitrock Properties, Inc.
Stockholm-Strandburg Telephone Co.
Sully Buttes Telephone Cooperative, Inc. n/k/a Venture Communications Cooperative
Tri-County Telcom, Inc.
Union Telephone Company
Valley Telecommunications Cooperative
Venture Communications, Inc. n/k/a Venture Communications Cooperative

Vivian Telephone Company d/b/a Golden West Communications, Inc.
West River Cooperative Telephone Co.
West River Telecommunications Cooperative
Western Telephone Company

[hereafter referred to as the RTCs]. During negotiations, the parties agreed to extend the arbitration window and agreed that the arbitration "window" would close on October 31, 2002. On November 25, 2002, the RTCs submitted their response to the Petition for Arbitration.

On November 22, 2002, PrairieWave Community Telephone, Inc. (PrairieWave) submitted a Petition to Intervene. On November 27, 2002, Western Wireless submitted its opposition to PrairieWave's Petition to Intervene. On December 18, 2002, PrairieWave submitted a Motion for Leave to Amend Petition to Intervene and an Amended Petition for Leave to Intervene. On December 18, 2002, Western Wireless and the RTCs filed a Stipulation for Scheduling Order and a Stipulated Procedural Schedule. Pursuant to the Stipulated Procedural Schedule, the partes agreed to deadlines for discovery, prefiled testimony, and hearing exhibits. The parties also stipulated to hearing dates and due dates for post-hearing briefs. The Stipulation further provided that the parties agreed that the Commission's deadline to issue an order resolving the issues pursuant to 47 U.S.C. section 252(b)(4) will be April 24, 2003, and set the date for filing signed agreements that conform to the Commission's order.

At its December 19, 2002, meeting, the Commission considered the Amended Petition for Leave to Intervene, the assessment of filing fees, and the Stipulated Procedural Schedule. At the meeting, Western Wireless and the RTCs stated that they had agreed to allow PrairieWave to intervene on a limited basis. The parties agreed that PrairieWave would not be allowed to testify or submit discovery, but PrairieWave would be allowed to conduct cross-examination at the hearing. Based on this agreement among the parties, the Commission granted PrairieWave's Petition for Leave to Intervene. The Commission also voted to require the companies to make a deposit not to exceed $75,000.00, pursuant to SDCL 49-31-44. SDCL 49-31-44 authorizes the Commission to require a deposit of up to seventy-five thousand dollars ($75,000) in the telecommunications investigation fund to defray Commission expenses incident to analyzing and ruling upon this type of filing. Finally, the Commission voted to adopt the procedural schedule as agreed to by Western Wireless and the RTCs. The Stipulated Procedural Schedule is hereby incorporated by reference.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, and 47 U.S.C. section 252. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing will be held on the application beginning at 9:00 a.m. on March 5, 2003, and continuing through March 7, 2003, in the Kneip Room of the Governor's Inn, 700 W. Sioux Ave, Pierre, SD, 57501. The purpose of the hearing will be to resolve the unresolved issues as listed in Western Wireless' Petition and the RTC's Response. The issues are hereby incorporated by reference.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights will be forfeited if not exercised at the hearing. If a party or its representative fails to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence, if any, presented during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties and the public, will make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission will resolve each issue listed in Western Wireless' Petition and the RTC's Response. The Final Decision made by the Commission may be appealed by any party as provided by law. It is therefore

ORDERED, that PrairieWave's Petition to Intervene is granted subject to the limitations as set forth above; and it is further

ORDERED, that each of the parties shall deposit an initial assessment of $250.00 in the telecommunications investigation fund and shall deposit any additional amounts as requested by the Executive Director up to the statutory limit of $75,000.00; and it is further

ORDERED, that the parties shall comply with the Stipulated Procedural Schedule which is incorporated by reference, with the hearing to be held beginning at 9:00 a.m. on March 5, 2003, and continuing through March 7, 2003, in the Kneip Room of the Governor's Inn, 700 W. Sioux Ave, Pierre, SD 57501.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 3rd day of January, 2003.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Delaine Kolbo

Date: 1/6/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Robert K. Sahr

ROBERT K. SAHR, Commissioner

January 14, 2003

Pamela Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, South Dakota 57501

RE: PUC Docket TC02-176, Petition for Arbitration of WWC

Dear Ms. Bonrud:

Enclosed for filing in the above referenced matter are the original and ten (10) copies of the Direct Testimony of the Rural Telephone Companies (RTCs). This testimony is supplied in accordance with the procedural schedule approved in this matter. Included you will find the "Pre-filed Direct Testimony" of RTC witnesses Larry Thompson, Robert Schoonmaker, and Douglas Meredith.

Please note that the Exhibits attached to the testimony of Douglas Meredith are considered confidential by the RTCs and should be treated accordingly.

You will also find enclosed a Certificate of Service verifying service of these documents on Western Wireless and Prairie Wave Communications. We have also e-mailed copies to both of these parties.

Sincerely,

Richard D. Coit
Attorney for RTCs
320 East Capitol Ave.
P.O. Box 57
Pierre, SD 57501

Encls.

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the foregoing document were hand-delivered on the 14th day of January 2003 to:

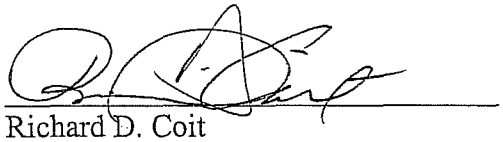
Pamela Bonrud
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Copies was sent by E-mail and by First Class Mail via U.S. Postal Service to:

Philip Schenkenberg
Briggs and Morgan
2200 First National Bank Building
332 Minnesota Street
Saint Paul, MN 55101

Talbot J. Wieczorek
Gunderson, Palmer, Goodsell & Nelson
440 Mt. Rushmore Road, Floors 3-4
PO Box 8045
Rapid City, SD 57709-8045

William Heaston
PrairieWave Communications
PO Box 88835
Sioux Falls, SD 57109



Richard D. Coit
PO Box 57
320 East Capitol Avenue
Pierre, South Dakota 57501-0057

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

Petition of WWC License L.L.C. For Arbitration Under The Telecommunications Act of 1996	)))	Docket No. TC02-176

DIRECT PRE-FILED TESTIMONY OF
DOUGLAS MEREDITH ON BEHALF OF

Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Company
Bridgewater-Canistota Independent Telephone Company
Cheyenne River Sioux Tribe Telephone Authority
City of Brookings Municipal Telephone Department
City of Faith Municipal Telephone Company
East Plains Telecom, Inc.
Fort Randall Telephone Company and Mount Rushmore Telephone Company
Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative, Inc.
James Valley Telecommunications
Jefferson Telephone Company d/b/a Long Lines
Kadoka Telephone Company
Kennebec Telephone Company
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Roberts County Telephone Cooperative Association and RC Communications, Inc.
Santel Communications Cooperative, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc.
Stockholm Strandburg Telephone Company
Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc.
Tri-County Telecom, Inc.
Union Telephone Company
Valley Telecommunications Cooperative
Vivian Telephone Company dba Golden West Communications, Inc.
West River Cooperative Telephone Company
West River Telecommunications Cooperative
Western Telephone Company

INTRODUCTION

Q: Please state your name, occupation, and place of business.

A: My name is Douglas Meredith. I am employed by John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm headquartered in Seabrook, Maryland: my office is located in a suburb of Salt Lake City, Utah. At JSI, I am the Director of Economics and Policy, and as such, I assist clients with development of policy pertaining to economics, pricing and regulatory affairs. I have been employed by JSI since 1995. Prior to my work at JSI, I was an independent research economist in Washington D.C.

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

In addition to assisting telecommunications carrier clients, I am also the economic advisor for the Telecommunications Regulatory Board of Puerto Rico. In this

capacity, I provide economic and policy advice to the Board Commissioners on all telecommunications issues that have either a financial or economic impact.

I have been a member of the national Rural Policy Research Institute ("RUPRI") telecommunications panel. In my capacity with RUPRI, I assisted in developing policy recommendations for advancing universal service and telecommunications capabilities in rural communities.

I have a Bachelors of Arts degree in economics from the University of Utah, and a Masters degree in economics from the University of Maryland – College Park. I am also a Ph.D. candidate in Economics at the University of Maryland – College Park: this denotes that I have completed all coursework, comprehensive and field examinations for my Doctorate of Economics.

Q: On whose behalf are you testifying in this proceeding?

A: My direct pre-filed testimony is submitted on behalf of the following rural telephone companies operating in South Dakota: Armour Independent Telephone Company, Baltic Telecom Cooperative, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone Company, Cheyenne River Sioux Tribe Telephone Authority, City of Brookings Municipal Telephone Department, City of Faith Municipal Telephone Company, East Plains Telecom,

Inc., Fort Randall Telephone Company and Mount Rushmore Telephone Company, Golden West Telecommunications Cooperative, Interstate Telecommunications Cooperative, Inc., James Valley Telecommunications, Jefferson Telephone Company d/b/a Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, McCook Cooperative Telephone Company, Midstate Communications, Inc., Roberts County Telephone Cooperative Association and RC Communications, Inc., Santel Communications Cooperative, Inc., Sioux Valley Telephone Company, Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc., Stockholm Strandburg Telephone Company, Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc., Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Vivian Telephone Company dba Golden West Communications, Inc., West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company (hereinafter "RTCs")

Q: What is the purpose of your testimony?

A: The purpose of my testimony is to respond to nine questions addressed in the present arbitration. The first question is identified as Unresolved Issue Number 3, which states: What rates can be adopted for the transport and termination of intraMTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?

The second issue I address is identified as Unresolved Issue Number 4, which states: Is Western Wireless ("WWC") entitled to be compensated at the tandem interconnection rate as required by 47 C.F.R. § 51.711(a) if its switch serves an area greater than the geographical area served by the ILECs' tandem switch? The third issue I address is identified in Unresolved Issue Number 5, which states: Should interstate tariffs govern WWC's purchase of access services and facilities from a RTC? I also address Unresolved Issues No 7, 9, 13, 14, 15, and Unresolved Issue B, as identified in WWC's petition for arbitration and the RTC response.

UNRESOLVED ISSUE NUMBER 3: What rates can be adopted for the transport and termination of intraMTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?

Q: Are you familiar with the terms transport, termination and reciprocal compensation as it pertains to this proceeding?

A: Yes. The appropriate explanation of the scope of transport, termination and reciprocal compensation is found in Federal Communications Commission (hereinafter "FCC") rule, 47 CFR §51.701, which states:

§ 51.701 Scope of transport and termination pricing rules.

...

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

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

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

My testimony addresses transport and termination as it is defined and explained by the FCC.

Q: Are you familiar with 47 CFR § 51.705?

A: Yes. This citation refers to a specific rule established by the FCC. The rule states:

§51.705 Incumbent LECs' rates for transport and termination.

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

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

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

(3) A bill-and-keep arrangement, as provided in §51.713.

Later in my testimony, I will present the results of forward-looking economic cost (hereinafter "FLEC") studies that are consistent with §§ 51.505 and 51.511. These FLEC studies will establish the FLEC rate for transport and termination consistent with § 51.705(a)(1). The RTC FLEC rates presented herein are reasonable approximations of the cost of transport and termination of telecommunications traffic between the each RTC and WWC.

Q: When can the South Dakota Public Utilities Commission apply § 51.705(1)(b) default proxies to establish rates for the transport and termination of telecommunications traffic?

A: The FCC has limited the use of proxies to those instances where the state commission determines that the cost information is somehow not consistent with the requirements of 47 CFR §§ 51.505 and 51.511. The intended use of proxy values established by the FCC is to provide a stopgap measure until a FLEC study is approved that is consistent with §§ 51.505 and 51.511. Because I present FLEC studies that are consistent with §§ 51.505 and 51.511, I submit that the use of default proxy values is inappropriate in this proceeding.

Q: According to the FCC, when can the South Dakota Public Utilities Commission apply § 51.705(1)(c) bill-and-keep rules in lieu of establishing rates for the transport and termination of telecommunications traffic?

A: The use of bill-and-keep is circumscribed by FCC rule to include only those instances where traffic is roughly balanced between the carriers. *See* 47 CFR § 51.713(b). A state commission can presume that traffic is roughly balanced unless a party rebuts this presumption. 47 CFR § 51.713(c).

Q: What traffic exchange ratio is considered roughly balanced?

A: The FCC has accepted a roughly balanced rule to be traffic that is within 10 percent (plus or minus) of being balanced. *See* Cox Virginia Telcom, Inc., v. Verizon South Inc., FCC 02-133, MEMORANDUM OPINION AND ORDER, May 2, 2002, ¶ 5. This means that the FCC considers traffic roughly balanced when the traffic exchange ratio is between 40 percent and 60 percent.

Q: Do you have data that shows that RTC/WWC traffic is not roughly balanced?

A: Recent billing records show that traffic is not roughly balanced for the RTC companies. Based on the current *Reciprocal Transport and Termination Agreement* between WWC and each RTC, the minutes exchanged between the parties are distributed using a 17 percent RTC-to-WWC factor and a 83 percent

WWC-to-RTC factor. *See* Article 8 of agreement approved by the Commission on May 23, 2000. The use of these factors confirms that current traffic is not roughly balanced. This conclusion is consistent with past Commission action involving Qwest. In an earlier arbitration, an agreement between Qwest and WWC, the Commission approved the use of a 17 percent and 83 percent ratio to determine traffic flows. In the most recent Qwest-WWC agreement, approved by the Commission on January 10, 2001, traffic between these carriers remains not roughly balanced.

In its document requests accompanying the RTC interrogatories, the RTCs requested that WWC provide specific originating and terminating data for each RTC. WWC indicated in its response that this data were not available. It indicated that the only source of data responsive to this request is specific records of bills sent to customers. It refused to create any summary documents of these billing records for this proceeding. *See* Response to RTC Document Request No. 2.

Q: Do you have any reason to conclude that traffic between WWC and the RTCs is roughly balanced?

A: No. Especially based on evidence in other states where I examined measurement data, there is no reason to conclude that this traffic is roughly balanced. In other

states, the percentage based on measured traffic is lower than the 17 percent factor currently used by the parties in South Dakota.

In summary, I conclude that the current practice of assigning 17 percent of the total traffic exchanged between the parties to the category of "RTC originated traffic" rebuts the presumption that traffic is roughly balanced. This current practice between the RTCs and WWC is consistent with the presumption that traffic is not roughly balanced in a recent agreement between WWC and Qwest. And this conclusion is consistent with measured traffic in other states.

Q: Now that you have rebutted the presumption of the balanced traffic, what is the requirement of 47 CFR § 51.705(a)?

A: The Communications Act of 1934, as amended (hereinafter "Act") provides a mechanism for resolving disputes when two negotiating parties fail to agree upon the rates for transport and termination of telecommunications traffic exchange. State commissions are required to use FCC FLEC guidelines in establishing a transport and termination rate. These rules require that state commissions use the FLEC of transport and termination of telecommunications traffic to establish reciprocal compensation rates. The FLEC requirements established by the FCC are found in 47 CFR §§51.505 and 51.511.

Q: Does the FCC have a FLEC model for the development of a traffic exchange rate?

A: No. The FCC does not have a model to develop FLEC for this purpose. The FCC has a model it uses to determine federal universal service support for non-rural local exchange carriers ("LECs"); however, the FCC has declined to use its Hybrid Cost Proxy Model ("HCPM") for federal universal service support in rural LECs. After a thorough examination of the proxy model platform, the Rural Task Force, an FCC panel of representatives from all segments of the industry including a CMRS representative from WWC, recommended that the FCC not use a proxy model for rural universal service purposes because of its inability to determine the cost of providing universal service in areas served by rural carriers.

Rather than require the use of a specific model, FCC rules permit a carrier to establish FLEC consistent with specific guiding principles. These guiding principles are required to be met in order to satisfy the FCC rules regarding the development of reciprocal compensation rates. These FCC rules implement the specific language found in the Act regarding rates for transport and termination of traffic.

Q: What are the guiding principles required by the FCC?

A: I refer to the principles found in 47 CFR § 51.505 and 51.511. These are the rules referenced in 47 CFR § 51.705(a) that state commissions must use to determine the FLEC for transport and termination of the exchange of telecommunications traffic pursuant to 47 U.S.C. § 251(b)(5). Additionally, the FCC has rules regarding the rate development for transport and termination. 47 CFR § 51.709 describes the rate structure for transport and termination. This rule states:

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

Q: Will you please describe these FLEC requirements?

A: Yes. Part 51.505 describes the FLEC standard that, absent other consideration I have discussed, must be used in this arbitration proceeding.

> §51.505 Forward-looking economic cost.
>
> (a) In general. The forward-looking economic cost of an element equals the sum of:
>
> (1) The total element long-run incremental cost of the element, as described in paragraph (b); and
>
> (2) A reasonable allocation of forward-looking common costs, as described in paragraph (c).
>
> (b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.
>
> (1) Efficient network configuration. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest

cost network configuration, given the existing location of the incumbent LEC's wire centers.

(2) Forward-looking cost of capital. The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(3) Depreciation rates. The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) Reasonable allocation of forward-looking common costs.

(1) Forward-looking common costs. Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(2) Reasonable allocation.

(i) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

(ii) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts;

(2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in §51.609;

(3) Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the

sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements; and

(4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(e) Cost study requirements. An incumbent LEC must 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 methodology set forth in this section and §51.511.

(1) A state commission may set a rate outside the proxy ranges or above the proxy ceilings described in §51.513 only if that commission has given full and fair effect to the economic cost based pricing methodology described in this Section and §51.511 in a state proceeding that meets the requirements of paragraph (e)(2) of this section.

(2) 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.

Q: What is your understanding regarding subpart (a) of rule 51.505?

A: Subpart (a) of rule 51.505 defines forward-looking economic cost or FLEC. FLEC is a specific cost standard that has two components. The first is total element long-run incremental cost ("TELRIC"), the second is a reasonable allocation of common costs. Certain individuals describe the FCC cost standard as TELRIC, but in fact TELRIC is only one of two parts. It is more accurate to describe the FCC cost standard as FLEC.

Q: Please describe TELRIC as it is defined in subpart (b) or rule 51.505.

A: TELRIC is a term coined by the FCC to describe certain features or principles of its cost standard. TELRIC has some characteristics of other types of long-run incremental cost. However, certain aspects of TELRIC are unique to the FCC cost standard. For example, under TELRIC, the FCC requires that wire centers be fixed at their current location. 47 CFR 51.505(b)(1). This constraint imposed by the FCC has significant implications for the FLEC models I present below.

TELRIC represents the reasonable attribution of incremental costs of an element (in this proceeding transport and termination). There are three required properties of TELRIC: efficient network configuration, forward-looking cost of capital, and economic depreciation rates.

Q: Please describe the efficient network configuration standard.

A: The efficient network configuration property has been the subject of a six-year court challenge. This property has two requirements. First, it requires that the network configuration be measured based on the most efficient technology currently available. And second, that the lowest cost network configuration given the existing location of the RTC wire centers. It is important to understand that this property has two parts: the use of the most efficient technology currently

available and the hypothetical configuration of the ILEC plant with the constraint that the ILEC wire centers remain fixed. The challenges regarding this property stem largely with the requirement that the ILEC outside plant be hypothetically developed.

When developing a transport and termination rate for reciprocal compensation purposes, the constraint that the wire center locations remain fixed greatly reduces the burden of satisfying this property. I base this determination on the fact that all switches used by the RTCs use the most efficient technology currently available: all switches use digital switch technology. Digital switch technology remains the most efficient technology available because its widespread use and reliability has greatly reduced the cost of switches. Additionally, the configuration of inter-office transport is not as complicated as the configuration of loop plant since the placement of existing wire centers is fixed.

Q: Please describe the forward-looking cost of capital standard and how you applied this standard in your FLEC studies.

A: As defined by the FCC, the "cost of capital represents the annual percentage rate of return that a company's debt-holders and equity holders require as compensation for providing the debt and equity capital that a company uses to finance its assets." Federal-State Joint Board on Universal Service; Forward-

Looking Mechanism for High Cost Support for Non-Rural LECs, 14 FCC Rcd 20156, FCC 99-304, November 2, 1999, TENTH REPORT AND ORDER, ¶ 433. In its Local Competition Order, the FCC concluded that the current federal rate-of-return of 11.25 percent is a reasonable rate of return by which to determine forward-looking costs. (¶ 702) Consistent with the FCC's determination, I have used the 11.25 percent rate of return for calculating FLEC transport and termination rates for the RTCs. This rate is a weighted-average of the return required for debt and equity holders, the equity return is adjusted for each RTC to achieve an overall rate of return of 11.25 percent. The debt rate used for each RTC is the weighted average debt rate for all outstanding debt. The debt-equity ratio used for each RTC is the existing debt-equity ratio for each RTC.

Q: Please describe the economic depreciation standard.

A: The FCC has evaluated depreciation rates for non-rural local exchange carriers. Its experience comes from various proceedings in which depreciation was hotly contested, such as in the X-factor proceedings. The FCC describes depreciation as "the method of recognizing as an expense the cost of a capital investment. Properly calculated economic depreciation is a periodic reduction in the book value of an asset that makes the book value equal to its economic or market value." Economic depreciation rates and their corresponding economic lives are

designed to capture the economic life of an asset rather than the life of an asset used for other purposes, such as tax computations.

The FCC has established the economic life of assets by USOA classifications based on the record for non-rural LECs. The FCC also recommended that rural carrier studies for universal service use currently authorized lives because "the assets used to provide universal service in rural, insular, and high cost areas are unlikely to face serious competitive threat in the near term." Federal-State Joint Board On Universal Service, 12 FCC Rcd 8776, FCC 97-157, REPORT AND ORDER, May 8, 1997, ¶ 250.

In preparing the FLEC studies, I have used the FCC's economic lives for Circuit Equipment and Cable and Wire Facilities. For Digital Switching I have used a 12-year economic life. This economic life is based on information received from numerous independent engineers that confirm that this value is reasonable, if not on the high end of the switching lives they see in the industry. For support plant assets, I have used a 12-year economic life as representative of the support plant life for the RTCs. I recommend that the Arbitrator use these economic lives as the economic lives for this proceeding.

As shown in Exhibits DDM-01 through DDM-30, pages five through eight, each RTC debt-equity ratio, weighted debt rate, return on equity, and the economic lives of each asset classification are used to determine levelized capital cost factors. The leveling process determines a single capital cost factor for the entire life of the asset classification employing a present value technique. As is demonstrated in the Exhibits, the leveling process is superior in developing a capital cost factor than say picking the average life of an asset because it incorporates a time-value-of-money component that is used to reflect the value of a dollar today is greater than the value of a dollar in the future.

Q: You mentioned that there are two components of FLEC: TELRIC and a reasonable allocation of common costs. Please describe the properties required when allocating forward-looking common costs.

A: The FCC has established specific rules for common costs. The FCC describes "forward-looking common costs as economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services." 47 CFR § 51.505(c)(1). While forward-looking common costs by rule can be considered generally as costs covering a sub-set of elements or costs covering all elements, I break these two types of common costs into what are typically called "shared costs" and "common costs." Forward-

looking shared costs are costs that are efficiently incurred in providing a group of elements or services, but not the entire group of elements or services. This leaves forward-looking common costs as costs that are efficiently incurred in providing all elements or services. While the FCC lumps these two types of costs together in its rule, discussion by the FCC in its Local Competition Order clearly distinguishes between these two types of cost allocations. *See* Local Competition Order ¶¶ 676, 694.

Common costs must also satisfy a reasonable allocation requirement which states that shared and common allocations, plus TELRIC for an element must not be greater than the forward-looking stand alone costs of the element. Additionally, the sum of allocable forward-looking common costs must equal total forward-looking common costs, except retail costs, that are attributed to operating the ILEC's total network.

Q: How are forward-looking common costs typically developed under the FLEC standard?

A: Forward-looking common costs, as defined by the FCC, are developed typically through a carrying charge factor. This process involves the development of an expense to investment ratio. The ratio is developed using total ILEC regulated and most-recent-year expenses as compared to total ILEC investments. This

percentage is then applied to most efficient technology and hypothetical network investment.

Where the most efficient technology used in a rural LEC FLEC study is substantively different from existing technology, I have recommended a downward adjustment of direct and shared carrying charge factors for predicted efficiencies in non-labor expenses. The reason for this type of efficiency adjustment of non-labor expenses is that more efficient technology "should" yield lower operating and maintenance costs.

In the present arbitration, I do not recommend applying an efficiency adjustment for switching and transmission costs. The RTC actual deployment of digital switches and fiber technology for transmission routes is the most efficient technology currently available. Therefore, the maintenance and operating-expense to investment ratios developed using existing operations are the best predictors of forward-looking direct, shared and common costs.

Using a carrying charge factor in this manner is consistent with the FLEC standard. In some instances, observers question the use of embedded investment in the development of the direct, shared and common cost factors. I note that these criticisms are unfounded because they ignore the underlying proposition of

the FLEC standard. Underlying the FLEC standard is the presumption, correct or otherwise, that embedded costs, "costs that the incumbent LEC incurred in the past," are inappropriately high. These embedded investments are supposed to be bloated because there was no incentive for efficiency. Assuming then that embedded investments are bloated, then developing carrying charges in the manner described above actually understates operational and maintenance expense (the denominator of the ratio is artificially large causing the ratio to be smaller). Recognizing this criticism is inconsistent with the observations of these self-same critics, I reaffirm my conclusion that the described carrying charge factor development is consistent with the FCC's FLEC standard. (For a discussion and approval of this method by the FCC, *See* Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services In Georgia and Louisiana, FCC 02-147, MEMORANDUM OPINION AND ORDER, May 15, 2002, ¶¶ 51-64.)

Q: Does the FLEC standard also prohibit certain types of cost principles?

A: Yes. 47 CFR § 51.505(d) states that there are four factors that must not be considered when developing FLEC rates: embedded costs; retail costs; opportunity costs; or revenues to subsidize other services. Embedded costs refer

to costs that have been incurred in the past and that are recorded in the carriers' books of accounts.

Q: In addition to 47 CFR § 51.505, are you familiar with 47 CFR § 51.511?

A: Yes. Rule 51.511 is the second rule referenced in 47 CFR § 51.705(a) that is the subject of this proceeding. Rule 51.511 states:

> §51.511 Forward-looking economic cost per unit.
>
> (a) The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in §51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.
>
> (b)(1) With respect to elements that an incumbent LEC offers on a flat-rate basis, the number of units is defined as the discrete number of elements (e.g., local loops or local switch ports) that the incumbent LEC uses or provides.
>
> (2) With respect to elements that an incumbent LEC offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g., minutes of use or call-related database queries) of the element.

This rule states that the total FLEC of transport and termination must be divided by the number of units the LEC is likely to provide to the requesting carrier and itself. For purposes of transport and termination, the total number of units used to develop FLEC is a reasonable projection of the total number of switch minutes and total number of transmission minutes.

Q: In developing the RTC rates for transport and termination, did you consider the FCC rules 51.507 and 51.509?

A: Yes. I have reviewed these rules. I conclude that the transport and termination rates I present in this testimony are consistent with these rules. These rules provide guidance regarding the rate structure of specific network elements. Rule 51.507 states:

> §51.507 General rate structure standard.
>
> (a) Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.
> (b) The costs of dedicated facilities shall be recovered through flat-rated charges.
> (c) The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Costs of shared facilities may be apportioned either through usage-sensitive charges or capacity-based flat-rated charges, if the state commission finds that such rates reasonably reflect the costs imposed by the various users.
> (d) Recurring costs shall be recovered through recurring charges, unless an incumbent LEC proves to a state commission that such recurring costs are *de minimis*. Recurring costs shall be considered *de minimis* when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.
> (e) State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.
> (f) State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

> (1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in §69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.
>
> (2) In states not using such existing plans, state commissions must create a minimum of three cost-related rate zones.

To a large extent this rule addresses the application of rate structures for unbundled network elements. Nonetheless, subparts (a) through (d) are applicable for transport and termination rates. The rates I have developed are consistent with these standards.

Likewise, rule 51.509 identifies the rate structure standards for specific elements. Transport and termination uses facilities that can be categorized as (1) local switching (2) shared transport and, in very limited instances, (3) tandem switching. Subparts (b) (d) and (e) address the rate structure for these facilities. FCC Rule 51.509 states:

> §51.509 Rate structure standards for specific elements.
>
> ...
>
> (b) Local switching. Local switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute usage charges for the switching matrix and for trunk ports.
>
> ...
>
> (d) Shared transmission facilities between tandem switches and end offices. The costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.
>
> (e) Tandem switching. Tandem switching costs may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.

...

The transport and termination rates presented in my testimony are usage sensitive charges for transport and termination. Since line ports at the switch locations are not included in these studies, use of a per-minute usage charge for switching function is consistent with the FCC's rule.

Q: Can you please summarize the FCC's FLEC standard?

A: Yes. To capture the essence of the FCC's FLEC standard, I refer to the United States Supreme Court decision in May 2002 regarding this matter. The Court said:

> "In essence, the Commission requires local regulators to determine the cost of supplying a particular incumbent network "element" to a new entrant, not by looking at what it has cost that incumbent to supply the element in the past, nor by looking at what it will cost that incumbent to supply that element in the future. Rather, the regulator must look to what it would cost a hypothetical perfectly efficient firm to supply that element in the future, assuming that the hypothetical firm were to build essentially from scratch a new, perfectly efficient communications network. The only concession to the incumbents actual network is the presumption that presently existing wire centers—which hold the switching equipment for a local area—will remain in their current locations. See In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996, ¶685, 11 FCC Rcd. 15499 (1996) (hereinafter Order) (describing TELRIC as "based on costs that assume that wire centers will be placed at the incumbent LEC's current wire center locations, but that the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements").

An example will help explain the system as I understand it. Imagine an incumbent local telephone company's major switching center, say, in downtown Chicago, from which cables and wires run through conduits or along poles to subsidiary switching equipment, other electronic equipment, and eventually to end-user equipment, such as telephone handsets, computer modems, or fax machines located in office buildings or private residences. A new competitor, whom the law entitles to use an "element" of the incumbent firm's system, asks for use of such an "element," say, a single five-block portion of this system, thereby obtaining access to 20 downtown office buildings. Under the Commission's TELRIC, the incumbent's "cost" (upon which "rates" must be based) equals not the real resources that the Chicago incumbent must spend to provide the five-block "element" demanded, but the resources that a hypothetical perfectly efficient new supplier would spend were that supplier rebuilding the entire downtown Chicago system, other than the local wire center, from scratch. This latter figure, of course, might be very different from any incumbents' actual costs." Verizon Communications Inc., et al., Petitioners v. Federal Communications Commission et al., WorldCom, Inc., et al., Petitioners v. Verizon Communications Inc. et al., Federal Communications Commission, et al., Petitioners v. Iowa Utilities Board et al., AT&T Corp., Petitioners v. Iowa Utilities Board et al., General Communications, Inc., Petitioner v. Iowa Utilities Board et al., On Writs of Certiorari to the United States Court of Appeals for the Eighth Circuit, 122 SCt 1646, May 13, 2002.

Q: Do you agree that FLEC rates for transport and termination must be lower than current RTC access rates for comparable transport and termination service?

A: No. There is no way to state that generally a FLEC rate for transport and termination would be less than or greater than comparable RTC access rates for comparable service. The underlying cost standards for both methods are distinct and unique; knowing the rate developed under the current access rate

methodology does not provide guidance for the rates developed under a FLEC standard. With regard to this comparison between the FLEC standard and an embedded or historic cost methodology, the FCC states:

> "we reiterate that the prices for the interconnection and network elements critical to the development of a competitive local exchange should be based on the pro-competition, forward-looking, economic costs of those elements, which may be higher or lower than historical embedded costs." (Emphasis Supplied) Local Competition Order, ¶ 705.

One reason why FLEC transport and termination rates can be higher than embedded cost access rates is due to the level of accumulated deprecation realized by the LEC. If accumulated deprecation is high, then the rate-base that underlies the embedded rates would be lower than what a levelized FLEC method would produce: everything else equal, this would result in higher FLEC rates than embedded rates.

Q: Do you agree that proxy models can be useful in developing FLEC rates for transport and termination?

A: Based on industry reports, such as the Rural Task Force recommendation, and upon my own examination of proxy models, I believe that proxy models are limited in their ability to develop FLEC-based rates for rural carriers.

The proxy models, most notably the BPCM, HAI, ICM and HCPM are at best able to determine first approximations of cost for rural LECs. The level of detail in the modeling, and the inputs used in the proxy models does not sufficiently capture the forward-looking costs of rural ILECs. Consequently, I recommend that the Commission reject the exclusive use of proxy models for developing rates in this arbitration.

I note that in one limited circumstance, the use of proxy models is acceptable. This circumstance is where the proxy model is used to develop a ratio of cost rather than the actual cost itself. In reality, this use is how the FCC uses the HCPM to distribute costs to non-rural ILEC federal universal service support. By fixing the level of cost, above which federal support will be provided, the FCC is able to distribute a fixed amount of support among non-rural carriers. I believe that proxy models can be useful in the development of a ratio necessary to determine one portion of the termination rate in this proceeding.

Q: Is it your testimony that that FLEC studies attached as Exhibits DDM-01 through DDM-30 are consistent with the FCC FLEC standards?

A: Yes. I believe that the FLEC studies are consistent with the FCC's FLEC standards and that the Commission should adopt the rates developed from these studies for purposes of resolving Arbitration Issue number 3.

Q: Will you please describe the information contained in Exhibit DDM-01?

A: Yes. Exhibit DDM-01 consists of ten (10) pages developed for Armour Independent Telephone Company. Page one has eight sub-parts that summarizes information from the supporting pages and develops a forward-looking rate for transport and termination. Page two reports the forward-looking investment for five categories of investment: switching, transmission equipment, transmission facility, traffic-sensitive loop, and support plant. Page three calculates direct, shared and common cost factors for each company developed in the manner described above. On page four I develop the forward-looking demand of total switch and transport minutes for each company. These minutes are used as the denominator for determining the transport and termination rate. Pages five through eight calculate the levelized capital cost factors I described above. And pages nine and ten are input pages to the model.

Q: Please explain how forward-looking investment costs were developed.

A: On page two, there are five investment categories. For switching and transmission equipment, the first two categories, I requested that each RTC provide a current replacement price for switching and transmission function performed at each RTC wire center.

Since the FCC mandates that switch locations remain the same in a FLEC study, I did not have to "optimize" the number of switch locations to be consistent with the FLEC standards. I obtained switch locations from NECA Tariff No. 4 that is used in the interstate jurisdiction to identify switch locations.

The RTCs deploy a switch configuration of variety of switches, including standalone, host and smart-remote switches. Prior to using vendor replacement cost estimates for the RTCs, I examined whether the capacity of the current switches was in excess of forward-looking capacity factors. The forward-looking fill factor I used was 90 percent, or ten percent of spare equipped capacity for the customers served by the switch. When the fill factor was less than 90 percent, I adjusted the vendor estimate to match the fill factor requirement. The vendor estimates include all switching function up to but not including the line cards on the line-end, and up to but not including the transmission equipment on the trunk-end.

Q: Please describe how forward-looking investment for transmission equipment and transmission facility was developed.

A: The RTCs as a group use the most efficient transmission equipment currently available. This consists of fiber technology under the current optical carrier standards. Also, the vast majority of RTCs use fiber rings for interoffice

transmission. Because of the recent design and deployment of fiber technology used for transmission equipment, I requested a vendor quote for existing transmission equipment functionality. In order to determine the degree of shared use of these structures or facilities, I examined the percentage of circuits used for Qwest transmission routes. WWC delivers its wireless traffic to the RTCs via direct routes or via Qwest transmission routes. WWC does not use SDN facilities. Consequently, I have identified transmission equipment attributable to Qwest transmission routes, host-remote and EAS routes by applying a facility/structure sharing percentage that is proportional to the number of circuits used for these routes currently in use by the RTCs. I have limited my examination of the RTC costs for Qwest termination routes only.

In addition to reporting the forward-looking cost for transmission equipment, I also calculated the forward-looking cost of transmission facilities. To determine this cost, I requested from each RTC a vendor price per foot for fiber (equipped, furnished and installed) for all fiber routes. The price per foot costs derived in this manner capture the variances in terrain and fiber installation among all RTCs.

To determine the forward-looking route miles for interoffice transmission, I requested from each RTC the engineering route miles within the company used either as interoffice transmission or as an umbilical or spur to an eventual Qwest

meet-point. In certain instances, Qwest has a presence at a switch center. In these instances, there would be zero miles to connect to Qwest. In other instances, the RTC has a meet-point with Qwest at their exchange or service area boundary. In these instances, the engineered mileage to the meet-point is reported. In certain other instances, the RTC does not have facilities that connect to Qwest. Rather, the RTC has facilities to a specified point, and uses another carrier's facilities to connect with Qwest. In these latter instances, I have only included mileage of the RTC: this means that I did not include the third-party facilities currently in use. The rates developed in these studies reflect a specific geographic point that in certain instances do not connect directly to Qwest. Inasmuch as third-party arrangements would need to be made by WWC to connect via these facilities, I believe that removal of any portion of existing third-party investment is required in the performance of these studies. I am not aware of the arrangements WWC may make in using intermediate transmission facilities used to deliver traffic to an RTC for termination to an RTC end-user customer. Thus, I have omitted these facilities from the studies.

Like the facility/structure sharing for transmission equipment discussed above, I have used a facility/structure sharing percentage for transmission facility. This percentage is either equal to the RTC's equipment circuit percentage or forty

percent, whichever is less. This percentage is intended to capture uses of the fiber facility other than use for circuits connecting and distributing calls from/to Qwest.

Q: Please explain how traffic-sensitive loop costs are used in calculating reciprocal compensation rates.

A: Non-traffic sensitive loop plant begins at the line card (card in line port) serving the loop; this classification of loop plant ends at the network interface device located at the customer's premises. The forward-looking deployment of loop plant uses digital loop carrier ("DLC") facilities. For example, in the FCC's forward-looking model ("HCPM") DLC is utilized. The use of DLC technology moves the placement of the line card from the wire center to a geographic point in the loop plant that is closer to the end-user customer. This deployment is considered an efficient deployment of loop plant. In instances where DLC facilities are used, there are two types of loop plant: non-traffic sensitive loop plant from the line card at the DLC location to the customer's premises; and traffic-sensitive loop plant from the serving wire center to the DLC location. The connection from the wire center to the DLC is typically fiber and this connection is traffic engineered.

FCC rules and guidelines indicate that rates for termination shall only include traffic-sensitive costs. Inasmuch as the transmission from a wire center to a DLC

location is traffic-sensitive facility, I include costs of the traffic-sensitive loop cost in the reciprocal compensation rate. To estimate the forward-looking economic cost of this facility, I have used the ratio of DLC feeder investment to total loop plant from the HCPM and have applied this ratio to existing loop plant. I assign only 50 percent of this investment to the rate for termination. This method provides a forward-looking estimate of shared traffic-sensitive facility on the loop-side of the serving wire centers.

Q: Why don't you include non-traffic sensitive loop cost in the reciprocal compensation rates?

A: The FCC rule 51.701(d) clearly states that termination includes end-office switching and delivery to the called party's premises. Under this rule, it would appear that non-traffic sensitive loop is permitted. However, one statement made by the FCC in its order promulgating the rule appears to limit the termination to only those instances where loop plant is traffic-sensitive. *See* Local Competition Order ¶1057. Following this guidance, I did not include the costs associated with the line card or the copper feeder, distribution and drop between the line card and the customer's location. In describing termination, the FCC stated that "termination primarily consists of the traffic-sensitive component of local switching." The use of the word "primarily" is very important. There are portions of the loop that are traffic engineered whose costs are traffic sensitive.

While termination "primarily" consists of traffic-sensitive local switching, it also includes a non-primary traffic-sensitive component of traffic engineered loop plant between the local switch and the line cards deployed in DLC cabinets in a forward-looking loop plant configuration. I therefore include a percentage of the costs estimated through use of the HCPM DLC to Gross Loop Plant ratio. This calculation is documented on page two of the studies.

Q: Do Exhibits DDM-02 through DDM-30 report similar information for the other RTCs?

A: Yes. The other exhibits report similar information for the other RTCs.

Q: Please explain the development of direct shared and common costs.

A: Direct, shared and common costs are developed using the relationship of costs and gross investments for the most recent annual period, generally year 2001. I identify in the Exhibits specific direct, shared and common cost for each operation involved in the transport and termination of traffic. One cost that I did not add to the study is the cost of third-party billing and recording. If Qwest, for example, charges the RTC a message rate for WWC transmitted using Qwest facilities, I recommend that third-party billing and recording charges be passed through to the originating party, in this instance WWC. Unresolved Issue No. 7 addresses the issue of third-party billing and recording fees.

I believe the development of direct, shared and common cost factors in these studies to be reasonable and consistent with the FCC's FLEC requirements. I recommend that the Commission adopt the cost factors shown in the Exhibits for this proceeding.

I also calculated an annual charge factor for support plant used to operate and maintain other investments. Support plant is an investment category that operates similar to a cost factor. Page one of the study identifies the support plant calculation.

Q: Please explain how you developed forward-looking demand minutes in Exhibit DDM-01.

A: The measurement of DEM for cost study purposes has become less important because of FCC's actions that have frozen various traffic factors. Nonetheless, a few of the RTCs have performed a traffic study since January 2000. From this information we have a good record from three of the companies on the ratio of total exchange traffic to toll traffic. I used a weighted average of these studies to develop projections of total minutes of use ("MOU") for all of the RTCs. On a weighted average basis, the exchange toll percentage ratio ("ETPR") for the three companies is 2.77. The ETPR is used to calculate the total exchange traffic from

known toll traffic. A factor of 2.77 indicates that for every toll MOU there are 2.77 exchange MOUs (local, EAS, ISP, and other local). I have used this 2.77 factor for all other RTCs in this proceeding except for Roberts County Telephone Cooperative Association, where I used a company-specific factor that is equal to 2.90. Even though the Roberts traffic study is older than 2000, it appears to have already accounted for the increase in local minutes and no upward adjustment is warranted.

In addition to estimating total traffic based on ETPR factors, page four of the exhibits converts DEM to an access MOU equivalent using a conservative conversion factor of 0.9750. This ratio indicates that for every 100 DEM there are approximately 97.5 billed MOUs. Historically a factor of 0.9346 was commonplace, but the increased subscription to voice mail, cellular phones and other calling features has likely caused this factor to increase.

Lastly, to calculate forward-looking demand for the mid-point of the two-year agreement period, I have applied a 1.5 percent growth rate on total MOUs. This value is based on my consideration of the decline in access minutes, the migration of ISP minutes off the switched telephone network, the decline of second lines and the increase of wireless usage nationally. I have also applied an estimate to the volume of EAS traffic traversing Host-smart remote links. If the RTC has

measured its EAS traffic, I have used the measured percentage. Otherwise, I have used 20 percent or 30 percent for companies with a small and large EAS calling scope respectively.

I recommend that the Commission adopt these forward-looking demand estimates as reasonable approximations of the total volume of traffic for each RTC. These estimates satisfy the requirements of 47 CFR 51.511(a). I have used these estimates to calculate the rate I recommend to be used for reciprocal compensation in this proceeding.

