ALJ/KJB/smj **Date of Issuance 1/30/2009**

Decision 09-01-019 January 29, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition by The Siskiyou Telephone Company (U 1017 C) for Arbitration of a Compensation Agreement with Cingular Wireless Pursuant to 47 C.F.R. § 20.11(e).	Application 06-02-028 (Filed February 27, 2006)
And Related Matters.	Application 06-02-029 Application 06-02-030 Application 06-02-031 Application 06-02-032 Application 06-02-033 Application 06-02-034 Application 06-02-035 Application 06-02-036 Application 06-02-037 Application 06-02-038 Application 06-02-040 (Filed February 27, 2008)

DECISION APPROVING ARBITRATED INTERCONNECTION AGREEMENTS

1. Summary

We approve the resulting arbitrated Interconnection Agreements (ICAs) between New Cingular Wireless, LLC d/b/a AT&T Mobility, Omnipoint Communications, Inc. d/b/a T-Mobile USA and 11 rural local exchange carriers and in doing so affirm the results adopted in the Final Arbitrator's Report (FAR).

The parties have previously signed and filed the ICAs. These proceedings are closed.

2. Procedural History

On February 27, 2006, the 11 rural local exchange carriers (RLECs) identified in the caption to this proceeding filed petitions for arbitration of ICAs between themselves and Cingular Wireless LLC d/b/a AT&T Mobility (Cingular), the predecessor of AT&T Mobility, pursuant to Section 252(b) of the Telecommunications Act of 1996, 47 USC § 252(b) (the Act), 47 C.F.R. § 20.11(e) and Commission Resolution ALJ-181. On the same day, Omnipoint Communications, Inc. d/b/a (T-Mobile) filed a similar petition for arbitration of an ICA between itself and Pinnacles Telephone Company, one of the 11 RLECs. Because the proceedings presented common issues of law and fact and involved a common party, they were subsequently consolidated by a ruling of the assigned Administrative Law Judge (ALJ).[1]

On April 18, 2006, attorneys for the Petitioners and Respondents filed a joint revised statement of unresolved issues, which indicated that four issues remained unresolved. Those issues were:

1. What is the appropriate reciprocal compensation rate?
2. What traffic between major trading areas (MTAs) is subject to reciprocal compensation?
3. What is the appropriate intra-MTA wireless/RLEC originating ratio for use by parties in billing for the termination of traffic?

[1] T-Mobile is identified throughout this opinion as a Respondent even though it petitioned for arbitration of its ICA with Pinnacles Telephone Company. Cingular and T-Mobile are represented by the same counsel and advance the same legal arguments. Accordingly, for ease of reference we choose to refer to T-Mobile as a Respondent.

4. Who is responsible for the cost of delivering traffic from the originating to the terminating carrier when the call originates from within an RLEC territory?

Issue No. 1, the appropriate reciprocal compensation rate, was further broken down into 19 sub-issues. Subsequently, the parties reached agreement on four of the 19 sub-issues, leaving 15 sub-issues related to fixing the appropriate reciprocal compensation rate for determination by the arbitrator, together with Issues 2 through 4. Issue No. 3, the appropriate intra-MTA wireless/RLEC originating ratio was resolved by stipulation of the parties prior to the evidentiary hearing on July 26, 2006.

After the evidentiary hearing, the assigned ALJ directed Respondents to prepare a table of proposed values that Petitioners could use to calculate a reciprocal compensation rate that would reflect all of Respondents' proposed modifications of Petitioners' cost studies. However, Respondents were unable to comply with this order without obtaining additional data from Petitioners. After hearing from the parties, the assigned ALJ determined that it would be more practical and expedient to decide the remaining unresolved issues before ordering a re-run of the cost studies.

Between August 18, 2006 and October 11, 2006, the parties briefed the remaining issues. Although Commission rules do not require an ALJ acting as an arbitrator of an interconnection agreement to choose between the positions of the parties on an issue-by-issue basis, as is the case in some other states,[2] the assigned ALJ chose to adopt that procedure in this case. Accordingly, as to each

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2 See, e.g., Missouri Commission Rule 4 CSR 240-36.040(19) which directs the arbitrator to select the position of one of the parties on an issue as his decision unless doing so would be clearly unreasonable or contrary to the public interest.

of the disputed issues and sub-issues, the assigned ALJ accepted the position of one or the other of the parties, unless the results of doing so would have been clearly unreasonable, in which case the assigned ALJ adopted a reasonable position advocated by neither of the parties.

