APPENDIX 1

to

Initial Brief

of

Southwestern Bell Wireless LLC, d/b/a Cingular Wireless

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

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

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.

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[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

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
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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 <u>is</u> 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").

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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.

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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.

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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.

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.

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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 <u>does not</u> 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.

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.
5. Is the HAI Model an appropriate	None.	The Arbitrator believes that the HAI Model is

Exhibit B to Report and Recommendations of the Arbitrator

ISSUE	CONTRACT SECTIONS	ARBITRATOR'S DECISION
model for determining rates in accordance with FCC rules and orders for Section 251(b)(5) traffic?		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 connection arrangements be included in this contract? If so, the following sub-issues should be addressed:		The Arbitrator concurs with the position of the CMRS Providers that provisions addressing direct connection arrangements should be included in the contract.
9E(1). What language should be adopted	3.0	The Arbitrator concurs with Staff's position that

Exhibit B to Report and Recommendations of the Arbitrator

ISSUE	CONTRACT SECTIONS	ARBITRATOR'S DECISION
for section 3.0 in the contract?		since the FCC consistently uses the terms transport and termination in relation to CMRS traffic, those terms should be utilized.
9E(2). Must a Type 2A and 2B interconnection be physically located within the wire center boundary of the telephone company's tandem switch?	3.1.2, 3.1.3	The Arbitrator agrees with the wireless recommendation that a Type 2A or 2B connection need not be located within an RTC end office exchange boundary. However, Section 251(a) does not require the RTCs to construct facilities beyond their exchange boundaries to provide interconnection at the request of a wireless carrier.
9E(3). When the percentages of usage on two-way interconnection trunks are reviewed and modified, shall charges between the parties be trued-up?	3.1.4	The Arbitrator accepts only the last sentence of the CMRS Providers' position and modifies it to read: "If the parties can measure actual minutes of use, they shall bill accordingly. "The arbitrator does not accept a true-up.
9E(4). Under what circumstances may a POI be changed?	3.2.1.2	The Arbitrator concurs with Staff that the movement of the POI should not be allowed without an agreement of the Parties.
9F. Should the contract contain a provision addressing circumstances when traffic levels are "de minimus"?	5.1.4	The Arbitrator concurs with the CMRS Providers that if the Commission adopts bill-and-keep as the primary compensation mechanism, then this paragraph will not be necessary.
9G. Should the Commission adopt the wireless carriers' proposal for determining the origination and termination points of a call?	5.4	The Arbitrator concurs with Staff that pursuant to the FCC's First Report and Order 96-98, para. 1044, the origination point of a call is "the location of the initial cell site when a call begins"
9H. What is the proper time period for payment of amounts due on a billing statement?	7.2.4	The Arbitrator concurs with the RTCs that the proper time period for payment is 30 days from the date of billing statement.
9I. Should the wireless carriers be "solely responsible for the services they provide to their end users"?	7.2.6	The Arbitrator concurs with the RTCs that each party shall 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.
9J. RESOLVED	7.5	Resolved
9K. 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?	14.21	The arbitrator does not accept any of the recommendations. The arbitrator recommends that the wireless carriers should provide notice to the RTC's prior to implementation. The notice requirement would also apply to affiliates of the wireless carriers.

APPENDIX 2

to

Initial Brief

of

Southwestern Bell Wireless LLC, d/b/a Cingular Wireless

MISSOURI

AGREEMENT FOR INTERCONNECTION AND RECIPROCAL COMPENSATION

by and between

SOUTHWESTERN BELL WIRELESS INC.

and

SOUTHWESTERN BELL TELEPHONE COMPANY

3.1.2 Land to Mobile Traffic

3.1.2.1 SWBT shall be responsible for the delivery of traffic from its network to the appropriate point of interconnection (within the serving wire center boundary of the end office in which the tandem, providing the Type 2A interconnection is located, or within the serving wire center boundary of the end office providing the Type 1 interconnection) on its network for the transport and termination of such traffic by Carrier to a Carrier end user.

3.1.2.2 Unless SWBT elects to have Carrier or a third party provision facilities, SWBT shall provide the physical plant facilities that interconnect SWBT's point of interconnection with Carrier's point of interconnection. SWBT shall be responsible for the physical plant facilities to the appropriate point of interconnection (within the serving wire center boundary of the end office in which the tandem, providing the Type 2A interconnection is located, or within the serving wire center boundary of the end office providing the Type 1 interconnection) on its network.

3.1.3 Traffic To Third Party Providers

Carrier and SWBT shall compensate each other for traffic that transits their respective systems to any Third Party Provider, as specified in Appendix PRICING. The Parties agree to enter into their own agreements with Third Party Providers. SWBT agrees that it will not block traffic involving Third Party Providers with whom Carrier has not reached agreement. In the event that Carrier does send traffic through SWBT's network to a Third Party Provider with whom Carrier does not have a traffic interchange agreement, then Carrier agrees to indemnify SWBT for such traffic pursuant to Section 18 of this Contract.

3.1.4 Transiting Traffic Factor

The Parties have agreed upon the land to mobile transiting traffic factor specified in Appendix PRICING paragraph 2.3, which represents the percentage of land to mobile minutes which will be considered as transiting minutes. The Parties have agreed to use the factor developed as a reasonable representation of the land to mobile traffic which is originated by a Third Party Provider and transits SWBT's network. This factor will be used to reduce the total minutes delivered to Carrier from SWBT, before the application of the interMTA factor outlined in section 14.2, to determine the minutes subject to reciprocal compensation. SWBT agrees