Q: Did you use similar methods for the RTC studies shown in Exhibits DDM-02 through DDM-30?

A: Yes. Similar methods were used for the other RTCs.

Q: Based on the studies you have prepared, what rates do you propose for use in this proceeding?

A: I recommend that the Commission determine that the rates I developed in this proceeding as fair and reasonable estimates of additional cost pursuant to the rules and regulations prescribed by the FCC. The FLEC rates, as detailed in Exhibits DDM-01 through DDM-30, are as follows. I only list Qwest connect transport and termination rates for RTC facilities.

Table 1

FLEC Transport and Termination Rates for RTCs

RTC	Indirect Connection via Qwest 47 U.S.C. § 251(b)(5) Reciprocal Compensation Rate (RTC Facilities Only)
Armour Independent Telephone Company	$ 0.028987
Baltic Telecom Cooperative	$ 0.042510
Beresford Municipal Telephone Company	$ 0.017675
Bridgewater-Canistota Indpendent Telephone Company	$ 0.049598
Cheyenne River Sioux Tribe Telephone Authority	$ 0.042590
City of Brookings Municipal Telephone Department	$ 0.029702
City of Faith Municipal Telephone Company	$ 0.009143
East Plains Telecom, Inc.	$ 0.057291
Fort Randall Telephone Company and Mount Rushmore Telephone Company	$ 0.018829
Golden West Telecommunications Cooperative	$ 0.079070
Interstate Telecommunications Cooperative, Inc.	$ 0.054296
James Valley Telecommunications	$ 0.035433
Jefferson Telephone Company d/b/a Long Lines	$ 0.039822
Kadoka Telephone Company	$ 0.036775
Kennebec Telephone Company	$ 0.098194
McCook Cooperative Telephone Company	$ 0.040908
Midstate Communications, Inc.	$ 0.030161
Roberts County Telephone Cooperative Association and RC Communications, Inc.	$ 0.029752
Santel Communications Cooperative, Inc.	$ 0.037427
Sioux Valley Telephone Company	$ 0.023710
Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc.	$ 0.039454
Stockholm Strandburg Telephone Company	$ 0.037497
Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc.	$ 0.036813
Tri-County Telecom, Inc.	$ 0.134576
Union Telephone Company	$ 0.036048
Valley Telecommunications Cooperative	$ 0.041559
Vivian Telephone Company dba Golden West Communications, Inc.	$ 0.039827
West River Cooperative Telephone Company	$ 0.062067
West River Telecommunications Cooperative	$ 0.030228
Western Telephone Company	$ 0.067240

UNRESOLVED ISSUE NUMBER 4: Is Western Wireless entitled to be compensated at the tandem interconnection rate as required by 47 C.F.R. § 51.711(a) if its switch serves an area greater than the geographical area served by the ILECs' tandem switch?

Q: Are you familiar with the proposed dispute raised by WWC in issue number 4?

A: I understand from the Petition for Arbitration, that WWC seeks to ensure that any RTC with a tandem rate (i.e., a Type 2A rate) must pay Western Wireless the tandem rate on all land-to-mobile Local calls. This is appropriate symmetrical compensation established in FCC Rule 51.711(a).

I don't believe that this is an unresolved issue. It is the position of the RTCs that symmetrical rates will apply in every case involving RTCs. WWC has not raised the issue of asymmetrical rates under FCC rule 51.711(b) and it my understanding that WWC merely seeks to ensure that symmetrical rates will apply, even in the case where Type 2A connections are used.

I recommend that the Commission affirm that the rates identified in the previous section are symmetrical rates for the type of interconnection noted therein. If WWC seeks direct interconnection with a RTC, then direct interconnection would

need to be developed based on case-specific transport identified at the time of WWC's request. In many cases, direct connection is where WWC connects directly to the end-office that will perform the termination of the call. In this instance only, no transport facilities would be appropriate as WWC would provide its own transport to the specific end-office performing the call termination. As direct connection is limited in its application today, I recommend that direct interconnection rates be developed upon request when case-specific transmission routes are identified by WWC.

Under no circumstances do I recommend that the Commission allow WWC to receive asymmetrical compensation. WWC has not raised the issue of 51.711(b) requirements and should be precluded from attempting to establish asymmetrical rates in this proceeding.

Lastly and most obviously, the FCC rule cited by WWC requires a LEC to have a tandem for which to offer tandem interconnection service. WWC apparently believes that some of the RTCs have a tandem and provide switched tandem service. If such switch tandem service were provided to other carriers, rates for tandem service must be provided. I understand that all RTCs use the Qwest tandems for tandem switching and that none of the RTCs provide switched tandem services to other carriers (there are some local "tandems" that provide

tandem service to the RTC itself, and in limited circumstances provide transport aggregation). Therefore, the RTCs do not have a tandem interconnection rate to offer. The application of 47 CFR § 51.711(a)(3) would not appear to apply in this proceeding. If WWC uses a Qwest tandem to exchange traffic with the RTCs, I submit that Qwest is acting as an agent of WWC and I recommend that the Commission affirm WWC's responsibility to pay any Qwest charges that apply to instances where Qwest is performing a function on behalf of WWC. Similarly, if WWC uses the facilities of a third-party, enabling it to interconnect with an RTC for wireless termination purposes, WWC should be required to pay for these facilities provided by a third-party.

UNRESOLVED ISSUE NUMBER 5: Should interstate tariffs govern Western Wireless' purchase of access services and facilities from a RTC?

Q: Are you familiar with the items related to issue number 5?

A: Yes. This issue involves what rates should apply to interconnection facilities used in the use of access services provided by the RTCs.

The RTC position is that these facilities are provided under tariff and that tariff rates should apply. It is not necessary to determine at this time what specific tariff should apply. Since traffic can be interstate, intrastate or of mixed jurisdiction,

the applicable tariff should be governed by case-specific facts for each application.

UNRESOLVED ISSUE NUMBER 7: Can an RTC charge WWC for billing costs incurred by the RTC associated with the terminated wireless traffic?

Q: Are you familiar with the items related to issue number 7?

A: As I mentioned in my response to Unresolved Issue Number 3, billing costs may arise in South Dakota depending upon how WWC interconnects with the RTCs. The RTCs have expressed their position that if WWC desires to interconnect using Qwest facilities then Qwest may perform a billing-measurement function for this traffic. I understand that the Qwest rate for measurement at its tandem switch is $0.0025 per message. To the extent that an RTC is charged by Qwest for its performance of this function occurring at the Qwest tandem switch, then the RTC will pass-through this charge to WWC. If WWC interconnects directly with an RTC then I understand that Qwest's billing-measurement function charge would not apply. The reasoning of the RTC position is whatever additional billing-measurement costs apply to WWC traffic delivered to an RTC, WWC should pay for these costs. This principle is similar to the use of Qwest facilities for tandem switching function. The RTC position is that all costs associated with

facilities carrying WWC's traffic, up to the point where RTC facilities are physically interconnected, are the responsibility of WWC.

UNRESOLVED ISSUE NUMBER 9: What usage levels should be considered *de minimis* and subject to bill-and-keep treatment?

Q: Are you familiar with the items related to issue number 9?

A: This issue has been resolved through the continuing negotiation process between WWC and the RTCs.

UNRESOLVED ISSUE NUMBER 13: What reciprocal compensation credit factor should be established for land-to-mobile traffic?

Q: Are you familiar with unresolved issue number 13?

A: Yes. The reciprocal compensation credit factor is currently at 17 percent. This means a credit of 17 percent is applied to total WWC minutes reported to reflect the volume of minutes originated by a RTC and delivered to WWC for termination.

I believe that there are two resolutions to the matter. Of course, the best scenario is when traffic is measured between the parties – thereby permitting actual billing without a credit factor. Presently, measurement can occur with minimum administrative burden on direct interconnection trunks. Because actual traffic measurement can be performed on direct interconnection trunks, this should be the method of determining the volume of traffic terminated on each network. In the absence of actual measurement of direct trunks, the 17 percent factor that is currently in use should remain in use.

The case where WWC chooses indirect interconnection with the RTCs, the issue of measurement is more problematic. By this I mean that measurement can be performed, but the administrative burden is considerably higher. Hence, for administrative ease, I recommend that the parties continue to use the 17 percent factor or measure the traffic. However, either party may establish a new factor to be used at minimum for a six-month period with a traffic measurement study. The parties will need to agree on the parameters of the measurement prior to performing a traffic measurement study.

I believe that actual measurement is the best case for all parties. However, because traffic measurement can be administratively burdensome with indirect interconnection, I recommend the use of the 17 percent factor currently used by

WWC and the RTCs until a measurement is performed. In the case of direct interconnection, the measurement of traffic can be performed with minimum burden at the trunk group level. I recommend that actual measurement replace the 17 percent factor for direct interconnection within a six-month implementation period. The direct measurement will result in an actual factor that can be used for a minimum of six-months. Either party can perform a trunk group study that will establish a traffic percentage that is higher or lower than the current 17 percent rate.

UNREOLVED ISSUE NUMBER 14: What shared facility factor should be established for two-way trunks used for direct interconnection?

Q: What is your recommendation regarding the shared facility factor issue?

A: In the case where direct interconnection is requested, the RTCs do not agree with the establishment of an arbitrary shared facility factor. The RTCs agree with WWC that cost sharing should occur for shared facilities between the RTC meet-point in the exchange boundary and the RTC wire center serving the exchange. The RTCs see no reason why use-measurement of direct interconnection facilities cannot establish a shared facility factor. This measurement would permit a calculation of proportional use of these facilities. Any other method of determining a shared facility factor would be arbitrary. Hence, I recommend that

the same measurement of direct interconnection traffic described in unresolved issue number 13 be used to establish the shared percentage factor for two-way facilities shared between the RTC meet-point within an exchange and the RTC wire center serving that exchange. For instances of one-way facilities, there is no facility sharing and the factor should not be used.

In the case of indirect interconnection, the use of facilities between the RTC meet-point within an exchange and the RTC wire center serving that exchange shared using the same percentage outlined in unresolved issue number 13 for indirect interconnection: to wit, 17 percent factor is used until a party performs a traffic study whose parameters are agreed to by the parties prior to the study.

UNRESOLVED ISSUE NUMBER 15: What are the appropriate rates for transiting services provided by an ILEC?

Q: Are you familiar with unresolved issue number 15?

A: Yes. WWC seeks to receive transit function rates when RTCs perform a transit function for third-parties.

The RTCs are not under a federal duty to perform any form of transit function. And thus the RTCs recommend that the Commission require that WWC address

transit service performed by an RTC for another carrier on an individual case basis outside the parameters of this interconnection request.

UNRESOLVED ISSUE B: How should inter-MTA traffic be identified and what charges are applicable to the same?

Q: Are you familiar with unresolved issue B?

A: Yes. It is generally understood that inter-MTA traffic exchanged between the RTCs and WWC is interexchange traffic and appropriate access charges should apply.

The RTCs are not able to identify this traffic because it requires knowledge of where the wireless customer is physically located at the beginning of the call to/from a RTC end-user customer. Information addressing this matter was requested from WWC by the RTCs and was not provided. This issue is important because, unlike other states, South Dakota has three (3) MTAs within its borders. *See* State Map attached to RTC Petition Response.

Q: Does this conclude your direct testimony?

A: Yes. I request the opportunity to revise or modify this pre-filed direct testimony at or before the hearing if I receive additional information pertaining to the issues I presented herein.

CONFIDENTIAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF SOUTH DAKOTA

Petition of WWC License L.L.C.	)	
For Arbitration Under The	)	Docket No. TC02-176
Telecommunications Act of 1996	)	

DIRECT PRE-FILED TESTIMONY OF
ROBERT C. SCHOONMAKER ON BEHALF OF

Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Company
Bridgewater-Canistota Independent Telephone Company
Cheyenne River Sioux Tribe Telephone Authority
City of Brookings Municipal Telephone Department dba Swiftel Communications
City of Faith Municipal Telephone Company
East Plains Telecom, Inc.
Fort Randall Telephone Company and Mount Rushmore Telephone Company
Golden West Telecommunications Cooperative
Interstate Telecommunications Cooperative, Inc.
James Valley Telecommunications
Jefferson Telephone Company d/b/a Long Lines
Kadoka Telephone Company
Kennebec Telephone Company
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Roberts County Telephone Cooperative Association and RC Communications, Inc.
Santel Communications Cooperative, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc.
Stockholm Strandburg Telephone Company
Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc.
Tri-County Telecom, Inc.
Union Telephone Company
Valley Telecommunications Cooperative
Vivian Telephone Company dba Golden West Communications, Inc.
West River Cooperative Telephone Company
West River Telecommunications Cooperative
Western Telephone Company

PREPARED DIRECT TESTIMONY OF
ROBERT C. SCHOONMAKER
ON BEHALF OF THE 34 SOUTH DAKOTA ILECS

Q. Would you please state your name and address.

A. My name is Robert C. Schoonmaker. My business address is 2270 La Montana Way, Colorado Springs, Colorado 80918.

Q. By whom are you employed and in what capacity?

A. I am a Vice President of GVNW Consulting, Inc., a consulting firm specializing in working with small telephone companies.

Q. Would you please outline your educational background and business experience.

A. I obtained my Masters of Accountancy degree from Brigham Young University in 1973 and joined GTE Corporation in June of that year. After serving in several positions in the revenue and accounting areas of GTE Service Corporation and General Telephone Company of Illinois, I was appointed Director of Revenue and Earnings of General Telephone Company of Illinois in May, 1977 and continued in that position until March, 1981. In September, 1980, I also assumed the same responsibilities for General Telephone Company of Wisconsin. In March, 1981, I was appointed Director of General Telephone Company of Michigan and in August, 1981 was elected Controller of that company and General Telephone Company of Indiana, Inc. In May, 1982, I was elected Vice President-Revenue Requirements of General Telephone Company of the Midwest. In July, 1984, I assumed the position of Regional Manager of GVNW Inc./Management (the

predecessor company to GVNW Consulting, Inc.) and was later promoted to my present position of Vice President. I have served in this position since that time except for the period between December 1988 and November, 1989 when I left GVNW to serve as Vice President-Finance of Fidelity and Bourbeuse Telephone Companies. In summary, I have had over 25 years of experience in the telecommunications industry working with incumbent local exchange carrier companies.

Q. What are your responsibilities in your present position?

A. In my current position, I consult with independent telephone companies and provide financial analysis and management advice in areas of concern to these companies. Specific activities which I perform for client companies include regulatory analysis, consultation on regulatory policy, financial analysis, business planning, rate design and tariff matters, interconnection agreement analysis, and general management consulting.

Q. Have you previously testified in regulatory proceedings?

A. Yes, I have testified on regulatory policy, local competition, rate design, accounting, compensation, tariff, rate of return, universal service, wireless interconnection, interconnection agreements, and separations related issues before the Illinois Commerce Commission, the Public Service Commission of Wisconsin, the Michigan Public Service Commission, the Iowa Utilities Board, the Tennessee Public Service Commission, the New Mexico Public Regulation

Commission and the Missouri Public Service Commission. In addition, I have filed written comments on behalf of our firm on a number of issues with the Federal Communications Commission and have testified before the Federal-State Joint Board in CC Docket #96-45 on Universal Service issues. I was also a member of the Rural Task Force appointed by the FCC to review and make recommendations on federal universal service issues.

Q: On whose behalf are you testifying in this proceeding?

A: My direct pre-filed testimony is submitted on behalf of the following rural telephone companies operating in South Dakota: Armour Independent Telephone Company, Baltic Telecom Cooperative, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone Company, Cheyenne River Sioux Tribe Telephone Authority, City of Brookings Municipal Telephone Department dba Swiftel Communications, City of Faith Municipal Telephone Company, East Plains Telecom, Inc., Fort Randall Telephone Company and Mount Rushmore Telephone Company, Golden West Telecommunications Cooperative, Interstate Telecommunications Cooperative, Inc., James Valley Telecommunications, Jefferson Telephone Company d/b/a Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, McCook Cooperative Telephone Company, Midstate Communications, Inc., Roberts County Telephone Cooperative Association and RC Communications, Inc., Santel Communications Cooperative, Inc., Sioux Valley Telephone Company, Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc., Stockholm Strandburg Telephone

Company, Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc., Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Vivian Telephone Company dba Golden West Communications, Inc., West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company (hereinafter "RTCs")

Q. What is the purpose of your testimony?

A. I will respond on behalf of the RTCs to many of the policy issues raised in the Western Wireless arbitration petition. Specifically, I will be responding to Unresolved Issues #1, 2, 6, 8, 10, and 12.

Unresolved Issue No. 1 – (Scope of Reciprocal Compensation Obligations)

What traffic is subject to reciprocal compensation in accordance with the FCC's rules?

Q. Could you briefly summarize the issue in dispute between the WWC and the RTCs regarding the traffic subject to reciprocal compensation?

A. Yes. The dispute is related only to wireline originated traffic terminating to WWC within one of the MTAs in South Dakota. As I understand WWC's position, they claim that any call originating from an RTCs end user that terminates to WWC within an MTA should be subject to reciprocal compensation and thus the RTC's should pay WWC reciprocal compensation for all such calls.

The RTCs disagree with WWC specifically regarding calls originated by an RTC's end user which are carried by interexchange carriers (IXCs).

Q. What is WWC's primary reference for supporting their position?

A. WWC refers to Section 51.701(b)(2) of the FCC rules which defines telecommunications traffic as, "Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in §24.202(a) of this chapter." WWC argues that this rule supports their position.

Q. Do the RTCs dispute the FCC rule itself?

A. No, they do not. They do, however, dispute the interpretation of the rule made by WWC. The RTCs differ from WWC in WWC's determination of what traffic is "between a LEC and a CMRS provider". Note that the rule specifically says such traffic must be between the LEC as an entity, and not from a LEC end user. The RTCs dispute with WWC has to do whether all calls from end user of a LEC are calls from the LEC itself. The RTCs contend that calls from a LEC end user, but carried by an IXC, are not. An end user of a LEC can also be, and is, the end user of other telecommunications providers. Specifically in the example relevant here, for long-distance calls to WWC within the MTA, the end user is the end user of an IXC, not a LEC. Thus the calls that are in dispute are really calls between an IXC and a CMRS provider, and not between the LEC and a CMRS provider.

Q. Could you describe the development of local calling areas, toll calling, and the basic features of the network that distinguish between local and toll calls?

A. Yes. Throughout the past decades, state commissions generally have had the responsibility for establishing local calling areas and distinguishing calls within those areas from calls that went outside those areas. Those calls that left the local calling areas were known as toll calls. With the advent of direct distance dialing several decades ago, the 1+ prefix was used to distinguish toll calls from local calls and to provide a "signal" to the end user that they were dialing a toll call which would bear a toll charge. Under Sections 49-31-5.1 and 49-31-7 of the South Dakota statutes, the Commission approves local exchange boundaries and reviews all changes to such boundaries. These boundaries describe the statutory limits of the provision of local exchange service.[1] Many of the South Dakota companies also provide extended area service that provides expanded area calling without usage-based toll charges. These extended area service arrangements are available to customers of the company, or to customers of other companies, pursuant to contractual arrangements with those companies. Many of these extended area service plans also have been established pursuant to the Commission's administrative processes.

At the time of the AT&T divestiture, the business relationships related to toll calling were modified to reflect the exchange access business relationship where LECs sold the use of their exchange access facilities to IXCs who provided toll service. These IXCs charged end users for the provision of toll service and

compensated the originating and terminating LECs for the use of their exchange access facilities pursuant to both interstate and intrastate access tariffs approved by the Federal Communications Commission (FCC) and the South Dakota Public Utilities Commission (the Commission) respectively. Under these arrangements the IXCs provided toll service to end user customers. In the intraLATA environment, some large LECs also chose to provide toll services and to act as interexchange carriers in the access charge environment.

Q. When the LEC is selling its services under the provisions of its access tariffs, is it providing a retail service to an end user customer?

A. No, it is not. The service provided under these access tariffs is to provide facilities to IXCs who use those facilities to transmit messages for their end user customers. The RTCs are not responsible for the transmission of messages under their access tariffs. Section 2.1.1(A) of both the National Exchange Carrier Association (NECA) interstate access tariff and the South Dakota Local Exchange Carrier Association (LECA) intrastate access tariff, with which most of the RTC companies concur, states specifically that, "The Telephone Company does not undertake to transmit messages under this tariff."

Q. When wireless providers began providing service, how did calls to such carriers fit into the local and toll calling patterns?

A. When wireless providers began providing service, they sought and received central office codes (NPA-NXX codes) or purchased the use of telephone

[1] See South Dakota statutes Section 49-31-1(13).

numbers in telephone company central office codes for their customers and associated those codes with telephone company local exchange areas. Calls to those wireless customers from within the telephone company local calling area generally were and are treated as local calls. Calls to wireless customers with NPA-NXX codes outside the local calling area were, and are treated as toll calls. Local switching systems are programmed pursuant to approved tariffs to complete toll calls using a 1+ prefix.

Pursuant initially to AT&T divestiture requirements and associated FCC Orders, and more recently to the Telecommunications Act of 1996 (the Act), dialing parity and presubscription procedures have been established so that end user customers can direct all 1+ calls to the IXC(s) of their choice. According to these legal and regulatory requirements, LECs direct 1+ dialed calls to their end user customers' presubscribed carrier who provides the toll call for the customer. The IXCs continue to use the LECs' exchange access facilities in order to provision the service to their end user customers.

Q. Are the local calling areas established by the state commissions used to determine the dialing characteristics and local or toll jurisdiction of calls from wireline customers to CMRS provider end users?

A. Yes they are, as I described in my previous answer. For example, a call from an end user in the Woonsocket exchange served by Santel Communications Cooperative, Inc. (Santel) who called a wireless customer with a Sioux Falls

NPA-NXX code would dial that call using the 1+ prefix and that customer's IXC would be responsible for carrying the call. If Worldcom was the IXC that provisioned and completed the call then Worldcom would charge the end user customer under its rate schedule and pay Santel its originating access charges. It would also compensate the terminating wireless carrier based on the business relationships established between the IXC and the terminating wireless carrier.

Q. Would such a call be a call between a local exchange carrier and a wireless carrier?

A. Clearly it would not. From a carrier standpoint the call is between Worldcom and the wireless carrier. In relationship to this call, the end user is Worldcom's end user, not the LEC's end user.

Q. Did the 1996 Telecommunications Act result in changes to the dialing arrangements related to toll calls to CMRS end users?

A. No it did not. Things certainly haven't changed in South Dakota either in regard to the RTCs or to the other companies, including Qwest, in the state. I am not aware of the implementation of any changes to dialing arrangements of calls between wireline and wireless customers as a result of the passage of the Act.

Q. Can you briefly summarize the business relations that exist between end users, LECs, and IXCs in relation to a presubscribed 1+ toll call?

A. Yes. The end user chooses a presubscribed IXC to handle its 1+ calls and establishes a business relationship with that IXC. The IXC, through the purchasing of access services from the LECs' access tariff, arranges to use the LECs' facilities to "access" its end user to provide toll services to that end user. When an end user makes a call by dialing 1+, the IXC, using the LEC facilities which it has purchased, and its own facilities, fulfills its obligation to the end user to complete the toll call, possibly to a CMRS provider within the MTA. It then charges the end user for the provision of that service.

Q. In this relationship is the call the end user makes a call "between a LEC and a CMRS provider"?

A. It is not. The call is between the IXC and the CMRS provider. The LECs involvement is that of a seller of facilities to the IXC so that the IXC can complete its obligation to its end user. The fact that the IXC's end user is also the LECs end user for the provision of local service is irrelevant in regard to the specific toll call between the IXC and the CMRS provider.

Q. Are you aware of any discussion in the FCC's First Report and Order in CC Docket No. 96-98 (FCC #96-325) adopted on August 1, 1996 (the First Report) that discussed any changes in carrier responsibilities or customer dialing procedures related to the implementation of the Act?

A. No. I have reviewed relevant portions of that Order and saw no such discussion.

Q. Are there statements in that Order that suggest that the FCC did not intend to change such arrangements?

A. Yes. Paragraph 1043 of the FCC interconnection Order as follows:

> Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.[2]

This indicates to me that the FCC intended that calls to CMRS providers that were currently being provided by IXCs and for which access charges applied would continue to be given the same treatment.

Q. Are there subsequent rulings by the FCC that calls carried by IXCs would continue to be subject to access charges?

A. Yes. In a decision issued in 2000 related to a compensation complaint between a paging carrier and an ILEC, the FCC made the following statement:

> Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules. Such traffic falls under the reciprocal compensation rules if carried by the incumbent LEC, and under our access charge rules if carried by an interexchange carrier.[3] [emphasis added]

[2] First Report and Order in CC Docket No. 96-98 (FCC #96-325) adopted on August 1, 1996, paragraph 1043.

[3] *TSR Wireless, LLC v. U S West Communications, Inc.,* Memorandum Opinion and Order, Released June 21, 2000 FCC 00-194 ("*TSR Wireless Order*"), paragraph 31.

Q. Does WWC believe that in implementing the Act, the FCC made some fundamental change in the responsibility for calls between LECs and CMRS providers?

A. From the position taken by WWC in this arbitration proceeding, it appears that it does. While I agree that changes were made in compensation regarding calls between LECs and CMRS providers, I do not believe that the FCC changed responsibilities for calls nor did the FCC change the dialing arrangements.

Q. Before exploring the issues related to implementation of the Act could you briefly describe the context in which the FCC implemented rules related to the Act?

A. Yes. The Act became law on February 8, 1996. Pursuant to requirements of the Act the FCC had six months in which to develop and implement rules on a host of technical, financial, and policy issues related to the new requirements of the Act providing for local interconnection, reciprocal compensation, dialing parity, and the pricing for such services. The FCC had a total of fifteen months to address and implement rules regarding universal service issues. These time frames put tremendous pressure on the FCC and its staff to review thousands of pages of comments on a large number of issues and to develop policies, procedures, and rules to implement the Act. The two Orders in CC Docket 96-98 issued on August 6, 1996, (dealing with interconnection issues) amounted to a total of 833 pages and incorporated some 70 pages of new rules. Given this time frame and the overwhelming number of issues that had to be dealt with, the FCC's focus was primarily on implementation as it related to the Bell Operating Companies

(BOCs) and the large metropolitan areas of the country since they comprised both the vast majority of the LEC customers and particularly the areas where competition was expected first. Thus, in establishing rules and in the implementing text, it is not always clear how the rules apply in the case of small companies, whose operations are often different than the BOCs. I believe that it is important that this Commission keep that in mind as it reviews the FCC's discussion and rules related to LECs and CMRS providers.

Q. What particular rules and Orders are relevant to the discussion of the extent that reciprocal compensation is applicable in the core situation that you described?

A. The FCC's First Report and Order, discussed earlier, is the Order that addressed the implementation of the Act in regard to these issues. Particularly relevant to this issue is the discussion in paragraphs 1033 to 1045. In the FCC rules, the pertinent section is Section 51.701, particularly 51.701(b) in which the FCC defines a local calling area for reciprocal compensation purposes.

Q. Are there places in the paragraphs you mentioned above that indicate that the FCC was focusing primarily on BOC circumstances rather than small company circumstances when it addressed these issues?

A. Yes. In the middle of paragraph 1043 the FCC states, "Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC..." This statement was likely true for the BOCs where calls between the BOC and CMRS providers were

primarily either in large metropolitan areas with large local calling areas, or intraLATA toll calling areas where the BOC provided virtually all intraLATA toll calling at the time. For small companies, such as the RTC companies, there was very little existing LEC to CMRS traffic that was not subject to access charges.

In paragraph 1034 the FCC contrasts the access charge regime where the originating LEC, terminating LEC, and an IXC are involved in a call with the intended use of reciprocal compensation which, according to the FCC is intended for, "...the situation in which two carriers collaborate to complete a local call." For the RTC companies, hardly any calls between CMRS providers and the RTC companies fall in this description of the intended use of reciprocal compensation, while most fall under the access charge regime for wireline originated calls. For wireless originated calls very few involve only two carriers to complete the calls to the RTC companies, with most calls involving a third carrier, often a large LEC, to complete the call.

Q. Upon what basis does WWC apparently derive its opinion that the RTC companies are responsible for compensation to CMRS providers for traffic terminated within the MTA even if it is carried by an IXC?

A. It apparently bases its position upon Paragraph 1036 of the FCC's First Report and Order. The FCC begins this paragraph by stating that it is defining, "...local service areas for calls to or from a CMRS network <u>for the purposes of applying</u>

reciprocal compensation obligations under section 251(b)(5)[4]. [emphasis added] After discussing varying types of wireless service areas and indicating that it will choose the largest of these areas, the paragraph is concluded with the following statement: "Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges."

Q. Can these statements be properly understood without putting them in the broader context of the remainder of the FCC's decision on this subject?

A. No. Taken on their face and out of context from the remainder of the First Report and the rules adopted in that order, these sentences seem to say that all calls to a wireless carrier within the MTA are not subject to access charges. However, the rules adopted by the FCC are more specific and limiting than this paragraph. They do not talk about all calls with the MTA, but a more limited set of calls. In §51.701(a) (adopted in the First Report) the FCC defines the scope of the rules for reciprocal compensation for the transport and termination of local telecommunications traffic as follows:

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

This clearly limits the application of the subpart to calls between LECs and other telecommunications carriers and not to calls between IXCs and such carriers. This distinction from Paragraph 1036 is also made clear in the specific FCC

[4] The First Report, para. 1036.

definition of a telecommunications traffic, found in §51.701(b) of the FCC's rules which states:

> (b) *Telecommunications traffic.* For purposes of this subpart, telecommunications traffic means:
>
> (1) Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (*see* FCC 01–131, paras. 34, 36, 39, 42–43); or
>
> (2) Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

In reviewing the rule it refers specifically and only to telecommunications traffic "between a LEC and a CMRS provider". Thus, for example, traffic between an IXC and a CMRS provider is not local telecommunications traffic under the FCC's rules for any purpose.

Q. Is this distinction further clarified in another paragraph of the First Report?

A. Yes. Between paragraphs 1036 and 1043 of the First Report there is clarification. In Paragraph 1043 the FCC states:

> We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA…is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.

The FCC states here that they are reiterating a previous statement. If one reviews the intervening paragraphs it is clear that this reference can only be to Paragraph 1036 where it spoke on this subject. In that Paragraph, however, it was not as specific in its reference to "…calls between an incumbent LEC and a CMRS network." This is emphasized by the following sentences where the FCC recognizes that most traffic between LECs and CMRS providers are not subject to

access charges, unless they are carried by an IXC. The paragraph concludes with the following statement:

> Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

This statement indicates the FCC's intent to preserve the interstate access regime for such calls to CMRS providers.

Q. In the discussion in this part of the First Report and in the rules that the FCC adopted is there any indication that these rules applied for any purpose beyond the determination of compensation?

A. No there is not. The discussion throughout this section discusses compensation for calls between LECs and CMRS providers. Section 51.701(A) cited above specifically indicates that it applies to compensation for those calls. There is nothing, either in the rules, or in the discussion in the Order that indicates any intent to require changes in network arrangements or dialing patterns. For example there is no discussion of removing interexchange carriers from carrying calls within the MTA by eliminating 1+ dialing on calls to wireless carriers within the MTA. It appears to me that the FCC was very careful to establish this relationship for reciprocal compensation purposes while not disturbing existing network calling patterns and existing network relationships.

Q. Are there other parts of the FCC's discussion in these paragraphs that highlight the differences between reciprocal compensation and access charge compensation?

A. Yes. In Paragraph 1033 the FCC specifically notes that, "The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic." In Paragraph 1034 the FCC states:

> ...reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. [emphasis added]

Further in Paragraph 1034 the FCC states:

> We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks... We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

These three statements indicate the intent of the FCC to maintain the access regime and to apply reciprocal compensation rules only in situations where two carriers are directly connected. They also confirm that reciprocal compensation and access are two separate and mutually exclusive compensation systems.

Q. How do the provisions of Section 251(g) of the Act relate to this issue?

A. Section 251(g) of the Act is a section that fundamentally assures that provisions related to compensation for exchange access services would be preserved upon implementation of the Act. In relevant part it states:

> [O]n and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier ... shall provide exchange access ... and exchange services for such access to interexchange carriers ...in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996....

This section clearly indicates that the provision of and compensation for exchange access shall be the same for IXCs after the implementation of the Act as it was before that implementation. Thus, suggestions that the Act fundamentally changed relationships between LECs and IXCs and that calls carried by an IXC should no longer be subject to access charges are contrary to this section of the Act.

Q. Has the FCC further clarified that calls subject to access charges are not subject to reciprocal compensation?

A. Yes. In the *ISP Reciprocal Compensation Order*, the FCC found that the telecommunications subject to sections 251(b)(5) and 251(d)(2) are all such telecommunications not excluded by section 251(g). The FCC further found, however, that section 251(g) excludes "exchange access, information access and exchange services for such access" provided to IXCs and information service providers from the reciprocal compensation requirements of Section 251(b)(5). [5] Thus, IXC-carried traffic is subject to access charges, not reciprocal compensation. While this Order has been remanded to the FCC by the Court of

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, para. 34 (FCC 01-131)(Rel. April 27, 2001), remanded in *WorldCom v. FCC, et al.*, No. 01-1218 (D.C. Cir.)(May 3, 2002).

Appeals, the issues on remand do not change the provisions of the Order regarding the "carve out" requirements of Section 251(g).

Q. The agreement that WWC filed characterized this issue as a dispute over the definition of "local traffic". How can this issue be resolved appropriately in the context of the contract?

A. The contract needs to clarify that traffic carried from an end user pursuant to an IXC's tariffs, rate schedules, or contracts is not traffic "...between a CMRS provider and the Telephone Company." This could be done by adding an additional sentence to the definition to clarify this, or by adding similar descriptive information in Section 2.1 to describe that traffic which is subject to the agreement. The RTC's will provide specific proposed language in their initial brief to address this issue.

Q. What are some of the ramifications that could result if the Commission determined that it would adopt WWC's proposals regarding Unresolved Issues #1 and #2?

A. They would be substantial and would include:

1) The RTCs would experience a significant decrease in access minutes and revenues which would lead to adverse financial impacts and consequent negative impacts on infrastructure investments and upgrades.

2) A requirement that RTCs route all intraMTA traffic to the CMRS provider would cause a significant decrease in toll minutes for interexchange carriers,

without their participation in the proceeding, and would likely raise questions regarding this decision in relation to the Commission's dialing parity and presubscription requirements.

3) Imposing such a requirement upon the RTCs without imposing a similar requirement on Qwest could raise issues of discrimination. The Commission should consider whether such a decision would require it to readdress this issue in Qwest's interconnection agreements with CMRS providers.

Unresolved Issue No. 2 (Delivery of Land-to-Mobile Traffic)

What obligations do the ILECs have to deliver traffic subject to reciprocal compensation to Western Wireless' network?

Issue No. 2(a): Are the ILECs prohibited from collecting access charges from any telecommunications carrier on land-to-mobile calls that originate and terminate in the same MTA?

Issue No. 2(b): If WWC established a direct connection with an ILEC, should the ILEC deliver all land-to-mobile intraMTA traffic to WWC over those direct facilities?

Q. Are the issues stated in Unresolved Issue No. 2 related to those in Unresolved Issue No. 1?

A. They are directly related, and, to a certain extent, are restatements of the broader issue raised in Unresolved Issue #1. As discussed in the response to Issue #1, the RTCs clearly are not prohibited from collecting access charges on calls that are carried by IXCs. As further discussed in the response to Issue #1, the FCC indicated no intent to change network configurations or dialing patterns in regard to intraMTA calls from those that were in existence when the Act was

implemented. Thus, the calls that had previously been carried by IXCs could continue to be carried by IXCs, hence making those calls subject to access charges.

Q. In its petition WWC cites FCC Rule 51.703(b) as its authority for its position that LECs should be prohibited from "...collecting charges from any carrier for intraMTA land-to-mobile traffic." Do you agree with this interpretation of the cited rule?

A. I do not. FCC Rule 51.703(b) states:

> **§ 51.703 Reciprocal compensation obligation of LECs.**
>
> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.
>
> (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

Since the heading of the rule is related to reciprocal compensation obligations of LECs, clearly section (b) would only apply where reciprocal compensation obligations exist. As previously discussed, such obligations do not apply in the case of traffic carried by IXCs. This rule does not preclude LECs from charging access rates on calls carried by IXCs as such calls do not fall under the reciprocal compensation definition and rules.

Q. Is WWC's position in its petition supported by this rule?

A. No. WWC's position is that the Commission should order all MTA traffic to be delivered directly to their network without the payment of access to any carrier.

Section 51.703 does not address at all how traffic should be delivered and whether the ILECs are responsible to deliver it to WWC. As discussed in response to Issue #1, the ILECs are not responsible to deliver traffic currently carried by IXCs directly to WWC. Since the traffic is exchange access traffic delivered to IXCs it is not subject to reciprocal compensation and thus the rule relied upon by WWC is inapplicable.

Q. Can you briefly describe the circumstances that led to the adoption of Section 51.703(b)?

A. At the time of the implementation of the Act, some ILECs who were directly connected to CMRS providers were charging the CMRS carriers for the cost of originating traffic on the ILEC network but which terminated to the CMRS provider. This rule was promulgated to make it clear that such intercarrier charges, where the networks were directly connected and the ILEC originated traffic was delivered directly from the ILEC to the CMRS provider were no longer acceptable.

Q. What is WWC's proposed contract language in Section 4.2.2 that relates to Unresolved Issue #2b?

A. WWC's proposed language for Section 4.2.2 of the contract is: "Telephone Company agrees to deliver all originating intraMTA traffic bound for CMRS Provider to the direct connection(s)."

Q. What is the RTCs objection to this language?

A. It appears to the RTCs that this language would require them to deliver traffic destined for CMRS provider NXX codes rated in any exchange within the MTA to be delivered to the CMRS provider rather than just those NXX codes in the local exchange. This would apparently require the RTC to change the dialing pattern for the NXX codes which are normally toll calls based on their rating points to eliminate the 1+ requirement. Such an action would take the provision of these calls away from the presubscribed IXC of the end user customer.

Q. Does the fact that a direct connection is established between WWC and the RTC require the RTC to redirect traffic away from interexchange carriers to WWC NNX codes that have been assigned to areas where the call would normally be a toll call?

A. No. The RTC should only be required to deliver to the direct connection calls from within the local calling area of the rating point for WWC's NNX code. If the WWC NNX code is located in an exchange that is outside the local calling area of the RTC exchange, calls to that NNX code would be subject to toll calling pursuant to the RTCs tariffs and the dialing parity and presubscription requirements as I explained in my response to Issue No. 1.

Q. Do the FCC's dialing parity rules allow the LEC to automatically assign intraLATA toll calls to a specific carrier?

A. No. Section 51.709(c) of the FCC's rules states in relevant part that, "A LEC may not assign automatically a customer's intraLATA toll traffic to itself, to its subsidiaries or affiliates, ... or to any other carrier,...". The routing proposed by WWC for traffic that would normally be intraLATA toll traffic would violate this rule.

Unresolved Issue No. 6 (Local Numbers)
May Western Wireless have numbers rated as local to an ILEC's end office without establishing a direct interconnection to that office.

Q. What is the language that WWC has proposed in regard to the delivery of Land-to-Mobile traffic?

A. WWC proposes the following language:

> Telephone Company agrees that originating traffic destined to a CMRS Provider NXX rated out of one of the Telephone Company's rate centers will be dialed as local and delivered to CMRS Provider via indirect connections through the LATA tandem operator when no direct connection exists

Q. What is the dispute that the RTCs have with this proposed language?

A. The RTCs would argue first that the language in the two lines is unclear since it could require all traffic from all the company's rate centers whether they would be toll calls or local calls to the WWC NXX code to be delivered to the CMRS provider. Secondly, the RTCs dispute the requirement that such traffic should be delivered via an indirect connection.

Q. What is the position that the RTCs take in regard to the proposed language?

A. In regard to the first two lines of the proposed language, the language should be modified to limit the calls that are being discussed to calls originating from within the local calling area of the RTC exchange where the WWC NXX code is rated. If this is not done, the same concerns discussed in regard to Unresolved Issue #2b would apply to this section.

If the call is to be rated and treated as a local call it should be delivered to the CMRS provider as a local call within the exchange area of the rating wire center. If the RTC is required to transport the call to some distant location for interconnection with the CMRS network at that point, it is not a call that should be considered a local call. If the CMRS provider is not connecting with the RTC within the area of the LEC exchange where the call is rated, the connection is not a local connection.

Q. What language would you propose as an alternative to the WWC proposed language?

A I would propose language as follows:

Telephone Company agrees that originating traffic from within a Telephone Company's local calling area destined to a CMRS Provider NXX rated out a Telephone Company's rate center within that local calling area will be dialed as local and delivered to the CMRS Provider via a connection with the CMRS Provider's network within the exchange boundary of the rate center.

Q. Is there any section of the Act that has relevance to this issue?

A. There is a section that has relevance, although it is not directly applicable. In referencing this section I want to emphasize that WWC has not requested the

removal of the rural exemption and negotiations under Section 251(c) of the Act. The companies are negotiating under the terms of Section 251(b)(5) of the Act instead. Nevertheless section 251(c)(2) of the Act describes the responsibilities of LECs to interconnect with other carriers under that section. It states in relevant part that ILECs have a responsibility to provide "...interconnection with the local exchange carrier's network ...(B) at any technically feasible point within the carrier's network..."[emphasis added]

The clear implication is that the interconnection is required to take place within the carrier's network, not at some distant point within some other carrier's network. To require a carrier to extend its network to some distant point across another's carrier's network and to describe this as a "local" connection and a "local" call strains credulity.

Q. Has WWC represented in writing that it does not desire negotiations under Section 251(c)?

A. Yes. WWC sent a letter to each of the RTC companies indicating their intent to negotiate under Sections 251(a) and (b) and Section 252 of the Act and not under Section 251(c). Attached as Exhibit 1 to my testimony is an example of the letters sent. Exhibit 1 is the letter sent to the General Manager of McCook Coperative Telephone Company dated November 29, 2001, by Gene DeJordy, Esq., Vice President of Regulatory Affairs of WWC.

Unresolved Issue No. 8 (Standard of Service)
Whether the ILECs [RTCs] must provide services at least equal in quality and performance to that which the party provides itself?

Q. Do you have any substantive comments regarding Unresolved Issue No. 8?

A. No. It is my understanding that the language in regard to this issue has been resolved by further negotiations between the parties.

Unresolved Issue No. 10 (Access to Numbering Resources)

Whether Western Wireless should have access to numbering resources consistent with 47 U.S.C. § 251(b)(3).

Q. What is the contract language that WWC proposes that the RTCs find objectionable?

A. The proposed language states: "Access to Numbering Resources – The CMRS Provider shall have access to numbering resources in the same fashion as they are provided to other Telecommunications Carriers."