On March 8, 2007, the assigned ALJ issued the Draft Arbitrator's Report (DAR). Comments on the DAR were filed by the parties on April 2, 2007 and Reply Comments were filed on April 17, 2007. On April 12, 2007, the assigned ALJ issued a ruling setting a schedule for re-running of cost studies in accordance with the findings of the DAR. On April 25, 2007, at the joint request of the parties, the assigned ALJ issued a further ruling extending the time allotted for re-running the cost studies to the later of 30 days from the issuance of the FAR or 30 days from the issuance of a ruling finally resolving any disputes among the parties regarding the time required to re-run the cost studies. The procedure for re-running the cost studies was further modified by an ALJ Ruling on June 28,2007 and the time to re-run the cost studies was further extend by the assigned ALJ in another ruling issued August 23, 2007.

On September 28, 2007 and October 16, 2007, Petitioners filed the revised cost studies. On October 22, 2007, Respondents filed comments on the revised cost studies; Petitioners filed reply comments on October 31, 2007.

On January 14, 2008, the assigned ALJ issued the FAR. A typographical error in the ordering paragraph of the FAR was corrected by an ALJ ruling on January 16, 2008.

On February 13, 2008 the parties filed signed ICAs incorporating the conclusions in the FAR (Conformed Agreements). Petitioners simultaneously filed a statement[3] (Petitioners' Statement) urging the Commission to reject the Conformed Agreements on the grounds that (a) they failed to comply with the requirements of Section 252 of the Act and (b) the FAR erroneously subjected traffic between commercial mobile service providers (CMRS providers or wireless carriers) and interexchange carriers (IXCs) to the reciprocal compensation regime. On the same date, Respondents filed statements[4, 5] (AT&T Statement and T-Mobile Statement, respectively) urging the Commission to accept the Conformed Agreements as being in full compliance with the Act.

3. Negotiated Portions of the Conformed Agreements

Section 252(e) of the Act provides that we may only reject an agreement (or portions thereof) adopted by negotiation if we find that the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement, or implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. No party or member of the public alleges that any negotiated portion of the Conformed Agreements should be rejected. We find nothing in any negotiated portion of the Conformed Agreements which results in discrimination against a

[3] Statement of Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Global Valley Networks, Inc. (U 1008 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C) Concerning the Final Arbitrator's Report.

[4] Statement of AT&T Mobility on Compensation Agreements: Arbitrated Issue.

[5] Statement of T-Mobile on Compensation Agreements: Arbitrated Issues 2 and 4 and Negotiated Provisions.

telecommunications carrier not a party to the agreements, nor which is inconsistent with the public interest, convenience and necessity.

4. Positions of the Parties Regarding Arbitrated Portions of the Conformed Agreements

Section 252(e) of the Act and our Rule 4.2.3 provide that we may only reject an agreement (or any portion thereof) adopted by arbitration if we find that the agreement does not meet the requirements of Section 251 of the Act, including the regulations prescribed by the FCC pursuant to Section 251, or the standards set forth in Section 252(d) of the Act.[6]

Petitioners argue that the arbitrated portions of the Conformed Agreements do not satisfy the Section 251 requirements or the Section 252(d) standards. Specifically, Petitioners allege as follows:

Arbitrated Issue 1: the FAR wrongly requires Petitioners to terminate traffic at unreasonably low rates[7] in violation of Section 252(d)(2)(A).[8]

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[6] Section 251 describes the interconnection standards. Section 252(d) identifies pricing standards.

[7] Petitioners' Statement, pp. 6-7.

[8] Section 252(d)(2)(A) Charges for transport and termination of traffic:

> (A) In general. For purposes of compliance by an incumbent local exchange carriers with section 251(b)(5) of this title, 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 the 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

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Arbitrated Issue 2: the FAR wrongly applies the reciprocal compensation regime to traffic between wireless carriers and IXCs[9] in violation of FCC Rule 51.701(b)(2).[10] Petitioners point out that their interpretation of this Rule has been adopted by the state commissions of Oregon, Colorado and Texas.[11]

Arbitrated Issue 4: the FAR wrongly requires Petitioners to transport traffic off their network[12] in violation of Section 251(c)(2)(B).[13]

> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

[9] Petitioners' Statement, pp. 7-8.

[10] FCC Rule 51.701(b):

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 service for such access.

(2) 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 § 24.202(a) of this chapter.

[11] Petitioners' Statement, p. 7.

[12] Petitioners' Statement, pp. 8-9.

[13] Section 251(c)(2) Interconnection—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network.

> (A) for the transmission and routing of telephone exchange service and exchange access;
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> (B) at any technically feasible point within the carrier's network;
>
> (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

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Respondents support approval of the Conformed Agreements. Each Respondent addresses a different set of issues in its statement of support. The AT&T Statement addresses Arbitrated Issue 1 and various sub-issues. The T-Mobile Statement addresses Arbitrated Issues 2 and 4.

With regard to Arbitrated Issue 1, Respondents argue that Petitioners were unable to provide factual support for their proposed 2.25¢ per minute termination charge. Corrections to the cost model inputs ordered by the arbitrator after taking evidence from the parties reduced the allowable termination charges to between 1/10th¢ per minute for the least-cost RLEC and 1¢ per minute for the highest-cost RLEC.[14] These revised charges are the output of the Petitioners' cost studies when the corrections ordered by the arbitrator are made to the inputs.

Although there are 15 separately arbitrated cost sub-issues, seven major cost sub-issues account for virtually the entire difference between the Petitioners' proposed rate and the rates approved in the FAR and adopted in the Conformed Agreements. Accordingly, the AT&T Statement addresses only those seven major sub-issues in detail. We discuss these points further in Section 5, below.

With regard to Arbitrated Issue 2, Respondents point out that FCC Rule 51.701(b)(1) defines traffic between a LEC and a carrier other than a CMRS

(D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and Section 252 of this title.

14 AT&T Statement, p. 2.

provider as telecommunications traffic. By implication, the definition includes traffic between a LEC and an IXC.[15]

With regard to Arbitrated Issue 4, Respondents point out that the position taken by the FAR has also been taken by the FCC and by every Federal court that has considered this issue.[16]

5. Discussion

5.1. Arbitrated Issue 1

Section 252(d) of the Federal Communications Act (the Act) and related FCC rules specify the principles and methods that Petitioners must use to establish transport and termination rates. The basic principle is set forth in FCC Rule 51.505(e), which specifies that an incumbent LEC must prove to the state commission that the rates for each element it offers [*e.g.*, transport and termination] 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.

To comply with this Rule, Petitioners were required to provide evidence that their proposed transport and termination rate of 2.25¢ per minute did not exceed their forward-looking economic costs. To provide this evidence, Petitioners created cost studies using an existing software program, HAI Model 5.3, designed to model such costs for CLECs. As inputs to this model, Petitioners used either its default values or other values that they argued more accurately represented their costs.

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15 T-Mobile Statement, pp. 3-6.

16 *Ibid.*, pp. 7-9.

Respondents identified 15 cost-related issues and offered substantive evidence to show that Petitioners' cost studies and their proposed rate of 2.25¢ per minute failed to satisfy the FCC rules. Respondents argued that default values should be used to calculate costs only when more reasonable values, generally based on the specific system configurations and operating practices of each RLEC, were unavailable, and that Petitioners' cost studies should be re-run using such reasonable values.

With regard to the disputed cost issues, the arbitrator ordered Petitioners to re-run their cost studies using either (a) input values based on the specific system configurations and operating practices of each RLEC; (b) the HAI Model's default values in those cases where the Petitioners' proposed alternative values were not supported by adequate evidence or (c) reasonable input values in those cases where neither the HAI Model default values nor the Petitioners' proposed alternate values were reasonable. We affirm the arbitrator's decision to replace Petitioners' proposed input values with input values arrived at in the manner described.

Using the output values produced by the re-run cost studies, the FAR concluded that reasonable rates for transport and termination ranged from 1/10 of a cent to 1¢ per minute rather than the 2.25¢ per minute rate originally proposed by Petitioners.