Q. Why do the RTCs object to this language?

A. The first objection is that the language proposed is so general that it could encompass several different meanings some of which may not be in the power of the RTCs and others where there could be disagreements as to whether the "access to numbering resources" is "in the same fashion" as with other carriers. WWC's petition provides no clarification of exactly what they want the RTCs to do.

Q. What interpretation of this language is not within the power of the RTCs to grant?

A. The most clear and likely reading of the language is the one that the RTCs have no power to grant. Reading the language on its face, I would read it to say that the RTCs should allow WWC to be able to get NNX codes (numbering resources) assigned to it on the same basis as other carriers do. This is an act that the RTCs cannot perform since they are not responsible for the assignment of NXX codes. That responsibility has been placed by the FCC on the North American Numbering Plan Administrator (NANPA) and is out of control of the RTCs. For this reason alone, the RTCs believe that the WWC language should not be included in the contract.

Q. Are there circumstances under which the RTCs can provide "numbering resources" to WWC?

A. Under the provision of a Type 1 interconnection the telephone company assigns numbers from its own NXX codes for the use of the CMRS provider in a specific exchange. Such numbers are frequently assigned in blocks of 100 numbers as requested by the CMRS carrier.

Q. Do the RTCs have any objection to providing numbers from their own NXX codes to WWC in conjunction with Type 1 interconnections?

A. They do not. The RTCs would not object to language in the contract that requires them to provide numbers from NXX codes assigned to the telephone company in

conjunction with a Type 1 interconnection. Contract language describing this limited assignment of numbers that is within the RTCs capabilities could be as follows:

> Access to Numbering Resources – The Telephone Company shall provide The CMRS Provider blocks of telephone numbers from a Telephone Company NXX reasonably requested by The CMRS Provider in conjunction with the provision of a Type 1 Interconnection.

Q. Is there another more subtle interpretation of the language proposed by WWC that causes concern to the RTCs?

A. Yes. The phrase "access to numbering resources" might be argued to refer to how the network is set up to operate in regard to NXX codes that are assigned as opposed to the assignment of the NXX codes themselves. WWC could argue, for example, that they already have NXX codes assigned by the NANP and that the RTCs have to configure their networks in a particular manner so that the RTCs end users can access the WWC codes through the network in a particular fashion or so that WWCs end users can access the RTC NXX codes in a particular fashion.

Q. Can you describe a situation where this more subtle interpretation of the language proposed by WWC is an issue with the RTCs?

A. Yes. When an NXX code is assigned by the NANPA the company requesting the code must identify the LEC exchange area where the code will be identified and "rated" for local and toll calling purposes. In the LEC wireline world the "rating" point would also be the same as the physical location of the local switching center

located in the same local exchange area or the ultimate "routing" location. As part of the NXX assignment, the carrier must also identify the tandem and end switch "routing" locations. In the past few years some carriers, particularly CMRS providers and certain competitive local exchange carriers (CLECs), have sought assignment of NXX codes where the "routing" point is a considerable distance away from the "rating" point. For example, it appears that this sort of an assignment was being sought by Level 3 Communications, LLC in the context of its application before this Commission for local service authority in Docket TC02-018 (*In the Matter of the Application of Level 3 Communications, LLC for Authority to Provide Facilities-Based Local Exchange Services in the Service Territory of Beresford Municipal Telephone Company*). Level 3 and other carriers seeking such NXX code assignments have argued that such routing should not only apply to traffic termination, but that other carriers should be responsible for originating transport to this distant routing point.

Q. What are the ramifications of this type of assignment?

A. There are several potential ramifications of this action. When wireline CLECs are engaging in this activity it frequently is being attempted to create circumstances where calls that would normally be toll calls appear as local calls and thus avoid LEC access charges that would normally be assessed on such calls. The carrier creates a call that appears to be a local call because of the number assigned, but which really terminates at a distant location. Certain CLECs, like Level 3, have specialized in this type of application to try to provide a local internet access

capability to a distant ISP router location. The use of a "local" number, while serving that number from a far distant switch location is also motivation for wireless carriers to seek such numbers.

A second impact often associated with this type of NXX assignment is that carriers try to require the originating LEC to pay for the transport to carry the "local" calls to that NXX code to a far distant switching location of the receiving carrier. This places inappropriate costs on the originating carrier since local rates typically aren't structured to recover toll-like transport costs. In many cases, they may desire to require small rural LECs to establish totally new business relationships to provide transport to areas where they have no facilities for providing service. While use of these schemes have, at this point in time, typically been limited to locations within the same LATA, conceptually they could be used, if allowed to proliferate, to access locations across a state or even the country.

A third impact of such a numbering strategy is that it could have substantial ramifications for national numbering plan resources, by encouraging multiple carriers to seek full NXX codes (10,000 numbers) in small rural exchanges to serve a very few customers. The use of NXX codes to avoid current regulatory requirements such as the payment of access and toll charges is inappropriate and the RTCs object to language in the contract that could be interpreted in this fashion.

Unresolved Issue No. 12 (Procedure for Renegotiation)
What procedure should apply if a Party seeks to renegotiate the Agreement at the end of a term? (Section 12.2.4).

Q. What is the proposal that is in dispute between WWC and the RTCs in regard to renegotiation.

A. WWC proposes that if the contract expires during the renegotiation process that the rates, terms, and conditions that are finally approved in the renegotiated (and perhaps rearbitrated) contract should apply retroactively to the date that the contract expired. While the RTCs do not oppose continuing to perform under the terms of the original contract for a period beyond the termination date of that contract while renegotiation and perhaps arbitration are taking place as contained in Section 12.2.4 of the proposed agreement, the RTCs oppose applying the terms of the subsequent contract retroactively to the termination date of the original contract.

Q. Why do the RTCs oppose the WWC retroactive application language?

A. The RTCs do not believe it is appropriate to approve or agree to retroactive application of a new contract. Retroactive application requires parties to operate under a contract before the terms of the contract are even now. Depending on changes in the terms and conditions, some terms may not be able to be applied retroactively. In addition, depending on changes in the terms or conditions of the contract, parties may operate their networks differently under the new terms or conditions than they would have in the past. Retroactive application of terms and

conditions deny the party the opportunity to adjust to the terms of the new contract, since they don't know precisely what those terms are until some time later.

Q. Is there a way within the language proposed by the RTCs that WWC could achieve its apparent objective of initiating the subsequent contract at the termination date of the original contract?

A. There is. While the language of Section 12.2.1 requires a Party to give a minimum of 60 days notice of the intent to terminate the existing contract, nothing in the language prevents a party from giving that notice earlier than that point of time. If WWC gave notice of the intent to terminate the contract 180 days before the end of the contract and requested negotiations to establish a new agreement at that time, the full period for conducting the negotiations and any required arbitration could be concluded before the original contract was terminated. This process would allow the subsequent contract to go into effect when WWC apparently desires it to without the need for retroactive application of the terms and conditions of the subsequent contract.

Q. Are you surprised that WWC has raised this issue?

A. Yes, I am. I have been involved in negotiations with a number of national wireless carriers and some smaller regional carriers as well and this is the first time I have seen retroactivity of rates proposed as an issue. While the terms of termination of the contract negotiations have varied somewhat in regard to the

length of the initial term, the length of the renewal term, and the notification period, in none of those other negotiations has there been a disagreement over the application of the initial contract until the subsequent contract is in place. In addition, review has been made of a recent interconnection agreement between Qwest and WWC filed in South Dakota. That agreement indicates that the initial agreement will remain in effect until the subsequent agreement is approved.

Q. Does this conclude your direct testimony?

A. Yes.

EXHIBIT 1

Western Wireless.

November 29, 2001

Via U.S. Mail

General Manager
McCook Cooperative Telephone Company
330 S. Nebraska St.,
Salem, South Dakota 57058

Dear General Manager;

It has been brought to my attention that the request for renegotiation pursuant to Section 252, and the accompanying Interconnection Agreement, sent to you recently could possibly implicate the additional obligations of incumbent local exchange carriers identified in Section 251(c) of the Communications Act of 1934, as amended ("Act"). This letter is to clarify that the request for renegotiation of a new interconnection agreement is only intended to address the interconnection obligations under Section 251(a) and (b) of the Act and the procedures for negotiation, arbitration, and approval of agreements under Section 252 of the Act.

I look forward to your response to the request for renegotiation.

Sincerely,

Gene DeJordy, Esq.
Vice President of Regulatory Affairs

cc: Richard D. Coit, SDITC

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION FOR ARBITRATION ON BEHALF OF WWC LICENSE L.L.C. WITH CERTAIN INDEPENDENT LOCAL EXCHANGE COMPANIES	)))	Docket No. TC02-176

DIRECT PRE-FILED TESTIMONY OF
LARRY THOMPSON ON BEHALF OF

Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Company
Bridgewater-Canistota Independent Telephone Company
Cheyenne River Sioux Tribe Telephone Authority
City of Brookings Municipal Telephone Department/Swiftel Communications
City of Faith Municipal Telephone Company
East Plains Telecom, Inc.
Fort Randall Telephone Company and Mount Rushmore Telephone Company
Golden West Telecommunications Cooperative, Inc.
Interstate Telecommunications Cooperative, Inc.
James Valley Cooperative Telephone dba James Valley Telecommunications
Jefferson Telephone Company d/b/a Long Lines
Kadoka Telephone Company
Kennebec Telephone Company, Inc.
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Roberts County Telephone Cooperative Association and RC Communications, Inc.
Santel Communications Cooperative, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc.
Stockholm Strandburg Telephone Company
Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc.
Tri-County Telecom, Inc.
Union Telephone Company
Valley Telecommunications Cooperative
Vivian Telephone Company dba Golden West Communications, Inc.
West River Cooperative Telephone Company
West River Telecommunications Cooperative
Western Telephone Company

INTRODUCTION

Q: What is your name and address?

A: My name is Larry D. Thompson. My business address is 1801 N. Main Street, Mitchell, South Dakota 57301.

Q: By whom are you employed and in what capacity?

A: I am the Chief Executive Officer of Vantage Point Solutions, Inc. (VPS). VPS is a telecommunications and consulting firm in Mitchell, South Dakota. The client base of VPS is made up of rural independent Local Exchange Carriers (LECs). I focus on assisting the small LEC with nearly all technical and financial aspects of their operation. My staff and I have provided engineering, financial, and regulatory services to many of the South Dakota LECs, as well as LECs in many other states.

Q: What is your educational and business background?

A: I received a Bachelors of Arts in Physics (1983) from William Jewell College, a Bachelors of Science in Electrical Engineering (1985) from the University of Kansas, and a Masters of Science in Electrical and Computer Engineering (1986) from the University of Kansas. I am a Registered Professional Engineer in South Dakota and 14 other states.

I have been active in the telecommunications industry since 1985. Previous to VPS, I worked for Martin Group, Inc., based in Mitchell, South Dakota. At Martin

Group, I was General Manager of the Telecom Consulting and Engineering Business Unit, providing engineering and consulting services to rural telecommunications providers throughout the nation. Prior to this, I worked as a Senior Consulting Engineer for CyberLink Corporation, a telecommunications consulting firm in Boulder, Colorado. Previous to this, I was employed at TRW, Inc. in Redondo Beach, California designing communication systems.

I was a speaker on the U.S. Senate panel titled, "Going the Extra Mile: Closing the digital divide in Rural America" and have spoken at Tom Daschle's Technology Summits. I was a panelist on the recent FCC Section 706 meeting in Cheyenne Wyoming and was also an active member of the National Exchange Carriers Association (NECA) Rural Broadband Task Force.

I am a regular speaker at many state, regional, and national telephone company organizations, including the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). In this capacity, I am often advising telephone company managers and board members regarding a variety of technical and financial issues.

Q: On whose behalf are you testifying in this proceeding?

A: My direct pre-filed testimony is submitted on behalf of the following rural telephone companies operating in South Dakota: Armour Independent Telephone Company, Baltic Telecom Cooperative, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone Company, Cheyenne River Sioux Tribe Telephone Authority, City of Brookings Municipal Telephone Department/Swiftel Communications, City of Faith Municipal Telephone Company, East Plains Telecom, Inc., Fort Randall Telephone Company and Mount Rushmore Telephone Company, Golden West Telecommunications Cooperative, Inc., Interstate Telecommunications Cooperative, Inc., James Valley Cooperative Telephone dba James Valley Telecommunications, Jefferson Telephone Company d/b/a Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, Inc., McCook Cooperative Telephone Company, Midstate Communications, Inc., Roberts County Telephone Cooperative Association and RC Communications, Inc., Santel Communications Cooperative, Inc., Sioux Valley Telephone Company, Splitrock Telecom Cooperative, Inc. and Splitrock Properties, Inc., Stockholm Strandburg Telephone Company, Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc., Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Vivian Telephone Company dba Golden West Communications, Inc., West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company (hereinafter "RTCs").

Q: What is the purpose of your testimony?

A: I will provide some background technical information that is pertinent to this hearing.

Q: Are you familiar with current telephone network technologies, including switching equipment, transmission equipment, and outside plant architectures?

A: I have provided engineering and consulting services to more than 100 rural LECs across the United Staes. I am familiar with nearly all of the technologies and architectures of a rural LEC network, including transport equipment, switching equipment, digital loop carrier equipment, broadband networks, along with copper and fiber outside plant cable. I have engineered both landline networks and wireless networks for my clients.

Q: Do you understand the various methods that a Wireless Service Provider (WSP) such as Western Wireless Corporation (WWC) can use to interconnect with a LEC?

A: Yes I do.

Q: Can you explain the various methods that are available?

A: Certainly. The standard that describes the interconnections between a Wireless Service Provider (WSP) and a LEC is the Telcordia document "GR-145-CORE – Compatible Information for Interconnection of a WSP/LEC Network." A summary of the requirements contained in this document are included in "SR-2275 - Telcordia Notes on the Network." This document was originally developed by Bellcore. The latest version of the document is Issue 4 dated October 2000.

GR-145-CORE defines six (6) types of direct interconnections between a LEC and a WSP.[1] The three (3) most common types of direct connections between a WSP and a rural LEC are as follows:

- **Type 1** – Direct WSP connection through a LEC end office
- **Type 2A** – Direct WSP connection with a LEC tandem office.
- **Type 2B** – Direct WSP connection with a specific LEC end office.

I've included Exhibits LDT-1, LDT-2A, and LDT-2B to aid in the technical explanation of these WSP to LEC connection types. Each of these connection types will be discussed in detail in the following pages.

Type 1 Connection

A Type 1 connection can be seen in Exhibit LDT-1. The technical definition for a Type 1 connection is as follows:

[1] Telcordia Notes on the Networks (SR-2275), Section 16.2, Issue 4, October 2000.

> The Type 1 interface is at the Point of Interface (POI) of a trunk between a WSP and a LEC end office switching system. The WSP establishes connections to the Directory Numbers (DNs) served by this LEC end office . . .[2]

With a Type 1 connection, the WSP leases access to a block of numbers from the local LEC's NPA-NXX. The LEC creates a Direct Inward Dial (DID) trunk group for access to the block of wireless numbers that is leased to the WSP. With this arrangement, a call originating from a LEC subscriber can be terminated to the block of numbers assigned to the WSP. Likewise, assuming that the DID trunk group were provisioned to be two-way, a call originating from the WSP block of numbers can be terminated to the LEC's subscriber.

To implement a Type 1 connection, translations in the LEC telephone switch must be modified to route a call that originates from the LEC's subscriber to the DID trunk group that serves the WSP's block of numbers. From there, the WSP completes the call to its wireless subscriber over their facilities.

Type 2A Connection

A Type 2A connection can be seen in Exhibit LDT-2A. The technical definition for a Type 2A connection is as follows:

[2] Telcordia Notes on the Networks (SR-2275), Section 16.2.1.1, Issue 4, October 2000.

> The Type 2A connection is at the POI of a trunk between a WSP and a LEC tandem switching system. Through this interconnection arrangement, the WSP can establish connections to a LEC end office and other carriers accessible through the tandem.[3]

With a Type 2A connection, the WSP and the LEC negotiate the location of the Point of Interconnection (POI). For the RTCs, the POI is either at the RTC's local tandem exchange boundary or a location inside the RTC local tandem exchange boundary. This POI could be in the RTC central office. In addition, the LEC and the WSP must agree on the type of transmission equipment and facilities, as well as the type of circuit and trunk group, to ensure compatibility.

A call originating with a LEC subscriber that uses the LEC local tandem switch and is destined for the WSP's assigned NPA-NXXs would be switched by the LEC telephone switch to the LEC local tandem and then on to the WSP trunk group. If this trunk group were two-way, calls originating from a WSP subscriber destined for one of the NPA-NXXs served behind the local tandem could be routed from the WSP trunk group to the LEC local tandem over this same trunk group. The LEC local tandem would then route the calls to the appropriate LEC End Office serving the dialed NPA-NXX to terminate the call.

[3] Telcordia Notes on the Networks (SR-2275), Section 16.2.1.2, Issue 4, October 2000.

Type 2B Connection

A Type 2B connection can be seen in Exhibit LDT-2B. The technical definition for a Type 2B connection is as follows:

> The Type 2B connection is at the POI of a trunk between a WSP and a LEC end office switching system. The Type 2B interconnection may only provide connections between the WSP and DNs served by the one end office to which it is interconnected.[4]

As with the Type 2A connection, when using a Type 2B connection, the WSP and the LEC must negotiate the location of the POI. For the RTCs, the POI is either at the RTC exchange boundary or a location inside the RTC exchange boundary. This POI could be in the RTC central office. In addition, the LEC and the WSP must agree on the type of transmission equipment and facilities, as well as the type of circuit and trunk group, to ensure compatibility.

A call originating from the LEC subscriber that is destined for a NPA-NXX assigned to the WSP are routed by the LEC telephone switch to the WSP trunk group. A call originating from a WSP subscriber comes into the LEC end office on the WSP trunk group, where the LEC telephone switch terminates the call to the LEC subscriber.

Type 1, Type 2A, and Type 2B are the three primary methods for a direct connection between a rural LEC and a WSP.

[4] Telcordia Notes on the Networks (SR-2275), Section 16.2.1.3, Issue 4, October 2000.

Q: How is WWC interconnecting with the South Dakota RTCs today?

A: Most RTCs do not have direct connections (Type 1, Type 2A, and Type 2B connections) to WWC. For these RTCs, the WWC traffic, both originating and terminating, is delivered over existing RTC and Qwest interexchange facilities. Since a direct connection to WWC is not used, I refer to this type of connection as an "indirect connection."

Traffic Originating from a RTC Subscriber

When no direct connection exists, the traffic originating from a RTC subscriber and terminating to a WWC subscriber is delivered to the interexchange carrier (IXC) that the RTC subscriber has selected (e.g., their Preferred Interexchange Carrier or PIC). For most RTCs, these calls are routed from the RTC to a centralized equal access tandem switch for delivery to the IXC. The IXC is then responsible for delivering the call to WWC.

There are a few instances in South Dakota where WWC has a Type 1 or Type 2B connection with a RTC. When this is the case, traffic originating from a RTC subscriber and terminating to a local WWC subscriber[5] is delivered to WWC over the direct connection (either Type 1 or Type 2B). In order for the RTC to accommodate a direct connection with WWC, it is necessary for the RTC to modify

[5] A local WWC subscriber in this context is one that has a WWC number assigned out of the NPA-NXX block it received from the RTC (Type 1) or has a WWC NPA-NXX (Type 2B) that is local to the RTC subscriber calling area.

the translations in their telephone switch to properly route the calls to the WWC DID block of numbers (in the case of the Type 1 connection) or the WWC trunk group (in the case of a Type 2A or Type 2B connection).

Traffic Terminating to a RTC Subscriber

In all instances in South Dakota that I am aware of, all traffic originating from a WWC subscriber and terminating to an RTC subscriber is delivered to the RTC over their existing interconnections with Qwest. For this type of call, WWC routes the call to the Qwest Tandem. Qwest, as the interconnecting carrier, then routes the call over their existing terminating trunks to the appropriate RTC local tandem or RTC end office. The RTC is then able to terminate the call to the RTC subscriber.

Q: Is it possible for a RTC to measure originating and terminating minutes of use between a WSP and a LEC?

A: If the RTC switch is properly equipped and provisioned, and the WSP (and any connecting carrier, when applicable) provides proper message data, the LEC can measure these minutes of use.

Q: How are the measurements of these minutes of use performed by the RTC?

A: Minutes of use (MOU) can be measured with the use of Automatic Message Accounting (AMA) procedures.

In order to measure traffic usage on a trunk group using AMA, an AMA recording device is used, and recording is activated on the trunk group. Using the Carrier Access Billing System (CABS) process, the RTC can produce MOU reports for the trunk group.

For trunk groups dedicated to a specific carrier, this method can record the call detail for originating and terminating traffic on a trunk group. Since only one carrier is using this trunk group, no separation process is required to determine the amount of traffic that is attributable to other carriers on the trunk group.

For terminating usage on trunk groups that are shared by more than one carrier, the proper measurement of MOU by carrier can be more difficult. In order to accurately record terminating traffic by carrier, the connecting carrier should send the Carrier Identification Code (CIC) and the Calling Number Identification. Unless this is done, it is difficult, if not impossible, for the RTC to properly identify the minutes associated with each carrier.

Assuming the RTC telephone switch is properly equipped and the appropriate translations performed, the AMA method of measuring MOU should work for Type 1, Type 2A, and Type 2B direct connection types. In addition, the AMA method would work for shared terminating trunk groups when using an indirect connection

type, provided that the interconnecting carrier is delivering all of the required call detail.

Q: Does this conclude your direct testimony?

A: Yes. I reserve the opportunity to revise or modify this pre-filed direct testimony at or before the hearing if I receive additional information pertaining to the issues I presented herein.

Exhibit LDT-1

WSP to LEC Switched Interconnection Configuration for Type 1 Interfaces

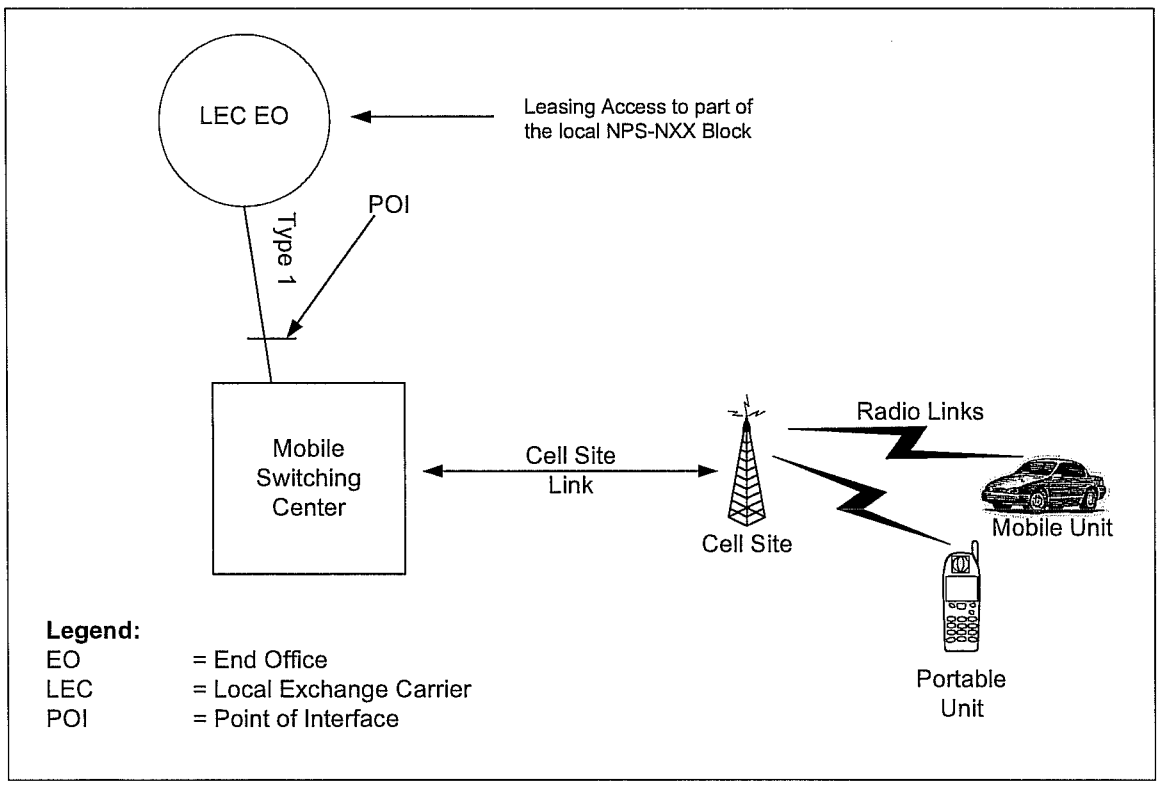


Exhibit LDT-2A

WSP to LEC Switched Interconnection Configuration for Type 2A Interfaces

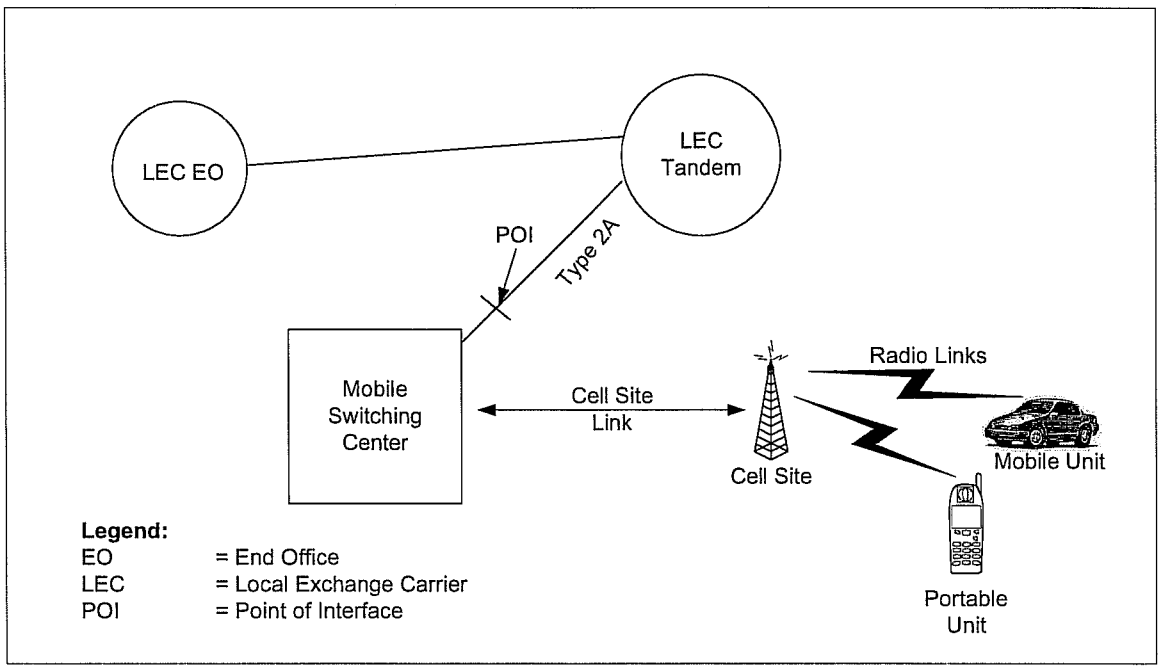
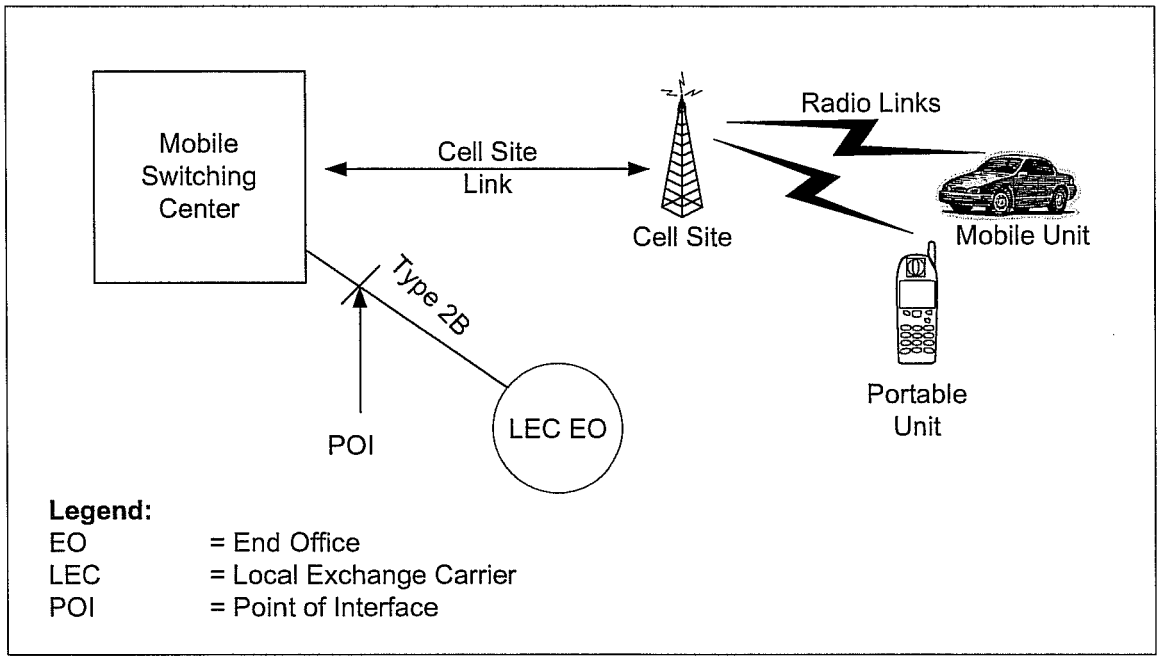


Exhibit LDT-2B

WSP to LEC Switched Interconnection Configuration for Type 2B Interfaces



2200 FIRST NATIONAL BANK BUILDING
332 MINNESOTA STREET
SAINT PAUL, MINNESOTA 55101
TELEPHONE (651) 223-6600
FACSIMLE (651) 223-6450

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

WRITER'S DIRECT DIAL
(651) 223-6578
WRITER'S E-MAIL
pschenkenberg@briggs.com

January 14, 2003

VIA FEDERAL EXPRESS

South Dakota Public Utilities Commission
First Floor - Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Petition of WWC License L.L.C. for Arbitration Under the Telecommunications Act of 1996

Dear Sir/Madam:

Enclosed for filing in connection with the above matter please find an original and ten copies of:

- Direct Testimony of Ron Williams on behalf of Western Wireless and Exhibits RW-1 through RW-5 (public version); and
- Direct Testimony of Ron Williams on behalf of Western Wireless and Exhibits RW-1 through RW-5 (confidential version).

Western Wireless requests confidential treatment of the confidential version of Mr. Williams' testimony and exhibits under Commission Rules Chapter 20.10.01. Each copy of the confidential version of Mr. Williams' testimony has been filed in an envelope marked "CONFIDENTIAL TREATMENT IS REQUESTED." The information for which Confidential Treatment is requested is contained on page 23 of Mr. Williams' Direct Testimony, and on Exhibits RW-3, RW-5 and RW-6.

Western Wireless requests Confidential Treatment of Exhibit RW-5, which is a map showing the coverage area of Western Wireless' mobile switching centers. Western Wireless contends this information constitutes trade secrets recognized and protected by law. If there are questions regarding confidentiality request, they may be directed to me. Western Wireless requests trade secret treatment of this information for five years.

With regard to other information for which Confidential Treatment is requested, that is SDTA information that has been provided to Western Wireless by SDTA and its members in

accordance with a protective agreement. Pursuant to that protective agreement, Western Wireless is prohibited from disclosing that information publicly, and so files that information with the Commission subject to Commission Rules Chapter 20.10.01. The information on page 23 of Ron Williams' Direct Testimony contains switch, line count, and minute of use information of one SDTA member. The information contained in Exhibits RW-3 and RW-6 are switch, line count, minute of use, and local calling area designations of SDTA companies. SDTA asserts this information is afforded Confidential Treatment, and any request with regard to this designation should be directed to Richard D. Coit, South Dakota Telecommunications Association, 604-224-7629.

Thank you for your consideration. Please do not hesitate to contact me if there are any further questions.

Very truly yours,

Philip R. Schenkenberg

PRS/smo
Enclosures
cc: Richard D. Coit, Esq. (via Federal Express w/both versions)
Talbot J. Wieczorek, Esq. (w/both versions)
Ron Williams

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

PETITION OF WWC LICENSE L.L.C.	)	
FOR ARBITRATION UNDER THE	)	**Docket No. TC02-176**
TELECOMMUNICATIONS ACT OF 1996	)	

DIRECT TESTIMONY OF

RON WILLIAMS ON

BEHALF OF WESTERN WIRELESS

TABLE OF CONTENTS

I. QUALIFICATIONS AND PURPOSE OF TESTIMONY

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Ron Williams. My business address is 3650 131st Ave., SE, Bellevue, Washington 98006.

Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A: I am employed as Director - Industry Relations by Western Wireless Corporation. My duties and responsibilities include developing effective and economic interconnection and operational relationships with other telecommunications carriers. I work with other departments within Western Wireless to assess company interconnection needs and interface with carriers to ensure arrangements are in place to meet the operational objectives of the company.

Q: PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A: I have a BA in Accounting and a BA in Economics from University of Washington. I also have a MBA from Seattle University.

Q: FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?

A: I am testifying on behalf of WWC License L.L.C. ("Western Wireless"), which provides commercial mobile radio services ("CMRS") in the state of South Dakota.

Q: WHAT IS YOUR PROFESSIONAL EXPERIENCE IN THE FIELD OF TELECOMMUNICATIONS?

A: I have ten years experience working for GTE, including six years in Telephone Operations and business development, and four years in cellular operations. I also have two years experience in start-up CLEC operations with FairPoint Communications.

Since August 1999, I have worked for Western Wireless, first as the Director of CLEC operations and, more recently, in my current position in Industry Relations.

Q: HAVE YOU TESTIFIED BEFORE ON BEHALF OF WESTERN WIRELESS?

A: Yes, last year I testified as the Company's witness in an interconnection arbitration proceeding between Western Wireless and thirty-two rural telephone companies in Oklahoma. As I discuss below, the Administrative Law Judge and the Oklahoma Commission adopted Western Wireless' positions on many of the same issues to be resolved in this proceeding. I also prefiled testimony in a North Dakota interconnection arbitration proceeding similar to this one. That case was settled in September 2002 prior to the hearing.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: I am familiar with all of the issues raised in the Petition for Arbitration filed by Western Wireless on October 31, 2002, and the Response to the Petitions for Arbitration ("Response") filed by affected South Dakota rural telephone companies ("RTCs") on November 25, 2002. My testimony will address the following unresolved issues:

Unresolved Issue 1 (Scope of Reciprocal Compensation Obligations): What traffic is subject to reciprocal compensation in accordance with the FCC's rules?

Unresolved Issue 2 (Delivery of Land-To-Mobile Traffic): What obligations do the RTCs have to deliver traffic subject to reciprocal compensation to Western Wireless' network?

Issue 2a: Are the RTCs prohibited from collecting access charges from any telecommunications carrier on land-to-mobile calls that originate and terminate in the same MTA?

Issue 2b: If Western Wireless establishes a direct connection with an RTC, should the RTC deliver all land-to-mobile intraMTA traffic to Western Wireless over those direct facilities?

Unresolved Issue 3 (Rates For Reciprocal Compensation): What rates can be adopted for the transport and termination of intraMTA traffic consistent with 47 U.S.C. § 252(d)(2) and FCC Rule 51.705?

Unresolved Issue 4 (Symmetrical Compensation at a Tandem Rate): Is Western Wireless entitled to be compensated at the tandem interconnection rate as required by 47 C.F.R. § 51.711(a) if its switch serves an area greater than the geographical area served by the RTC's tandem switch?

Unresolved Issue 5 (Application of Tariffs): Should interstate tariffs govern Western Wireless' purchase of access services and facilities from an RTC?

Unresolved Issue 6 (Local Numbers): May Western Wireless have numbers rated as local to an RTC's end office without establishing a direct interconnection to that end office?

Unresolved Issue 7 (Allocation of Billing Costs): Can an RTC charge Western Wireless for billing costs incurred by the ILEC?

Unresolved Issue 10 (Access to Numbering Resources): Whether Western Wireless should have access to numbering resources consistent with 47 U.S.C. § 251(b)(3). (Section 7.4.)

Unresolved Issue 11 (Dialing Parity): Should Western Wireless' numbers rated out of an RTC end office receive the same dialing treatment as other numbers within that local calling area or extended area service area? (Section 7.5.)

Unresolved Issue 12 (Procedure for Renegotiation): What procedure should apply if a Party seeks to renegotiate the Agreement at the end of a term? (Section 12.2.4.)

Unresolved Issue 13 (Reciprocal Compensation Credit Factor): What reciprocal compensation factor should be established for land-to-mobile Traffic? (Appendix A, Section 4.)

Unresolved Issue 14 (Shared Facility Factor): What shared facility factor should be established for two-way trunks used for direct interconnection? (Appendix A, Section 4.)

Unresolved Issue 15 (Transit Rates): What are the appropriate rates for transiting services provided by an RTC? (Appendix A, Section 7.)

Unresolved Issue 16 (Carrier Specific Information): Whether each final Agreement should include RTC-specific information related to exchanges, numbers, CLLI codes, tandem switches, and local calling areas. (Appendix B.)

Unresolved Issue A (Statute of Limitations): What is the applicable statute of limitations relating to claims for non-payment of transport and/or termination charges?[1]

Unresolved Issue B (Identification of InterMTA Traffic): How should InterMTA traffic be identified and what charges are applicable to the same?[2]

My testimony describes Western Wireless' understanding of the legal requirements that apply to arbitrated interconnection disputes between a CMRS provider such as Western Wireless and local exchange carriers ("LECs") such as the RTCs, and my testimony presents the positions of Western Wireless on the unresolved issues identified above. For each of the unresolved issues, I will identify the applicable legal standard, establish the facts relevant to a determination, and recommend to the South Dakota Public Utilities Commission ("Commission") the appropriate resolution of each dispute.

My testimony does not address Issue 8 and Issue 9 identified in the Petition because Western Wireless has withdrawn those issues and agreed to accept the RTCs' proposed contract language.

---

1 This issue was identified in the RTCs' Response, not Western Wireless' Petition.

2 This issue was identified in the RTCs' Response, not Western Wireless' Petition.

II. INTERCONNECTION OBLIGATIONS OF A LEC IN ACCORDANCE WITH THE 1996 ACT

Q: DESCRIBE THE INTERCONNECTION OBLIGATIONS IMPOSED ON LECS PURSUANT TO THE 1996 ACT.

A: The Telecommunications Act of 1996 ("1996 Act") fundamentally restructured local telephone markets, and imposed numerous requirements on LECs intended to facilitate market entry and allow competitive carriers to utilize LEC networks and network functions. *See AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 726 (1999) ("*Iowa Utilities*"). Pursuant to the 1996 Act and the FCC's rules, these requirements include the obligation to interconnect directly or indirectly with other telecommunications carriers, the obligation to enter into arrangements for cost-based, reciprocal compensation for local telecommunications traffic, and a prohibition on discriminatory treatment. The United States Supreme Court has mandated that these federal obligations imposed by law must be applied by this Commission in considering an interconnection arbitration like this one. *See Iowa Utilities*, 119 S. Ct. at 733 (FCC has authority to issue interconnection rules that must guide state commission judgments).

Q: ARE THE RTCS REQUIRED TO PROVIDE WESTERN WIRELESS WITH TRANSPORT AND TERMINATION SERVICES AT COST-BASED RATES PURSUANT TO THE 1996 ACT?

A: Yes. Section 251(b)(5) of the Act imposes on all LECs the obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Charges must be based on a reasonable approximation of the additional costs of terminating such calls. 47 U.S.C. § 252(d)(2). This obligation is imposed on rural telephone companies like the RTCs. Western Wireless is entitled to the

benefit of these provisions as it is a "telecommunications carrier." *See* 47 U.S.C. § 3(49); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC 15499, FCC 96-325, ¶¶ 1012-1015 (1996) ("*First Report and Order*"). Moreover, under the FCC's Part 20 Rules governing LEC-CMRS interconnection, the RTCs must interconnect directly or indirectly with Western Wireless. *See* 47 C.F.R. § 20.11(a).

Q: HAVE THE RTCS COMPLIED WITH ALL OF THE OBLIGATIONS IMPOSED UPON THEM BY THE 1996 ACT?

A: The RTCs have met some of their interconnection obligations, and the parties have agreed to many key terms and conditions for interconnection. However, in this proceeding, the RTCs seek to establish interconnection arrangements that are not reciprocal, do not provide for cost-based rates, and would apply access charges (rather than reciprocal compensation) to traffic subject to reciprocal compensation obligations.

Q: ARE THERE ANY SPECIAL RULES THE COMMISSION MUST CONSIDER IN RESOLVING ANY OF THE OUTSTANDING INTERCONNECTION ISSUES BETWEEN THE RTCS AND WESTERN WIRELESS, A CMRS PROVIDER?

A: Yes there are, and those special rules are important in this arbitration. CMRS providers are licensed by the FCC in accordance with federal law. As a result, the FCC has jurisdiction over CMRS-LEC traffic, and has established certain standards that apply to interconnection and traffic exchanged between CMRS providers and landline carriers. Reciprocal compensation applies to "telecommunications traffic" as defined in the FCC's rules. However, for traffic originated or terminated by a CMRS provider, FCC Rule 51.701(b)(2) provides that the term "telecommunications traffic" includes all traffic

between a CMRS provider and a LEC that originates and terminates in the Major Trading Area ("MTA").

Q: WHAT IS A "MAJOR TRADING AREA"?

A: The nation was broken up into MTAs established by Rand McNally based on the 1980 census. The FCC then decided to issue certain CMRS licenses by MTA and ultimately used the designation to establish the scope of calls subject to reciprocal compensation. The western part of South Dakota is in the Denver MTA, with the rest of the state mostly in the Minneapolis MTA. There is also a small portion of southeastern South Dakota that is in the Des Moines/Quad Cities MTA.

Q: IS "TELECOMMUNICATIONS TRAFFIC" THE SAME AS "LOCAL TRAFFIC"?

A: Yes. Prior to 2001 the FCC used the term "Local Traffic" to refer to traffic subject to reciprocal compensation obligations. In 2001, the FCC decided that the terms "Local Traffic" and "Non-Local Traffic" were confusing as applied to calls bound for the Internet. *See In the Matter of Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, Order on Remand and Report and Order, 66 Fed. Reg. 26,800, FCC 01-131, ¶ 46 (rel. Apr. 27, 2001) ("*ISP Remand Order*"). The FCC therefore amended its reciprocal compensation rules to use the term "telecommunications traffic" to encompass 1) landline calls within a state-approved local calling area, and 2) calls to or from a CMRS provider that originate and terminate within the same MTA. 47 C.F.R. § 51.701(b)(2). This change did not affect the MTA rule or the substantive treatment of CMRS/LEC calls, and many CMRS-LEC interconnection agreements still use the terms

"Local Traffic" and "Non-Local Traffic." Instead of referring to "Local Traffic" in this testimony, I will refer to "traffic subject to reciprocal compensation" or "intraMTA traffic."

Q: DO THE RTCS RECOGNIZE THAT INTRAMTA CALLS TO AND FROM WESTERN WIRELESS ARE SUBJECT TO RECIPROCAL COMPENSATION UNDER THE FCC'S RULES?

A: No. The RTCs seek to avoid the application of the MTA rule to calls originated by their own customers. This impacts reciprocal compensation obligations and the obligation to route traffic in a way that is efficient and non-discriminatory.

III. EXISTING INTERCONNECTION ARRANGEMENTS BETWEEN WESTERN WIRELESS AND THE RTCS

Q: ARE THERE ANY EXISTING INTERCONNECTION AGREEMENTS BETWEEN WESTERN WIRELESS AND THE RTCS?

A: Yes. Western Wireless has an existing interconnection agreement with each RTC. Those agreements were entered into voluntarily subject to 47 U.S.C. § 252(a)(1) for business reasons. While Western Wireless has 10 direct connections in various RTC service territories, most traffic between Western Wireless and the RTCs is indirectly exchanged via tandem switches of third-party carriers. The rates, and many of the terms and conditions in these existing agreements would not meet the standards for arbitrated agreements under 47 U.S.C. § 252(e)(2)(B).

Q: IS WESTERN WIRELESS SEEKING TO ESTABLISH NEW INTERCONNECTION AGREEMENTS CONSISTENT WITH THE REQUIREMENTS OF THE ACT AND FCC'S IMPLEMENTING REGULATIONS?

A: Yes. Western Wireless seeks to establish interconnection agreements that would govern the exchange of all telecommunications traffic between Western Wireless and each RTC.

IV. NEGOTIATIONS BETWEEN WESTERN WIRELESS AND THE RTCS

Q: HAS WESTERN WIRELESS REQUESTED INTERCONNECTION WITH THE RTCS UNDER SECTION 252(A) OF THE ACT?

A: Yes. Western Wireless commenced negotiations for new interconnection agreements on November 21, 2001. As negotiations progressed, the parties agreed to extend the arbitration window to allow further time for the parties to reach voluntary agreements. Pursuant to the last such agreement, the arbitration window opened October 6, 2002, and closed October 31, 2002. Based on these dates, negotiations are deemed to have commenced on May 24, 2002.

Q: ARE YOU FAMILIAR WITH THE NEGOTIATIONS BETWEEN WESTERN WIRELESS AND THE RTCS?

A: Yes. As Director-Industry Relations, I was personally involved in the substantive negotiation sessions. I work closely with Gene DeJordy, who also participated in the negotiations with the RTCs.

V. SCOPE OF RECIPROCAL COMPENSATION OBLIGATIONS (ISSUE 1)

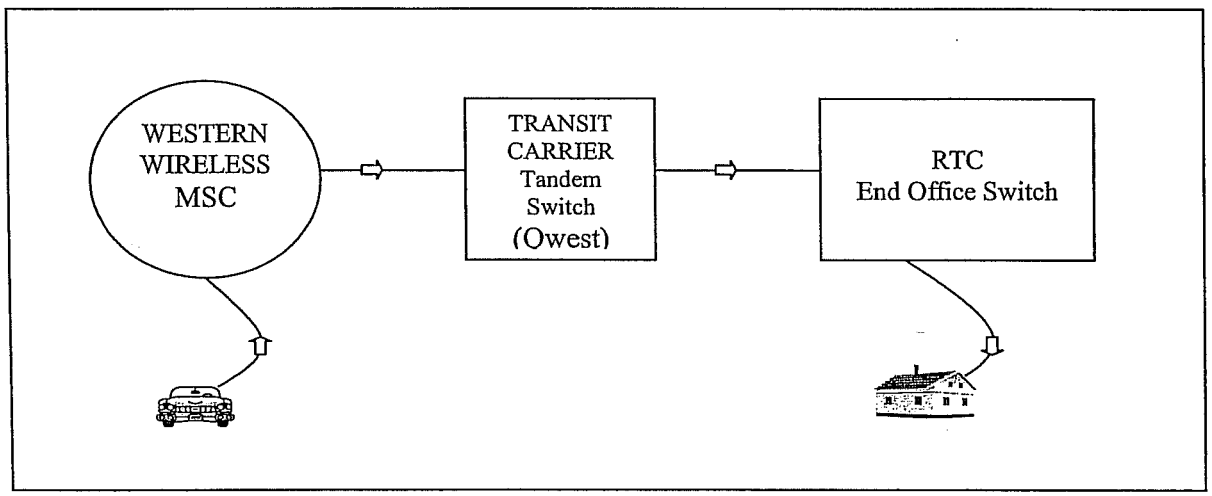
Q: HOW DOES WESTERN WIRELESS ROUTE MOBILE-TO-LAND CALLS TO AN RTC?

A: Given the number of small independent telephone companies throughout the country, it is virtually impossible for a CMRS carrier to have direct interconnection with all landline carriers. South Dakota is no different – while Western Wireless does directly connect with some RTCs, most traffic is sent indirectly. To accomplish an indirect interconnection with one of the RTCs, Western Wireless routes intraMTA calls to another carrier's tandem switch, typically Qwest, which then routes or sends those calls to

the applicable RTC for termination. Western Wireless pays Qwest a transit fee for this service and pays the RTC for terminating this traffic. The transit fee is comprised of compensation for the tandem switching and transport costs incurred by Qwest. The transit fee does not include any end-office switching costs because the call does not terminate on the Qwest network. Diagram A demonstrates how this indirect interconnection is accomplished.

DIAGRAM A

MAJOR TRADING AREA



- **NO DIRECT INTERCONNECTION BETWEEN CMRS MSC AND RTC END OFFICE**
- **INTRAMTA MOBILE-TO-LAND CALL**
- **WESTERN WIRELESS PAYS TRANSIT CARRIER FOR APPLICABLE TANDEM SWITCHING AND TRANSPORT**
- **WESTERN WIRELESS PAYS RECIPROCAL COMPENSATION TO RTC**

Q: DO THE RTCS AGREE THAT RECIPROCAL COMPENSATION APPLIES TO WESTERN WIRELESS' INTRAMTA CALLS THAT ARE TRANSITED THROUGH AN INTERMEDIATE CARRIER SUCH AS QWEST?

A: Yes. The RTCs agree these calls are subject to reciprocal compensation pursuant to FCC Rules 51.701 and 51.703. FCC Rule 51.703(a) requires that: "Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier." FCC Rule 51.701(b)(2) further provides that "telecommunications traffic" includes all traffic "exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter." Calls that do not originate and terminate in the same MTA are subject to interstate access charges.

Q: HAS THE FCC RECOGNIZED THAT CMRS PROVIDERS ARE ENTITLED TO UTILIZE TRANSIT CARRIERS TO ACCOMPLISH INDIRECT INTERCONNECTION?

A: Yes. The FCC's rules define "interconnection" between a LEC and CMRS provider as:

> Direct or indirect connection through automatic or manual means (by wire, microwave, or other technologies such as store and forward) to permit the transmission or reception of messages or signals to or from points in the public switched network.

47 C.F.R. § 20.3(3)(b) (2001) (emphasis added). In the *First Report and Order*, the FCC concluded "that telecommunications carriers should be permitted to provide interconnection pursuant to Section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices." *First Report and Order*, ¶ 997 (emphasis

added). Just recently, the FCC recognized that CMRS carriers use transiting carriers to transport calls to a terminating LEC, especially in rural areas:

> [I]n rural settings, wireless carriers can elect to deliver CMRS-originated calls to a large ILEC . . . for routing to the rural LEC carrier.

Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, 66 Fed. Reg. 28,410, FCC 01-132, ¶ 91 and n.148 (rel. Apr. 27, 2001) (emphasis added). The FCC then noted that terminating compensation for this service must be cost-based and reciprocal:

> Under both types of LEC-CMRS interconnection, the LEC receives forward-looking economic cost- (FLEC-) based reciprocal compensation for the LEC's additional costs of terminating CMRS-originated calls.

Id. ¶ 92 (emphasis added). These FCC determinations confirm that indirect interconnection is "LEC-CMRS interconnection," and that it is subject to reciprocal compensation.

Q: DO THE RTCS RECEIVE COMPENSATION FOR TERMINATING CALLS ROUTED TO THEM VIA INDIRECT MEANS?

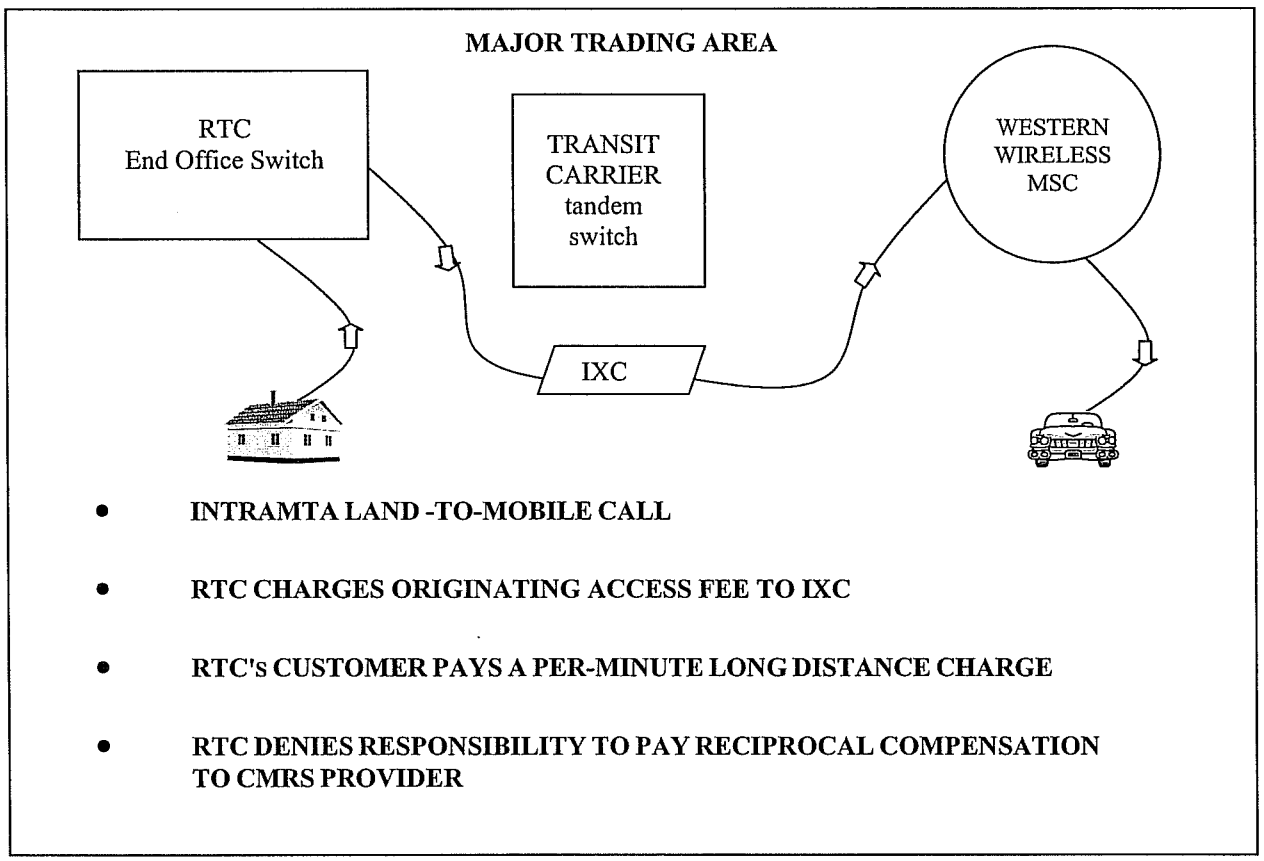
A: Yes. Western Wireless routes each call via a Qwest tandem and pays reciprocal compensation to an RTC for each minute of usage that a Western Wireless call is terminated on an RTC network.

Q: LET'S TURN TO LAND-TO-MOBILE CALLS. IN WHAT CIRCUMSTANCE MIGHT AN INTRAMTA LAND-TO-MOBILE CALL BE ROUTED THROUGH A THIRD-PARTY CARRIER?

A: An RTC could route land-to-mobile traffic to Western Wireless through an intermediate transiting carrier in the same manner that Western Wireless indirectly routes the mobile-to-land traffic. However, the RTCs today send almost all intraMTA land-to-mobile calls

to Western Wireless through an interexchange carrier ("IXC").[3] Diagram B demonstrates how this indirect traffic exchange occurs.

DIAGRAM B



Q: DO RECIPROCAL COMPENSATION OBLIGATIONS APPLY TO INTRAMTA LAND-TO-MOBILE CALLS THAT ARE SENT TO AN IXC?

A: Absolutely. FCC Rules 51.701 and 51.703 apply reciprocal compensation to all intraMTA calls, without exception. The RTCs cannot avoid this obligation to pay

[3] The exception is where there are direct facilities and the land-to-mobile call is to a number rated at the originating end office.

Western Wireless reciprocal compensation for terminating this traffic by simply routing the call through an IXC.

Q: BUT THE RTCS CONTEND THAT THEY ARE NOT REQUIRED TO PAY RECIPROCAL COMPENSATION FOR INTRAMTA TRAFFIC CARRIED BY AN IXC. ARE THEY CORRECT?

A: No. In addition to the FCC's Rules 51.701 and 51.703, the FCC similarly made this clear in its *First Report and Order* that reciprocal compensation applies to all intraMTA calls. The FCC has stated: "We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges." *First Report and Order*, ¶ 1043. The fact that an IXC – or other third-party carrier – handles that call, does not impact the RTC's reciprocal compensation obligations. This issue was determined in Western Wireless' favor in the recent Oklahoma arbitration where the Commission ruled:

> [A]ll traffic exchanged between the parties, which originates and terminates in the same Major Trading Area as determined at the beginning of the call, is subject to reciprocal compensation.
>
> . . .
>
> [E]ach carrier must pay each other's reciprocal compensation for all intraMTA traffic whether the carriers are directly or indirectly connected, regardless of an intermediary carrier.
>
> . . .
>
> [C]alls made to and from CMRS Providers within the Major Traffic [sic] Area are subject to transport and termination charges rather than interstate or intrastate access charges.

Oklahoma Decision, p. 4 (Ex. RW-1).

Q: WHAT IS THE PRACTICAL AFFECT OF THE RTCS SENDING LAND-TO-MOBILE CALLS TO AN IXC?

A: First, the RTCs seek to avoid paying any reciprocal compensation to Western Wireless for terminating the call. Because Western Wireless does not collect access charges from IXCs on these calls, reciprocal compensation is the mechanism by which Western Wireless must be compensated for this transport and termination service. Second, the RTCs would actually collect compensation (from the IXC) in the form of their originating access charges. The obvious motivation underlying the RTCs' position is an attempt to obtain a duplicate financial benefit. Not only are the RTCs seeking to avoid payment of compensation to Western Wireless, but also they seek to receive access charge revenue from the IXC for the land-to-mobile traffic. This collection of compensation plainly violates FCC Rule 51.703(b), which provides that:

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

47 C.F.R. § 51.703(b). To make matters worse, the RTCs' customers are penalized by having to pay a per-minute long distance charge to the IXC.

Q: CAN YOU EXPLAIN THE RATIONALE BEHIND THE FCC'S INTRAMTA RULE?

A: Yes. The intraMTA rule was adopted by the FCC based upon the unique attributes of wireless carriers. The geographical areas for wireless carriers' license areas are established by the FCC, and are larger than landline companies' service areas. The FCC determined in Rule 51.701(b)(2) and in the *First Report and Order* that the MTA should be used to designate the area for purposes of determining reciprocal compensation

between all CMRS providers and LECs. The FCC decided on the MTA as the scope primarily because it is the largest licensing area used by the FCC for CMRS and, therefore, most closely matches the wide-area local calling systems developed by CMRS providers and expected by wireless customers. By adopting a single MTA-based definition, the FCC intended to insure fairness among wireless providers in terms of interconnection with the LECs and reflect the wide-area local calling patterns of wireless customers. The intra MTA rule recognizes the mobile nature of cellular customers, who are expected to cover significant distances in connection with their communications. The intra MTA rule is also an essential part of facilitating competitive entry by wireless carriers in areas historically dominated by monopoly landline companies.

Q: IN SUMMARY, WHAT TRAFFIC SHOULD BE SUBJECT TO RECIPROCAL COMPENSATION OBLIGATIONS IN THE PARTIES' FINAL AGREEMENT?

A: Reciprocal compensation obligations should apply to all traffic exchanged between Western Wireless and the RTCs that originates and terminates within the same MTA, regardless of whether the call is routed through a third-party carrier. The Commission should order the parties to submit a final interconnection agreement that complies with this requirement.

VI. DELIVERY OF TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION (ISSUE 2)

Q: WHAT IS THE PARTIES' DISPUTE REGARDING THE DELIVERY OF TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?

A: As discussed above, the FCC established the MTA as the local calling area for traffic to or from a CMRS network. The RTCs want to avoid delivering land-to-mobile traffic

subject to reciprocal compensation on a local basis – they contend that nearly all land-to-mobile intraMTA traffic should be routed on IXC toll networks. While this is bad for consumers, it is good for LECs (who collect access charges) and IXCs (who collect toll revenue).

Q: DO THE FCC'S RULES PREVENT THE RTCS FROM COLLECTING ACCESS CHARGES ON INTRAMTA CALLS?

A: Yes. The FCC's rule 54.703(b) provides:

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

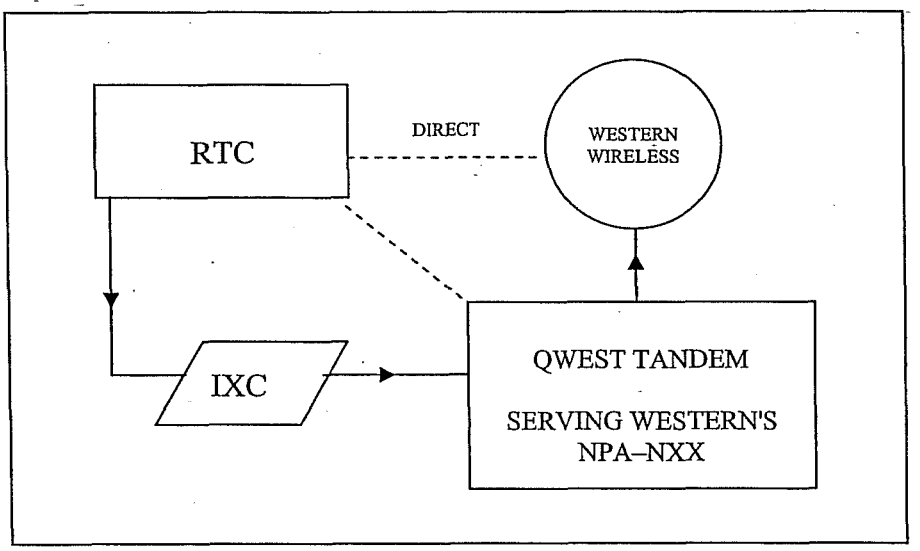
"Telecommunications traffic" is defined as intraMTA traffic to or from a CMRS network. 47 C.F.R. § 51.701(b)(2). Western Wireless believes this rule applies and should be enforced by specific provision in the parties' interconnection agreements.

Q: HOW SHOULD INTRAMTA TRAFFIC BE DELIVERED?

A: Western Wireless has proposed that an RTC deliver intraMTA traffic at either a point of direct interconnection established between the parties or at the Qwest LATA tandem serving the LATA in which the call originates.

The following two diagrams show how the parties propose to route land-to-mobile intraMTA traffic. Diagram C represents the RTCs' proposal to treat intraMTA traffic as toll traffic, and Diagram D represents Western Wireless' proposal to treat intraMTA traffic as local traffic.

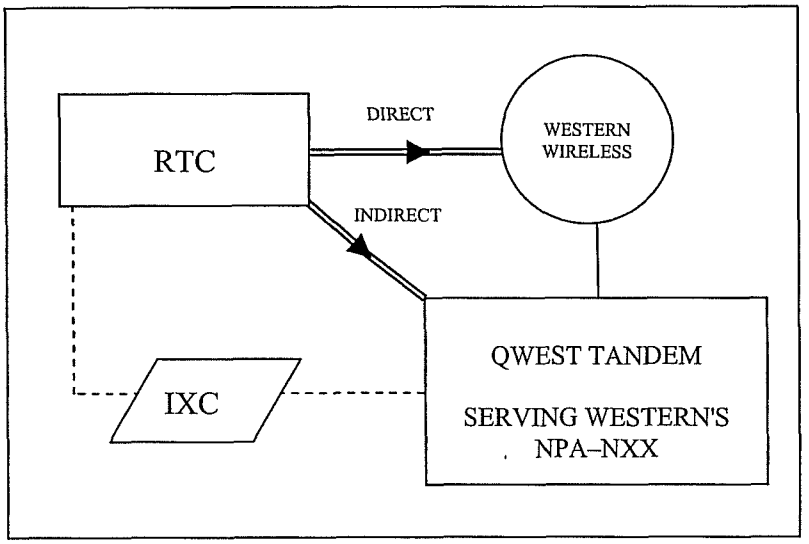
DIAGRAM C – RTC POSITION



RTC Proposal: In Diagram C, the RTC routes land-to-mobile traffic to an IXC, even though the call is intraMTA and can easily and efficiently be handed off directly to Western Wireless over the direct facilities, or at the Qwest tandem.

Western Wireless Proposal: In Diagram D, the RTC switches the call either directly over existing facilities or to the Qwest tandem where Western Wireless has a point of connection. This avoids the extra cost of transport, and eliminates the IXC's involvement. The RTCs have the obligation to exchange local telecommunications traffic with Western Wireless, and cannot collect access charges on that traffic. They should not be able to avoid exchanging intraMTA traffic when local facilities are available as the most efficient method of interconnection.

DIAGRAM D – WESTERN WIRELESS' POSITION



The Utilities Board of the State of Iowa has recently determined that rural LECs should recognize intraMTA calls as local:

> The Board will not change its finding that intraMTA calls from wireline customers of the independent LECs to the customers of the wireless service providers are local calls and should be dialed, and billed, as such. The FCC has clearly stated that those are local calls. Ultimately, the independent LECs must treat these calls as what they are, and the Board expects that they will do so within a reasonable time frame.

Citation Iowa Utilities Board, In Re: Exchange of Transit Traffic, Docket Nos. SPU-00-7, TF-00-275, (DRU-00-2), Order Denying Application for Rehearing (May 3, 2002) (Ex. RW-2).

Q: DO THE RTCS HAVE THE ABILITY TO USE INDIRECT FACILITIES TO DELIVER LAND-TO-MOBILE CALLS TO THE QWEST TANDEM?

A: I believe they do. In response to discovery requests, each RTC indicated they had a direct network meet point with Qwest and that they were receiving mobile-to-land traffic

at that meet point. I am not award of any technical reason why the RTC cannot route land-to-mobile traffic through Qwest to Western Wireless using that same meet point and two-way trunk facilities. Alternatively, the RTC could use their affiliate transit provider, SDN, to route that traffic to the Qwest tandem.

Q: WHAT SHOULD THE COMMISSION ORDER WITH REGARD TO THE DELIVERY OF LAND-TO-MOBILE INTRAMTA TRAFFIC?

A: The Commission should order that traffic to be delivered on a local basis over existing direct facilities or at the Qwest LATA tandem.

VII. RATES FOR TRANSPORT AND TERMINATION OF TRAFFIC (ISSUE 3)

Q: WHAT RATES WILL THE COMMISSION BE SETTING IN THIS PROCEEDING?

A: An originating carrier must pay the terminating carrier the additional costs incurred after a call is delivered to the originating carrier at the point of interconnection. This is referred to as "transport and termination." "Termination" is defined as the switching function at an end office. 47 C.F.R. § 51.701(d). "Transport" is defined as any tandem switching and transmission necessary to get a call to the end office serving the customer. 47 C.F.R. § 51.701(c). In this docket the Commission will set transport and termination rates paid by Western Wireless on mobile-to-land calls, and paid by the RTCs on land-to-mobile calls.

Q: WHAT EVIDENCE IS WESTERN WIRELESS OFFERING RELATED TO THE APPROPRIATE PRICING OF TRANSPORT AND TERMINATION PURSUANT TO THE ACT?

A: Each RTC has the burden of establishing appropriate rates for transport and termination of telecommunications traffic pursuant to the Act. 47 C.F.R. § 51.705. In addition, the

rates set for an RTC will be reciprocal – the rate paid by Western Wireless to an RTC for transport and/or termination will also be the rate paid by the RTC to Western Wireless. 47 C.F.R. § 51.711. For these reasons, Western Wireless will review the RTCs' cost study and respond with its own cost testimony on rebuttal. In this direct testimony, I will discuss the pricing standards that apply to transport and termination, and provide the Commission with an outline of how these pricing issues should be analyzed.

Q: HOW DOES THE ACT REQUIRE A STATE COMMISSION TO SET PRICES FOR THE TRANSPORT AND TERMINATION OF TELECOMMUNICATIONS TRAFFIC SUBJECT TO RECIPROCAL COMPENSATION?

A: In Section 252(d)(2) of the Act, Congress mandated that transport and termination be priced as follows:

> (A) IN GENERAL. For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless:
>
> > (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
> >
> > (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

47 U.S.C. § 252(d)(2)(A) (emphasis added).

Q: IS THIS THE SAME STANDARD THAT APPLIES TO THE PRICING OF UNBUNDLED NETWORK ELEMENTS ("UNEs") PURCHASED BY A COMPETITIVE LOCAL EXCHANGE CARRIER?

A: No. The pricing methodology for UNEs is set forth in 47 U.S.C. § 252(d)(1).

Q: HOW DO THESE TWO PRICING STANDARDS COMPARE?

A: They are somewhat different. The goal of traditional interconnection arbitrations has been to set UNE prices that will allow competitive local exchange carriers ("CLECs") to provide local service in competition with a regional Bell Operating Company ("RBOC"). In purchasing a loop, end office switching, and other network elements needed to provide local voice service to the RBOC's customer, the CLEC is essentially taking over a portion of the RBOC network, and obtaining payment from that landline end user. It makes sense, then, that the CLEC pay for that portion of forward-looking network costs attributable to that customer's local service. The dynamics of setting transport and termination rates for purposes of reciprocal compensation are different. As it terminates another carrier's local traffic, the landline service provider (here the RTC) is still using its network to provide local service, and still retains the customer. The other carrier seeks only to terminate its traffic to the RTC's customer and so is not leasing that network. Instead, the other carrier must only be charged "additional costs of terminating such calls." 47 U.S.C. § 252(d)(2)(a)(ii). Because the RTCs do not offer access to UNEs, pricing of UNEs is not at issue here. The Commission will price only transport and termination for purposes of reciprocal compensation, and must do so at the "additional costs" of providing transport and termination.

Q: WHAT ARE THE RTCS' ADDITIONAL COSTS OF TERMINATION, I.E. THE SWTICHING OF A CALL AT AN RTC END OFFICE?

A: Given today's switch technology, once a forward-looking network is in place to provide local service in an RTC exchange, the additional switch cost of terminating another

carriers' local traffic is $0. In other words, the RTC would have to build the same exact forward-looking network whether or not it was terminating local traffic originated by any other carrier. The "additional costs" of terminating local traffic originated by another carrier are $0. ***CONFIDENTIAL BEGINS***

CONFIDENTIAL

ENDS

The additional costs of termination is $0.

This example applies with equal effect to all RTC switches, because in no case does the additional traffic load imposed by intraMTA wireless traffic create additional switching needs. As evidence of this I have attached product specifications for a Nortel DMS-10

switch that is used by many RTCs. Ex. RW-4. That switch's capacity is determined by the number of ports, and can switch over 10,000 per calls at the same time. I am not aware of any capacity limitation that would generate additional costs at any RTC switch.

Q: WESTERN WIRELESS' PROPOSED INTERCONNECTION AGREEMENT SUGGESTS THERE SHOULD BE DIFFERENT RATES FOR END OFFICE INTERCONNECTION (TYPE 2B) THAN FOR TANDEM INTERCONNECTION (TYPE 2A). *SEE* APPENDIX A. WHY IS THIS?

A: Reciprocal compensation rates are set at the additional costs of transporting and terminating a mobile-land call. The RTC company's costs will be higher for a call delivered to a tandem office, and lower for a call delivered directly to an end office switch.

Stated simply, if Western Wireless delivers traffic at an RTC end office switch – referred to as a "Type 2B" connection – it should pay only a termination rate. This is referred to as a "Type 2B" rate. If, on the other hand, Western Wireless delivers traffic at a tandem switch – referred to as a "Type 2A" connection – it should pay a rate that includes termination plus transport. This is referred to as a "Type 2A rate."

For example, Sully Buttes has a tandem switch at Highmore, and its Gettysburg end office is served by that tandem switch. If Western Wireless were to deliver a Gettysburg-bound call at Highmore, it would pay tandem switching plus transmission necessary to take that call to Gettysburg, plus termination. If, on the other hand, Western Wireless were to establish a connection at Gettysburg, it would need to pay only for a termination rate.

Western Wireless expects to establish Type 2B connections in various RTC areas, and is entitled to pay the lower Type 2B rate on such connection. For that reason Western Wireless asks the Commission to establish separate Type 2A and Type 2B rates for the following RTCs that have tandem switches: Sully Buttes, Golden West, Interstate, Midstate Communications and Union.

Western Wireless will offer further analysis in its rebuttal testimony.

VIII. WESTERN WIRELESS IS ENTITLED TO CHARGE THE TANDEM INTERCONNECTION RATE (ISSUE 4)

Q: WHAT IS WESTERN WIRELESS' POSITION REGARDING THE COMPENSATION THE RTCS SHOULD PAY TO WESTERN WIRELESS FOR INTRAMTA LAND-TO-MOBILE CALLS THAT ORIGINATE ON AN RTC'S NETWORK AND TERMINATE ON WESTERN WIRELESS' NETWORK?

A: As discussed above, Western Wireless is entitled to be paid symmetrical, reciprocal compensation for terminating land-mobile calls. To implement this, where a single rate is established for calls to an RTC, that same rate will be paid by the RTC to Western Wireless for land-to-mobile intraMTA calls. For those companies that have both a Type 2A tandem rate and a Type 2B end office rate, Western Wireless is entitled to charge the RTC the higher "Type 2A" or "tandem" rate on every call it terminates from that RTC.

Q: WHY IS WESTERN WIRELESS ENTITLED TO THE TANDEM SWITCHING INTERCONNECTION RATE ON ALL CALLS ORIGINATED BY THE RTC WITH TANDEM SWITCHES?

A: All calls originated by the RTCs are switched by Western Wireless' mobile switching center, or "MSC." Under the FCC's Rules, Western Wireless' MSC is equivalent to a tandem, so the RTC must compensate Western Wireless at the tandem interconnection rate.

Q: WHY IS WESTERN WIRELESS' MSC EQUIVALENT TO AN RTC TANDEM?

A: Because Western Wireless' MSCs serve a greater geographic area than each RTC tandem switch. *See* 51.711(a)(3).

Q: HOW MANY MSCS ARE USED BY WESTERN WIRELESS TO TERMINATE INTRA-MTA CALLS ORIGINATED ON THE RTCS' NETWORKS IN SOUTH DAKOTA?

A: Western Wireless has an MSC in Rapid City and an MSC in Sioux Falls, each of which is used to terminate calls within portions of South Dakota. Every call terminated by Western Wireless is switched by an MSC.

Q: HOW LARGE ARE THE GEOGRAPHIC AREAS SERVED BY WESTERN WIRELESS' MSCS?

A: The Rapid City MSC serves an area of approximately 30,000 square miles. The Sioux Falls MSC serves an area of approximately 48,000 square miles. Exhibit RW-5 shows these coverage areas.

Q: HOW MANY TANDEM SWITCHES DO THE RTCS OPERATE IN SOUTH DAKOTA?

A: The RTCs have indicated in discovery that no RTC tandem serves a geographic area greater than that served by any Western Wireless MSC:

Company Tandem	Area Served
Sully Buttes	6268 sq. miles
Golden West	21,312
Interstate	196 (Clear Lake) 265 (Brookings)
Midstate	2210
Union	459.5

Because Western Wireless' MSCs serve areas much larger than the RTCs' tandems, Western Wireless is entitled to the Type 2A rate on all calls from these RTCs.

IX. APPLICATION OF TARIFFS (ISSUE 5)

Q: WHAT IS AT DISPUTE BETWEEN THE PARTIES WITH RESPECT TO THE APPLICATION OF TARIFFS TO WESTERN WIRELESS' PURCHASE OF FACILITIES FROM AN RTC?

A: The agreement attached to Western Wireless' Petition contains agreed-to provisions that will allow Western Wireless to purchase RTC facilities where direct connections are justified. The pricing of these facilities can be a significant impediment to the efficient provision of service in RTC areas.

Q: WHAT PRICING STRUCTURE HAVE THE RTCS PROPOSED?

A: The RTCs have proposed that facilities be priced out of intrastate access tariffs.

Q: WHAT CONCERNS DOES WESTERN WIRELESS HAVE WITH THIS POSITION?

A: Consistent with the goals of local competition, Western Wireless should be able to purchase facilities at the lowest rate available. Western Wireless is in the process of reviewing the tariff provisions that have been provided by the RTCs, and will offer further discussion in rebuttal testimony.

X. RATING OF LOCAL NUMBERS/DIALING PARITY (ISSUE 6)

Q: WHAT IS THE DISPUTE BETWEEN THE PARTIES WITH RESPECT TO WESTERN WIRELESS' ABILITY TO RATE LOCAL NUMBERS?

A: Western Wireless has licensed service areas in all RTC territories. Under numbering regulations, Western Wireless has the right to obtain numbers and rate the numbers as local to an RTC service area. Western Wireless is entitled to do this whether or not it has

a direct connection with the RTC in the service area. Once such numbers are established as local, the RTC has an obligation under local dialing parity rules to allow its customers to dial those numbers as local. The RTCs currently take the position that they will respect this local rating only if Western Wireless establishes direct facilities to the specific end office. It is neither efficient nor realistic to establish direct facilities in all of these areas. Moreover, the RTCs cannot condition their compliance with dialing parity requirements on the existence of direct facilities. The RTCs should instead use more efficient common transport to deliver calls appropriately. This is good for consumers, efficient, and consistent with the FCC's Rules and Orders.

Q: WHY IS IT IMPORTANT FOR WESTERN WIRELESS TO RATE NUMBERS IN RTC END OFFICES WITHOUT ESTABLISHING DIRECT CONNECTIONS?

A: Western Wireless' presence in the South Dakota market provides South Dakota consumers with competitive wireless service offerings, including service offerings competitive with those offered by the RTCs. If Western Wireless' customers lack the ability to receive local calls from many of the RTCs' landline subscribers, Western Wireless is placed at a competitive disadvantage, because it discourages calls from the RTCs' landline subscribers to Western Wireless' mobile subscribers. By comparison, Western Wireless' mobile subscribers in the state may place calls to any of the RTCs' landline subscribers without toll.

Q: PLEASE EXPLAIN HOW THIS ARRANGEMENT CAN BE ESTABLISHED FROM A TECHNICAL STANDPOINT.

A: Western Wireless would obtain a number block and assign that number block as local to an RTC rate center. The RTC would program its switch to recognize the numbers as local, and would deliver the calls to either an existing direct connection within the RTC service territory or over common transport facilities to the Qwest LATA tandem.

Q: ARE SUCH COMMON FACILITIES AVAILABLE?

A: Yes. My review of the RTCs' discovery response shows common trunks are in place between all RTC tandems and hosts and the Qwest LATA tandem. Alternatively, the RTCs could route traffic to their affiliate SDN for delivery at the Qwest LATA tandem. Western Wireless is directly connected to every Qwest LATA tandem in South Dakota.

Q: WHAT SHOULD THE COMMISSION ORDER REGARDING THE DELIVERY OF LAND-TO-MOBILE LOCAL TRAFFIC?

A: The Commission should adopt Western Wireless' proposed contract language in Section 4.3.2 of the Agreement, which states:

> Telephone Company agrees that originating traffic destined to a CMRS Provider NXX rated out of one of the Telephone Company's rate centers will be dialed as local and delivered to CMRS Provider via indirect connections through the LATA tandem operator when no direct connection exits.

XI. ALLOCATION OF BILLING COSTS (ISSUE 7)

Q: WHAT IS THE PARTIES' DISPUTE RELATED TO THE ALLOCATION OF BILLING COSTS?

A: The RTCs have proposed contract language that would allow them to charge Western Wireless for costs incurred by the RTC to bill reciprocal compensation. Because the

RTCs do not have the ability to measure and bill reciprocal compensation traffic, they generally purchase call records from Qwest at a cost of $0.0025 per call.

Q: DO THE RTCS NEED TO INCUR THIS COST?

A: The RTCs have not demonstrated that they need to incur this cost. It is my understanding that Qwest does provide certain summary data reports for free that would allow the RTCs to bill reciprocal compensation traffic.

Q: SHOULD WESTERN WIRELESS HAVE TO PAY THE RTCS' COSTS TO MEASURE RECIPROCAL COMPENSATION TRAFFIC?

A: No. The Act requires that transport and termination be priced at an ILEC's additional costs of terminating that traffic. 47 U.S.C. § 252(d)(2)(A). There is no provision allowing an ILEC to impose these administrative costs as "additional costs" of transport and termination. When the FCC established its cost standards for reciprocal compensation it recognized that small ILECs might incur costs to measure reciprocal compensation:

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

First Report and Order, ¶ 1045. Clearly, the FCC contemplated that a company would bear its costs of measuring and billing reciprocal compensation. In addition, any forward-looking cost methodology assumes the ILEC uses the most efficient, best available technology. 47 C.F.R. § 51.505(b)(1). Any forward-looking network would use switches with the capability to measure inbound traffic in a manner sufficient for

billing purposes. One of the fundamental provisions of the Act is that a telecommunications carrier is not required to pay for the inefficiencies existing within an ILEC's current network. *Verizon Comms. Inc. v. FCC*, 122 S. Ct. 1646, 673 (2002) (cost difference between actual costs and efficient TELRIC cost is an inefficiency that cannot be recovered).

Q: HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A: The Commission should adopt Western Wireless' proposed contract language in Section 7.2.5 of the agreement, which requires each party to bear its own billing costs.

XII. ACCESS TO NUMBERING RESOURCES (ISSUE NO. 10)

Q: WHAT ARE THE ISSUES RELATED TO ACCESS TO NUMBERING RESOURCES?

A: Western Wireless has proposed contract language requiring the RTCs to provide access to numbering resources in the same fashion as provided to other carriers. *See* Section 7.4. The RTCs have taken the position that this requirement should not be imposed. In their response to the Petition, they proposed that Western Wireless was seeking to use this issue for an attempt to obtain EAS and wide area calling services that are met necessary for interconnection. RTC Response, ¶ 43.

Q: WHAT IS YOUR RESPONSE?

A: I do not understand the RTCs' claims, but I do believe that Western Wireless is entitled to obtain an agreement containing the proposed language regarding numbering resources. Section 252(b)(3) of the Act obligates every LEC to permit all providers to have

nondiscriminatory access to telephone numbers. FCC Rule 51.217 imposes the following requirement on all LECs, even rural LECs:

> A LEC shall permit competing providers to have access to telephone numbers that is identical to the access that the LEC provides to itself.

47 C.F.R. § 51.217(c)(1). Western Wireless' proposed contract language is consistent with FCC rules and should be adopted.

XIII. EAS DIALING PARITY (ISSUE 11)

Q: SHOULD WESTERN WIRELESS' NUMBERS RATED OUT OF AN RTC END OFFICE RECEIVE THE SAME DIALING TREATMENT AS OTHER NUMBERS WITHIN THAT LOCAL CALLING AREA OR EXTENDED AREA SERVICE AREA?

A: Yes they should. As discussed above, Western Wireless has the right to rate numbers within an RTC rate center. Once it does so, landline customers within that rate center – including any EAS – should be able to dial the Western Wireless local numbers on a local basis. This is local dialing parity, and it is an obligation of every LEC:

> A LEC shall permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer's or the called party's telecommunications service provider.

47 C.F.R. § 51.207. Western Wireless simply seeks compliance with this rule.

For example, Western Wireless plans to obtain a block of numbers rated as local to the Sully-Buttes Britton exchange. Britton is EAS to Sully-Buttes' Langford exchange, which means customers in Langford can call customers in Britton as part of their local calling area. Western Wireless wants to ensure that its local numbers in Britton can be called by Langford residents on a local basis. Quite clearly, if Sully-Buttes requires its

customers to dial extra digits simply because of the identity of the called party's carrier, that would violate FCC Rule 51.207.

Q: HOW WOULD THE COMMISSION IMPLEMENT WESTERN WIRELESS' REQUESTED RESOLUTION OF THIS ISSUE?

A: Western Wireless has asked the Commission to approve final agreements that include ILEC specific information, including applicable local calling areas. *See* Issue 25 (discussed infra). Attached as Ex. RW-6 are copies of each such proposed attachment. This information was obtained from the RTCs in discovery so should be accurate. Approval of this carrier-specific information will make clear the scope of each RTC's dialing parity obligations.

XIV. PROCEDURE FOR NEGOTIATION (ISSUE 12)

Q: WHAT IS THE PARTIES' DISPUTE REGARDING THE PROCEDURE FOR RENEGOTIATION?

A: Western Wireless has proposed an orderly procedure for contract renegotiation that will ensure there is no gap between termination of this contract and the effective date of a new agreement. We think this procedure will give the parties the best chance to negotiate a new agreement without resorting to arbitration, and will ensure that new rates can be effective at the most appropriate time.

XV. RECIPROCAL COMPENSATION CREDIT FACTOR (ISSUE 13)

Q: WHAT IS A RECIPROCAL COMPENSATION CREDIT FACTOR?

A: Because of technical difficulties and costs associated with measuring land-to-mobile traffic, CMRS providers and ILECs generally agree to an assumed land-to-mobile traffic percentage, and then the assumed land-to-mobile minutes are netted on the ILEC's

invoice to the CMRS provider. For example, assume there were 700 land-to-mobile minutes in a billing period. A 30% reciprocal compensation credit factor would mean that 30% of total traffic, or 300 minutes, was land-to-mobile. The ILEC would offset the 700 minutes against the 300 minutes and bill the CMRS carrier for the remaining 400 minutes.

Q: WHAT DO THE PARTIES' CURRENT AGREEMENTS ON THIS POINT PROVIDE?

A: Today the parties operate under agreements that assume 83% of reciprocal compensation traffic between the parties is mobile-to-land traffic, and 17% is land-to-mobile traffic.

Q: WHAT IS AN APPROPRIATE PERCENTAGE TODAY?