The seven major cost issues identified by Respondents and their resolution in the FAR are as follows:

5.1.1. Sub-Issue 1-J: What is the usage-sensitive portion of end office switching?

Sub-Issue 1-J seeks to determine what portion of the cost of a switch is usage-sensitive and thus should be recoverable from interconnecting carriers as part of a termination rate. Petitioners proposed a 70% value for the usage-sensitive portion of switching. The FAR determined that a usage sensitive factor of 10% is appropriate.[17] In reaching this decision the FAR noted that the FCC has held that "[f]or the purposes of setting rates under section 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes an 'additional cost' to be recovered through termination charges."[18] Moreover, in a 2003 arbitration order, the Wireline Competition Bureau of the FCC determined that no portion of a modern switch – not even the "getting started" costs of switches - is usage sensitive.[19]

Although Petitioners took the position that 70% of the cost of modern switches is usage-sensitive (and thus can be included in their costs of termination), they offered no evidence in support of their position. Instead they relied on a default input from the FCC's 1999 Inputs Order, an order involving universal service rather than reciprocal compensation.[20] The FAR found that this FCC Order was not relevant, noting that "Petitioners appear to be confusing the cost requirements for access charges and universal service subsidies with the cost support requirements for reciprocal compensation."[21]

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17 FAR, p. 13.

18 Local Competition Order, 11 FCC Rcd 15499, 16024-25 ¶ 1057 (1996) (emphasis added).

19 Virginia Arbitration Cost Order, 18 FCC Rcd 17722, 17903 ¶ 463, 17912-13 ¶¶ 488-89, 17872 n. 933, 17876 n.1016, 17877 ¶ 391 (2003) (Wireline Competition Bureau).

20 USF Inputs Order, 14 FCC Rcd 20156 (1999).

21 FAR, p. 13.

Petitioners also relied on the Commission's SBC UNE Reexamination Order, D.04-09-063, to justify their claim that 70% of the cost of a modern digital switch is usage-sensitive. However, the SBC UNE Reexamination Order found that Pacific Bell could not price the local switching UNEs on a usage-sensitive basis, because the costs of modern digital switches are not usage-sensitive.[22] With regard to reciprocal compensation, the Commission maintained the *status quo* "70/30 split," explaining that, "changes to reciprocal compensation rate structures are beyond the scope of this proceeding."[23] Petitioners failed to present evidence on this issue and failed to challenge Respondents' evidence. Accordingly, we affirm the ruling in the FAR that only 10% of switch costs is usage-sensitive.

5.1.2. Sub-Issue 1-I: What is the forward-looking common cost factor for switching?

Sub-issue 1-I seeks to determine the forward-looking common cost factor – or "markup" factor – to be used in calculating Petitioners' rates for termination and transport. FCC Rule 51.505(a)(2) specifies that an incumbent LEC's forward-looking economic costs for transport and termination may include the total element long-run incremental cost (TELRIC) of providing transport and termination, plus a "reasonable allocation of forward-looking common costs."[24]

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[22] D.04-09-063, p. 241.

[23] D.04-09-063, p. 291 (Conclusion of Law 138) (emphasis added).

[24] FCC Rule 51.505(c) (1) provides that 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." *See also,* Local Competition Order, 11 FCC Rcd at 16025 ¶ 1058 ("Rates for termination established pursuant to a

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This overhead component is generally referred to as 'shared and common cost markup,' or simply 'markup.' It is typically a percentage added to TELRIC to recover costs attributable to a group of Unbundled Network Elements (UNEs) but not specific to any one UNE, as well as costs that are common to all outputs offered by the firm.[25] These common costs apply to executive, planning, legal, finance and other general and administrative functions. FCC Rule 51.505(e) specifies that an incumbent LEC "must prove . . . that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element." Rule 51.505(c) defines forward-looking common costs as those costs "efficiently incurred in providing a group of elements or services." Moreover, the FCC has ruled that Incumbent LECs "shall have the burden to provide the specific . . . magnitude of these forward-looking common costs."[26]

The arbitrator found that Petitioners used values derived from their embedded costs in place of their "forward-looking common costs" to determine markup rates and concluded that this approach was inconsistent with federal law: "Using the Federal Universal Service Support Cap to determine common cost factors is inappropriate because the cap includes embedded costs that may not be used in a forward looking analysis."[27] Petitioners also failed to prove that the costs were "common" as required by FCC Rule 51.505(c)(1) which specifies that to be a common cost the function must be performed "in providing a group of elements or services . . . that cannot be attributed directly to individual

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TELRIC-based methodology may recover a reasonable allocation of common costs").

[25] *Verizon UNE Reexamination Order*, D.06-03-025, pp. 113-114.

[26] *Local Competition Order*, 11 FCC Rcd at 15852 ¶ 695.

[27] FAR, p. 11.

elements or services." In the absence of evidence that the claimed common costs were efficiently incurred and common to all services, use of the HAI model's default value was appropriate.

5.1.3. Sub-Issue 1-G: What is the economic life for switching?

FCC Rule 51.505(b)(3) specifies that the depreciation rates used in calculating forward-looking economic costs of elements "shall be economic depreciation rates." Accordingly, once the FAR determined the cost to purchase and install a new switch, the FAR was also required to determine how long a new digital switch would remain in use in Petitioners' networks. The FAR adopted a 10-year switch life.[28] This ruling is consistent with FCC requirements and was overwhelmingly supported by record evidence. Petitioners argued that the forward-looking economic life for new switches is five years. However, as the arbitrator noted, they failed to produce any evidence to support that argument "other than their cost witness's anecdotal statement that switch life must be revisited frequently."[29] In contrast, Respondents' proposal for a 10-year economic life for switches was supported by extensive record evidence including: (i) 2004 CPUC Annual Reports from five of the Petitioners which showed remaining lives for their switches of 10 years or more; (ii) the FCC's Inputs Order which used a 16.17 year economic life for switching; and (iii) the Commission's UNE orders for SBC and Verizon which calculated economic lives for switches of those companies of 10 years and 12 years, respectively.[30]

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[28] *Ibid.*, p. 9.

[29] *Id.*

[30] *SBC UNE Reexamination Order*, D.04-09-063, *mimeo* at 134 and 283

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5.1.4. Sub-Issue 1-B: What is the current cost to purchase and install digital switches?

Sub-issue 1-B involves determining Petitioners' costs to purchase and install new switches. Petitioners relied on the HAI Model to determine the costs of new switches, using input values approved in the FCC's 1999 *Inputs Order*. Respondents did not challenge use of these cost estimates so long as they were reduced to reflect prices "currently available." Specifically, Petitioners' expert Conwell testified that switch prices had "declined twelve percent (12%) from 1999 to 2005."[31]

Petitioners chose not to challenge this evidence, instead "elect[ing] to let [their cost] Model . . . speak for itself."[32] Indeed, their cost witness readily admitted that "the cost of switching equipment has been declining over time."[33]

As the FAR correctly observed, the evidence that prices of digital switches have fallen 12% since 1999 "is unrebutted." (FAR at 7.) The FAR was therefore correct in ordering that switch investments in the Rural LECs' cost studies be reduced by that factor.

(Conclusion of Law 68); *Verizon UNE Order*, D.06-03-025, *mimeo* at 59, 61 and 151 (Conclusion of Law 21).

31 Testimony of L. Craig Conwell (Conwell Direct), pp. 23-24.

32 Rebuttal Testimony of Chad Duvall (Duvall Rebuttal), p. 2.

33 Testimony of Chad Duvall (Duvall Direct, p. 11.

5.1.5. Sub-Issue 1-O: What percentage of interoffice cable costs are attributable to transport versus other uses (loop concentrators, leased fibers, etc.)?

To the extent that a Petitioner's interoffice cable routes are used for purposes other than transporting traffic subject to reciprocal compensation, FCC Rule 51.511 requires that those other purposes (e.g., loop concentrators, fibers leased to third parties and others) be assigned a proportionate share of the interoffice cable costs. Otherwise, carriers sending traffic to a Petitioner will be paying for costs that have nothing to do with the transport of that traffic. Sub-issue 1-O determines how costs of interoffice cable should be shared among users of the cable.

Petitioners claimed that the Commission should rely on the HAI Model to develop the cost of transport cable, using input values approved in the FCC's Inputs Order. Their cost witness, however, admitted that the HAI Model did not allocate any cable costs to other uses of the cable (non-Section 251(b) traffic).[34] At the same time, Petitioners provided, in their responses to data requests, clear evidence that the fibers in their interoffice cables are shared among multiple uses. The failure to apportion cable costs among all users to the cable is prohibited by FCC Rule 51.511(a), which specifies that the forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element "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

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[34] Hearing Transcript p, 82, lines 2-8.

element that the incumbent LEC is likely to use in offering its own services, during a reasonable planning period." Given Petitioners' admission that their cost studies did not allocate cable costs among the various users of the cable, plus evidence that they actually share cable fibers among multiple uses, the FAR was correct in requiring Petitioners' cost studies to be rerun with cable costs allocated as required by the FCC Rule.