A: Our experience is that the gap is narrowing significantly as people are receiving more calls on their mobile phones. In the Oklahoma arbitration case the rural companies were not able to show that traffic was out of balance between any two companies. At this time, however, we do not have the data to show specific percentages in South Dakota, but we are in the process of trying to complete such a study. A preliminary analysis, for example, shows that traffic between Golden West and Western Wireless is near 30% land-to-mobile, and traffic between Bookings/Switftel and Western Wireless is near 40% land-to-mobile. When we complete this analysis we expect that it will show an 83%-17% factor to be far too low, at least in some of the more significant RTC areas. We will make that information available to the RTCs when we have it.

XVI. SHARED FACILITY FACTOR (ISSUE 14)

Q: WHAT IS A "SHARED FACILITY FACTOR"?

A: A shared facility factor is much like reciprocal compensation credit factor – it is an assumption about the amount of land-to-mobile versus mobile-to-land traffic transmitted over direct interconnection facilities. Under the FCC's rules, a LEC must pay its portion of two-way facilities.

Q: WHAT DOES WESTERN WIRELESS PROPOSE?

A: In our experience, the existence of two-way direct facilities (and thus numbers) leads to increased land-to-mobile calling in an area. We therefore seek a shared facility factor that is somewhat higher than the applicable reciprocal compensation credit factor.

XVII. TRANSIT RATES (ISSUE 15)

Q: DOES THE COMMISSION NEED TO ESTABLISH TRANSIT RATES IN THIS PROCEEDING?

A: It is unclear at this time whether that will be necessary. I will have to review the RTCs' direct testimony and will respond in my rebuttal testimony.

XVIII. CARRIER-SPECIFIC INFORMATION (ISSUE 16)

Q: WHAT DOES WESTERN WIRELESS REQUEST WITH REGARD TO CARRIER-SPECIFIC INFORMATION?

A: Western Wireless requests that each final agreement contain an appendix showing each RTC exchange, switch, CLLI code, numbers, and local calling areas. Proposed appendices are attached as Ex. RW-6. This information is not always easy to find, and will be important information to have ready access to as the parties implement the

agreements. Because this information was provided by each RTC, they should have no objection to its use.

XIX. STATUTE OF LIMITATIONS (ISSUE A)

Q: WHAT IS THE PARTIES' DISPUTE REGARDING THE STATUTE OF LIMITATIONS?

A: Western Wireless wants to establish a contractual statute of limitations so that potential claims must be brought in a reasonable time. Western Wireless proposes two years from accrual of a cause of action, which should be sufficient time to allow any Party to bring a claim. It is also the statute of limitations under federal law (47 U.S.C. § 415), which is appropriate given that this is an agreement governed by federal law.

Q: WHAT DO THE RTCS PROPOSE?

A: The RTCs propose a six year statute of limitations, which is unreasonable and unnecessary from a business perspective. Nearly all business contracts, including interconnection agreements, include a provision for a one or two year statue of limitations on claims.

XX. IDENTIFICATION OF INTER-MTA TRAFFIC (ISSUE B)

Q: WHAT IS PARTIES' DISPUTE REGARDING THE IDENTIFICATION OF INTERMTA TRAFFIC?

A: This issue was raised by the RTCs in their response, but it is unclear exactly what the RTCs propose. Western Wireless acknowledges that interMTA calls are excluded from reciprocal compensation. In addition, land-to-mobile interMTA calls may be subject to interstate access charges under certain circumstances. However, it is our belief that the amount of interMTA calls delivered between Western Wireless and the RTCs in South

Dakota will be de minimus. Because this is an issue raised by the RTCs, I will address it further in my rebuttal testimony.

Q: DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A: Yes, it does.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA 09

IN THE MATTER OF: APPLICATION OF SOUTHWESTERN BELL WIRELESS L.L.C. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	Cause No. PUD 200200149
IN THE MATTER OF: APPLICATION OF AT&T WIRELESS SERVICES, INC. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	Cause No. PUD 200200150
IN THE MATTER OF: APPLICATION OF W.W.C. LICENSE, L.L.C. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACTOF 1996	)	Cause No. PUD 200200151
IN THE MATTER OF APPLICATION OF SPRING SPECTRUM, L.P. D/B/A SPRINT PCS FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	Cause No. PUD 200200153 ORDER NO. 466613

HEARING: August 1, 2002, before the Commission *en banc*

APPEARANCES: Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"), J. Paul Walters, Jr.;
AT&T Wireless Services Inc., Marc Edwards and Lawrence S. Smith;
WWC License, LLC ("Western Wireless"), Mark J. Ayotte, Philip R. Schenkenberg and Dallas E. Ferguson;
Sprint Spectrum, L.P. d/b/a/ Sprint PCS ("Sprint Spectrum"), Brett D. Leopold and Nancy Thompson;
Public Utility Division, Maribeth D. Snapp, Deputy General Counsel and Elizabeth Ryan, Assistant General Counsel;
The Rural Independent Local Exchange Companies, Ron Comingdeer, Kendall W. Parrish, and Kimberly K. Brown.

INTERLOCUTORY ORDER

EX RW-1

AUG 12 2002

RECEIVED

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, the above-consolidated Causes come on for consideration and order, regarding the Arbitrator's Report and Recommendation on the unresolved issues of the interconnection agreements between the Commercial Mobile Radio Service Providers ("CMRS Providers")[1] and the Rural Independent Local Exchange Companies ("RTCs").[2]

This Cause is an arbitration of interconnection agreements pursuant to the Telecommunications Act of 1996 ("ACT") [47 U.S.C. § 252]. The subject of the interconnection agreements in this Cause concern wireless to landline calls and landline to wireless calls between CMRS Providers and RTCs. The parties agreed to many provisions of the interconnection agreements; however negotiations broke down over the reciprocal compensation arrangements for telecommunication transport and termination, and the rate for that telecommunication transport and termination. Accordingly, the CMRS Providers filed petitions before the Commission for arbitration of the unresolved issues pursuant to the Act.

---

[1] Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"); AT&T Wireless Services Inc.; WWC License, LLC ("Western Wireless"); Sprint Spectrum, L.P. d/b/a/ Sprint PCS ("Sprint Spectrum")

[2] Atlas Telephone Company; Beggs Telephone Company; Bixby Telephone Company; Canadian Valley Telephone Company; Central Oklahoma Telephone Company; Cherokee Telephone Company; Chickasaw Telephone Company; Chouteau Telephone Company; Cimarron Telephone Company; Cross Telephone Company; Dobson Telephone Company; Grand Telephone Company; Hinton Telephone Company; KanOkla Telephone Association; McCloud Telephone Company; Medicine Park Telephone Company; Oklahoma Telephone & Telegraph; Oklahoma Western Telephone Company; Panhandle Telephone Cooperative, Inc.; Pine Telephone Company; Pinnacle Communications; Pioneer Telephone Cooperative, Inc.; Pottawatomie Telephone Company; Salina-Spavinaw Telephone Company; Santa Rosa Telephone Cooperative, Inc.; Shidler Telephone Company; South Central Telephone Association; Southwest Oklahoma Telephone Company; Terral Telephone Company; Totah Telephone Company, Inc. and Valliant Telephone Company.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission having considered the recommendation of the Arbitrator, Administrative Law Judge Robert E. Goldfield, the record in the above-consolidated Causes and the oral argument of counsel, finds as follows:

The Commission finds that it has jurisdiction in the Cause pursuant to the Telecommunications Act of 1996, 47 U.S.C. §§ 251 & 252; Title 17 O.S. 131 et seq., and Commission rules OAC 165: 55 et seq.

The Commission further finds that notice was properly given pursuant to the law and the Commission's rules.

The Commission further finds that the Order issued in this Cause is applicable to the parties of this Arbitration only.

The Commission further finds that the procedural history, summary of evidence and the standard of review set forth in the July 2, 2002, Report and Recommendations of the Arbitrator are, hereby, adopted as the procedural history, summary of evidence and the standard of review of the Commission. Furthermore, the Report and Recommendations of the Arbitrator, which is attached hereto as "Attachment A" is incorporated herein by reference.

The Commission further finds that the recommendations of the Arbitrator regarding the disputed issues between CMRS Providers and RTCs, which were not appealed by any party, are adopted as the findings of the Commission.

The Commission further finds that the recommendations of the Arbitrator regarding the unresolved issues of the interconnection agreements, which the RTCs appealed, is hereby adopted as the findings of the Commission. Specifically, the Commission finds as follows regarding the unresolved issues:

Unresolved Issue No. 1. What traffic within a Major Trading Area is subject to reciprocal compensation?

The Arbitrator recommended that all traffic exchanged between the parties, which originates and terminates in the same Major Trading Area as determined at the beginning of the call, is subject to reciprocal compensation. Such traffic shall be referred to as intra-MTA traffic hereafter.

Unresolved Issue No. 2. Do reciprocal compensation principles apply when the parties are not directly interconnected?

The Arbitrator recommended that each carrier must pay each other's reciprocal compensation for all intra-MTA traffic whether the carriers are directly or indirectly connected, regardless of an intermediary carrier.

Unresolved Issue No. 3. May the RTCs charge terminating access rates for any traffic in an intra-MTA area or Major Trading Area?

The Arbitrator recommended that calls made to and from CMRS Providers within the major traffic area are subject to transport and termination charges rather than interstate and intrastate access charges.

Unresolved Issue No. 4. What are the appropriate rates to be charged for transport and termination of traffic subject to reciprocal compensation?

The Arbitrator recommended that, at this time, a rate should not be set. Agreeing with Staff, the Arbitrator recommended that transport and termination be provided on a "bill and keep" basis until an individual study

establishes that it is economically and justifiably appropriate to do otherwise. If the Commission determines that an imbalance in the exchange of intra-MTA traffic is occurring, then a forward-looking cost study should be done to establish a rate.

Unresolved Issue No. 5. Is the Hatfield Associates Inc., (HAI) Model an appropriate model for determining rates in accordance with FCC rules and orders for Section 251 (b) (5) traffic?

The Arbitrator recommended that the HAI model was not an appropriate model. The Arbitrator stated that the model is suspect and unreliable due to the ability to manipulate inputs to obtain a desired result.

Unresolved Issue No. 6. Is it reasonable and in compliance with the FCC requirements for RTCs to utilize a composite rate?

The Arbitrator, for the following reasons, recommended that it was not reasonable to utilize a composite rate: (1) A uniform transport and termination rate is not appropriate because each company must have its own rate based upon its own costs; (2) It is inappropriate to develop costs on either an aggregate, weighted average, or composite basis; (3) It is inappropriate to average tariff rates to arrive at a uniform rate for every company; and finally (4) It is inappropriate to average the results of a cost study to support a rate.

Unresolved Issue No. 7. Is Western Wireless entitled to be compensated at the tandem interconnection rate?

The Arbitrator recommended that the rates are to be symmetrical utilizing the RTC's tandem interconnection rate.

Unresolved Issue No. 8. Is Western Wireless entitled to establish a single point of interconnection at a tandem switch and obtain a virtual NPA NXX in the RTC's end office switches?

The Arbitrator recommended that Western Wireless have the option of establishing local numbers in an RTC's switch without having a direct connection.

Unresolved Issue No. 9 (A). How should "Cell Site" be defined?

The Arbitrator recommended that the definition be consistent with the definition used by SWBT in its Wireless Interconnection Agreement, which is as follows: "Cell Site is a transmitter/receiver location, operated by the cellular carrier, through which radio links are established between the cellular system and mobile units. The area reliably serviced as a given call site is referred to as a 'cell.'"

Unresolved Issue No. 9 (B). How should "traffic" be defined?

The Arbitrator recommended that the definition be the definition used in 47 C.F.R. 51.701(b)(2) which states that telecommunications traffic is traffic exchanged between a local exchange carrier and a CMRS Provider which, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. § 24.202(a).

Unresolved Issue No. 9 (C). Should the contract contain incomplete sentences that do not clearly relate to any other sections?

The Arbitrator recommended striking those paragraphs that contained incomplete sentences that did not relate to any other section. (Paragraph 2.2, 2.3 and 2.4)

Unresolved Issue No. 9 (D). What language regarding Internet Service Provider ("ISP") traffic should be adopted?

The Arbitrator recommended that the language in Paragraph 2.5 of the CMRS Providers' proposed agreement be used, which primarily states that there is no internet service provider bound traffic between them and that internet service provider bound traffic will not be separately identified or accounted for under the agreement.

Unresolved Issue No. 9 (E)(1). What language should be adopted for Section 3.0 in the contract?

The Arbitrator recommended that the terms "transport and termination" in relation to CMRS Providers' traffic be utilized.

Unresolved Issue No. 9 (E)(2). Must a Type 2A and 2B interconnection be physically located within the wire center boundary of the telephone company's tandem switch?

The Arbitrator recommended that a Type 2A and 2B connection need not be located within a RTCs' end office exchange boundary, but § 251(a) of the Act does not require the RTCs to construct facilities beyond their exchange boundaries to provide interconnection at the request of a wireless carrier.

Unresolved Issue No. 9 (E)(3). When the percentages of usage on two-way interconnection trunks are reviewed and modified, shall charges between the parties be trued-up?

The Arbitrator did not recommended a true up, but rather recommended that if the parties can measure the actual minutes of use, they shall bill accordingly.

Unresolved Issue No. 9 (E)(4). Under what circumstances may a point of interconnection be changed?

The Arbitrator recommended that the point of interconnection should not be changed without agreement of the parties.

Unresolved Issue No. 9 (F). Should the contract contain a provision addressing circumstances when traffic levels are "de minimus"?

Since the Arbitrator recommended "bill and keep" as the primary compensation mechanism, a de minimus provision is not necessary.

Unresolved Issue No. 9 (G). Should the Commission adopt the CMRS Providers' proposal for determining the origination and termination points of a call?

The Arbitrator recommended Staff's position that the origination point of a call is the location of the initial cell site when a call begins.

Unresolved Issue No. 9 (H). What is the proper time period for payment of amounts due on a billing statement?

The Arbitrator, agreeing with the RTCs, recommended that the proper time period for payment is 30 days from the date of the billing statement.

Unresolved Issue No. 9 (I). Should the CMRS Providers be solely responsible for the services they provide to their end users?

The Arbitrator, agreeing with RTCs, recommended that each party be responsible for the services they provide to their respective end users, and, therefore language should be included to reflect the reciprocal nature of the parties' responsibilities.

Unresolved Issue No. 9 (J). (Has been resolved.)

Unresolved Issue No. 9 (K). Should the contract contain the proposed wording in Paragraph 14.21 involving expanded networks, and should the terms and rates of the Agreement apply to such expanded networks?

The Arbitrator recommended that CMRS Providers provide notice to the RTCs prior to implementation, and that the notice requirement also apply to affiliates of the wireless carriers.

The Commission further finds that with respect to Unresolved Issue No. 4, regarding the Commission utilizing the "bill and keep" method instead of establishing a reciprocal compensation rate, that the Commission appreciates the concern of the RTCs. However, although the Commission finds that there is a presumption of "balanced traffic," nothing in this Order precludes a RTC from filing an application to rebut that presumption by arguing that an imbalance of traffic is occurring and that the RTC is losing revenue. Upon an RTC filing an application, a hearing can be set where the RTC will have an opportunity to persuade the Commission through the presentation of individual traffic and cost studies, whereby, the Commission may set an appropriate reciprocal compensation rate for the RTC.

The Commission further finds that pursuant to Commission Order No. 462431, the parties are to prepare their respective interconnection agreements in conformance with the Commission's Order herein by August 22, 2002.

ORDER

IT IS, THEREFORE, THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the Report and Recommendation of the Arbitrator, attached hereto and marked Attachment A, is adopted by the Commission, and that the above Findings of Fact and Conclusions of Law, are, hereby, the Order of the Commission.

OKLAHOMA CORPORATION COMMISSION

DISSENT

Chairman Denise A. Bode

Vice Chairman Bob Anthony

Commissioner Ed Apple

DONE AND PERFORMED THIS 9TH DAY OF AUGUST, 2002

Secretary, Peggy Mitchell

ATTACHMENT A

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF: APPLICATION OF SOUTHWESTERN BELL WIRELESS LLC FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200149
IN THE MATTER OF APPLICATION OF AT&T WIRELESS SERVICES, INC. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200150
IN THE MATTER OF APPLICATION OF WWC LICENSE, LLC) FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200151
IN THE MATTER OF APPLICATION OF SPRINT SPECTRUM, L.P. D/B/A SPRINT PCS FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200153

REPORT AND RECOMMENDATIONS OF THE ARBITRATOR

I. Procedural History

Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"), AT&T Wireless Services, Inc. ("AWS"), WWC License, LLC ("Western Wireless") and Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint Spectrum") (collectively, the "CMRS Providers") petitioned the Oklahoma Corporation Commission ("Commission"), pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) (the "Act"), to arbitrate unresolved issues after unsuccessful negotiations for a reciprocal transport and termination agreement between the CMRS Providers and the respondent Rural Telephone Companies ("RTCs"). The CMRS Providers are Commercial Mobile Radio Service providers, licensed to provide cellular telecommunications service within the State of Oklahoma. The negotiations between the CMRS Providers and the RTCs resulted in the agreement attached to each petition filed by each respective CMRS Provider (collectively, the "Agreement"). The Agreement sets forth the terms and conditions to which the parties have agreed, as well as language proposed by the parties regarding the unresolved issues for

arbitration. The final unresolved issues are summarized in the Final Issues Matrix filed in this cause.

On April 2, 2002, the Commission issued its Order consolidating the causes filed by Cingular (PUD 200200149), Western Wireless (PUD 200200151) and Sprint Spectrum (PUD 2000200153) into the cause filed by AWS, PUD 200200150, as the surviving cause for purposes of the petitions of arbitration filed by the CMRS Providers.

This Cause came on for hearing on the merits pursuant to Notice and Order of the Commission on June 17-19, 2002. The Administrative Law Judge, Robert E. Goldfield, acting as arbitrator pursuant to the Act ("Arbitrator"), proceeded to hear testimony of witnesses sworn and examined and to take evidence on the record. At the conclusion of the hearing on the merits, the Arbitrator took the issues presented under advisement, and after due deliberation, issued this Report and Recommendations of the Arbitrator.

II. Standards of Review

The Act gives the state commissions guidelines and procedures for approval of either negotiated or arbitrated agreements. State commissions are to limit consideration of any petition for arbitration (and any response thereto) to the issues set forth in the petition and in the response. 47 U.S.C. §252(b)(4). The state commission is to resolve each issue set forth in the petition, and the response, by imposing appropriate conditions if required to implement the requirements of §251 of the Act. 47 U.S.C. §252(b)(4)(c).

All parties have submitted extensive testimony, as well as briefs in these proceedings. The Arbitrator made no decision with respect to settled issues. The Arbitrator makes his recommendations on the disputed issues based upon the evidentiary record contained in this consolidated cause, the prefiled testimony, briefs filed by the parties and the testimony of the witnesses appearing on behalf of the parties.

III. Summary of Evidence

Summaries of the testimony of witnesses presented in this Cause are attached as Exhibit A.

IV. Findings of Fact, Conclusions of Law and Recommendations

The recommendations of the Arbitrator as to each disputed issue are reflected in Exhibit B attached to this Report. In addition to what is included within Exhibit B, the Arbitrator makes the following findings and conclusions:

1. The Commission has jurisdiction over the issues addressed in this matter pursuant to Commission Rule Subchapter 165:55-17 and 47 U.S.C. §§ 251-252.

2. The Commission finds that the recommendations made herein in no way affect past OCC orders regarding access rulings or anything else, as these matters all concern land line to land line calls.

3. The Arbitrator further finds that this cause concerns wireless to land line and land line to wireless calls and concerns wireless carriers, a carrier that we don't regulate, and a land line carrier that we do regulate. Therefore, the Arbitrator further finds that OCC rules and regulations of the OCC generally do not apply.

4. The Arbitrator finds the FCC regulations generally apply in this case. The effects of those regulations result in some strange final determinations, for instance, the much maligned local call from Broken Bow to Boise City. Despite some argument to the contrary, the Arbitrator finds that the MTA controls this case and most of its results.

5. Each RTC is an incumbent local exchange carrier, and each of the CMRS Providers is a CMRS provider as defined by the FCC.

6. Section 251(b)(5) of the Act and FCC Rule 51.703 require local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of "telecommunications traffic".

7. FCC Rule 51.701(b) defines "telecommunications traffic" between a local exchange carrier and a CMRS provider to be traffic that "at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter."

8. A bill-and-keep arrangement as defined in FCC Rule 51.713 is an acceptable mechanism for providing reciprocal compensation between carriers.

9. FCC Rule 51.711 requires transport and termination rates to be symmetrical, which means that the rates charged by an incumbent local exchange carrier for transport and termination are the same rates charged by a carrier other than an incumbent local exchange carrier.

10. The RTCs proposed a reciprocal compensation rate of $0.053804. That rate is not based on a reliable, forward looking cost study. In addition, the proposed rate was stated to be equivalent to the RTC's Radio Common Carrier tariffed rate. However, the RTC's RCC tariff does not contain a rate, but instead cross-references the RTC's ORTC intrastate access tariff. The reciprocal compensation rate proposed by the RTCs in this proceeding is in fact their intrastate terminating access rate.

11. The Arbitrator further finds that the Hatfield model, which was utilized by the RTCs herein, has already been found suspect by the Arbitrator in at least one previous hearing due to the ability of the persons using it to be able to manipulate the inputs to reach about almost any imaginable result. In this case the result utilizing the Hatfield model is approximately ten cents per minute, but the RTCs are gracious and offer a 50 percent discount. To be even more gracious, they offer to use input suggested by the wireless carriers' experts even though their inputs were not an exhaustive study.

12. The Arbitrator further finds that there is no comparison between the RTC rural areas and SWBT's generally high density city areas, but if the RTC's rate is 29 times higher than that of Southwestern Bell Telephone Company, the Arbitrator questions the differences between the varied RTCs. So the Arbitrator finds that it seems to be impossible for an average cost study to be representative of all those varied companies. It doesn't really matter whether 1994 data or the 2000 data, which was not allowed, is used, the results are still questionable.

13. Because no forward-looking rate was established, and traffic is roughly balanced, bill-and-keep should be adopted as the appropriate mechanism for providing reciprocal compensation. Any party may seek to establish rates in a subsequent docket, but must present an individual cost study that complies with the Act, and must show that establishing rates and rendering bills is more economically appropriate than bill and keep.

14. Western Wireless' mobile switching centers serve a geographic area greater than that served by any RTC tandem switch. In accordance with FCC Rule 51.711(a)(3), if rates are established in a subsequent docket, Western Wireless will be compensated at the RTC's tandem interconnection rate on all calls.

15. Exhibit B reflects the issue and the recommendation as to each issue by identifying which of the competing provisions or positions proposed by the parties for identified sections of the Agreement (whether or not modified by the Arbitrator) are recommended by the Arbitrator. Only the language recommended by the Arbitrator is indicated on the attached Exhibit B. If approved, this Report and Recommendation and Exhibit B reflect the decision announced by the Arbitrator orally on July 2, 2002, which is formally submitted for recommendation by this Report and Recommendation on this day.

V. Conclusion

The Arbitrator has made the Findings and Recommendations as set forth above based upon the requirements of the Telecommunications Act of 1996 and the record created by the parties. If this recommendation is adopted, the parties would be ordered to submit for approval, in accordance with the procedural schedule, revised interconnection agreements (a total of 128 agreements) that conform the rulings herein.

Robert E. Goldfield
ROBERT E. GOLDFIELD
AdministrativeLawJudge

July 2, 2002
Date

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

A. CMRS Providers' Witnesses

Direct Testimony of William H. Brown

William H. Brown, Senior Interconnection Manager, testified on behalf of Cingular. Mr. Brown's testimony addressed the following issues: (1) the appropriate inter-carrier compensation arrangements between Cingular and the RTCs, (2) the appropriate rates for transport and termination of traffic, (3) whether the contract provisions should be reciprocal, and (4) miscellaneous contract issues.

1. Inter-Carrier Compensation Arrangements

The Act requires telecommunications carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Three basic types of calls involved in this arbitration are subject to reciprocal compensation principles: (1) calls which originate and terminate within a Wide Area Calling Plan (WACP) and also within a Major Trading Area (MTA); (2) mobile to landline calls which do not fall within a WACP, but do fall within an (MTA); and (3) landline to mobile calls which do not fall within a WACP but do fall within a single MTA.

a. IntraMTA, Intra-WACP Traffic

Reciprocal compensation principles should apply to all intraMTA calls that originate and terminate within a WACP. In Oklahoma, all landline-to-landline calls within a WACP are treated as local, and under the FCC regulations, reciprocal compensation principles apply to the transport and termination of such calls. There is no justification for treating Cingular differently than a wireline carrier for intraMTA traffic exchanged within a WACP.

Despite the RTCs' assertion that reciprocal compensation principles apply only to traffic exchanged through direct interconnection, "the Act defines the duty of all telecommunications carriers 'to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers". [Emphasis added.] 47 U.S.C. § 251(a)(1). Thus, even if Cingular is indirectly interconnected with an RTC, reciprocal compensation principles apply to all intraMTA, intra-WACP traffic.

b. Mobile-Originated, Intra-MTA Traffic

Cingular and the RTCs should also apply reciprocal compensation principles to all mobile-originated traffic that originates and terminates within the same MTA, even if it does not originate and terminate within a WACP. 47 CFR. § 51.701(b)(2) defines telecommunications traffic involving a CMRS provider as "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." Section 51.701 as a whole requires companies exchanging "telecommunications traffic" to apply reciprocal compensation principles to such traffic. Thus, when a CMRS provider originates traffic to a LEC, reciprocal compensation principles apply if the call originates and terminates

within the same MTA, even if the MTA is larger than the WACP, and even if the call would be treated as exchange access if sent landline-to-landline.

c. Landline-Originated, Intra-MTA Traffic

The RTCs, citing Order No. 399040 in Cause Nos. 95-117 and 95-119, assert that they are required to hand-off to an interexchange carrier (IXC) all landline-to-mobile traffic terminating outside a WACP. The order, however, is silent on the relationship between landline and CMRS providers. Under the FCC rules discussed above, all mobile to landline calls that originate and terminate within the same MTA (even if they don't originate and terminate within the same WACP) are subject to reciprocal compensation principles.

2. Transport and Termination Rates

47 C.F.R. § 51.711(a) requires that "[r]ates for transport and termination of local telecommunications traffic shall be symmetrical." Section 51.705 requires that rates be based on "forward looking costs of transport and termination, using an appropriate cost study." The rate proposed by the RTCs does not comply with these FCC rules. Therefore, the Commission should adopt as a proxy the TELRIC-based reciprocal compensation rate established by the Commission for Southwestern Bell Telephone Company - $0.003551 per minute of use.

Although the FCC requires Cingular and the RTCs to reciprocally compensate each other for the transport and termination of telecommunications traffic, the RTCs do not believe they owe reciprocal compensation to Cingular. Two separate paragraphs in the proposed interconnection agreement would remove from the terms of the contract all landline to mobile traffic, relieving the RTCs of the obligation to reciprocally compensate Cingular. The RTC argument is inconsistent with FCC rules, and the contract provisions should not be adopted by the Commission.

3. Reciprocity

As a general rule, the contract principles should be reciprocal. The Commission should reject all RTC-proposed contract language that places obligations only upon Cingular but not upon the RTCs. Thus, the Commission should reject all RTC-proposed language that would remove from the terms of the agreement all landline to mobile traffic, thereby relieving the RTCs of the obligation to reciprocally compensate Cingular.

Similarly, the billing provisions in the contract should be reciprocal. The RTC-proposed billing provisions that are not reciprocal should be rejected. Likewise, the liability limitations provisions should be reciprocal.

4. Miscellaneous Contract Issues

Finally, Mr. Brown testified concerning various miscellaneous contract issues, as follows:

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

1. The word "fixed" should be deleted from the definition of the term "Cell Site," because wireless carriers occasionally use mobile cell sites for emergency service, network evaluation or maintenance.

2. The terms "Local Access and Transport Area", "LATA", "Local Service Provider", "Access Tandem", and "Wireless Tandem" should be deleted as inapplicable.

3. Paragraphs 2.2 and 2.3, should be deleted, because they do not contain complete sentences, and the RTCs have been unable to explain their purpose.

4. The RTCs' proposed paragraph 2.5, regarding the treatment of internet-bound traffic, is inconsistent with the FCC's Order on Remand in Docket 96-98, released April 27, 2001, and should be replaced with Cingular's proposed paragraph.

5. The language in paragraph 3 proposed by the RTCs is peculiar to local exchange service and should be replaced with Cingular's proposed language which contains phrases appropriate to an agreement for reciprocal compensation between a CMRS carrier and an RTC.

6. Paragraphs 3.1.2 and 3.1.3, as proposed by the RTCs, should be deleted because they require that Type 2A and 2B interconnection be physically located within the wire center boundary of an RTCs' switch. This is neither required by law or network considerations. Cingular's language for these paragraphs should be adopted.

7. Cingular proposes the deletion of the RTCs' paragraph 3.2.1.2 which would allow the RTCs the unilateral and uncontrolled discretion to force a CMRS carrier to relocate its facilities. Cingular proposes language allowing the relocation of connected facilities only after consultation and agreement between the parties.

8. Paragraph 7.2.6 should be deleted, because it holds Cingular "solely responsible" for its services. That is inconsistent with the agreed-to liability language, is not reciprocal and ignores the RTCs' responsibility for the RTCs' portion of a call.

9. The language in paragraph 7.5 relating to maintenance of entries in the Local Exchange Routing Guide should be modified as proposed by Cingular to make the responsibilities of Cingular and the RTCs reciprocal.

10. Paragraph 13.0 should be removed, because it requires Cingular to furnish proof to the RTCs of Cingular's right to provide CMRS service in Oklahoma. No such state certification requirement exists.

11. Paragraph 14.21 describes a type of business combination or extension common in the provision of CMRS service and should be adopted by the Commission as a matter of business convenience to both parties.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

Brown Rebuttal Testimony

Mr. Brown filed rebuttal testimony addressing allegations contained in the direct testimony of Gary M. Jay, C. Roger Hutton and William S. McBride of the RTCs.

The rebuttal testimony addressed three major points: (1) the RTCs are inappropriately handing off to interexchange carriers (IXCs) landline-originated, intraMTA calls which terminate to Cingular within a Wide Area Calling Plan (WACP); (2) the RTCs should not be required to hand off to IXCs, wireline-originated traffic that terminates to Cingular within the same Major Trading Area (MTA) but outside the WACP; (3) the RTCs are inappropriately attempting to charge Cingular switched access rates for the termination of wireless-originated traffic that originates and terminates in the same WACP or in the same MTA.

1. Landline to Wireless Intra-MTA, Intra-WACP Traffic

The RTCs take the position that when an RTC end-user places a call to a Cingular subscriber, this traffic is interexchange traffic and must be handed off to an IXC, even if the traffic originates and terminates within a WACP. The rationale given is that Cingular does not have a direct connection with the RTC end offices, but rather connects directly to SWBT tandems, and SWBT connects directly to the RTCs. This means that Cingular customers have numbers associated with a Cingular Mobile Switching Center in SWBT territory, rather than an RTC end office. Thus, RTC customers may be paying a toll charge to make an intra-WACP call to a Cingular customer. The RTCs are not justified in handing off intra-WACP calls to an IXC. Under Commission orders, all calls placed within a WACP are treated as local.

Cingular agrees that reciprocal compensation principles under Section 251(b)(5) do not apply to traditional access traffic. The question is, in a wireless context, what is traditional access traffic? An example is the requirement that Regional Bell Operating Companies (RBOCs) which have not been granted Section 271 relief must hand off interLATA traffic to an IXC. Where RBOCs are not required to hand off traffic to an IXC, on the other hand, reciprocal compensation principles apply.

IntraMTA, Intra-WACP traffic clearly is not traditional access traffic, and the RTCs should not hand it off to an IXC. The bulk of Cingular's traffic in Oklahoma is exchanged with the RTCs in the Tulsa and Oklahoma City WACPs. If the RTCs are currently handing off to an IXC all landline to wireless traffic originating and terminating within a WACP, their customers may be receiving inappropriate toll charges for local calls, and Cingular is being denied reciprocal compensation for the termination of such traffic.

The RTCs are taking the same position with regard to CLECs which do not have a direct connection with the RTCs. The RTCs send all intra-WACP traffic, originated by RTC end users and bound for a CLEC, to an IXC. This treatment of landline to landline intra-WACP traffic as toll traffic is in contravention of Commission orders.

RTC witness McBride is incorrect when he alleges that Southwestern Bell Telephone routes landline-originated, intraMTA, intra-WACP calls to an IXC. SWBT delivers such traffic directly to Cingular. Cingular and Southwestern Bell apply reciprocal compensation principles to all intraMTA, intra-WACP traffic.

Mr. Brown stated that the Commission should adopt Cingular's proposed language that would require reciprocal compensation principles be applied to all landline-originated, intraMTA, intra-WACP calls.

2. Landline to Wireless, Intra-MTA Traffic

Landline-originated, intra-MTA traffic terminating to Cingular outside a WACP should be treated the same as intraMTA, intra-WACP traffic. Reciprocal compensation principles should apply, and the RTCs should not hand off such traffic to IXCs. The RTCs argue that Order No. 399040 in Cause No. 95-117 and 95-119 requires them to hand off to an IXC all landline-to-mobile traffic, regardless of the points of origin or termination. As discussed above, this is clearly inappropriate in the case of intraMTA, intra-WACP traffic and is equally inappropriate in the case of intra-MTA traffic that terminates outside a WACP. The order involves only landline traffic. The order is silent regarding wireless traffic and the relationship of wireline and wireless carriers. Interjecting an IXC into a call that originates and terminates within the same MTA is needless and inconsistent with federal law.

The Commission should rule in this arbitration that RTC-originated, intra-MTA calls that terminate outside a WACP should be considered as local traffic. Cingular would charge reciprocal compensation rates to the originating RTC for such traffic. This would be consistent with the FCC rulings which state "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges."

RTC witness McBride is wrong in alleging that Cingular expects "to collect on the same minute of use from three separate sources: the Access Provider, the IXC and their own wireless subscriber." Both Cingular and the RTCs will charge their own customers for use of their networks. No one disputes that. If the call were local, Cingular would bill reciprocal compensation only to the RTC originating the call, and nothing to the transiting carrier. If the call were toll, Cingular would bill the IXC only, not the RTC.

3. Wireless to Landline Intra-MTA Traffic

The FCC is very clear about wireless originated traffic. All such traffic is to be treated as local for reciprocal compensation purposes provided such traffic originates and terminates within the same MTA. Cingular recognizes its obligation to compensate the RTCs for terminating all Cingular–originated, intra-MTA traffic. Cingular objects, however, to paying switched access rates to the RTCs for the termination of intra-MTA traffic. The RTCs take the position that all traffic exchanged with Cingular is interexchange traffic, because Cingular does not have a direct connection with the RTCs. This position is inconsistent with FCC orders which state that "traffic

to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges." The Commission should adopt Cingular's proposed language that requires reciprocal compensation principles to be applied to all wireless-originated traffic that terminates within the same MTA and reject the RTCs proposal to allow them to charge switched access rates for all intra-WACP and intra-MTA traffic.

4. Additional Issues

Since the filing of the direct testimony, the RTCs have raised the issue whether provisions addressing direct connection arrangements should be included in this contract. The answer is yes. Mr. McBride has admitted, at page 5 of his testimony that wireless carriers are entitled to direct interconnection. Section 251(a)(1) of the Telecommunications Act specifically places upon the RTCs the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunication carriers." The contract in dispute should include provisions for direct interconnection between Cingular and the RTCs.

Brown Cross Examination Testimony

The cross examination testimony of Mr. Brown appears at pages 12 through 42 of the Transcript dated June 17, 2002.

Direct Testimony of Billy H. Pruitt

Introduction

Billy H. Pruitt testified on behalf of Sprint Spectrum. Mr. Pruitt is a Principal Engineer II in the Carrier Interconnection Management group at Sprint Spectrum. In his Direct Testimony, Mr. Pruitt discussed the major issues that Sprint PCS and the RTCs failed to reach agreement on in their interconnection negotiations. He also explained Sprint PCS' position on each issue presented in this interconnection arbitration. The primary issues discussed in Mr. Pruitt's testimony are (1) reciprocity; (2) direct vs. indirect interconnection; (3) the billing of access charges by the RTCs for traffic that should be subject to reciprocal compensation; and, (4) the appropriate level for a reciprocal compensation rate. He also briefly testified on several miscellaneous issues.

1. Reciprocity

Mr. Pruitt testified that the contract language proposed by the RTCs lacks reciprocity. He testified that the Telecommunications Act of 1996, 47 U.S.C. § 251(b)(5), requires all telecommunications providers to enter into "reciprocal compensation arrangements." He also testified that federal rules provide that any telecommunications between a LEC, such as the RTCs, and a CMRS provider that originates and terminates within the same Major Trading Area ("MTA") is by definition "telecommunications traffic" subject to reciprocal compensation

pursuant to 47 C.F.R. § 51.701(b)(2). This rule applies regardless of how the traffic is delivered to the CMRS provider. Mr. Pruitt summarized and disagreed with the RTCs' position that when traffic is not handed directly to the CMRS providers it is no longer telecommunications traffic subject to reciprocal compensation, but access traffic handed off to an IXC.

2. Direct v. Indirect Interconnection

Mr. Pruitt testified about direct and indirect interconnection. Mr. Pruitt refuted the RTCs' claim that indirect interconnection is not an option for a reciprocal compensation arrangement. He testified that when traffic originates from a CMRS provider and terminates to an RTC through a SWBT tandem it is being delivered to the RTCs on a local basis and reciprocal compensation is applicable, not access charges. He also testified that under 47 U.S.C. § 251(a)(1) and also 47 C.F.R. § 51.100 that LECs have the duty to interconnect either directly or indirectly with any telecommunications carrier. Mr. Pruitt also testified that the FCC concluded in the First Report and Order, ¶997 "that telecommunications carriers should be permitted to provide interconnection pursuant to 251(a) either directly or indirectly, based upon their most efficient technical and economic choices." He testified that the FCC found that "indirect interconnection (e.g. two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to § 251(a)." He testified that the RTCs' duty to pay reciprocal compensation is not premised upon the type of connection between the parties and that 47 C.F.R. § 51.701 provides no exception to the reciprocal compensation rules based on whether or not the connection is direct or indirect. Mr. Pruitt also testified that the cost of a direct trunk to each of these companies would significantly exceed the revenue generated for either party and that the only economically rational means for Sprint PCS to interconnect with the RTCs is indirectly through a third-party LEC tandem.

3. Access Charges v. Reciprocal Compensation for IntraMTA Traffic

Mr. Pruitt testified that the RTCs cannot bill the CMRS providers access charges for telecommunications traffic that originates and terminates within the same MTA. He testified that the FCC's First Report and Order prohibits the RTCs' imposition of access charges upon intraMTA CMRS traffic.

Mr. Pruitt further testified that the RTCs' local calling scopes are not applicable to traffic sent to or received from a CMRS provider. He testified that the relevant local calling area for CMRS providers is defined by the FCC as the MTA and that access charges are not applicable when traffic originates and terminates within the same MTA. Mr. Pruitt also testified that the Paragraph 47 of the FCC's ISP Remand Order also concludes that CMRS calls originating and terminating in the same MTA are within the scope of Section 251(b)(5) for reciprocal compensation purposes and access charges do not apply. Mr. Pruitt testified that other state regulatory commissions have agreed with the CMRS carriers' position finding that that the FCC has deemed intraMTA traffic as local and that access charges do not apply.

4. Reciprocal Compensation Rate

Mr. Pruitt testified about the appropriate rate to be charged for the intraMTA traffic exchanged by Sprint PCS and the RTCs. Mr. Pruitt testified that 47 C.F.R. § 51.705 mandates that the rate elements be based on one of the following methodologies:

(1) The forward looking economic cost 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.

Mr. Pruitt testified that the parties may also negotiate a mutually acceptable rate. He also testified that the FCC rules do not provide any other options for intraMTA traffic and that access charges do not apply.

5. Miscellaneous Issues

Mr. Pruitt listed and testified about several miscellaneous provisions in the proposed interconnection agreement that are the subject of dispute between the parties.

- Regarding the definition of "Cell Site," he testified that the word "fixed" should not be in the definition as proposed by the RTCs. Mr. Pruitt testified that CMRS providers occasionally use mobile cell sites for emergency, network evaluation or maintenance purposes. He testified that the definition should not obligate CMRS providers to place a POI at a cell site, as the duty to interconnect is at any technically feasible point *within the incumbent LEC's network*, not on the CMRS provider's network.

- Regarding the definition of "Traffic," Mr. Pruitt testified that the definition should include all "traffic" contemplated by the agreement, i.e., telecommunications (or Local Traffic) and InterMTA (or Non Local) Traffic.

- Regarding Paragraph 2.5, Mr. Pruitt testified that the CMRS providers' proposed language simply incorporates the relevant requirements of the FCC's Order on Remand and Report and Order on Intercarrier Compensation in its Docket 96-98, released April 27, 2001 and should be included in the contract.

- Regarding Paragraph 3.0, Mr. Pruitt testified that the use of the phrase transport and termination are appropriate for an agreement for reciprocal compensation between a CMRS provider and an RTC, rather than the language (transmission and routing) proposed by the RTCs, which is peculiar to local exchange service.

- Regarding Paragraphs 3.1.2 and 3.1.3. Mr. Pruitt testified that the law clearly allows interconnection at any feasible point and that the RTCs' proposed requirement that the POI be located within the serving wire center boundary of the tandem or end

office switch when there is a direct connection between the parties should not be in the agreement.

- Regarding Paragraph 3.1.4, Mr. Pruitt adopted his testimony pertaining to Paragraphs 3.1.2 and 3.1.3 and testified that the responsibility for two-way trunks are changed only prospectively as the accounting for retrospective true-ups is not cost justified.

- Regarding Paragraph 3.2.1.2, Mr. Pruitt testified that the parties should reach agreement before relocation and that the RTC's language giving them uncontrolled discretion to force relocation in certain situations should be rejected.

- Regarding Paragraph 4.4, Mr. Pruitt testified that the language was unclear and extraneous and should be deleted.

- Regarding Paragraph 5.1.4, Mr. Pruitt testified that the proposed language pertaining to "*de minimis*" traffic allows the parties the option to avoid the cost of billing until such time as traffic patterns warrant a more sophisticated agreement.

- Regarding Paragraph 5.3, Mr. Pruitt testified that the CMRS providers' proposed language reflects a reciprocal billing arrangement and that the definition of "conversation time" is unnecessary and should be deleted.

- Regarding Paragraph 5.4, Mr. Pruitt testified that the FCC rules should be included for determining whether a call is intraMTA or interMTA.

- Regarding Paragraphs 7.2.1, 7.2.2, 7.2.4 and 7.2.5, Mr. Pruitt testified that the billing provisions in the agreement should be applicable to both parties and that the normal payment period be extended from 30 to 45 days.

- Regarding Paragraph 7.2.6, Mr. Pruitt testified that this provision is inconsistent with Section 8 of the agreement and that it is not reciprocal.

- Regarding Paragraph 7.5, Mr. Pruitt testified that responsibility for LERG entries should be reciprocal and appropriately distributed between the RTCs and the CMRS providers.

- Regarding Paragraph 8.7.1, Mr. Pruitt testified that the provision should limit the liability of all parties to the agreement.

- Regarding Paragraphs 12.2 and 13, Mr. Pruitt testified that that RTC language should be rejected as redundant and because the language erroneously implies a state certification requirement for CMRS carriers

- Regarding Paragraph 14.21. This language describes a type of business combination or extension of interconnection agreements to cover these arrangements and is a

common agreement. This is a matter of business convenience to both parties and should be adopted.

Pruitt Cross Examination Testimony

The cross examination testimony of Mr. Pruitt appears at pages 44 through 57 of the Transcript dated June 17, 2002.

Direct Testimony of Suzanne K. Nieman

Introduction

Suzanne K. Nieman testified on behalf of AWS. Ms. Nieman first testified concerning an overview of AWS' CMRS wireless services. The CMRS end user customer has a cell phone handset which is both a receiver and transmitter on a series of radio frequencies licensed to each CMRS provider by the FCC. Using the handset, the end user can make a radio connection with the CMRS provider's nearest tower, which also has a receiver and transmitter. These towers are known in the industry as cell sites. One of the features of CMRS service is that, if the end user moves from the vicinity of one cell site to another during the course of a call, the technology will automatically switch the call to the new cell site.

Each of the AWS cell sites is connected by private line facilities to one of AWS' Mobile Switching Centers, or MSCs. These switches in turn are interconnected by landline trunks with the public switched telephone network. The MSCs perform essentially the same functions as do the local exchange companies' tandem switches. MSCs control the activities of the cell-site. They direct incoming calls to the cell site serving the customer, and, for calls traveling in the mobile to land direction, collect and concentrate those calls for forwarding to the public switched telephone network. They also record traffic data for billing both our own customers and for intercarrier compensation. Our MSCs are connected to the Southwestern Bell local and access tandems in Tulsa and Oklahoma City and MCI Worldcom in Tulsa.

All regulation of CMRS providers is based upon federal law, and regulatory jurisdiction rests in the federal government, rather than the states. CMRS providers hold licenses issued by the federal government for specific frequencies and territories. These licenses authorize the holder to erect and maintain cell sites within the geographic area identified and to market to end users whose addresses are within that area.

AWS is licensed to provide service throughout parts of central and eastern Oklahoma. Through roaming agreements and otherwise, AWS customers can send and receive calls wherever they are located in the state, and can send calls to destinations throughout the country. AWS' MSCs are located in Tulsa and Oklahoma City.

AWS currently has interconnection agreements with a number of local exchange companies in Oklahoma. These include Southwestern Bell Telephone Company, Alltel Oklahoma, Mid-America Telephone, Inc., Oklahoma Communications System, Inc., and

Wyandotte Telephone Company. Each of these agreements has been filed with and approved by the Oklahoma Corporation Commission. In addition, AWS has an interim agreement with Valor under which AWS is exchanging traffic and payments, and AWS hopes to conclude a permanent agreement with that company shortly. Reciprocal compensation payments for traffic termination under these agreements range from $.002268 to $.022935 per minute of use.

1. Exchange of Traffic with RTCs in this Proceeding

AWS receives and exchanges traffic with most of the independent local exchange companies represented in this proceeding. Records show that AWS is receiving traffic from a substantial majority of the RTCs present in this proceeding, in amounts ranging from less than one hundred to hundreds of thousands of minutes per month.

A group of CMRS providers, including AWS, has conducted extensive discussions with the RTCs represented in this proceeding beginning in March of 2001, but has been unable to reach agreement. The Parties have been utilizing the same original form, and providing redline mark-ups between one another up until the time of filing for the arbitration.

2. Areas of Disagreement

The areas of disagreement fall into two categories. First, there are major issues on which the CMRS providers and the RTCs disagree, as a matter of fundamental policy and law. These are summarized by category below. Second, there are specific details of the contract, many of which reflect these fundamental areas of disagreement, and others which are simply contractual disputes. These too are summarized below.

3. Reciprocity

The fundamental issue in this proceeding is whether the principle of reciprocal compensation applies to all intraMTA traffic. The applicable federal statutes and rules require that, for all local traffic exchanged between an RTC and a CMRS provider, there must be reciprocal and symmetrical compensation based on the forward looking additional costs of the local exchange company to transport and terminate the call. (See 47 C.F.R. Sec.s 51.703, 51.711.) The FCC has defined the local calling scope between CMRS providers and local exchange companies to be the Major Trading Area, or MTA. (See 47 C.F.R. Sec.s 51.701(b)(2), 24.202(a)). An intraMTA call is one that originates and terminates within the same MTA, and the reciprocal compensation obligation applies regardless of the nature or identity of any intermediate carrier.

The RTCs' argument is that they should only be required to pay transport and termination charges to CMRS providers in those cases where intraMTA land to mobile traffic is passed over a direct connection between the RTC and the CMRS provider. (See, for example, paragraphs 2.1, 2.6, and 2.7 of the Agreement as proposed by the RTCs.)

4. Transport and Termination Rates

The other major area of disagreement is the rate to be charged for transport and termination of that local intraMTA traffic. The RTCs feel they should be allowed to charge switched access rates to CMRS providers for terminating CMRS traffic that originates outside the RTCs' local calling scope, but within the MTA. The federal rules require rates to be based on the forward looking costs of each individual RTC to transport and terminate an additional call. (See 47 C.F.R. Sec. 51.705). The federal rules forbid the charging of access rates for the termination of an intraMTA call. In addition, the RTCs want to charge their intrastate access rates for termination of indirectly connected intraMTA traffic.

The rates proposed by the RTCs in this proceeding are substantially higher than any rate to which AWS has ever agreed. Most of the Regional Bell Operating Companies have agreed to transport and termination rates of less, and usually substantially less, than one cent per minute of use.

The cost study offered by the RTCs in support of their rate proposal is addressed by Dr. Bob Mercer. In addition to the appropriate calculation and determination of rates, as a practical matter, the Commission must recognize the available options. The RTCs and the CMRS providers have been exchanging traffic on a bill and keep basis for years. What this means is that neither company compensates the other for terminating the traffic originated by the other. Bill and keep is authorized both by the Federal Telecommunications Act, §252(c)(2)(B)(i), and the FCC's rules. Under those rules, a state commission is authorized to impose bill and keep if the traffic between the companies is roughly balanced, and is authorized to presume that the traffic is balanced unless a party presents evidence to the contrary. (See 47 C.F.R. §51.713.) The greatest advantage for the present purposes is that bill and keep diminishes the importance of resolution of the reciprocity issues in this matter, and does nothing to disturb the parties' present mode of doing business. An additional advantage to the bill and keep regime is that it substantially reduces the administrative and billing overhead costs incurred by any other rate regime, to the eventual benefit of each company's customers.

5. Other Contract Matters and Issues in Dispute

The following is a summary of the contract issues in dispute:

a. Reciprocal compensation - The issue of the applicability of reciprocal compensation is addressed above, and is covered by draft contract paragraphs 2.1, 2.6, and 2.7. Moreover, throughout the agreement, including the recital, the RTC contract language attempts to limit the application of the agreement to address only mobile to land traffic, and exclude land to mobile traffic. This limiting language is objectionable to AWS because the agreement should be reciprocal in nature, and capture all traffic, regardless of directionality. (See paragraphs 2.1, 5.2 and 7.2.7). In order to be reasonable, equitable and compliant with the standard that the compensation for transport and termination be reciprocal and symmetrical, the agreement must apply to traffic exchanged in both directions. Similarly, the disputed language proposed by the RTCs for paragraph 4.3.2

excludes indirectly connected mobile to land traffic and, in addition, interjects the irrelevant excuse that the CMRS providers are compensated by their end users and the false assumption that the CMRS providers can seek terminating compensation from the third party carrier.

Recommendation: The language proposed by AWS and the other CMRS providers in paragraphs 2.1 and 5.1.2 cures the reciprocity problems. The disputed language in paragraphs 4.3.2, 5.2, 5.5, and 7.2.7 should be deleted.

b. Rates - The issue of what rates are appropriate for the transport and termination of traffic is encompassed by paragraphs 4.3.1 and 5.1.2 of the draft contract. These are the sections in which the RTCs attempt to charge terminating access for termination of mobile to land intraMTA traffic. Recommendation: Adopt redline language proposed by AWS and other CMRS providers in these sections of the contract.

c. Traffic originated or terminated by CMRS carriers or RTCs, but also transported by a Third Parties should not be excluded from the contract. The RTCs attempt to exclude traffic from this agreement that is carried by a third party, such as an interexchange carrier. Paragraph 2.7 articulates the RTC view that calls originated by their subscribers destined for a location outside their local exchange are all long distance calls and, therefore, the calls are exempt from the requirements for reciprocal compensation. Paragraph 2.6 applies the same concept to mobile to land calls handed to an interexchange carrier, which presumably would pay the RTC terminating access. Paragraphs 5.1.3 and 5.5, taken together, exclude from the reciprocal compensation requirements any traffic carried over any kind of indirect interconnection. These provisions ignore the plain language of the federal requirement that reciprocal compensation is due for all traffic that originates and terminates within the same MTA. There is no exception for the nature or identity of the intermediate carrier, and indeed, no mention of an intermediate carrier. The only criterion is the origination and termination points. Further, these provisions falsely assume that somehow state law provisions can change or limit the requirements of federal law. These ideas should be rejected by the Arbitrator, and the RTC language should be deleted from the agreement.

d. Recitals – The RTCs' recital language proposes to limit the agreement only to land to mobile traffic. The compensation should be in both directions. In addition, the RTCs' proposed recital language is also objectionable because it makes the provision of certain services and facilities subject to tariffed, rather than agreed rates, and because it implies that the parties are not under a general obligation to exchange all telecommunications traffic originating on one network bound for the other. Finally, the last unnumbered paragraph of the recitals proposed by the RTCs should not be adopted because it is duplicated by the sixth unnumbered paragraph of the recitals.

e. Definitions – The parties are in disagreement over several definitions:

1. The definition of "CMRS Traffic" should be excluded from the agreement because it does not contain all the traffic exchanged between the parties.
2. The definition of "Local Traffic" should mirror the federal definition of "telecommunications traffic" found in 51 C.F.R. §701(b)(2) as proposed by the CMRS providers, rather than being confined to mobile to land and directly connected land to mobile traffic, as proposed by the RTCs.
3. The definition of "Wireless Traffic" advocated by the RTCs is improper because it incorporates the entirely extraneous issue of what the end user is charged for the call. The question of end user charges has no relevance under the Federal Telecommunications Act.
4. The definition of "Transport" should be made reciprocal, as the CMRS providers have suggested.
5. The definitions of the terms "Connecting Facilities," "Local Access and Transport Area," "LATA," "Local Service Provider," "Access Tandem," and "Wireless Tandem" should be deleted because these terms are not otherwise used in the draft agreement. In addition, the definition of "Wireless Tandem" proposed by the RTCs is improper; a mobile switching center is a wireless tandem.
6. The definition of "End Office" should be amended by deletion of the phrase "exchange service" modifying the phrase "station loops;" the loops referred to are used for all purposes, not just exchange service.
7. The RTCs' proposed definition of "Indirectly Connected" is objectionable because it is limited to interconnection through the facilities of an interexchange carrier only, and because it applies only to mobile to land traffic.
8. The Commission should adopt the definition of "Interexchange Carrier" we have suggested because it relies on the federal definition, without reference to landline carriage boundaries that are largely irrelevant to the subject of RTC to CMRS interconnection.
9. The definition of the term "Act," referring to the Federal Telecommunications Act of 1996, should be limited to implementation by the rules of the FCC, as suggested by the CMRS providers
10. The concept that cell sites are fixed in location should be deleted from the definition of "Cell Site;" occasionally, CMRS providers use mobile cell sites for maintenance, diagnostic or emergency purposes.
11. Finally, the inclusion of the defined term "Traffic," to include both Local Traffic and InterMTA Traffic, is useful to the understanding of the agreement and should be included.

f. ISP Order – Paragraph 2.5 should include the CMRS clarifying language that adopts the FCC's order requiring that RTCs who choose to take advantage of the FCC's order limiting the amount of compensation they pay for ISP bound traffic must also make those same terms available to CMRS providers immediately.

g. Paragraph 3.0 focuses on exchange service and access service. Those distinctions may be meaningful to local exchange companies, but have no application to CMRS service. The more neutral language proposed by the CMRS providers, referencing the federally defined term "telecommunications," covers the same ground.

h. Terms of Direct Connection - The subject of paragraphs 3.1.2, 3.1.3, and 3.1.4 is the means of direct interconnection. There is no technology based reason why a point of interconnection need be physically located within the local exchange company's geographic boundaries if the parties so agree. Further, there is no reason to restrict a Type 2B interconnection to one way only as the default mode. Finally, while it is appropriate to share the cost of interconnection facilities on a volume of traffic basis, the changes in cost sharing should be prospective only, so that adequate planning and budgeting can be accomplished. The other difference is found in paragraph 3.2.1.2. Once a point of interconnection is physically established, it should not be subject to disconnection without the agreement of both parties. The alternative language proposed by the RTCs would give them the unilateral right to force a reconnection of a previously established interconnection point.

i. Voluntary Delivery of Traffic – Paragraph 4.4 is unnecessary.

j. Definition and Treatment of *De Minimus* Traffic – The CMRS providers proposed a *de minimus* provision in Paragraph 5.1.4. While the traffic volumes exchanged between a few of the Oklahoma RTCs and AWS are significant, many are not. AWS records show that twelve of the RTCs present here are sending AWS traffic at the level of about 1,000 minutes per month or less. These traffic volumes and the revenues they represent, even at the overly high level of terminating compensation proposed by the RTCs, cannot justify the additional expense of administration, data recordation and billing that would be involved were there not a *de minimis* provision in the standard form agreement. As noted earlier, AWS advocates bill and keep as the basis for the exchange of traffic between CMRS providers and the RTCs in Oklahoma. However, if the Commission determines to use a reciprocal compensation scheme, then the parties should terminate traffic on a bill and keep basis, unless and until the traffic reaches the non-de minimis level of 4,000 minutes per month, or 12,000 minutes per quarter. When traffic exceeds those levels in either direction, then billing would be justified and would be done.

k. Billing Reciprocity - Paragraph 5.3 as proposed by the RTCs lacks reciprocity of billing. The language proposed by the RTCs assumes that only the RTCs will be doing any billing. The language should be made reciprocal, as billing will occur in both directions. Additionally, Paragraphs 7.2.1, 7.2.2, 7.2.4, and 7.2.5 also lack reciprocity of billing. These assume the RTCs will be the only Party doing any billing. The CMRS proposals make these provisions reciprocal. In addition, the CMRS providers have requested 45, rather than 30 days to pay bills. It takes a little longer for the mail to arrive and to process payments when business is done on a national, rather than a statewide basis, so a 45-day period is reasonable.

l. Definition of IntraMTA Traffic – Paragraph 5.4 proposed by the CMRS providers incorporates the terms of the FCC's rules for determining what traffic is intraMTA traffic for purposes of intercarrier compensation for transport and termination, and thus should be included.

m. Call Interruption – Paragraph 7.2.6 as proposed by the RTCs is objectionable because it ignores the RTC's responsibility for their portion of an interconnected call; if a call cannot be completed, or is interrupted because of a fault on their system, it is the RTCs' responsibility, not the responsibility of the CMRS provider. In addition, here again there is a lack of reciprocity in this language.

n. LERG Programming – The Parties have a dispute over Paragraph 7.5. It is customary in these interconnection agreements for each party to assume responsibility for programming its own switches to conform to the Local Exchange Routing Guide, without charges to any other carrier. The language proposed by the CMRS providers does that. The language proposed by the RTCs disclaims any responsibility for programming even their own switches correctly, and is completely inappropriate.

o. Indemnification Reciprocity - Paragraph 8.7.1 is contested because the RTCs propose that only they are entitled to indemnification, while the CMRS providers suggest that indemnification should apply to both the RTCs and CMRS providers.

p. CMRS providers are subject to Federal regulation, not State certification. The CMRS providers object to Paragraph 13 proposed by the RTCs, which falsely implies that the CMRS providers are required to be certified by the State of Oklahoma in order to provide service in Oklahoma. There is no such requirement, and thus a contract requirement to demonstrate certification is inappropriate.

q. Extension of Agreement – The CMRS providers have proposed Section 14.21 which would enable an agreement to be extended or continued as necessary to continue to conduct business. This is common in the provision of CMRS service, and in these types of contracts.

Nieman Cross Examination Testimony

The cross examination testimony of Ms. Nieman appears at pages 74 through 81 of the Transcript dated June 17, 2002.

Direct and Rebuttal Testimony of Ron Williams

Ron Williams testified on behalf of Western Wireless. Mr. Williams is employed as Director - Industry Relations by Western Wireless.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

1. Reciprocal Compensation Obligations

CMRS providers are licensed by the Federal Communications Commission ("FCC") in accordance with federal law. As a result, the FCC has jurisdiction over CMRS-LEC traffic, and has established certain standards that apply to interconnection and traffic exchanged between CMRS providers and landline carriers. These rules allow for either direct or indirect interconnection between CMRS carriers and LECs, and require reciprocal compensation (instead of access charges) on all calls to or from a CMRS provider originated and terminated within the same Major Trading Area ("MTA"). It is virtually impossible for a CMRS carrier to have direct interconnection with all landline carriers. To accomplish an indirect interconnection with one of the RTCs, Western Wireless routes intra-MTA calls to another carrier's tandem switch, typically Southwestern Bell ("SWBT"), which then routes or sends those calls to the applicable RTC company for termination. Western Wireless pays SWBT a transit fee for this service. The current, inappropriate, practice in the land-to- mobile scenario, is for the RTCs to send intra-MTA calls to an interexchange carrier ("IXC"), which pays the RTC an access charge and assesses the customer a toll charge. Western Wireless receives the call from the IXC without collecting an access charge. Reciprocal compensation obligations apply to all calls originated and terminated within an MTA, whether or not there is direct interconnection between the parties, and regardless of the intermediary carrier. As a result, both scenarios for indirect interconnection described above should be subject to reciprocal compensation. Every agreement that Western Wireless has with a Regional Bell Operating Company, and more than thirty approved agreements with rural telephone companies, provide for reciprocal compensation on all intra-MTA calls. Under FCC Rules, reciprocal compensation applies to "telecommunications traffic." For landline traffic exchanged between local exchange carriers, "telecommunications traffic" includes calls that originate and terminate within the state-approved local calling area. However, for traffic originated or terminated by a CMRS provider, FCC Rule 51.701(b)(2) provides that the term "telecommunications traffic" includes all traffic between a CMRS provider and a LEC that originates and terminates in the same MTA. The Commission should order that reciprocal compensation must be paid on all calls originated and terminated within an MTA. In addition, the FCC has determined that intra-MTA CMRS calls are not interexchange calls, and FCC Rule 51.703(b) prohibits an RTC from collecting access charges from an IXC on intra-MTA calls to a CMRS provider. As a result, the RTC company should route those intra-MTA calls through a transiting carrier rather than an IXC, and should allow those calls to be dialed by their customers on a local basis.

2. The Commission Should Adopt Bill and Keep

Because the RTCs have failed to establish appropriate total element long run incremental cost ("TELRIC") rates, and have failed to show that traffic is out of balance, The Commission should establish bill-and-keep as the appropriate mechanism for reciprocal compensation. Western Wireless supports Staff's recommendation that bill-and-keep be adopted in this proceeding.

3. The RTCs Have Not Established TELRIC Rates That Comply With the FCC's Rules

a. Access Rates Are Not Allowed

The RTCs proposed rate of $0.053804 per minute of use does not represent forward-looking costs, but is instead the sum of several intrastate access rate elements (carrier common line, line termination, local switching, local transport termination, local transport facility, intercept, and information surcharge). Federal law requires transport and termination rates to be set based on forward-looking costs or bill and keep, not at access rates. See 47 C.F.R. § 51.705. In addition, FCC rules prohibit the Commission from considering embedded costs – which form the basis for access rates – in setting a forward- looking rate. 47 C.F.R. § 51.505(d)(1). The Commission should not adopt the RTC's proposed access rate.

b. Loop Costs Cannot Be Recovered in Transport and Termination Rates

The RTCs seek to recover loop costs and line port costs (collectively "loop costs") within transport and termination rates. The loop is not a cost incurred in providing transport and termination service, and so cannot be recovered in transport and termination rates. The FCC has stated clearly that proper TELRIC methodology does not allow loop costs to be allocated to transport and termination rates. By seeking to include loop costs in local interconnection rates, the RTCs are seeking to have a competitor's local customers subsidize the loop where the loop is being used for local traffic, which is a clear barrier to entry, and undermines the entire local competition provisions of the Act.

c. A Statewide Composite Rate is Not Appropriate

Separate rates need to be set for each RTC. Mr. Harris admits that costs vary among companies, and that his recommended rate is not necessarily accurate for any company. Mr. Jay explained these companies range in size by up to a factor of 200. Western Wireless can expect to exchange most of its intra-MTA traffic with the larger RTC companies like Panhandle Telephone Cooperative (4502 lines), Pioneer Telephone Coop. Inc. (55866 lines), and Chickasaw Telephone Co. (8701 lines), and will likely exchange negligible amounts of intra-MTA traffic with smaller companies like Atlas Telephone Co. (1746 lines), Central Oklahoma Telephone Co. (2684 lines), and Beggs Telephone Co. (1787 lines). FCC Rule 51.507(e) requires each RTC to separately "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." A composite rate that applies to 32 companies does not meet this standard. If bill- and-keep is not adopted, the Commission should establish separate forward-looking transport and termination rates for each RTC.

d. Tandem Interconnection Rate

Western Wireless' mobile switching centers ("MSCs") that serve Oklahoma cover 25,567 square miles, 91,102 square miles, and 36,055 square miles. The largest area of coverage for an RTC tandem switch is 5897 square miles. Western Wireless has therefore met the standard in

FCC Rule 51.711(a)(3) that its switch serve a geographic area at least comparable to that served by the RTCs' tandems. If the Commission establishes a Type 2A interconnection rate that is greater than a Type 2B interconnection rate, Western Wireless is entitled to the higher Type 2A rate on all intra-MTA calls it terminates.

4. Western Wireless Should Be Allowed to Establish Virtual NXX Arrangements with RTCs

Western Wireless provides service today in RTC exchanges operated by the following RTCs: Panhandle, Dobson, Pioneer, South Central, Hinton, Carnegie, Shidler, Southwest Oklahoma, Santa Rosa, Terrell and Kanokla. Western Wireless should have the ability to establish numbers that are local to those RTC exchanges where it has both license and cellular network facilities. Western Wireless' proposed virtual NXX arrangement will allow customers in those areas to obtain a wireless phone with a local number. Right now Western Wireless can establish numbers local to end users in an area only where it has a direct connection, which is cost prohibitive for most rural Oklahoma exchanges. Western Wireless proposes that final approved interconnection agreements allow Western Wireless to have a block of numbers rated as local to an end office even if Western Wireless does not have a direct connection to that office. This would simply require the following steps:

1) Western Wireless identifies the block of numbers and the end office where those numbers would be assigned;
2) the RTC programs its switch to recognize those numbers as local for its end users; and
3) the RTC routes those calls on existing feature group C trunks back to SWBT for delivery to Western Wireless.
There are existing trunks to SWBT that could be used in this arrangement. These steps are feasible and will benefit consumers, and similar local calling accommodations are in place today. With regard to the RTCs' testimony that they are prohibited from routing calls in this manner and offering local dialing to their customers, Panhandle is doing that today with land-to-mobile traffic to Epic Touch in accordance with an agreement that has been approved by the Commission.

Williams Cross Examination Testimony

The cross examination testimony of Mr. Williams appears at pages 87 through 105 of the Transcript dated June 17, 2002.

Direct Testimony of W. Craig Conwell

Introduction

W. Craig Conwell is an independent consultant, specializing in telecommunications cost analysis. He holds both a Bachelors and a Masters of Science degree in Industrial Engineering

from Auburn University. He has 28 years experience in the telecommunications industry. Such experience includes performing cost accounting studies, designing cost accounting systems and measurements, and reviewing cost models. As a consultant, he develops cost studies for service resale, reciprocal compensation agreements, and unbundled network elements. He has also provided expert testimony in several states regarding UNE costing, collocation costs, and costs for reciprocal compensation.

Mr. Conwell was engaged by Cingular to review the transport and termination cost data provided by the Oklahoma small independent telephone companies (RTCs) to determine whether the data meet the requirements for establishing transport and termination rates, and to determine whether the costs provided by the RTCs are reasonable.

47 C.F.R. Section 51.301(c)(8) (ii) requires that the RTCs provide "cost data that would be relevant to setting rates if the parties were in arbitration." The RTCs have failed to comply with that requirement. The cost data provided by the RTCs are incomplete and inadequate for evaluating transport and termination costs.

The burden is on the RTCs to provide sufficient data to support the proposed rate, but the RTCs have proposed a rate without sufficient information to evaluate it. The RTCs have provided a summary of the cost elements, a listing of input data changes, a brief description of the changes, and a copy of the Hatfield model. However, the cost support information did not explain the rationale for the three elements of costs – "traffic sensitive," "line port" and "loop cost" - elements inconsistent with the transport and termination charges allowed by the FCC. Also, the RTCs did not provide the model's output or indicate how the summary costs were derived from the Hatfield model output. Reciprocal compensation rates must be supported by company specific data; none was provided.

Because at the time Mr. Conwell's testimony was prepared the RTCs had not provided sufficient cost support to evaluate their proposed rate, the purpose of this testimony is (1) to identify FCC requirements for cost-based transport and termination rates, and (2) to describe the documentation which the RTCs are required to produce to allow evaluation of their costs and proposed rates.

1. FCC Requirements For Reciprocal Compensation Rates

Reciprocal compensation rates must be based on forward-looking economic costs, which the FCC defines in 47 CFR § 51.505 as the sum of total element long-run incremental cost (TELRIC) and a reasonable allocation of forward-looking common costs. Specifically, reciprocal compensation rates "shall not exceed the forward-looking economic costs."

Reciprocal compensation rates are designed to recover the forward-looking economic costs of "transport and termination." RTC "transport" represents the common transport from the RTC interconnection point with Southwestern Bell to the RTC end office. "Termination" is the usage sensitive portion of the end office switch, excluding the port or non-usage sensitive portion of the switch. Termination excludes the switch line port. It also excludes the subscriber loop.

The four specific requirements for determining the TELRIC of transport and termination and a reasonable allocation of forward-looking common costs are as follows:

1. Plant is to reflect forward-looking technology and costs. Switching, transmission equipment and cable costs utilized for transport and termination are to reflect currently available equipment, at current vendor prices and company-specific discounts.

2. Plant capacity is to reflect an efficient network configuration.

3. Support asset costs and operating expenses are to be directly attributable to transport and termination and forward-looking. Support assets include land and building as well as maintenance and other operating expenses. These costs are not to reflect embedded costs, or past operating costs, but current costs directly attributable to switching and common transport.

4. Common costs allocated to transport and termination are to be forward-looking and costs that are efficiently incurred.

Transport and termination costs should reflect company-specific costs. The switch investment per line entered in the Hatfield model should reflect the current vendor engineered, furnished and installed costs, after discounts, for a new or replacement switch. Land, building and other support asset costs should reflect only the assets supporting central office equipment and their current costs for the particular company involved. Operating expenses should reflect current switch maintenance expenses for each particular company, exclusive of provisioning expenses. To date, the RTCs have provided no company-specific costs to Cingular.

2. Documentation Which the RTCs Should Provide

The burden is on the RTCs to provide cost documentation sufficient to validate the reasonableness of their transport and termination costs and to demonstrate that these costs are representative of their forward-looking economic costs. Such documentation should cover all key data affecting transport and termination costs, show the source of the key data, and demonstrate the reasonableness of the data. The RTCs have not done this.

Rebuttal Testimony of W. Craig Conwell

The major points of this rebuttal testimony are: (1) the cost data produced by the RTCs determines the costs of switched access, not transport and termination, ignoring the FCC requirement that rates for transport be based on "forward-looking costs of offerings"; (2) the Rural Telephone Companies (RTCs) failed to provide adequate cost data and a written factual record to support a transport and termination rate; (3) the testimony of the RTCs' cost witness includes erroneous and unsubstantiated assertions with little new substantive information; (4) a cost not exceeding $0.0139 per minute for transport and termination represents a benchmark for individual RTC rates, which should be based on individual company costs rather than an average of all companies. The proposed rate of $0.053804 per minute is excessive.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

1. The RTCs Produced The Wrong Cost Study

The cost data produced by the RTCs in response to Cingular's discovery request measures the cost of Interexchange Carrier (IXC) switched access, rather than the transport and termination costs of local traffic. The RTC study differs from a transport and termination cost study in the following three ways: (1) The dedicated transport element does not apply to Cingular traffic, which transits a Southwestern Bell tandem switch through common transport. (2) Key cost data are likely to be different between IXC switched access and Cingular traffic. These differences cannot be identified because of the lack of data provided by the RTCs. (3) Non-traffic sensitive costs such as line port and loop costs do not apply and should not be recovered in transport and termination rates. The study result of $0.1031 per minute of use should be ignored because it incorporates a substantial subsidy of local loop and end office termination costs, and there is no evidence that the study is based on cost data applicable to Cingular.

2. Cost Data Provided By The RTCs Fails To Meet FCC Requirements

47 C.F.R. § 51.505(e)(2) requires "a written factual record that is sufficient for purposes of review," and § 51.301(c)(8) (ii) requires that the RTCs provide "cost data that would be relevant to setting rates if the parties were in arbitration." There is little or no factual evidence to support key cost data. In the HAI Model, the RTCs increased the proportion of buried fiber feeder cable from 60% to 90%, lowered the proportion of aerial fiber feeder cable from 35% to 5%, eliminated any sharing with other utilities of the cost of trenching for buried cables and poles for aerial cable, and increased switching costs from 76% to 139%, all without substantive evidence to support these changes. The cost support that was received was late and piecemeal so Cingular could not fully analyze it.

3. Response to The Testimony Of The RTCs' Cost Witness

The RTCs cost witness, Mr. Harris, misinterprets the FCC's rules regarding reciprocal compensation costs. His testimony offers two reciprocal compensation rates: $0.053804 per minute and $0.1031 per minute. As shown in Exhibit WCC-1, the $0.1031 cost includes $0.0531 of traffic sensitive costs and $0.0500 of non-traffic sensitive costs ($0.0052 for switch line port and $0.0448 for allocated loop costs). These non-traffic sensitive costs should not be included in the rate. Mr. Harris justifies these as "joint and common costs". 47 C.F.R. § 51.505 requires reciprocal compensation rates to be based on total element long-run incremental cost, plus "a reasonable allocation of forward-looking common costs." The rules say nothing about "joint" costs. Section 51.319 states that line port and loop are individual elements for which costs are directly attributed and separate rates developed. Section 51.505(d)(4) states that transport and termination costs cannot include revenues to subsidize other services. Eliminating the line port and loop costs lowers the RTC cost estimate from $0.1031 to $0.0531 per minute. This remaining cost reflects IXC switched access costs contrary to § 51.705(a), which defines the cost basis for reciprocal compensation as the forward-looking economic costs of transport and termination. Switched access costs are greater than transport and termination costs. The RTCs

are asking Cingular to pay a rate in excess of forward-looking economic costs, which subsidizes other RTC services and requires Cingular customers to pay for a service they do not use – switched access.

Mr. Harris describes the HAI model as conservative, yet the modifications the RTCs made to the model input are large and unsubstantiated. For example, switching costs are raised by 117%, signaling costs by 44% and common transport costs by 45%. Mr. Harris asserts that actual minutes of use grew over six years and "using the updated minutes results in lower per unit costs," but he provides no evidence to support the assertions. Similarly, Mr. Harris provides no evidence of the mix of recent cable placement to substantiate his assertion that transport costs produced by the RTCs reflect a very high proportion of buried cable with significantly higher investment cost per foot. Mr. Harris also suggests the reason for averaging the individual company costs to produce a single rate is that "the impact of any aberrations produced by the (HAI) model is mitigated by the smoothing effect an average cost implies." This is nonsense. If the model understates or overstates the costs of each individual company, the costs will also be understated or overstated in the average.

4. A Reasonable Transport and Termination Rate

To adequately match costs and revenues, the Commission should apply to each RTC individual rates based on the forward-looking economic costs of that company. The RTCs have not provided the specific cost information necessary to develop reasonable transport and termination costs for each of the 32 RTCs.

Mr. Conwell said that as an alternative, he has developed a single transport and termination rate, capable of modification, to serve as a reasonable benchmark for the individual company forward-looking economic costs.

The transport and termination rate should cover three elements - the traffic sensitive component of end office switching, signaling, and common transport. He said he excluded tandem switching costs until the RTCs produce a valid measure of their tandem-handled wireless traffic. A reasonable traffic-sensitive end office switching cost for rural telephone companies is $0.0042/minute. To arrive at this, he adjusted the RTC switching costs to correct the switching investment to $265 per line, based on a U.S. Department of Agriculture Rural Utilities Service (RUS) analysis of rural telephone company switch costs during the 1992-1996 timeframe. He also removed 30% of Network Expenses as being associated with provisioning costs, rather than switch maintenance. This is a reasonable amount and a common adjustment in TELRIC studies for unbundled network elements. His rate also includes a mix of host and remote switches, the addition of engineering fees, the higher cost of growth lines after the cutover of a new switch, and the costs of software upgrades. By comparison, the HAI model switching cost with default values are $0.0056 for the RTCs, and $0.0016, for Southwestern Bell. His cost of $0.0042 appears reasonable.

Generally speaking, signaling costs should be a minor part of transport and termination costs. To understand the cause of differences in signaling costs, he determined an equation that

expresses signaling costs in terms of the underlying cost drivers. The link cost is trivial, and the Signal Transfer Point (STP) cost per message and the minutes per call are determinative for both Southwestern Bell and Valor in Oklahoma. With the RTC signaling costs, the link cost becomes important, driven by the monthly cost per link, lines per link, and messages per line.

For example, Pioneer Telephone Cooperative represents 29% of the RTC switched lines and supposedly has a signaling cost of $0.00333 per minute, due to a cost per link of $315.38 per month and only 189 lines per link. Otherwise, its signaling cost drivers are similar to either Valor or Southwestern Bell. Panhandle Telephone Cooperative represents another 12% of RTC switched lines. Its signaling cost is reported as $0.00146 per minute, less than half that of Pioneer, driven by a cost per link of $500.62 per month, but 438 lines per signal link. Mr. Conwell set the cost per link at $234 per month, representing the median of the 32 companies' signaling costs, and including the HAI model modifications made by the RTCs, and recognizing the potential for higher link costs due to distance and other factors. Mr. Conwell set the lines per link equal to 500 lines, compared to Valor's 1,745 and Southwestern Bell's 2,547 lines, recognizing that smaller switches will have fewer lines per link. Adding these drivers to the formula [($0.00012 STP cost per message + ($284 per link x 12 months / 500 lines per link / 12,000 messages per line)) x (6 messages per call / 70% completion rate) / 7.5 minutes per call], Mr. Conwell arrived at a benchmark signal cost of $0.00079 per minute. This figure should be reasonable, because sixteen of the RTCs' HAI default costs fall below this level, and eleven of the HAI costs with modifications fall below this figure.

With regard to common transport costs, after modification of the HAI model default values, the RTCs estimated the average cost as $0.02318 per minute. The transport mileage used to arrive at this number is likely overstated. The common transport distance should be from the RTC switch to the point of interconnection. The HAI model measures distances between wirecenters and has presumably measured the distance from the RTC switch to the SWBT tandem. A shortened transport distance reduces the cable and wire facilities cost portion of common transport, which is substantial for the RTCs. The RTCs, without substantiation, changed the HAI model default assumption to reflect no sharing with other utilities the costs of buried cable trenching, conduit and other cable placement costs. Finally, it is very likely the central office equipment and fiber cable material prices contained in the HAI model have declined over time. However, the RTCs elected to use the default values for equipment costs, except in the case of switching where they raised the input value by 68%.

Exhibit WCC-4 shows the common transport costs, based on the HAI model default values, for the six largest RTCs as well as Beggs Telephone and Atlas Telephone. The transport and termination costs range from $0.0009 to $0.0033 per minute, with an average value of $0.0028. Reducing this figure by ten percent to allow for reduction in central office equipment costs, the result is $0.0025 per minute. The transport facility costs range from $0.0019 to $0.0161 per minute, with an average of $0.0128 per minute. Mr. Conwell ran a sensitivity analysis and found that an increase in the sharing percentage from 33% to 50% is offset by a deduction in fiber cable costs of 20%. Mr. Conwell assumed the two issues net against each other. To establish a benchmark for common transport distance, Mr. Conwell assumed 50% of the transport facility cost represents the distance from the point of interconnection to the

Southwestern Bell tandem. Given this assumption, a reasonable transport facility cost is $0.0064 per minute, 28% higher than the Valor cost from the HAI model, and over three times the Southwestern Bell cost. Mr. Conwell has not included a tandem switching cost because he has not been provided a valid estimate of the wireless provider traffic actually transiting RTC tandem switches. The 50% tandem traffic estimate given apparently applies to IXCs. If applicable, tandem switching adds minimally to this cost, given the low HAI model tandem switching cost for Valor and Southwestern Bell, when weighted by the percent wireless traffic through tandems.

Based on the information available to Cingular, he recommended the following benchmark cost for transport and termination provided by the RTCs:

End office switching-traffic sensitive:	$0.0042/minute
Signaling:	$0.0008/minute
Common transport:	$0.0089/minute
Rate (excluding tandem switching):	$0.01390/minute

Mr. Conwell said that he offers this only as an upper limit on the transport and termination cost. Each RTC should produce its own transport and termination cost study and rate, taking into account the cost variations on transport distances, structures sharing, signaling arrangements and other factors.

Testimony of Randy G. Farrar

Randy G. Farrar is a Senior Manager – Network Costs for Sprint Corporation. Mr. Farrar testified that while Sprint's primary interest in this proceeding is in its capacity as a wireless carrier, Sprint Local Telecommunications Division (Sprint LTD) also operates as an RTC in 18 states, serving more than 8 million access lines. He testified that most of Sprint's RTC territories are rural including rural exchanges in two states bordering Oklahoma - Kansas and Texas. He also testified that Sprint's perspective on the pricing and costing of terminating traffic represents an accommodation of interests similar to those that the Corporation Commission of Oklahoma must balance in this docket.

Mr. Farrar testified that he routinely performs cost studies for terminating traffic for both Sprint's wireless and RTC operations and that he has direct experience with the underlying cost methodologies required to comply with the FCC's TELRIC guidelines. He testified that his experience in preparing cost studies on behalf of an RTC provides an independent, fact-based standard for evaluating the reasonableness of the Oklahoma RTC's proposed costs and rates.

1. **Oklahoma RTCs' Proposed Costs**

Mr. Farrar testified that the Oklahoma RTCs claim their cost of terminating traffic is $0.1031 per MOU, a cost nearly 20 times Sprint LTD's average cost in similar rural areas in

Kansas and Texas. He testified that the Oklahoma RTCs' cost of $0.1031 includes an improper allocation of non-traffic sensitive loop and port costs totaling $0.0500. He testified that even excluding this improper allocation, the Oklahoma RTCs traffic-sensitive switching costs of $0.0531 are more than 10 times the costs calculated by Sprint LTD. Mr. Farrar concluded that the Oklahoma RTCs had not provided any valid reason why their costs should be so much greater than the Sprint LTD costs in rural territories.

2. FCC's TELRIC Standard

Mr. Farrar testified that the Oklahoma RTCs' cost study and the testimonies of Mr. Jonathon P. Harris violate the FCC's TELRIC cost standard as defined in the FCC's Local Competition Order.

a. Joint and Common Costs

Mr. Farrar testified that the Oklahoma RTCs' cost study and Mr. Harris improperly consider the local loop a joint and common cost. He testified that the loop cannot be either a joint or common cost as those terms are defined in ¶676 of the Order.

He also testified that there is a common-sense reason why the local loop cannot be a joint or common cost. He explained that Paragraphs 367 – 396 and § 51.319(a) define the local loop as an unbundled network element, and Section 51.505(c)(1) defines common costs as "economic costs that cannot be attributed directly to individual elements" such as the local loop. Accordingly, Mr. Farrar testified that the loop simply cannot be both an unbundled element and a common cost to unbundled elements at the same time.

b. Traffic-Sensitive vs. Non-Traffic Sensitive Costs

Mr. Farrar testified that the Oklahoma RTCs' cost study and Mr. Harris improperly allocate non-traffic sensitive ("NTS") loop and port costs to a traffic-sensitive rate for terminating traffic.

He testified that ¶1057 of the Order explicitly states that the loop is non-traffic sensitive. He testified that if the amount of usage increases while the number of subscribers stays constant, loop costs will not change, and therefore, loop cannot be a traffic-sensitive cost. In addition, he also testified that if the number of subscribers increases while the amount of usage stays constant, loop costs would increase. Therefore, loop costs are non-traffic sensitive.

He also testified that ¶744, § 51.507, and § 51.509 of the Order specifically state that NTS costs should be recovered through flat-rated charges and prohibit the recovery of NTS costs through traffic-sensitive rates.

3. USF Models Are Not Appropriate For Terminating Cost Studies

Mr. Farrar testified that universal service fund (USF) models, like HAI, are inappropriate for determining an RTC's rate for terminating traffic. He testified that USF models are concerned with the cost of basic service. He also testified that switching and transport typically account for less than 10% of the total cost of USF basic service. Accordingly, Mr. Farrar testified that most of the complexity in USF models deals with loop costs. As a result, he testified that for usage-sensitive services such as terminating traffic or switched access, USF models do not provide sufficient precision for switching and transport costs.

Mr. Farrar testified that the FCC arrived at a similar conclusion in its Fifth Report and Order, CC Docket No. 96-45, October 22, 1998, ¶ 75.

4. Termination Costs v. Access Rates

Finally, Mr. Farrar testified that the Oklahoma RTCs' claim that their termination costs exceed their access rates is counter-intuitive. He testified that it is generally recognized that access rates are set well above costs to subsidize local rates.

Testimony of Dr. Robert Mercer

Dr. Mercer testified that the RTCs have put forth the HAI Model, Release 5.0a ("HAI 5.0a") as a "basis to estimate the forward looking costs of transport and termination of traffic to customers on their networks." The term "basis" must be taken with a large grain of salt, for the transport and termination rate proposed by the RTCs is not taken directly from any HAI Model result. Rather, having allegedly obtained a rate of $0.1031 from the HAI Model, the RTCs announce that they are "willing" to accept a rate of approximately half that much, $0.053804, which is taken from the existing RCC tariff. Dr. Mercer said AT&T Wireless Services, Inc. and WWC License, LLC engaged him to review the RTCs cost study to determine how they obtained the interconnection cost result of $0.1031 per minute, and whether that process represents a valid use of the model. He said he found that the RTCs have taken a legitimate model that should produce forward looking interconnection costs, and used it in a wholly inappropriate way that produces absurd results. He emphasized that it is not the model itself that is defective in any way. Dr. Mercer was formerly the president of HAI Consulting, Inc, and has spent a substantial amount of time over the past eight years participating in the development of the various versions of the HAI model. He served as an expert witness on the model in 29 proceedings in 16 different states. As a result, he is intimately familiar with all versions of the HAI model, including HAI 5.0a.

Dr. Mercer states the HAI Model is recognized industry-wide as a sophisticated and robust method of developing forward looking costs. He agrees with that characterization of the model -- provided the model is run with appropriate inputs, the appropriate outputs of the model are utilized, and there is no additional processing that further introduces ambiguities and distortions into the HAI results. Nothing could be further from the truth than Mr. Harris'

characterization that Dr. Mercer is guilty of "disowning a model [I] participated in crafting and vigorously defended on many occasions." Rather, he characterizes his attitude as dismay that a model with all the promise of the HAI model has been rendered ineffective and irrelevant through misuse by the RTCs. The entire process by which the RTCs arrived at the $0.053804 rate is distorted and illogical. It is distorted because they have used the model in an entirely inappropriate fashion in many different respects. It is illogical because it has been used as a "stalking horse" whose result they generously propose to reduce by approximately one-half. Yet, if the RTCs had used the model appropriately, it would have produced results on a per- RTC basis that would have averaged less than $0.01, and, for many companies, produced results of only about $0.005. Dr. Mercer was not asked to analyze the merits of setting rates versus bill and keep, nor should his testimony be understood to endorse the former. Dr. Mercer only points out that HAI 5.0a, the only model put forth for estimating the cost of transport and termination, legitimately should have produced a much lower result than the RTCs claim. Dr. Mercer also testified that it should be understood that the RTC cost study really consists of two different parts: one involving runs of HAI 5.0a, and the other performing various "downstream" calculations using the results of the model. Both parts of the study are fatally flawed. In his testimony, Dr. Mercer first summarizes the inappropriate ways in which the RTCs have used HAI 5.0a, then deals with the remainder of the cost study involving the downstream processing of the HAI results. In his Direct Testimony, Dr. Mercer described a number of apparent defects in the RTCs Cost Study, not the least of which was that, at the time that testimony was written, the Independents had not disclosed most of the essential details about their use of the HAI Model. The RTCs subsequently failed to produce a meaningful description of their cost study, and specifically their use of the HAI 5.0a Model, in either their direct or rebuttal testimonies. It was only in their responses to the wireless carriers' interrogatories and requests for production (hereafter, referred to collectively as "data requests") that it became possible to understand and assess the merits of the study. After this assessment was completed, it became obvious that the RTCs' use of the HAI Model suffered from the following defects:

- Many of the model input adjustments the RTCs made were inappropriate, such as the prices paid for local switches and the amount of toll and IXC access traffic routed via tandem switches; Many other model inputs should have been adjusted to reflect the operations and environment of small RTCs, but were not adjusted (or were adjusted inappropriately), such as the investment in tandem switches; For example, during the deposition of Mr. Jay, it became obvious that in all or most cases, tandem switching functionality is provided by switches that jointly support local and tandem switching. The percentage of joint local/tandem switches is a parameter in the model whose default value is considerably lower than 100%; setting this parameter properly will dramatically effect the tandem switching cost calculated by the model. In some cases, such as the cost of dedicated circuits and tandem switching, RTC results were taken from the model when the appropriate cost should have been taken from an HAI 5.0a run for SWBT.

Turning to the second part of the cost study – the RTCs downstream processing of the HAI results –his Rebuttal Testimony again captures a number of defects in what the RTCs have done. These include:

- The RTCs have taken loop and local switch port cost outputs which the model appropriately treats as non-traffic-sensitive costs and attributed them to transport and termination cost. This is

neither legitimate in the FCC's TELRIC construct nor consistent with the way in which the model operates; The study calculates a single averaged transport and termination rate across all companies and across interconnection at the end office and at the tandem switch, which is wholly inappropriate, given the substantial differences such as the number of lines served, minutes of switching and transport use, physical location of switches, and the network configuration used to terminate CMRS traffic from SWBT;

- Even in their data request responses, let alone in their direct and rebuttal testimonies, the RTCs have failed to provide critically important information on the technical and financial arrangements by which they receive CMRS terminating traffic from SWBT, and have thereby not provided critical quantitative information needed to assess a major component of the interconnection cost; and The study uses several parameters in arriving at the weighted average cost for which no rationale is provided. The substantial defects in the RTCs' cost study, including both the HAI model runs and the subsequent processing of the HAI results, means the results are meaningless. Dr. Mercer has not attempted to correct, or succeeded in correcting, all of the defects in the RTC Cost Study. However, Dr. Mercer's Rebuttal Testimony demonstrates that appropriate corrections would likely lead to a result that is an order of magnitude less -- around $0.01 per minute rather than more than $0.10 per minute as presented by the RTCs. Dr. Mercer arrived at this estimate by using realistic local switching costs, and by assuming an efficient carrier would purchase tandem switching services and dedicated circuits from SWBT.

Mercer Cross Examination Testimony

The cross examination testimony of Dr. Mercer appears at pages 121 through 124 of the Transcript dated June 17, 2002.

B. Staff Witnesses

Testimony of Lillie R. Simon

Introduction

Lillie R. Simon testified that she is employed by the Public Utility Division ("Staff") of the Oklahoma Corporation Commission ("OCC" or "Commission") as a Public Utility Regulatory Analyst in the Telecom Section. In prefiled testimony, she discussed the contents and relief requested in the consolidated causes, and addressed three issues and made a recommendation on each. The three issues that she addressed are: (1) should the contract require each Party to pay reciprocal compensation to the other for the termination of intraLATA traffic: (2) must the parties pay reciprocal compensation to each other when they are indirectly interconnected; and (3) may the ILECs charge terminating access rates for intraMTA traffic.

She testified that Staff believes there are two possible scenarios under which wireless to wireline (or vice versa) calls can be made that affect the issues in this cause. She testified that Staff based its recommendation on the two possible scenarios as they relate to current rules and orders.

Ms. Simon testified that normal wireline to wireline calls are rates according to their Local Area and Transport Area ("LATA") and whether the call is intraLATA or interLATA. Wireless calls are defined by a Major Trading Area ("MTA") which does not necessarily correspond to the LATAs. She further testified that the FCC has defined MTAs as an "appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251 (b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges." *Local Competition Order*, CC Docket 96-98, First Report and Order Paragraph 1036, 11 FCC Rcd. 15499 (1966). She further testified that there are two major LATAs in Oklahoma, and there are six MTAs in Oklahoma.

Ms. Simon testified that Staff had identified two possible scenarios for placing a call affected by this Cause. The first is a CMRS to LEC call that originates and terminates within the same MTA. The second is a LEC to CMRS call that originates and terminates within the same MTA. She further testified that Staff believes that all calls made under either of the scenarios fall under 47 C.F.R. §51.701, which defines telecommunications traffic as "traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same MTA". She further testified that Staff believes that these calls should be treated as local calls and reciprocal compensation would apply. The calls in both scenarios meet the criteria of originating and terminating within the MTA at the beginning of the call.

Ms. Simon further testified that Staff made the distinction "at the beginning of the call" because this is the same distinction that the FCC has supported. She testified that in order to avoid confusion and possible prorating of calls, the FCC has designated the beginning of the call as the point where rates apply.

Ms. Simon further testified that Staff did not believe that the Wide Area Calling Plan ("WACP") arrangements would affect the calls that at the beginning of the call, originated and terminated within an MTA. She testified that the FCC has clearly stated in Paragraphs 1035 and 1036, of the First Report and Order, that the FCC has sole authority and has designated MTAs as the local service areas for CMRS providers.

Ms. Simon further testified as to the issue revolving around the terms "directly connected" versus "indirectly connected". She testified that Staff believes that there should not be any differentiation between directly connected and indirectly connected as it relates to the originating and terminating ends of the call. She testified that direct connection is a means which a carrier may use when there is enough traffic to warrant the expense of putting in a trunk, otherwise the carrier would indirectly connect through the use of another carrier's facilities. She further testified that Staff believes the FCC has upheld this position several times in *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, FCC 96-325 and *In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket 94-54, FCC 00-253.

Ms. Simon further testified regarding the definitions of "CMRS Traffic", "Interexchange Carrier", "Traffic", "Local Traffic", "Wireless Traffic", "Transport", and "End Office".

Simon Rebuttal Testimony

Ms. Simon also filed Rebuttal Testimony. In the Rebuttal Testimony, she responded to specific testimony by both Azita Sparano and William McBride. She testified that Staff believes that if one were to accept Ms. Sparano's testimony strictly as what is quoted, one would be led to believe that access charges have a place in this cause. Ms. Simon further testified that one were to research further into the documents from which Ms. Sparano quotes, it is clear that the FCC has designated themselves as the sole authority on CMRS calls and the appropriate compensation, and that access charges do not apply in the cases of CMRS calls within the MTA. Ms. Simon further testified that in *In the Matter of Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, 16 FCC Rcd. 9610 (2001), paragraphs five (5), six (6), seven (7), eight (8) and nine (9) emphasize that in the instances where LEC to CMRS calls or CMRS to LEC calls are interMTA, they would be considered long distance calls and the appropriate access charges would apply. She further testified that the determining factor is that the calls within an MTA are local calls and should be treated as such. She testified if the LECs use an IXC to transit the calls, that would fall under 47 C.F.R. §51.701(c) as an "equivalent facility provided by a carrier other than an incumbent LEC". She testified that the LEC and IXC may choose to compensate each other through the intrastate access charge rules with no compensation for the transport—that is their decision to make. She testified that Staff believes the LEC retains the responsibility of paying termination to the CMRS provider.

Ms. Simon further testified in response to testimony of Mr. William McBride, in reference to the issue of direct connection versus indirect connection. She testified that Staff believes that the LECs are using the "equivalent facility provided by a carrier other than an incumbent LEC" as described in 47 C.F.R. §51.701(c) in describing transport. She further testified that the LEC is responsible for termination, but transport is an arrangement to be determined between the LEC and the IXC. She further testified that the CMRS provider is entitled to termination charges and Staff believes these termination charges are the responsibility of the LEC. She further testified that regardless of what title the LECs may choose, they are still the calling party's local exchange provider and call to and from the CMRS network within the MTA are deemed local calls.

Simon Cross Examination Testimony

The cross examination testimony of Ms. Simon appears at pages 128 through 171 of the Transcript dated June 17, 2002.

Direct Testimony of Mark Edward Carter

Mark Edward Carter testified that he is employed by the Public Utility Division of the Oklahoma Corporation Commission ("OCC" or "Commission") as a Public Utility Regulatory

Analyst (PURA III) in the Telecommunications Group ("Staff"). He testified that he holds a Bachelor of Science Business Management and Master of Business Administration degrees from LeTourneau University, in Longview, Texas, and is currently pursuing a Juris Doctorate from the Oklahoma City University School of Law. He testified that his prior professional experience includes two years as Tax and Regulatory Director for a multi-national telecommunications corporation where he planned, organized, and controlled regulatory affairs throughout the United States and internationally, where his areas of responsibilities included developing competitive advantage through strategic use of the regulatory environment, attaining certification to conduct business throughout the United States and international jurisdictions, ensuring corporate regulatory compliance in all jurisdictions, and providing insight and direction of the regulatory environment for the corporate strategic planning steering committee.

Mr. Carter testified that his testimony is limited to addressing the establishment of rates appropriate for the transport and termination of traffic for reciprocal compensation purposes, pursuant to Section 251(b)(5) of the Federal Telecommunication Act of 1996 ("FTA" or "Act") between the CMRS providers and the independent local exchange carriers ("RTCs") that are parties to this cause. He testified that in Staff's opinion, transport and termination should be provided on a bill and keep basis, however, if charges are to be imposed, then they must be based on the reasonably approximated forward-looking costs of the incumbent local exchange company. He further testified that Staff's opinion was based on 47 U.S.C. §252(d)(2).

Mr. Carter testified that 47 C.F.R. §51.705 describes three possible methods for establishing an incumbent LEC's rate for transporting and terminating traffic. He further testified that It is Staff's opinion that the Commission has the authority to elect any of the three methodologies described in 47 C.F.R. 51.705, however, the Commission must base the incumbent's rates upon one of the three enumerated methods. He further testified that the three methods include: bill-and-keep arrangements pursuant to 47 C.F.R. 51.713, default proxy rates pursuant to 47 C.F.R. 51.707, and rates based on a forward-looking economic cost study pursuant to 47 C.F.R. 51.505 and 51.511.

Mr. Carter testified that it is Staff's opinion that the default proxy rates enumerated in 47 C.F.R. 51.705 and defined in 47 C.F.R. 51.707 should not be considered as a basis to establish rates in this case because the underlying methodology utilized to calculate the requirements (i.e., the appropriate range for the proxy rates) for the termination and transport proxy rates in Section 51.707 are currently on remand from the Eighth Circuit Court of Appeals to the FCC for further consideration. He testified that since the rates have been remanded to the FCC, Staff believes it would be inappropriate to use the mandatory proxy rate range established by the FCC in this cause. He further testified that absent some rate agreed to by the parties (e.g., NECA's transport and termination rates, or rates based on the CALL's proposal) as a default proxy rate, Staff encourages the utilization of one of the other two methods promulgated by the FCC.

Mr. Carter further testified that excluding the FCC's default proxy rate or a proxy rate agreed to by the parties, the Commission can order either a bill-and-keep arrangement or a compensation arrangement utilizing rates established by conducting a forward-looking cost study. He testified that it is Staff's opinion that, where the Commission has determined that an imbalance of telecommunications traffic exists between two carriers, a forward-looking cost

study is the appropriate method for calculating the transport and termination rates. He testified that here, however, no such determination has been made. He further testified that therefore, Staff recommends the Commission adopt remaining alternative—a bill-and-keep reciprocal compensation arrangement.

Mr. Carter testified that 47 C.F.R. §51.713(b) grants the Commission the authority to impose a bill-and-keep arrangement "if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced with the amount of telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to §51.711(b) (concerning asymmetrical rates for transport and termination of incumbent LECs)." He testified that to date, the Commission has not found an imbalance of traffic to exist, consequently, the Commission may presume that the "amount of telecommunications traffic from one network to the other is roughly balanced...." He testified that It is Staff's opinion, that absent a Commission finding that the evidence demonstrates the exchange of telecommunications traffic is not "roughly balanced," the appropriate reciprocal compensation method is a bill-and-keep arrangement wherein neither of the two interconnected carriers charges the other for telecommunications traffic that originates on the other carrier's network.

Mr. Carter testified that if the Commission determines an imbalance in the exchange of telecommunications traffic exists between the CMRS providers and the RTCs, Staff would support utilizing a forward-looking cost study to establish the transport and termination rates. He further testified that however, even where the Commission finds an imbalance in traffic, it is Staff's opinion that interconnecting carriers should only be required to pay reciprocal compensation for transport and termination costs if those costs satisfy a *de minimus* standard. He further testified that it is Staff's opinion that any such rates established by conducting a forward-looking cost study should be established in a separate cost docket.

Mr. Carter testified in summary, that Staff encourages the Commission to order a bill-and-keep reciprocal compensation arrangement for compensation of reciprocal traffic between the RTCs and the CMRS providers. He further testified that, due to the extremely complex nature of forward-looking costing and the amount of time required to conduct and review such a cost study, Staff encourages the Commission to require a separate cost docket in the event a party desires to move from a bill-and-keep arrangement to a reciprocal compensation arrangement based on a forward looking costs.

Carter Cross Examination Testimony

The cross examination testimony of Mr. Carter appears at pages 173 through 175 of the Transcript dated June 17, 2002.

C. RTC Witnesses

Azita Sparano Testimony

Ms. Azita Sparano testified on behalf of the Rural Telephone Companies. Ms. Sparano is Director of Regulatory and Policy, of John Staurulakis, Inc. (JSI). JSI is a telecommunications consulting firm specializing in all aspects of independent telephone company needs, including regulatory and revenue recovery matters. Ms. Sparano's testimony in this cause supports the fact that not all landline originated intraMTA traffic is subject to reciprocal compensation pursuant to 251(b)(5) of the Act. The FCC did not change the local calling scope of the RTCs, which is contained in their General Exchange Tariffs. Congress and the FCC preserved the access charge regime and stated that reciprocal compensation does not apply to traffic that was subject to access charges prior to the Act or the First Report and Order on Local Competition (Local Competition Order). Landline-originated calls to numbers outside of the RTCs' local calling scope have been and continue to be interexchange calls, and as such RTCs must route these calls to the presubscribed IXC of the calling end user customer. The RTCs have obligations to route and rate calls under the federally mandated dialing parity and equal access rules and are obligated to provide originating access to IXCs for interexchange (toll) calls for such traffic. The CMRS Providers do not have such obligations and request that RTCs provide them preferential treatment, by ignoring the RTCs obligations as LECs. Clearly IXC-carried traffic is not the RTCs' traffic and is not subject to reciprocal compensation. RTCs do not have any obligation to pay reciprocal compensation on another carriers' traffic. During cross-examination of Ms. Sparano in this proceeding, she testified that for purposes of reciprocal compensation, the FCC defined the local service area as traffic that originates and terminates within the same MTA. However, the FCC did not stop at this conclusion without also specifying certain qualifying conditions. Based on the complete reading and understanding of all of the relevant FCC rulings and orders, it is clear that the compensation regime applicable to IXC-carried traffic is access charges and not reciprocal compensation. The FCC has prescribed two mutually exclusive compensation regimes: pre-Act or pre-existing Access Charge Regime and the new rules governing the Reciprocal Compensation Regime. The FCC clearly recognized that intraMTA traffic between a LEC and a CMRS Provider is subject to Reciprocal Compensation, unless it is carried by IXCs.

The FCC did not change the ILECs local calling scope for calls made to the CMRS Providers' customers

Ms. Sparano further testified that the local calling scope for the RTCs' customers are defined in their General Exchange Tariffs, which have been approved by the Oklahoma Corporation Commission ("OCC"). A landline-originated call is treated as local if it is made to a number within the local calling scope of the calling party. The RTCs' end-user subscribers buy local service pursuant to the applicable tariff and, therefore, subscribe to the local calling scope defined in such tariff, regardless of whether the called number is a landline or wireless number. In the Local Competition Order, the FCC did not change the local calling scope of the incumbent local exchange carriers ("ILECs").

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

RTCs must route toll (interexchange) calls to presubscribed IXCs, due to their federally mandated dialing parity and equal access obligations

Ms. Sparano further testified that the RTCs have equal access obligations under both federal and state rules. Equal Access allows the landline end users to select the IXC of their choice for long distance calls. It is essential to recognize that Congress or the FCC did not reclassify long distance calls as local. The FCC emphasized that dialing parity is the most important feature of equal access. Under the FCC's Local Dialing Parity rules, the ILECs cannot discriminate by rating the call as toll or local, based on the called party's local service provider. If a call does not originate and terminate within the ILEC's end user customer's local calling scope, then it is rated as a toll call and the RTCs, as Access Providers, are obligated to route the call to the presubscribed IXC (or toll provider). For example, if a call from an RTC's exchange A to exchange B is outside the local calling scope of exchange A, then the RTC would rate the call from its customer in exchange A to customers in Exchange B as interexchange or toll call and route the call to the presubscribed IXC of the calling customer. These rules apply to all landline-originated calls, regardless of whether the call is made to a landline or a wireless number. In contrast to the testimony presented by Staff and the CMRS Providers, the RTCs cannot rate such a call made to a CMRS Provider customer as local. The FCC's local dialing parity rules forbid ILECs from considering the called party's local service provider, namely CMRS Providers in this cause, when rating and routing a call.

IXC carried traffic is subject to access charges and not reciprocal compensation.

Ms. Sparano further testified that the FCC's access charge regime governs the payments that IXCs make to LECs to originate and terminate toll calls. Congress and the FCC preserved pre-existing access charge regime and excluded all IXC-carried traffic from the purview of § 251(b)(5) of the Act. In the Senate and House Joint Explanatory Statement of the Committee of Conference, under the NEW § 251 – INTERCONNECTION, the following statements clearly indicate that Congress did not intend to change the access charge regime in place, prior to the 96 Act, "The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under § 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission's access charge rules."

ISP Order Issue

Ms. Sparano further testified that the FCC's ISP Order as interpreted by the CMRS Providers' is not relevant, due to the fact that the RTCs did not have any existing arrangements on the effective date of the Order. Any new agreement for ISP-bound traffic would be under the FCC's bill and keep rule. A Most Favored Nation provision allows for opting into a negotiated or arbitrated agreement approved by the state commission, not for opting into a ruling made by the FCC or state commission. Paragraph 82 of the ISP Order makes this point very clear.

Please see the transcript for the cross-examination of Ms. Sparano.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

Gary M. Jay Testimony

Mr. Gary M. Jay testified on behalf of the Rural Telephone Companies. Mr. Jay is Comptroller of Salina-Spavinaw Telephone Company ("Salina-Spavinaw") and testified that Salina-Spavinaw and the 31 other Oklahoma rural telephone companies in this proceeding, are designated as "Access Providers" pursuant to Order No. 399040, issued by the Oklahoma Corporation Commission ("OCC") on January 30, 1996. As Access Providers, these companies provide only intraexchange services to their local exchange subscribers. The Access Providers do not provide toll services or any other interexchange services. They do not own or control the routing or transmission of toll calls originating in their exchanges. Based on the Commission's orders, the Access Providers are prohibited from entering the toll business. Their role in the handling of interexchange calls is to make their networks available for the origination or termination of the call, in return for which they are paid access charges.

The Oklahoma Access Provider companies serve rural and small-town Oklahoma. Some important characteristics of their networks are markedly different from those of urban or suburban carriers. For instance, whereas an urban or suburban carrier may practice widespread utilization of aerial plant, rural carriers generally choose to bury cable, because buried cable provides the best and most reliable service over their large expanses of serving territory. Buried plant is far less prone to failure and requires less maintenance than aerial cable.

Rural carriers have few opportunities to share the cost of burying cable or drops with other utility providers. Often, there simply are no other utility providers in the area utilizing buried plant. Even when such other utility providers exist, the imperatives of being the telecommunications carrier of last resort deny rural LECs the luxury of waiting for someone else to be ready to dig.

In the past, the Access Providers could exist comfortably on end-office electronic umbilical cords attached to a Southwestern Bell ("SWB") tandem switch. Those days are long gone. The subscriber choice and anti-slamming duties imposed upon the Access Providers by the FCC and OCC dialing parity orders, standing alone, justify the tandem switches that route the vast majority of Access Provider interexchange traffic, without even considering the other significant network management and revenue advantages of having a tandem switch.

In cities and suburbs, space limitations alone often compel common placement of distribution and feeder facilities. Such is not the case in rural exchanges. While there is some such sharing, it is nowhere close to the scale assumed in the HAI 5.0a Model.

As required by FCC and OCC dialing parity rules, the Access Providers route all interexchange traffic, including landline to CMRS calls, to the subscriber's interexchange carrier of choice. The IXC pays originating access to the Access Provider, transmits the call on IXC facilities, and should pay the CMRS provider for terminating the call. In this landline to wireless scenario, the Access Provider owes nothing to the CMRS provider.

A call which originates from a wireless phone bound for an Access Provider's landline subscriber is routed by the CMRS Provider to a SWBT tandem and from there across SWBT's Feature Group C network and through the Access Provider's facilities to the Access Provider's local exchange subscriber. In this scenario, the CMRS Provider owes the Access Provider compensation for transport and termination of the call. The Access Providers propose a uniform rate of $0.053804, which is equivalent to the approved Radio Common Carrier tariffed rate.

If a CMRS provider establishes a Point of Interconnection on the network of an Access Provider, reciprocal compensation would be paid.

Until late 1997, SWBT billed and collected the revenue from the CMRS Providers and shared those collected revenues with the Access Providers pursuant to Commission-approved revenue-sharing agreements. After 1997, although SWBT continued to transit CMRS traffic to the Access Providers on the SWBT Feature Group C network, the revenue sharing agreements were terminated by SWBT. CMRS traffic continued to flow to the Access Providers on the SWBT Feature Group C network, but the Access Providers could not identify the responsible CMRS provider. Following the proceedings in Cause No. PUD 980000263, the Access Providers received from SWBT information identifying the responsible CMRS Providers. Thereafter, the CMRS Providers were billed out of access tariffs approved by the appropriate regulatory agency, which is the only lawful method by which the Access Providers can charge for their services. Some CMRS Providers have paid these bills, but none of the four CMRS Providers in this cause have done so.

The Access Providers have continually demanded payment of the bills rendered to the CMRS Providers, both retrospectively and prospectively. The Access Providers have never agreed to or acquiesced in any "bill and keep" arrangement.

The Oklahoma Access Providers do not provide "virtual NXX" services to themselves, and they have no "foreign central offices." The Oklahoma WACPs are not "swapping arrangements;" rather, they are OCC created and mandated toll repricing plans in which all end-users have a toll replacement additive added to their bill for local exchange service. SWB, as the toll carrier, receives the toll, and the Access Providers receive the equivalent of access charges from the Oklahoma High Cost Fund.

There is nothing "virtual" about Foreign Exchange ("FX") service. It is a tariffed, flat-rated circuit similar to special access or private line. The suggestion that "virtual NXXs" are part of an Access Provider's obligation to provide nondiscriminatory access to numbers is false.

The Access Providers are exempt from the obligation to provide interconnection, pursuant to § 251(C)(2) of the 1996 Telecom Act, until such time as the OCC terminates the exemption pursuant to a bona fide request for interconnection.

The assertion that wireless customers make calls to landline phones "without toll" is specious, because the cost of transporting and terminating a wireless to landline call is buried in the per-minute charges paid by the wireless customer to the CMRS Provider. The suggestion

that landline subscribers should be able to dial wireless phones toll free, although appealing at first blush, is grossly unfair and destructive to competition in the interexchange market.

Mr. Jay, in his Rebuttal Testimony, provided the Access Providers' suggested contract language regarding the definition of traffic, grammatically complete sentences, direct interconnection, the origination and termination points of a call, how long the CMRS Providers have to pay invoices, the responsibility of wireless carriers for the services they provide to their end users, and the issue of expanded networks.

Mr. Jay further testified that the Commission has granted Salina-Spavinaw and six other Access Provider companies a temporary waiver of the FCC's requirement to implement intraLATA equal access because the Commission found it in the public interest to continue the availability of SWBT's optional toll discount plans to such Access Provider companies' end users. Mr. Jay further testified that legal restrictions exist that could prevent a company from programming a number as local in the Salina-Spavinaw switch. He further testified that the CMRS carriers in this proceeding were looking to the wrong party for compensation for calls terminating on the CMRS network because under Commission rules and orders, IXCs carried such calls. He further testified that the CMRS carriers had initiated a proceeding at the FCC to obtain compensation from IXCs for the very traffic they seek compensation from the Access Providers. Finally, Mr. Jay testified that the reciprocal compensation provisions of § 251(b)(5) of the Act do not apply to the transport or termination of interstate or intrastate interexchange traffic.

Please see the transcript for the cross-examination of Mr. Jay.

C. Roger Hutton Testimony

Mr. C. Roger Hutton testified on behalf of the Rural Telephone Companies. Mr. Hutton is CEO of CHR Solutions, Inc.; an engineering and management consulting firm. Mr. Hutton's testimony filed in this proceeding is directed to Issue No. 1 in dispute between the Rural Telephone Companies (RTCs) and the Wireless Providers. Issue No. 1 on the Dispute Matrix relates to the type of traffic subject to reciprocal compensation. Mr. Hutton's testimony first provides background on how the RTCs became Access Providers and that they are no longer interexchange toll providers responsible for transporting and terminating interexchange toll traffic.

Mr. Hutton further testified that the Orders of this Commission in 1996 established the existing access charge process that require the RTCs to hand off interexchange toll traffic to the interexchange toll provider selected by the end user customer. Subsequent Orders of the Commission define the Wide Area Calling Plans (WACPs) and require the RTCs to hand off WACP traffic to Southwestern Bell (SWBT) as the designated WACP provider. Southwestern Bell handles the WACP traffic in the same manner as all other interexchange toll providers and the RTCs receive access revenues for use of their facilities. The access orders of this Commission outline clearly that the originating interexchange toll traffic does not belong to the RTCs; consequently, the RTCs are not responsible for terminating compensation to the wireless

providers. The interexchange toll provider that receives end user toll revenues for the traffic and has the responsibility to make sure it has facilities to transport and terminate the traffic.

Mr. Hutton further testified that the Commission has instructed SWBT to provide sufficient billing data to the RTCs so that appropriate billing can be issued to any telecommunications carrier that terminates traffic on their facilities. If SWBT cannot provide billing data, the RTCs have the authority from the Commission to bill SWBT access for terminating traffic.

Mr. Hutton further testified regarding the Orders of the Commission and the FCC that outline the regulatory requirements for end user customer's to choose which interexchange toll provider they would like to receive services from. The Dialing Parity, Equal Access Presubscription, and Slamming Orders of the FCC and endorsed by the Commission, are explicit that the RTCs cannot arbitrarily change the interexchange toll provider of an end user customer. Until this Commission changes its existing policies and Orders regarding interexchange toll traffic subject to these rules, the RTCs are not allowed to carry interexchange toll traffic. Therefore, the RTCs are not the party responsible for terminating compensation to the wireless providers.

Mr. Hutton further testified through cross examination and surrebuttal that toll calls destined for the customers of CMRS Providers were subject to the Orders of the Commission issued in Cause Nos. PUD 95-117 and PUD 95-119. SWB became the toll provider for these calls and the RTCs became Access Providers for the calls originated by customers in their exchanges as a result of the Commission's Order issued in these cases. In addition, calls destined for CMRS customers on a 1+ calling basis subsequently became the traffic of the IXCs as a result of the Commissions Dialing Parity Order issued in Cause No. PUD 980000263. All of these orders predated the FCC actions on CMRS traffic.

Mr. Hutton further testified that the issue of virtual NXX, as proposed by Western Wireless, should not be considered in this arbitration. This proposal, if approved, would require the RTCs to provide interexchange services contrary to prior Commission Orders issued in Cause Nos. PUD 95-117 and PUD 95-119. Also, the IXCs who currently carry the calls are not party to this arbitration and their businesses would be adversely affected if the RTCs were ordered to provide this service. In addition, the CMRS Providers provided no testimony as to the manner in which the RTCs would be compensated for this service and, therefore, no basis exists for the service to be provided.

Please see the transcript for the cross-examination of Mr. Hutton.

Gary Burke Testimony

Mr. Gary Burke testified on behalf of the Rural Telephone Companies. Mr. Burke is employed by Panhandle Telephone Cooperative as plant manager. In this capacity Mr. Burke is responsible for planning, engineering, construction and maintenance of the company's facilities.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

Mr. Burke testified to the following issues; Shared Trenching Facilities and Virtual NXX Arrangements.

Shared Trenching Facilities

Mr. Burke testified that it is not common, nor customary, for rural telephone companies and other utility companies to place facilities in a common trench or on joint poles. This situation is rare for several reasons. First, it is very difficult for utility companies to be on the same time schedule due to different methods of provisioning, placement, supply lead times and priorities. To leave trenches open for extended periods of time to allow for scheduling differences would create public safety issues. Second, in the majority of cases, telephone companies are placing facilities in locations where other utility companies have no need for facilities, nor are existing pole lines generally located where a telephone company's needs exist. In my 24 years of telephone company experience, although joint trenching has occurred, it is a very small piece of the overall construction for a rural telephone company—far less than 1% (both in capital dollars and total footage placed) of the construction activity.

Virtual NXX Arrangements

Mr. Burke further testified that a "virtual NXX" is a concept promoted by CMRS Providers and CLECs. In the case of a CMRS Provider, an NXX belonging to the CMRS provider is physically located within a switch owned by the CMRS provider, but is associated with an Access Provider's wire center in a completely different location. This would enable an Access Provider's end user to call the CMRS NXX without incurring toll charges, even though it is not physically located within that wire center.

Mr. Burke further testified that calls to a "virtual NXX" would be routed via translations over existing common facilities to a LATA tandem. The terminating CMRS provider must also have a connection to the LATA tandem. The traffic would then be sent from the LATA tandem over this connection to the wireless switch and then on to the wireless end user. This results in increased traffic load on the interexchange facilities between the Access Providers and SWB and potentially increased traffic loading on the interexchange facilities between the wire centers of the Access Provider if IXC's have established POP's at an end office. The "virtual NXX" will result in traffic being directed away from existing IXC facilities, which they are required to lease or to own, onto the common facilities, which the CMRS Providers would not be required to lease or to own. Switching and transport would be provided by the Access Provider and any third party carrier. In addition, if interexchange traffic is not handed off to an IXC, the CMRS provider avoids the cost of leasing a facility to provide a POI within the boundary of the end office for which it seeks local calling. In other words, they will get a "free ride" on facilities used for other purposes.

Please see the transcript for the cross-examination of Mr. Burke.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

William S. McBride Testimony

Mr. McBride testified on behalf of the Rural Telephone Companies. Mr. McBride is employed by Fred Williamson and Associates. Mr. McBride testified that the CMRS Providers are now and have been delivering their traffic to the RTCs by means of Southwestern Bell Telephone (SWBT). Throughout Mr. McBride's testimony and as contained in the hearing transcript this situation of the CMRS Providers delivery of traffic to the RTCs via SWBT is identified as "indirect" interconnection. Mr. McBride described in testimony and with illustrations how this traffic flow from the CMRS Providers originates and or is carried on the CMRS Providers' networks, transits SWBT's facilities and is then delivered for termination by SWBT to the RTCs. Mr. McBride noted in his testimony that the CMRS Providers and SWBT anticipated this "transiting" function being performed by SWBT and indeed the CMRS Providers pay SWBT a transiting fee for this service. However, no compensation for the traffic the CMRS Providers are terminating on the RTC networks has ever been rendered by the CMRS Providers to the RTCs, despite being billed for such usage by the RTCs.

Mr. McBride further testified that reciprocal compensation obligations do apply for traffic exchanged between the CMRS Providers and the Rural Telephone Companies (RTCs) in this Cause. However, Mr. McBride also testified that you had to look at the specific nature of the traffic to determine when such obligations are applicable and who the responsible originating carrier actually is. Mr. McBride stated that reciprocal compensation for traffic exchanged within an MTA is applicable to traffic that the CMRS Providers send to the RTCs on either a directly or indirectly connected basis. This is appropriate because the CMRS Provider has the retail relationship with the originating wireless end user for traffic the end user originates. This responsibility remains whether the wireless traffic is delivered to the RTCs via facilities the CMRS Providers have leased, purchased and/or are utilizing as transiting per their interconnection agreements with the transiting carrier (the transiting carrier utilized by the CMRS Providers in Oklahoma on an almost exclusive basis to deliver traffic to the RTCs is SWBT). Mr. McBride also clearly testified that reciprocal compensation does not apply to traffic that the CMRS Providers have lawfully (under their dialing parity and pre-subscription process and/or under the terms of their agreements that are on file with various state commissions, (including Oklahoma) handed off to an Interexchange Carrier (IXC) for termination to the RTCs. Such traffic would be correctly identified, under the federal and state access charge régime requirements, by the RTC, the CMRS Providers and the IXC as being the responsibility of the IXC and, therefore, the RTCs would bill and the IXC would pay for this traffic under the terms of the appropriate and approved RTC switched access tariff.

Mr. McBride further testified that the Telecommunications Act specifically requires, in 47 U.S.C. 251(g), that each local exchange carrier (LEC) must provide exchange access to interexchange carriers in accordance with the same obligations that applied to each carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 (Act). There is no exclusion for CMRS traffic in §251(g), indeed that section specifically states that obligations of the LEC (the RTCs in this Cause) to provide exchange access on a non discriminatory basis to interexchange carriers apply until "explicitly superseded by regulations prescribed by the Commission after such date of enactment." No such explicit regulations have been prescribed by the Commission, therefore, the requirement by the RTCs to continue to

provide exchange access to interexchange carriers is still in force and is exactly what the RTCs are doing. Mr. McBride stated that just like the traffic the CMRS Provider hands off to an IXC, the interexchange traffic (originating in an RTC exchange area) that a toll provider or IXC customer originates and that is destined for a CMRS Provider's subscriber is the responsibility of the toll provider and/or IXC. Mr. McBride also specifically noted that the CMRS Providers agree that IXCs should pay CMRS Providers for use of their network as found in the Sprint PCS petition in FCC Docket WT 01-316 filed October 22, 2001. Western Wireless and Cingular (SWBT Wireless) filed comments in that Docket in complete agreement with Sprint. Mr. McBride also included statements from the CMRS Providers filings in that Docket where they describe why the IXC owes them compensation for terminating traffic on their networks; why a de facto bill and keep arrangement does not exist between the IXC and Sprint PCS; and why it was difficult for Sprint PCS to readily identify the IXC that was terminating traffic on the CMRS network. Mr. McBride noted that the same rationales can be applied to the RTCs in this Cause. A de facto bill and keep does not exist simply because the CMRS Providers have avoided paying for the use of the RTC's networks despite being billed for it by the RTCs.

In regards to interexchange traffic, Mr. McBride testified that the RTCs, by Oklahoma Corporation Commission (OCC) rules do not carry interexchange traffic. The OCC rules require that such traffic be handed off to the appropriate Interexchange toll provider or IXC. The interexchange traffic that is originated within an RTC exchange area belongs to a toll provider or IXC and, therefore, it is the responsibility of the toll provider or IXC to compensate those carriers on whose network(s) their traffic transits and/or terminates. This responsibility for compensation by the toll provider or IXC remains regardless of if the customer being handed off to their pre-subscribed IXC generated the originating call or if the originating customer dialed 1010-XXX (also known as dial-around) to reach an IXC of their choice.

The RTCs are Access Providers as discussed in Oklahoma Corporation Commission (OCC) Order No. 399040. Access Providers, as the name implies, provide access for toll providers and IXCs to reach end user subscribers and is in compliance with FCC and OCC requirements. It also means that when the end-user subscriber has established a retail business relationship with their toll provider or IXC and the end-user places a call utilizing the toll provider and/or IXC facilities then the end user, the minutes associated with that call, and the revenue billed to the end-user for the call belong to the toll provider and/or IXC and not the RTC. Therefore any compensation, defined as reciprocal or otherwise, for toll provider or IXC traffic delivered to a CMRS Provider is due from the toll provider or IXC, not the RTC.

Mr. McBride pointed out in his testimony that the CMRS Providers have been sending significant volumes of traffic to the RTCs for a number of years without compensation arrangements. For a limited time period partial cost recovery for this CMRS traffic had been provided to the RTCs by SWBT in the nature of revenue sharing arrangements. This sharing by SWBT did not identify the specific CMRS Providers that were actually responsible for the traffic; it simply provided partial cost recovery because SWBT was billing the CMRS Providers on a distance sensitive basis and for terminating end office costs even when the traffic terminated to an RTC end user. Since SWBT was billing for facilities that it didn't own a revenue sharing process was negotiated between SWBT and the RTCs. However, shortly after the

implementation of their agreements with the CMRS Providers under the Telecommunications Act of 1996, SWBT unilaterally canceled the revenue sharing process leaving the RTCs with no means of cost recovery for the CMRS traffic that uses RTC facilities. Until SWBT began producing the Cellular Transiting Usage Summary Report (CTUSR) the RTCs had very limited abilities to identify the CMRS Providers that were sending them traffic via SWBT facilities. Mr. McBride specifically noted in his testimony that the OCC in Order 455901 issued in Cause No. PUD 980000263 requires SWBT to either provide the CTUSR at no costs to the RTCs so that the RTCs can identify the CMRS Providers for billing purposes or SWBT can be billed for the CMRS traffic. The RTCs have billed the CMRS Providers for use of the RTC facilities but the CMRS Providers have yet to pay. Just because the CMRS Providers have thus far avoided paying for use of the RTC facilities does not mean that the RTCs have agreed to a bill-and-keep arrangement. Indeed the bills rendered to the CMRS Providers clearly show that the RTCs expect compensation. Mr. McBride also presented testimony that reflects a significant traffic imbalance between the Parties in this Cause and therefore bill-and-keep is clearly not appropriate. Mr. McBride's study reflects that the balance of traffic is 81 / 19; meaning that the CMRS Providers are terminating to the RTCs 81% of the total traffic that is being exchanged between the Parties. Mr. McBride explained that this study resulted from the analysis of billing records for the landline to CMRS portion (originating) and from the use of SWBT's CTUSR for the corresponding CMRS to landline (terminating) portion. The originating and terminating usage was from the same 2/5/02 through 3/4/02 time period and absolutely reflects a significant traffic imbalance.

Mr. McBride's testimony clearly reflects that the Telecommunications Act and the FCC acknowledge that the access charge regime is still in existence and that the RTCs have specific obligations to provide exchange access to interexchange carriers. There are also specific obligations that the RTCs as "Access Providers" under the orders of the OCC have to hand off interexchange traffic. The RTCs don't carry it and, therefore, cannot be responsible for any compensation that is due from it.

Mr. McBride further testified that the Virtual NXX proposal by Western Wireless should be rejected because it is a purely a demand for toll by-pass by Western Wireless. It is not part of their negotiated agreement with SWBT that was approved by the OCC nor is there any language regarding Virtual NXX in the agreement that was subject to arbitration. Mr. McBride explained that Virtual NXX as requested by Western Wireless is an interexchange service offering not subject to reciprocal compensation and as explained in Mr. McBride's rebuttal testimony is not like foreign exchange (FX) service as alluded to by Western Wireless. Mr. McBride also pointed out during cross examination that FX service is provided on a very limited basis under explicit tariff conditions and is solely provisioned on a dedicated circuit basis with the requesting customer paying for the dedicated circuit. In addition, the implementation of virtual NXXs for Western Wireless should be viewed as anti-competitive since it would directly impact toll providers and IXCs doing business in Oklahoma.

The de-minimus language and "traffic levels" proposed by the CMRS Providers are not appropriate for the RTCs. The type of arrangement they propose may be better suited to the

larger LECs, such as SWBT, with whom the CMRS Providers are involved but not with the RTCs.

Please see the transcript for the cross-examination of Mr. McBride.

Jonathon P. Harris Testimony

Jonathon P. Harris testified on behalf of the Rural Telephone Companies. Mr. Harris is a principal in the firm Beacon Telecommunications Advisors, LLC, which provides financial and regulatory consulting services to independent telephone companies throughout the United States. Mr. Harris testified to the following areas regarding costs incurred by the Oklahoma ILECs to switch message traffic across the network and the correct level of compensation for use of the ILEC network.

Reciprocal Compensation

Subpart H of CFR 47 Part 51 governs the issues of reciprocal compensation. It splits the services provided between co-carriers into two distinct categories, those of transport and termination. "Transport" is defined as the transmission and any necessary tandem switching of traffic from the interconnection point between the two carriers to the end office switch that directly serves the called party. "Termination" is the switching of telecommunications traffic at the terminating carrier's end office switch and delivery of such traffic to the called party's premises.

Forward Looking Cost of Service Studies

47 CFR §51.705(a)(1) specifies that forward looking costs studies conducted for the purpose of establishing interconnection rates should be conducted pursuant to 47 CFR §§ 51.505 and 51.511. Since they don't utilize current actual costs, determination of forward looking costs requires the use of a model. All models require inputs. Rather than dismissing the study out of hand, it would be wise to determine the validity of the inputs, specifically as they relate to the Oklahoma ILECs.

The HAI Model Fulfils all of the Requirements for a Forward Looking Cost Study

In the interests of economic efficiency and timeliness, the RTCs chose to adopt an existing model rather than develop their own. Of the publicly available models, HAI 5.0a was selected because it was inexpensive, and relative to the other available models, the calculations of the model are more open. HAI generally produces conservative results (lower costs) than the other models. For this reason, the CMRS Providers themselves recognize that the HAI Model is "the best model" for determining a forward looking interconnection cost. The HAI forward looking cost model is recognized also by the FCC as complying with the principles of forward looking cost studies as set forth in 47 CFR §51.505.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

HAI Default Inputs do not Reflect the Forward Looking Costs of Oklahoma RTCs

In providing for user adjustable inputs, the authors of the HAI Model recognized that there would be many instances in which default input information would need to be adjusted. The current and more importantly, expected future operating costs of Oklahoma RTCs are not properly reflected in the default input amounts. Therefore, the RTCs changed a limited number of inputs to more accurately reflect their expected costs.

These changes recommended by Mr. Harris can be summarized as follows:

- Recognize that substantially more cable and wire facilities are buried rather than aerial
- Reduce the portions of Loop and Interexchange cable which is deemed to have common placement.
- Eliminate the assumption that 2/3rds of cable and wire facilities are shared with other utilities
- Increase the default amount of switching costs. The HAI defaults utilized a sample which was simply not reflective of switching costs incurred by Oklahoma ILECs.
- Decrease the depreciable life of switches from 16+ years to 12 years.
- Adjust the rate of return to 11.25%

Adjusting the minutes of use was considered. However, upon review of actual 2000 minutes, submitted by the companies' consultants, it was determined that the HAI default minutes (based upon RBOC per line averages in 1994) were actually representative of the actual minutes carried in 2000.

Results of Forward Looking Cost Study Using HAI

After giving effect to the limited changes to inputs, the results of the study indicates a forward looking cost of 10.37¢ per minute. This consists of transport and switching of 5.37¢, line port costs of 0.52¢ and loop costs of 4.48¢

If no changes to the default inputs of the HAI Model are made, the model determines a rate of slightly more than 5.00¢. Finally, even if only those changes advocated by the CMRS Providers are made, a rate covering only transport and switching (and excluding loop) of 3.19¢ is calculated.

The Costs of Termination Should be Included in the Reciprocal Compensation Rate

The final part of the definition of "termination", as stated previously, is critical. Mr. Harris testified that the FCCs rule doesn't say "delivery to the called party's line card." Obviously, the traffic must transit the end user's loop to be delivered to the called party's premise. Clearly, the loop is part of termination as defined above, and it is used to terminate CMRS originated traffic.

47 CFR §51.505(a)(2) indicates that a forward looking cost includes a reasonable allocation of forward-looking common costs. 47 CFR §51.505(c) defines forward-looking common costs as "costs efficiently incurred in providing a group of elements or services...that cannot be attributed directly to individual elements or services." (emphasis added)

The general rate structure standard at 47 CFR §51.507(c) says that the costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users, and that costs of shared facilities may be apportioned either through flat rate or usage sensitive charges.

Mr. Harris rebutted the testimony of Dr. Mercer where he asserts that Line Port and Loop are not common or joint costs. Mr. Harris testified that Dr. Mercer's proposal is only correct when conducting a UNE study, not for transport and termination rates. However, as required by FCC rules, rates must be calculated performing a forward-looking cost of service study, as was performed by Mr. Harris.

While a UNE study must utilize forward-looking costs, it aggregates costs to discrete network elements or facilities rather than telecommunications services. In a UNE study, the loop and line port are defined as elements. Therefore, by definition in a UNE study, the loop and line port cannot also be defined as common costs. While UNE studies are forward looking cost studies, not all forward looking cost studies are UNE studies. In a forward-looking cost of telecommunications service study, the loop and line port are common costs. The FCC, courts and various state commissions have repeatedly found that the loop is a joint and common cost when studying services. Since the CMRS Providers are not purchasing UNEs, a cost of service study is appropriate.

The telecommunications industry has often made a distinction between "traffic sensitive" and "non-traffic sensitive" costs. However, in reality most costs including most non-traffic sensitive costs are actually step variable costs. In his book, Cost Accounting, A Managerial Emphasis, Charles T. Horngren defines step variable costs as those in which the cost of an input is constant over various ranges of output, but which increase by discrete amounts as activity moves from one range to the next. This step-like behavior occurs when an input is acquired in discrete quantities but is used in fractional quantities. This is precisely what happens with loop usage. It is acquired in discrete units (loops), but is used in fractional quantities (minutes). Just as the HAI Model assumes the addition of another end office switch at either 80,000 ports, or 600,000 busy hour call attempts; a business subscriber might decide to add another loop based upon their busy hour usage or overall usage including terminating usage.

Finally, 47 U.S.C.A. § 254(k) prohibits defined Universal Services, such as local service and access to Interexchange carriers, from bearing more than a reasonable allocation of joint and common costs. If CMRS Providers are not allocated their proportional usage of the loop facilities, then Universal Services will be allocated more than their proportional usage.

A Composite Rate Applicable to All RTCs is Permissible and Reasonable

Everyone would agree that a forward looking cost study is at best an approximation/estimate of what any individual company's cost will be in the future. Further, only two company's individual forward looking costs are below the 5.3804¢ composite rate which the RTCs propose as being representative of their forward looking costs.

Additionally, the companies believe that it is appropriate to charge similar rates for similar services. They wish to avoid regulatory disparity and discrimination in pricing. Given the range of variables which can impact forward looking costs, the RTCs believe that the administrative convenience of a single rate exceeds the minor benefit that might be associated with individual company rates. This is reinforced by the fact that calculating, and maintaining 32 separate rates, and negotiating 32 separate contracts would be much more expensive.

Conclusion

In compliance with FCC rules, the RTCs have performed a forward looking cost of service study which supports the proposed reciprocal compensation rate of 5.3804¢ per minute. Contrary to the assertions of the CMRS Providers, this is a rate for transport and termination (reciprocal compensation), not access. The Commission should approve this rate as being a just and reasonable forecast of the RTCs' forward looking costs for transport and termination of CMRS traffic.

Please see the transcript for the cross-examination of Mr. Harris.

Tim Morrissey Testimony

Mr. Tim Morrissey testified on behalf of the Rural Telephone Companies. Mr. Morrissey is employed by Fred Williamson and Associates (FW&A) as Manager-Regulatory/Legislative Affairs. Mr. Morrissey testified to the specific issues identified below.

Issue 4 - What are the appropriate rates to be charged for transport and termination of traffic subject to reciprocal compensation?

Mr. Morrissey's Rebuttal Testimony substantiated that the Access Providers have met the standard established by the Federal Rules for the proposed compensation rate. Specifically the compensation rate proposed by the Access Providers does not exceed the forward-looking economic costs per minute of use associated with the termination of traffic from CMRS Providers. The Access Providers have submitted a cost study prepared based on the HAI 5.0a Model that depicts the forward-looking cost of the Access Providers involved in this cause. The information presented in testimony shows that the forward-looking costs from the HAI 5.0a for the Access Providers is $0.1037 per minute of use and lends credible support to the $0. 53804 per minute of use compensation rate proposed by the Access Providers.

EXHIBIT A TO
REPORT AND RECOMMENDATION
OF ARBITRATOR

Issue 5 - Is the HAI Model an appropriate model for determining rates in accordance with FCC rules and orders for § 251(b)(5) traffic?

Mr. Morrissey also addressed the CMRS Providers' unsupported and unsubstantiated claims regarding the inputs to the HAI 5.0a forward-looking cost study submitted by the Access Providers. The CMRS Providers' claims that the Access Providers failed to substantiate the forward-looking cost study are erroneous. The Access Providers, prior to filing testimony, submitted to the CMRS Providers the HAI Model, inputs, modifications to the inputs, a description of those modifications, and the HAI 5.0a Model Documentation. The CMRS Providers possessed sufficient information to analyze the forward-looking costs from the HAI 5.0a Model, but they simply chose to let the provided information and data sit, and instead, assert false allegations. Nevertheless, the Access Providers' testimonies and responses to interrogatories explain in detail the process and data sources utilized to develop the forward-looking costs from the HAI 5.0a Model. Included in these explanations was a discussion of the differences in end office and tandem interconnection costs and how the Access Providers used a very conservative approach in combining these cost amounts from the HAI 5.0a Model. The Access Providers have also explained the methods used to convert line port and loop costs, from the HAI 5.0a Model to a per-minute of use recovery amount. The HAI 5.0a Model reasonably depicts the forward-looking costs of the typical networking arrangements of the Access Providers and demonstrates, contrary to the CMRS witnesses claims, that the compensation rate proposed by the Access Providers is appropriate and reasonable. Finally, there is no merit to the CMRS witnesses' allegations that the forward-looking costs of the Access Providers should more closely resemble the negotiated rates and forward-looking costs of other LECs such as Sprint and Southwestern Bell Telephone. The cost data presented in the Direct Testimonies of the CMRS Providers contain anomalies and is an inadequate basis for evaluating the Access Providers' proposed forward-looking cost and compensation rate.

Mr. Morrissey provided surrebuttal testimony that explained why the forward-looking costs proposed by Dr. Mercer and Mr. Conwell, witnesses for the CMRS Providers, of $0.010722 and $0.0139, respectively are too low and based on erroneous assumptions. Mr. Morrissey explained why the studies fail to appropriately depict the forward-looking costs associated with serving rural areas. Further, Mr. Morrissey provided surrebuttal testimony that showed that acceptance of the inputs recommended by Dr. Mercer and corrections of inappropriate omissions by Mr. Conwell would support a switching and transport cost of over three cents per MOU.

Mr. Morrissey's surrebuttal testimony discussed the following deficiencies with the forward-looking cost studies purported by Dr. Mercer and Mr. Conwell:

- They exclude key components of forward-looking cost components that are necessary to terminate CMRS traffic: Line Port and Loop recovery; Dedicated Transport; and Mr. Conwell excludes Tandem Switching.
- The CMRS cost studies make erroneous substitutions of the Access Providers' costs with SWBT's and other companies' costs or inputs that do not represent the costs of facilities that serve the Access Providers' areas and customers. The major deficiencies are:

- Dr. Mercer inappropriately substituted SWBT's Dedicated Transport Cost from the HAI 5.0a Model of $0.00086 for the Access Providers' Dedicated and Common Transport Facility Components.
  - Assumed use of HAI5.0a default inputs that do not reflect rural costs.
  - SWBT's HAI costs reflect the facilities necessary to serve their customers, not the Access Provider customers. SWBT's facilities and network, as depicted in the HAI Model, do not extend to the Access Providers' customers. These facilities are not capable of transporting traffic to the areas served by the Access Providers.
  - Reflects a study area average cost for SWBT rather than the cost for rural areas. The cost proposed by Dr. Mercer substantially reflects the cost of serving customers in metropolitan areas rather than rural areas. 68% of the Access Providers' customers are in areas with less than 100 lines per square mile, only 14% of SWBT's lines are located in such areas. The costs for SWBT's most rural zone is approximately 700 percent higher than SWBT's study area average cost. SWBT's transport cost, if adjusted to reflect the density of the areas served by the Access Providers and to include the Common Transport Component, would be more than one cent.
  - It is not surprising that even Mr. Conwell's purported transport cost is $0.0089 are more than ten-fold the amount proposed by Mr. Mercer.
- Mr. Mercer, in the same erroneous fashion, substituted the Access Providers' tandem switching costs with SWBT's tandem switching costs. He ignores that a significant number of the Access Providers own tandem switches with higher costs than SWBT's switches.
- Mr. Mercer also employed inputs for local switching costs that reflect cost amounts that the FCC employed for estimating costs for large LECs rather than rural LECs.
- Mr. Conwell improperly asserts that the Access Provider's proposed common transport cost is $0.02318 per MOU, rather than the $0.011588 proposed by the Access Providers. He similarly asserts that the Access Providers' tandem cost is $0.0273 rather than $0.009502 proposed by the Access Providers.
- Mr. Conwell bases his purported transport cost on the HAI 5.0a default inputs that do not reflect rural costs, but at least bases his costs on a sample of Access Provider companies. He also arbitrarily reduces the termination costs by 10 percent. This reduction is not substantiated.
- Also, as stated previously, Mr. Conwell excluded forward-looking cost components for tandem-switching costs and dedicated transport costs.
- Mr. Conwell substantially understates the Access Providers' local switching costs.
  - The cost of $0.0042 per MOU that he recommends is more than 40 percent less than the $0.007 amount recommended by Mr. Mercer.
  - He utilizes RUS data that is not representative of the costs of the Access Providers. The average switch size in the RUS data is 1,365 lines. The average switch size of the Access Providers is 700 lines. A more representative sample, containing smaller switches, would result

in higher costs per line than what Mr. Conwell calculated. He also removed 30 % of the network expenses associated with switching.

- Acceptance of the inputs recommended by Dr. Mercer and corrections of inappropriate omissions of transport and tandem switching costs made by Mr. Conwell would support a cost of over three cents ($0.03) per MOU. This assumes that SWBT transport and tandem costs are not erroneously substituted for the higher rural costs of the Access Providers as Dr. Mercer recommended. Dr. Mercer's recommended input changes consisted of the following:
- Dr. Mercer's recommended local switching inputs.
- Tandem switching costs adjusted to reflect amounts close to the end office switching costs recommended by Mr. Mercer.
- 100% tandem routing of all interexchange traffic as recommended by Mr. Mercer.
- Elimination of Loop and Line Port costs.
- Replaced Dedicated Transport, assumed in the HAI 5.0a Model, with one-half of common transport costs to acknowledge that a portion of the actual facilities used to transport CMRS traffic from the SWBT tandem to the ILEC tandem or end office are owned by SWBT.
- Removed tandem switching and common transport costs in cases where the Access Provider does not own a tandem switch.

Please see the transcript for the cross-examination of Mr. Morrissey.

Paul L. Cooper Testimony

Mr. Paul L. Cooper testified on behalf of the Rural Telephone Companies. Mr. Cooper is retained by Fred Williamson and Associates, Inc. ("FW&A"). FWA performs studies for and represents small rural telephone companies in a number of states, including Oklahoma. Mr. Cooper testified regarding issues 1 and 2, that reciprocal compensation applies to traffic originated by a CMRS Provider's customer (excluding any traffic that they hand off to an IXC), which terminates to a customer using the RTC Access Provider's network facilities. Reciprocal compensation does not apply to IXC or toll provider interexchange (interMTA or intraMTA) traffic that is originated by IXCs (or SWBT acting as the toll provider in the WACP) using RTC facilities. FCC and Commission rules and orders require that the RTC Access Providers hand off this traffic to the customers' IXC (or SWBT within the WACP). FCC rules and orders specifically allow IXCs to carry interMTA or intraMTA traffic that is terminated by the CMRS Providers and these orders and rules do not require the RTCs to pay reciprocal compensation to the CMRS Providers when IXCs originate and carry the calls. Instead, the IXCs or toll providers are responsible for compensating the CMRS Providers for the use of their facilities by the IXCs to complete IXC customer calls.

Regarding issues 3, 4 and 5, Mr. Cooper further testified that the Commission should adopt the RTC proposed rate of $.053804 (a) that is reflective of, and supported by forward-looking costs, (b) that is efficient, just and reasonable and (c) that promotes the public interest and competitive equity. This rate does not exceed the forward-looking RTC costs produced by the HAI Model ($.103678 – modified inputs or $0.081640 – unmodified or default inputs) and reflects the forward looking cost recovery of the transport, tandem switching, end office

switching and customer connection network facilities used by the CMRS Providers when they terminate their customer's calls on the RTC Access Provider's networks. Loop and port rate elements ($0.027500) are included in the proposed rate because the FCC's definition of termination includes the cost of delivery of telecommunications traffic to the called party's premises and this would not be possible without these facilities. Loop and port costs in Oklahoma are not recovered from the Oklahoma Universal Service Fund (OUSF) nor end users as they are in the Federal jurisdiction, but are still recovered on a shared per minute basis from interexchange services. In the interests of competitive equity, the CMRS Providers should pay the same amount per minute for loop and port facilities as do other interexchange services. This will insure that local exchange services bear only a reasonable share of these costs and do not subsidize the intrastate competitive services of the CMRS Providers.

Mr. Cooper further testified that bill-and-keep is not appropriate and cannot be adopted by the Commission because the RTC's have met their burden of proof under 47 CFR §51.713, to establish that there is a significant imbalance of traffic.

Regarding issue number 6, Mr. Cooper further testified that the composite rate proposed by the RTC Access Providers complies with all FCC and Commission rules, regulations and orders for determining a reciprocal compensation rate. It is clearly within the jurisdiction of the Commission to allow the use of a common aggregate rate, particularly when, (a) the use of an aggregate rate promotes efficiencies and lower costs, (b) the CMRS Providers have demonstrated no harm associated with use of a common rate, and (c) that common rate is significantly below the HAI Model efficient forward-looking cost levels in the aggregate and for nearly every individual ILEC Access Provider.

Finally, regarding issue number 8, Mr. Cooper further testified that the virtual NXX proposal should be rejected because it (a) allows use of RTC Access Provider facilities for free while requiring RTCs to carry the interexchange call to anywhere in the world designated by Western Wireless, and then to also pay transiting and termination charges; (b) is at odds with network routing, FCC and Commission rules; (c) is anti-competitive; (d) requires RTC local exchange customers to inappropriately cross subsidize Western Wireless services; and (e) is not like FX and WACP services as Western Wireless claims. If adopted, all costs incurred by the RTC Access Providers (transport, transiting and terminating access payments) and revenues lost (originating access) to implement the virtual NXX service would be recoverable from the OUSF by the RTC Access Providers.

Please see the transcript for the cross-examination of Mr. Cooper.

Exhibit B to Report and Recommendations of the Arbitrator

ISSUE	CONTRACT SECTIONS	ARBITRATOR'S DECISION
1. What traffic within an MTA is subject to reciprocal compensation?	Recitals; Definitions "CMRS Traffic," "Wireless Traffic," "Local Traffic," "Transport"; Paragraphs 2.1, 2.2, 2.3, 2.4, 2.7, 3.0, 3.1.2, 3.1.3, 3.1.4, 5.2 and 7.2.7	The Arbitrator agrees with the position of the CMRS Providers that the FCC requires that reciprocal compensation be paid by the originating carrier for all traffic exchanged between the parties that is originated and terminated within an MTA as determined at the beginning of the call.
2. Do reciprocal compensation principles apply when the parties are not directly interconnected? II. RTC Sub-Issues (a) Mobile to landline intraMTA traffic: (i) Do reciprocal compensation principles apply to wireless-originated, intraMTA traffic handed off to a transiting carrier for termination to an RTC end user? (b) Landline to mobile, intraMTA traffic: (i) Are the RTCs required to route such traffic to a toll provider (an IXC or SWBT acting as an IXC) or a transiting carrier? (ii) Can such traffic be routed to a transiting carrier, and if so must the RTCs pay the transiting carrier to transit the traffic and pay reciprocal compensation to the wireless carriers? (iii) If such traffic is routed to a toll provider (an IXC or SWBT acting as an IXC), must the RTCs pay reciprocal compensation to the wireless carriers?	Definitions of "Connecting Facilities," "End Office," "Indirectly Connected," ; Paragraphs 2.6, 2.7, 4.3.1, 4.3.2, 4.3.3, 5.1.3, , 5.5 and 7.3; Appendix A	The Arbitrator agrees with the position of the CMRS providers that the FCC requires that the parties must pay each other reciprocal compensation for all intra-MTA traffic whether the parties are directly or indirectly connected, and regardless of the intermediary carrier. The Arbitrator further finds that the RTC subissues are duplicative of the main issue and need not be addressed.
3. May the Rural Telephone Companies charge terminating access rates for any intraMTA traffic?	5.1.2	The Arbitrator concurs with the position of the staff. No. The FCC has clearly stated that calls made to and from a CMRS network within the MTA are subject to transport and termination charges rather than interstate and intrastate access charges.
4. What are the appropriate rates to be charged for transport and termination of traffic subject to reciprocal compensation?	5.1, 5.1.3, Appendix A	The Arbitrator concurs with Staff's recommendation that transport and termination be provided on a bill and keep basis until an individual study shows that it is more economically and justifiably appropriate to do otherwise. The bill and keep arrangement shall continue until the Commission has determined that an imbalance in the exchange of telecommunication traffic exists, at which time a forward-looking cost study is to be utilized to establish the rate.

Exhibit B to Report and Recommendations of the Arbitrator

ISSUE	CONTRACT SECTIONS	ARBITRATOR'S DECISION
5. Is the HAI Model an appropriate model for determining rates in accordance with FCC rules and orders for Section 251(b)(5) traffic?	None.	The Arbitrator believes that the HAI Model is suspect given the ability of persons to manipulate the inputs to obtain a desired result.
6. Is it reasonable and in compliance with the FCC requirements for the RTCs to utilize a composite rate?	Appendix A.	The Arbitrator concurs with the position of the CMRS Providers that (1) A uniform transport and termination rate is not appropriate; each company must have its own rate based on its own costs. (2) For the same reason it is not appropriate to develop costs on an aggregate, weighted average, or composite basis. (3) It is not appropriate to average tariffed rates to arrive at a uniform rate for every company. (4) It is not appropriate to average the results of a cost study to support a rate.
7. Is Western Wireless entitled to be compensated at the tandem interconnection rate?	Appendix A.	The Arbitrator finds that the rates are to be symmetrical utilizing the independent's tandem interconnection rate.
8. Is Western Wireless entitled to establish a single point of interconnection at a tandem switch and obtain a virtual NPA NXX in the RTCs' end office switches that subtend the tandem?	None.	The Arbitrator concurs with the position of Western Wireless that based on standards of non-discrimination and numbering obligations, Western Wireless should have the option of establishing local numbers in an RTC switch without having a direct connection.
9. Miscellaneous Issues		
9A. How should "Cell Site" be defined?	Definition of "Cell Site"	The Arbitrator concurs with the position of the staff to define "cell site" consistent with the definition used by SWBT in its Wireless Interconnection Agreement. "Cell Site – A transmitter/receiver location, operated by the cellular carrier, through which radio links are established between the cellular system and mobile units. The area reliably served as a given call site is referred to as a 'cell.'"
9B. How should "Traffic" be defined.	Definition of "Traffic"	The Arbitrator concurs with the position of the Staff for utilizing the definition of "Traffic" found in 47 CFR 51.701(b)(2). "Telecommunications traffic means: Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. Sec. 24.202(a).
9C. Should the contract contain incomplete sentences that do not clearly relate to any other sections?	2.2, 2.3 and 2.4	The Arbitrator recommends striking proposed paragraphs 2.2, 2.3 and 2.4.
9D. What language regarding ISP traffic should be adopted?	2.5	The Arbitrator concurs with Staff position to utilize the language proposed in 2.5 of the CMRS Providers' proposed agreement.
9E. Should provisions addressing direct		The Arbitrator concurs with the position of the

then carries the call to the independent local exchange carriers (LECs) for connection to the called customer. Qwest charges the wireless companies a transit fee for carrying the traffic. INS charges a "centralized equal access" (CEA) fee to Qwest for carrying the traffic. The independent LECs assess access charges to Qwest for terminating the wireless traffic to their customers.

In the proposed decision and order, the Presiding Officer concluded that federal law defines the wireless traffic at issue as "local," so access charges do not apply. The wireless carriers could build their own networks and interconnect directly with the independent LECs on a bill-and-keep basis, pursuant to Board and Federal Communications Commission (FCC) rules. If, however, the wireless carriers want to use INS facilities for an indirect connection, they may do so, but INS is entitled to compensation for providing those services. The appropriate rate for INS's services cannot be determined on this record. If the wireless carriers want to include Qwest in the transaction, Qwest is also entitled to compensation for carrying this traffic, but it has no obligation to pay access or other terminating fees because this is local traffic. The parties were encouraged to negotiate an agreement regarding these matters under the federal Act, with Board arbitration available for any issues the parties are unable to resolve by negotiation.

On December 11, 2001, notices of appeal were filed by INS, the Rural Iowa Independent Telephone Association (RIITA), Qwest, Iowa Telecommunications Association (ITA), and Central Scott Telephone Company (Central Scott). On

December 21, 2001, the Board issued an order waiving rules 7.8(2)"c" and "d" and establishing a procedural schedule for this appeal.

Pursuant to that schedule, on January 11, 2002, responses to the notices of appeal were filed by INS, Qwest, RIITA, ITA, Central Scott, U.S. Cellular and Verizon Wireless (collectively referred to hereinafter as Verizon), Sprint Spectrum L.P. d/b/a Sprint PCS and Sprint Communications Company L.P. (Sprint), South Slope Cooperative Telephone Company, Inc. (South Slope), and AT&T Wireless Services, Inc. (AT&T Wireless).

On March 18, 2002, the Board issued an order affirming the proposed decision and order.

On April 5, 2002, ITA filed an application for rehearing, requesting reconsideration of two issues: First, the Board's discussion of the use of bill-and-keep, and second, the Board's directive that the independent LECs allow their customers to place calls to wireless customers within the same Major Trading Area (MTA) as local calls. ITA asks that the Board issue an order clarifying that its bill-and-keep rule is not applicable to interconnection negotiations between wireline and wireless service providers and withdrawing the directive that independent LECs allow their customers to dial calls to wireless customers in the same MTA as local calls.

On April 19, 2002, answers to the ITA application for rehearing were filed by Qwest, Verizon, AT&T Wireless, and Sprint. Each of these parties resists ITA's request for reconsideration of one or both of the identified issues. Their specific arguments will be summarized in the discussion of each issue, below.

ANALYSIS

Issue 1. Does the bill-and-keep rule apply to wireline-to-wireless interconnections?

A. Summary of arguments

ITA argues the Board should clarify its prior discussion of bill-and-keep and its expected role in the negotiations between the wireless carriers and the independent LECs. On the one hand, the orders require the parties to negotiate an interconnection agreement for the exchange of wireless and wireline traffic, with the resulting terms and conditions to apply to traffic exchanged from and after April 19, 1999. On the other hand, the orders also state that if the wireless service providers were to connect directly with each of the independent LECs, they would be entitled to exchange traffic with the LECs on a bill-and-keep basis pursuant to 199 IAC 38.6, at least until such time as a continuing and significant traffic imbalance has been shown.

ITA argues these two statements create irreconcilable differences between the parties at the very opening of negotiations, as the independent LECs believe the bill-and-keep rule does not apply and the wireless service providers believe they are entitled to bill-and-keep from April 19, 1999, to a date at least six months after an interconnection agreement is executed. Because it is likely that the wireless service providers originate more traffic to the independent LECs than vice versa, any future compensation arrangements are likely to result in net payments from the wireless service providers to the independent LECs. This tends to reduce the incentive for the

wireless service providers to negotiate an interconnection agreement in a timely manner, according to the ITA.

The ITA argues that the bill-and-keep rule should not apply to wireless-to-wireline interconnection agreements because chapter 38 of the Board's rules applies only to wireline local exchange carriers and is inapplicable to wireless service providers. The ITA further argues that application of bill-and-keep in these circumstances would unfairly discriminate against the independent LECs because Qwest has a Board-approved wireless interconnection tariff that applies in the absence of an interconnection agreement and allows Qwest to charge the wireless service providers for terminating wireless calls to Qwest's local exchange customers.

Verizon argues that there is no inconsistency in the Board's orders and, therefore, no need for clarification, because the discussion concerning negotiated compensation relates to the transit services provided by INS, while the discussion concerning bill-and-keep relates to exchange of traffic with the independent LECs. These entities are differently situated; INS is entitled to compensation because it has no end-user customers involved in any of these calls, so it must recover its costs from the carriers that have such customers. The independent LECs, in contrast, have end-user customers involved in every call and can recover their costs from those customers.

Verizon also argues that bill-and-keep is the only compensation system that can legally result from this record because the Board's rule requires the use of bill-

and-keep until a factual determination is made by the Board that the exchange of traffic is unbalanced.

AT&T Wireless argues that the ITA is not seeking clarification; instead, it is seeking reversal of the Board's prior decisions. AT&T Wireless finds no ambiguity and no need for clarification.

Sprint argues the Board did not intend to reward the independent LECs with retroactive compensation for calls terminated in the past. Sprint also argues that the evidence presented at hearing establishes that the wireless service providers offered a model interconnection agreement that the ITA refused to consider, establishing that it is the ITA, not the wireless service providers, that apparently lacks an incentive to negotiate. Sprint also notes that a witness for an independent LEC admitted at hearing that bill-and-keep might be acceptable, if the traffic exchange was reasonably balanced. (Tr. 1105-06.)

Finally, Qwest argues that the Qwest tariff cited by ITA applies to wireless traffic that transits Qwest's network and does not attempt to apply access charges to the exchange of traffic with a wireless service provider, as was the case with the ITA's proposed tariff. Qwest also notes that the record shows that no service is provided pursuant to the tariff, citing Tr. 648. Qwest asks that the Board disregard the ITA's claim of discrimination based on Qwest's tariff.

B. Analysis

The divergent positions of the parties make it apparent that some further discussion of this issue is appropriate. All parties need to understand that the

Board's intention is that they negotiate one or more interconnection agreements to resolve the various issues in a commercially reasonable manner. If those negotiations are unsuccessful, the Board stands ready to determine the appropriate terms and conditions for exchange of this traffic, but that determination will have to be based on a record that is focused on issues such as the appropriate rates, terms, and conditions for interconnection in these circumstances.

However, the likelihood of successful negotiations will be improved if the parties understand the Board's view of the circumstances, based upon the record made in this docket. Clearly, the Board's bill-and-keep rule is not directly applicable to the wireless-to-wireline traffic at issue; as ITA notes, the application of chapter 38 of the Board's rules is limited to wireline carriers. However, the principles behind those rules are likely to be equally appropriate in situations involving wireless service providers, to the extent the circumstances are similar. Thus, if the Board is required to decide the terms and conditions for exchange of local traffic between wireless and wireline carriers, the Board may decide to apply the same bill-and-keep principles that it adopted as a rule in chapter 38, if it appears the flow of traffic is reasonably balanced. If, however, the traffic flow is imbalanced, then the Board will set a rate applicable to exchange of the traffic, in order to fairly compensate the carriers for use of their respective networks.

In this connection, it may be appropriate to note that the record in this docket already contains evidence from a wireless service provider that the traffic between a

wireless service provider and a wireline local exchange carrier is imbalanced. At the hearing, the Sprint witness testified:

> Q. There is another section in here. It just isn't jumping out of me, where it talks about this hearing, the facility cost, and that would be a factor that was a negotiated factor at the time that says, you know, the land to mobile is this percent, the mobile to land is this percent, and that's how we will share the cost of the facility.
>
> A. In today's environment with larger LECs, the standard current ratio is about 65/35, somewhere in that range.
>
> Q. That assumes that 65 percent of the traffic is wireless to wireline and 35 percent is reversed, wireline to wireless?
>
> A. Yes.
>
> Q. For purposes of the smaller LECs that you have negotiated agreements with, what is that ratio in general?
>
> A. With a lot of the smaller LECs, because we don't do direct connections where they would share in the cost of facility, that isn't in there, but I think it is safe to assume just for discussion purposes that it is probably more in the range of 75 to 25, 80/20, something like that.
>
> Q. Okay. So it is clear under any of those scenarios that the balance of traffic is not balanced 50/50, correct?
>
> A. Yes, when based on minutes of use, that's correct.

(Tr. 2298-99.) This testimony suggests there may be a significant traffic imbalance between the wireless service providers and the independent LECs. If, in any subsequent proceeding, the Board were to determine that the traffic is imbalanced even when all of the local traffic is correctly recorded as local, then it is likely the Board would set a reciprocal compensation rate. The parties should consider this likelihood when negotiating.

In summary, the Board will clarify its earlier discussion of bill-and-keep in this way: By its own terms, the bill-and-keep requirement of 199 IAC 38.6 is not directly applicable to the wireless-to-wireline traffic at issue. However, it is likely that the principles that made the bill-and-keep requirement appropriate for wireline interconnection agreements will apply with equal force to wireless-to-wireline arrangements if the traffic exchange is reasonably balanced. If the traffic is not balanced, then bill-and-keep may not be appropriate. If the traffic was significantly imbalanced in the past, then the Board recognizes the possibility that the wireless service providers may owe termination charges to the independent LECs back to April 19, 1999.

Issue 2. Should the independent LECs be required to allow their customers to dial calls to wireless customers in the same MTA as local calls?

A. Summary of arguments

ITA also requests rehearing concerning the Board's direction that the independent LECs allow their customers to dial intraMTA calls to wireless customers as local calls. ITA asserts the Board should reconsider and withdraw the directive because it involves "numerous technical and legal problems." ITA claims that local exchange carriers are limited to providing local service within their local exchange boundaries, so "it is simply not possible for them to complete 'local' calls to wireless carriers who do not have a physical presence (i.e., interconnection) within the independent LEC's local exchange." ITA complains that treating these calls as local, rather than interexchange, will eliminate originating access revenue associated with

these calls. ITA argues the directive is unlawful because the Board fails to cite any legal authority for the directive. Finally, ITA argues the directive is a taking of property without due process of law, as it requires the independent LECs to effectively extend their networks beyond their current boundaries and therefore requiring that they spend money for which they (allegedly) will not be compensated. ITA cites two Missouri cases, from 1921 and 1967, in support of this argument.

Verizon responds that the Board correctly ordered the independent LECs to treat land-to-mobile calls as local calls for purposes of dialing and routing. Verizon argues that ITA's claim of technical and economic difficulties should be rejected as lacking in credibility, in light of the fact that some ITA members already treat certain land-to-mobile calls as local, but only if they involve their affiliated wireless service provider, Iowa Wireless. The fact that the ITA members are able to do this for their affiliated entity demonstrates it is both technologically and economically feasible.

Verizon argues that the remainder of the ITA arguments are equally without merit. ITA cites to no evidence in support of its claim that there are technical difficulties associated with treating these calls as local, while the Wireless Terminating Access Agreement with Iowa Wireless is proof that it can be done. The fact that treating these intraMTA calls as local will reduce the access revenues of the independent LECs is irrelevant, in Verizon's opinion, because the traffic is local and access charges should never have applied.

As to ITA's argument of a regulatory taking, Verizon responds that this is a new argument that cannot properly be raised at this stage of the proceedings.

Verizon also argues that the independent LECs must provide their local exchange carriers with non-discriminatory access to any number that can be dialed, meaning they must offer the same local dialing option for all other wireless service providers that the LECs offer for Iowa Wireless.

AT&T Wireless argues the technical problems alleged by ITA are largely resolved by use of INS for the purpose for which it was intended, providing centralized access to other telecommunications providers. AT&T Wireless argues there is no legal problem to address because federal law is very clear that these intraMTA calls are local calls and they must be routed and billed as such.

Sprint argues the record establishes that there is no technical requirement that customers of Iowa LECs must place calls to wireless end-users using 1+ dialing. INS's own witness testified that agreements have been reached allowing the use of local, 7-digit dialing for calls from some independent LEC customers to Iowa Wireless customers, demonstrating that there is no technological barrier. (Tr. 1940-41.)

B. Analysis

The Board will not change its finding that intraMTA calls from the wireline customers of the independent LECs to the customers of the wireless service providers are local calls and should be dialed, and billed, as such. The FCC has clearly stated that those are local calls. Ultimately, the independent LECs must treat these calls as what they are, and the Board expects that they will do so within a reasonable time frame.

First, the Board rejects the ITA's assertion that there are technical barriers to treating intraMTA calls as local. The fact that multiple ITA members already do precisely that for their own affiliate, Iowa Wireless, is sufficient evidence to demonstrate there are no insurmountable technical barriers.

Second, the Board rejects ITA's argument that the Board is somehow requiring that the independent LECs provide local service outside their service territories. First, the LECs will not be offering service to any customers outside their service territories; they will only be offering their existing customers, all of whom are located within their service territory, the ability to make a local call as a local call, even though the called party may be physically located outside the LEC's exchange. As a legal matter, this is no different from extended area service, or EAS, which is statutorily-defined as a basic local telephone service, see Iowa Code § 476.96. Moreover, as a practical matter, connecting the independent LECs to other telecommunications carriers in an efficient manner is the very reason for INS's existence and the Board expects that INS will continue to carry this traffic. The real issue appears to be who is going to pay for INS's services.

As the Board described in its previous orders, the wireless service providers could build their own networks to directly connect with the independent LECs. Under those circumstances, the wireless service providers might pay the full cost of those facilities (and therefore bear the cost of the traffic in both directions) or they might negotiate with the independent LECs for a contribution toward the cost of those facilities (and therefore share the costs of at least some of that traffic). However, INS

has already built the necessary network, making it unnecessary for the wireless service providers to do so, so long as they are willing to pay INS for the use of the INS network. The parties may be able to negotiate an arrangement where the independent LECs pay part of the INS transit charges, as is apparently done in some other states, but at this time the Board cannot rule on the question of whether that is necessary or appropriate. That remains a subject for negotiation and, if necessary, arbitration.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The application for rehearing filed by the Iowa Telecommunications Association on April 5, 2002, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 3rd day of May, 2002.

Information:
Document Library
Features
Benefits
Tech Specs
Customer Testimonials
DMS-10 Video

Products:
DMS-10 Remotes
DMS-10 Configurations
DMS-10 STP

How to Buy

Contact DMS-10

Service & Support:
DMS-10 Feature Planning Guide
Training, North America
Training, All Regions
Tech. Documentation, North America
Tech. Documentation, All Regions

DMS-10 Carrier Class Switching System

Tech Specs

Function
Digital Central Office switching system.

Services
POTS, CLASS, MDC, AIN, LNP, GR-303, Equal Access, Voice Mail, Application Peripheral

Data Access
Analog Modem data/Switched 56kbs, ISDN BRI and PRI

Applications/Configurations
End Office, Tandem, Host/Satellite Office Configuration, SRP, STP, SSP, Host Office

System Interfaces

- Trunking: DS-1, ISDN PRI, ISUP;
- Billing/Administration: Ethernet;
- Remotes: DMS Access, TR-08, GR-303

Subscriber Interfaces
2-wire POTS, Meridian Business Set (MBS), DPX/FX, BRI, CLASS, Coin, CCF

System Capacities (Maximum)

Directory Numbers:	1,025K
HNPA:	32
NXX Codes:	1,024
Routes:	2,048
Thousands groups:	1,024
Toll regions:	256
PRI Links:	320

Ex RW-4

Service Capabilities (Maximum)

- *Meridian Digital Centrex (MDC)*

IBS Groups (6 lines/Group):	255
IBS Max Bus. Lines:	1,530
EBS Customer Groups:	512
EBS Customer Group Size:	2 to 3,000
MADN Groups/switch:	512
MADN Appearance Per Group:	8
Group Intercom (GIC):	10 to 32 members
DN Appearances/MBS:	8/set, 44-52/addon

- *CLASS*
  Screen list per DN: 4
  DNs per List: 32

- *Other Voice*

Hunt Groups:	1024
Lines/Hunt Group:	256
Remote CFW Appearances:	1,024
SMDI Links:	4
SMDR AMA Groups:	256 per RAO
Virtual Facility Groups:	25

Power Requirements:
501 Series--20,000 lines switch
3 Ph (240 V, 60A) -48Vdc, 200 A

Operating Conditions:

- *Ambient Temperature*

Recommended	65° to 85° F
Extreme	40° to 120° F

- *Relative Humidity*

Recommended	20% to 55%
Extreme	20% to 80%

Reliability:

- *System*
  Min/yr.- 0.74, MTBF .- 324

- *Individual Line (LCM)*
  Min/yr.- 6.4, MTBF .- 28.1

- *Individual Digital Trunk*
  Min/yr.- 17.7, MTBF .- 10.2

Architecture Capacities (Maximum):

- *Connection Capacity:*
  110,000 call attempts (ABSBH)
  240,000 CCS

- *Wired Lines (POTS):*
  640 Lines/LCM
  32 LCMs/Host

- *Host (*Lines I/F):*
  20,000 lines (500)
  8 CCS/line (500)
  (*Combined lines host/remotes)

- *ISDN BRI:*
  28 lines/Drawer
  56 lines/LCM
  1000 BRI lines/switch

- *Host (Trunk I/F):*
  7584 Trunks
- *SRI:*
  20 DS-1 ports/shelf
  7 shelves/switch
- *Digital Signal Interface (DSI):*
  10 DSIs/shelf
- *HSO (16 SSOs):*
  30,000 Lines
- *LCC (16 SSOs):*
  58,000 Lines
- *MPU Shelf (SS7):*
  38 A-links

Remote Capacities:

- RLCM/OPAC: 640 Lines
- DMS Access (VLCM): 640 Lines/2-4 DS-1s
- RSC-S: 4,480 Lines
- TR-08: 20 SCSs/Host
  6 SLC96/SCS
  96 /SLC96
- GR-303: 20 ESMAs/Host
  5 RDTs/ESMA,
  2048 lines/RDT

CONFIDENTIAL

2

SDTA Fax Message

TO:	**Rolayne Wiest**
FAX #:	
DATE:	1/23/2003
# PAGES:	2

FROM: X **Rich Coit** ____ **Greg Dean** ____ **Gini Grannes**

South Dakota Telecommunications Association
320 East Capitol Avenue
Post Office Box 57
Pierre, SD 57501-0057

PHONE #: (605) 224-7629
FAX #: (605) 224-1637

w **Rolayne attached is a copy of the letter executed by RTCs and WWC in Docket TC02-176 revising agreed to procedural schedule. We will follow-up with the original. Thanks. Rich**

January 23, 2003

Rolayne Ailts Wiest
Public Utilities Commission
Capitol Building - 1st Floor
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070

Re: Petition of WWC License, LLC for Arbitration Under the Telecommunications Act of 1996
Docket No. TC02-176

Dear Rolayne:

As we discussed this morning, the parties have agreed to amend the Scheduling Order as follows:

- All rebuttal testimony is due February 14, 2003, instead of February 7, 2003.
- Surrebuttal testimony is due on February 21, 2003.
- Western Wireless may file a final round of surrebuttal testimony on February 25, 2003 to address any new issues first raised in the RTCs' February 21st filing.

Otherwise, the Scheduling Order will remain the same. You indicated that you did not expect this would be a problem, and asked that the parties confirm this with you in writing.

Thank you for your consideration and please contact either of us if you need any further information.

Very truly yours,

Philip R. Schenkenberg

Richard D. Coit

PRS/smo
cc: Ron Williams
Matt McCaulley

1493182v1