5.1.6. Sub-Issue 1-L: What is the total length of interoffice cables?

Interoffice cable length is the cumulative length of cable routes connecting a Petitioner's switches (or wire centers) to each other and to the meet point with Pacific Bell Telephone Company dba AT&T California. All other things equal, the longer the cable distances assumed in the cost study, the higher the transport costs. Sub-issue 1-L determines whether Petitioners' cost studies have used cable distances consistent with FCC requirements and their actual serving areas. Petitioners argued that the Commission should rely on the HAI Model to develop and cost this component of a forward-looking network, again using the input values approved in the FCC's Inputs Order. Respondents demonstrated that Petitioners' cost studies overstated cable distances in three different ways in contravention of federal regulation. First, Petitioners' cost expert admitted that for certain Petitioners, the HAI Model calculated "more interoffice mileage than their existing network."[35] FCC Rule 51.505(b)(1) requires that Petitioners' cost studies use "the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." By definition, no cable distance longer than

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[35] *Duval Rebuttal*, p. 9, lines 3-4.

the total distance of any Petitioner's current interoffice network can be "lowest cost." Second, the record is uncontroverted that the HAI Model overstates the distances to Petitioners' respective meet points with AT&T California. Specifically the HAI Model assumes every Petitioner will construct (or lease) redundant interconnection facilities the entire distance to an AT&T California wire center, even though all Petitioners currently interconnect with AT&T California at mid-span meets and do not have redundant facilities. Third, Petitioners overstated the cost of microwave facility replacement by assuming in their cost studies that they would replace all existing microwave facilities with fiber cable.[36] We affirm the FAR's determination that the Rural LECs' cost studies should be re-run to include: (1) actual cable distances between wire centers, (2) actual cable distances to meet points with AT&T California, and (3) actual microwave costs of those companies employing microwave transport.

5.1.7. Sub-Issue 1-P: What is the appropriate utilization level for interoffice transport?

Once interoffice cable costs and transmission equipment costs for the interoffice transport system are computed, these costs are divided by the quantity of interoffice circuits (expressed as DS0 equivalents) to compute forward-looking economic costs per DS0 equivalent. These amounts then are divided by the minutes of use per trunk (where a trunk used for voice traffic requires one DS0) to arrive at common transport costs per minute of use. Sub-issue 1-P determines the total number of DS0 equivalents to be used in each

[36] *Conwell Direct,* p. 61, n. 38.

Petitioner's cost study. If the number of DS0 equivalents is underestimated, then the common transport costs will be overstated.

Petitioners argued that the Commission should rely on assumptions in the HAI Model to develop this component of a forward-looking network even though the model underestimated current demand and reflected low utilization. The FAR disagreed, concluding that:

> Petitioners have made no representation that HAI 5.3 accurately models transport and transmission costs of the various networks. It is incumbent on Petitioners to demonstrate that their network is forward-looking and efficient. Merely relying on the results of the model run does not accomplish that showing.[37]

Thus, the FAR was correct to require Petitioners to re-run their cost studies using demand for DS0 equivalents sufficient to yield a 66% utilization level.

5.2. Arbitrated Issue 2

Put simply, this issue comes down to the question of whether a different result should be reached in those cases where an RLEC and a wireless carrier exchanging intra-MTA traffic interconnect indirectly via an IXC from those cases in which they interconnect directly. The issue is material to this arbitration because the bulk of intra-MTA traffic exchanged between RLECs and wireless carriers is exchanged via IXCs. Both Petitioners and Respondents cite FCC Rule 51.701(b) in support of their positions. Petitioners draw our attention to 51.701(b)(2) which defines telecommunications traffic to include "traffic between a LEC and a CMRS provider." Respondents point to the exception created by 51.701(b)(1) for "traffic exchanged between a LEC and a telecommunications

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[37] FAR, p. 18.

carrier other than a CMRS provider…" Petitioners argue that traffic exchanged between an RLEC and an IXC is not traffic "exchanged between a LEC and a CMRS provider" and therefore is not subject to the reciprocal compensation requirements imposed on all LECs by Section 251(b)(5) of the Communications Act. Respondents argue that if the FCC had intended to create an exemption from the reciprocal compensation scheme for calls between a wireless carrier and a LEC that are routed through an IXC it could easily have done so, as is shown by the exemption created for traffic between LECs and non-CMRS providers.

The arbitrator agrees with Respondents. In doing so, he follows the lead of every federal court that has considered this issue. To interpret the Rule otherwise would create a lopsided situation in which the RLECs would receive reciprocal compensation from the wireless carriers for all the wireless-originated calls they terminate but pay no compensation to the wireless carriers, since all the wireless-bound calls originated by the RLECs are initially handed off to IXCs.

5.3. Arbitrated Issue 4

The parties agree that the originating carrier is responsible for transit charges up to a point. They disagree as to the location of that point. The RLECs argue that the originating carrier is responsible for transit charges to the point of intersection between the originating carrier and the IXC. Wireless carriers argue that the originating carrier is responsible for transit charges from the point of origin to the point of termination. We agree with the FAR that Section 51.703(b) of the Federal Communications Act establishes the principle that transit charges between the point of origin and the point of termination are the responsibility of the originating carrier. This result is consistent with the decision of the FCC in its *TSR Wireless* decision[38] and the decisions of all Federal courts that have considered the issue.[39]

Arbitration under '96 Fed Telco Act

This is a decision under the state arbitration provisions of the federal Telecommunications Act of 1996. Pursuant to Rule 14.6(c)(5) of the Commission's Rules of Practice and Procedure, the public review and comment period for the proposed decision is waived/reduced.

Findings of Fact

1. On February 13, 2008, the parties filed conforming Agreements for Commission approval. On the same date, the parties also filed statements regarding whether or not the Agreements should be approved by the Commission.

2. The parties negotiated the Agreements in their entirety except for the portions presented for arbitration.

3. No party or member of the public alleges that any negotiated portion of the Agreements is not in compliance with Section 252(e)(2)(A) of the Act.

4. No negotiated portion of the Agreements results in discrimination against a telecommunications carrier not a party to an Agreement, or is inconsistent with the public interest, convenience and necessity.

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[38] "Section 51.703(b), when read in conjunction with Section 51.701(b)(2) requires LECs to deliver, without charge, traffic CMRS providers anywhere within the MTA in which the call originated." 16 FCC Rcd at 11184 ¶ 31.

[39] See, e.g., *Atlas Telephone v. Oklahoma Corporation Commission*, 400 F.3d 1256, 1266 (10 Cir. 2005); *Mountain Communications v. FCC*, 355 F.3d 644 (D. C. Cir. 2004); *MCIMetro v. Bell South*, 3522 F.3d 872 (4th Cir. 2003); *Southwestern Bell v. Texas Public Utilities Commission*, 348 F.3d 482 (5th Cir. 2003).

5. In their February 13th statements, the RLECs contend that the arbitrated outcomes on three issues do not comply with the Act of the FCC's implementing rules.

6. The Act requires the Commission to approve or reject an arbitrated interconnection agreement within 30 days after the agreement is filed.

7. The parties have agreed in writing that the time for a Commission decision under the Act may be extended to May 1, 2008.

Conclusions of Law

1. Nothing about the result of this arbitration is inconsistent with governing federal law.

2. No arbitrated portion of any Agreement fails to meet the requirements of Section 251 of the Act, including FCC regulations pursuant to Section 251, or the standards of Sections 252(d)(2) of the Act.

3. No provision of any Agreement conflicts with state law or other requirements of the Commission.

4. Arbitrated Issue 1 was correctly decided by the FAR.

5. Arbitrated Issue 2 was correctly decided by the FAR.

6. Arbitrated Issue 4 was correctly decided by the FAR.

7. The Agreements should be approved.

O R D E R

IT IS ORDERED that:

1. Pursuant to the Telecommunications Act of 1996 and Resolution ALJ-181, the Interconnection Agreements between AT&T Mobility, T-Mobile and the 11 rural local exchange carriers named in the heading to this decision filed February 13, 2008 are approved.

2. Application (A.) 06-02-028, A.06-02-029, A.06-02-030, A.06-02-031, A.06-02-032, A.06-02-033, A.06-02-034, A.06-02-035, A.06-02-036, A.06-02-037, A.06-02-038, A.06-02-040 are closed.

This order is effective today.

Dated January 29, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners