

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition for Declaratory Ruling To Clarify the)
Applicability of the IntraMTA Rule to LEC-)
IXC Traffic and Confirm That Related IXC)
Conduct Is Inconsistent with the)
Communications Act of 1934, as Amended,)
and the Commission's Implementing Rules)
and Policies)

WC Docket No. _____

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Federal Communications Commission
Office of the Secretary

PETITION FOR DECLARATORY RULING OF THE LEC PETITIONERS

Matthew A. Brill
Jarrett S. Taubman
LATHAM & WATKINS LLP
555 11th Street, NW, Suite 1000
Washington, D.C. 20004

*Coordinating Counsel for the LEC Petitioners**

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* Additional Counsel Listed on Signature Page

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PETITION FOR DECLARATORY RULING OF THE LEC PETITIONERS

Pursuant to Section 1.2 of the Commission's rules,¹ Bright House Networks LLC; the CenturyLink LECs²; Consolidated Communications, Inc.³; Cox Communications, Inc.⁴, FairPoint Communications, Inc.⁵; Frontier Communications Corporation⁶; LICT Corporation⁷; Time Warner Cable Inc.⁸; Windstream Corporation⁹; the Iowa RLEC Group¹⁰; and the Missouri

¹ 47 C.F.R. § 1.2.

² The "CenturyLink LECs" consist of the LECs individually identified in Exhibit A.

³ Consolidated Communications, Inc. files this petition on behalf of its local exchange carrier affiliates, which are individually identified in Exhibit A.

⁴ Cox Communications, Inc. files this petition on behalf of its local exchange carrier affiliates, which are individually identified in Exhibit A.

⁵ FairPoint Communications, Inc. does not itself provide service to end users and files this petition on behalf of its operating company affiliates, which are individually identified in Exhibit A.

⁶ Frontier Communications Corporation does not itself provide service to end users and files this petition on behalf of its operating company affiliates, which are individually identified in Exhibit A.

⁷ LICT Corp. is a holding company that controls 14 rural local exchange carriers ("RLECs"), which are individually identified in Exhibit A.

⁸ Time Warner Cable Inc. does not itself provide service to end users and files this petition on behalf of its operating company affiliates, which are individually identified in Exhibit A.

RLEC Group¹¹ (collectively, the “LEC Petitioners”) request that the Commission issue a declaratory ruling to confirm that the “intraMTA rule”—under which intraMTA calls exchanged between local exchange carriers (“LECs”) and commercial mobile radio service (“CMRS”) carriers are subject to reciprocal compensation—does not apply to LEC charges billed to an *interexchange carrier* (“IXC”) when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services. The Commission should further declare that the attempts of certain IXCs to misapply the intraMTA rule to avoid paying access charges and to claim entitlement to substantial retroactive refunds are inconsistent with the Communications Act of 1934, as amended (the “Act”), and the Commission’s implementing rules and policies.

INTRODUCTION AND SUMMARY

Although the intraMTA rule has existed for almost two decades, some IXCs are now attempting to reinterpret the rule in an effort to justify their demands for refunds of access charge payments they voluntarily have made for years. The intraMTA rule is designed to prevent LECs from assessing intrastate and interstate switched access charges on CMRS carriers for “local” traffic (defined in this context as calls between two end points within a single Major Trading Area or “MTA”) that CMRS carriers exchange with LECs. The Commission adopted the rule in 1996, in the *Local Competition First Report and Order*, holding that such “local” intraMTA wireless traffic is not subject to access charges but rather is subject to reciprocal compensation

⁹ Windstream Corporation does not itself provide service to end users and files this petition on behalf of its operating company affiliates, which are individually identified in Exhibit A.

¹⁰ The “Iowa RLEC Group” consists of 108 RLECs, which are individually identified in Exhibit A.

¹¹ The “Missouri RLEC Group” consists of 31 RLECs, which are individually identified in Exhibit A.

arrangements under Section 251(b)(5) of the Act—“*unless it is carried by an IXC.*”¹² Pursuant to the intraMTA rule, a CMRS carrier may establish an interconnection agreement (“ICA”) or comparable arrangement with a LEC to exchange intraMTA calls over local trunks under the reciprocal compensation rate regime, and, indeed, that often is how such traffic is exchanged.

The ICA, in turn, may address the situation in which the LEC-CMRS traffic is not exchanged directly, but instead is exchanged indirectly by means of a third-party local transit provider (such as an incumbent local exchange carrier (“ILEC”) tandem). Where a LEC-CMRS ICA contemplates reciprocal compensation as the basis for the exchange of intraMTA traffic, the LEC may rightly assume that the CMRS carrier is relying on that arrangement and exchanging traffic with the LEC in the manner contemplated by the ICA. However, where an intraMTA wireless call is routed via an IXC *outside* the provisions of a LEC-CMRS ICA, and instead is terminated (or originated) using a LEC’s tariffed switched access services, access charges *do* apply as between the LEC and the IXC.¹³

As discussed below, the Commission repeatedly has reaffirmed this dichotomy over the years. The entire telecommunications industry has designed its billing practices accordingly, such that *any* traffic (including any intraMTA wireless traffic) that an IXC routes via tariffed switched access facilities has been subject to intrastate or interstate access charges as between the LEC and the IXC. For 18 years following the promulgation of the intraMTA rule, IXCs paid such tariffed charges without dispute. The Commission has done nothing to upset these billing

¹² See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, at ¶ 1043 (1996) (“*Local Competition First Report and Order*”) (emphasis added); see also *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, at ¶ 31 (2000) (reiterating that intraMTA traffic is subject to “access charge rules *if carried by an interexchange carrier*”) (emphasis added) (“*TSR Wireless Order*”).

¹³ *Id.*

practices. Although the 2011 *USF/ICC Transformation Order* resolved certain disputes that had arisen in applying the intraMTA rule,¹⁴ that order did not purport to alter the scope of the rule or to upset the industry’s longstanding understanding of the rule’s inapplicability to LEC-IXC billing practices concerning traffic voluntarily routed via tariffed access facilities—particularly where routed by an IXC that previously has paid access charges under such tariffs and established industry practices.

Nevertheless, three IXCs—specifically, Sprint, Verizon, and Level 3—have misconstrued the Commission’s guidance (or are deliberately distorting it) and are unjustifiably attempting to avoid paying switched access charges in connection with alleged intraMTA wireless traffic that they exchange with LECs over long-distance trunks (“access trunks”).¹⁵ More specifically, these IXCs seek to avoid any obligation to pay switched access charges in connection with:

- (i) traffic originating from wireless callers that those IXCs allegedly picked up at some point in an unspecified routing path and then sent to LECs over long-distance trunks pursuant to the LECs’ switched access tariffs;¹⁶ and
- (ii) traffic originating on LEC networks, routed to those IXCs through long-distance trunks (on a 1+ dialed basis where the calling party is the IXCs customer) and then allegedly terminated to CMRS customers.

Furthermore, these IXCs seek to avoid paying such access charges even though, in the call flows at issue, the LECs had no reason to suspect that the calls were intraMTA in nature and were

¹⁴ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, at ¶¶ 976-1008 (2011) (“*USF/ICC Transformation Order*”).

¹⁵ Although these IXCs claim to have exchanged intraMTA traffic, they notably have not proffered any evidence in support of such assertions or demonstrating the amount of such traffic they carry or how such traffic can be reliably identified.

¹⁶ Indeed, these IXCs allege that wireless traffic was routed in this manner even though, in some cases, the originating CMRS carrier was affiliated with the IXC and had entered into ICAs or comparable commercial agreements with LECs for the exchange of intraMTA traffic subject to Section 251(b)(5), but (according to the IXC) nevertheless opted to route some of that traffic through the IXC, which in turn relied on tariffed access services.

never notified of the purportedly wireless intraMTA nature of the calls by any CMRS carrier or IXC. Nor did these IXCs ever explain how it supposedly was determined that the calls were intraMTA in nature, or ever propose the use of an intraMTA wireless “factor” prior to billing.¹⁷

These IXCs not only paid both terminating and originating access charges for years in connection with this alleged intraMTA traffic, without objection, but also presumably recovered the costs associated with those payments from their own retail and wholesale customers (through long-distance or other charges). Nevertheless, these large, sophisticated carriers now act as if they suddenly have discovered the two-decade old intraMTA rule and are seeking to use it not only to avoid paying access charges on a going-forward basis, but to claim entitlement to tens or hundreds of millions of dollars in retroactive refunds for access charges already paid over many years. And, remarkably, Verizon and Sprint are making such claims even though their own LEC operations for years engaged in (and still engage in) the very same billing practices that these companies (in their capacity as IXCs) now contend have been unlawful for nearly two decades.

These unwarranted refund demands have resulted in a flood of lawsuits, naming much of the telecommunications industry as defendants. Sprint has filed at least 34 lawsuits against 360 LEC defendants, and Verizon has filed at least 33 lawsuits against 514 LEC defendants, in courts throughout the country, and all of these cases turn entirely on the IXCs’ misinterpretation of the Commission’s intraMTA rule.¹⁸ Although the state of the law had been settled for years—as reflected in ubiquitously applied and accepted industry practices governing intercarrier

¹⁷ Even if the intraMTA rule applied to this traffic (which it does not for the reasons discussed below), the IXCs’ failure to identify the traffic as intraMTA traffic makes it impossible for access providers to bill anything but access charges.

¹⁸ Verizon and Sprint entities provide both local and long-distance services. The local operations have imposed, and, in some cases continue to impose, access charges on IXCs for intraMTA traffic. Each corporate parent thus finds itself on *both* sides of this issue, which further underscores the need for the Commission to clarify the appropriate understanding of the intraMTA rule.

compensation between LECs and IXCs—these lawsuits have undermined certainty and historical practices regarding the scope of the Commission’s rules governing intraMTA wireless traffic, particularly where such traffic is routed over long-distance trunks. In turn, the spate of litigation has imposed substantial costs and unanticipated risks on LECs and, for many carriers, the prospect that existing revenue losses associated with the Commission’s ongoing phase-out of switched access charges could be exacerbated (and accelerated) threatens to affect near-term investment plans.

Making matters worse, Level 3 has acted without bothering to file lawsuits seeking to establish a right to refunds and Sprint (in some cases) has not waited for the conclusion of its lawsuits to obtain the refunds that it seeks. Instead, they have helped themselves to such refunds by withholding payment of undisputed balances for tariffed access services they purchased from many different LECs in connection with unrelated calls (*i.e.*, for calls having nothing to do with intraMTA wireless traffic). Even if the substantive claims of Level 3 and Sprint had merit—which they do not—this conduct would be unjust and unreasonable, and would constitute an independent violation of the Act, the Commission’s implementing rules and policies, and filed tariffs that require the payment of undisputed charges.

The first court to issue a substantive ruling in the pending lawsuits rejected Sprint’s interpretation of the intraMTA rule. Just last month, the U.S. District Court for the Northern District of Iowa appropriately recognized that “neither the FCC’s 1996 *Local Competition Order* nor its 2011 [*USF/ICC Transformation*] *Order* expressly applies to compensation between a LEC and an IXC for intraMTA calls.”¹⁹ Rather, “the 1996 *Local Competition Order*

¹⁹ *Sprint Communs Co., L.P. v. Butler-Bremer Mutual Tel. Co.*, 2014 U.S. Dist. LEXIS 141758, at *11 (N.D. Iowa Oct. 6, 2014) (Memorandum Opinion and Order Regarding Defendants’ Motion to Dismiss or Stay).

distinguishes between service arrangements between LECs and CMRS providers and service arrangements between LECs and IXC, and did not apply its conclusion that service arrangements involving intraMTA traffic between CMRS providers and LECs are subject to reciprocal compensation, not access charges, to service arrangements involving such traffic between LECs and IXCs.”²⁰ The *USF/ICC Transformation Order* “only ‘clarified’ payment arrangements between LECs and CMRS providers, but did not address payment arrangements between LECs and IXCs.”²¹ Likewise, the court held that the judicial precedent on which Sprint sought to rely is inapposite because the cases at issue “do not involve interpretation or policy analysis of FCC regulations regarding payment arrangements between LECs and IXCs.”²² Accordingly, the court concluded that the question of whether compensation between LECs and IXCs for the traffic in question is subject to reciprocal compensation or filed tariffs is one properly referred to the FCC under the “primary jurisdiction doctrine,” and it stayed the litigation pending resolution of the threshold legal issues by the Commission.²³

Other courts with pending actions may well reach the same conclusion (if they do not dismiss such actions with prejudice), adding further calls for the Commission to resolve the key legal issues in dispute. But the risk of inconsistent and erroneous judicial determinations, as well as the substantial and unwarranted cost of litigating an identical legal question in courts across the country, highlights the need for the Commission to confirm once and for all that LEC access

²⁰ *Id.* (citing *Local Competition First Report and Order* ¶ 1043).

²¹ *Id.* (citing *USF/ICC Transformation Order* ¶ 1007 n.2132).

²² *Id.* at *11-12 (emphasis in original) (citing, e.g., *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006)). The court also concluded that “INS cannot be read as a judicial conclusion that the FCC’s regulations require reciprocal compensation between LECs and IXCs for the traffic in question,” and that other cases frequently cited by IXCs involved compensation between intermediary transit carriers or between LECs and CMRS carriers. *Id.* (emphasis added).

²³ *Id.* at *15-17.

charges apply to an IXC when (i) a CMRS carrier elects to forgo a reciprocal compensation arrangement with a LEC (or forgoes alternative routing options available under such an arrangement) and instead routes intraMTA traffic via an IXC that relies on a LEC's switched access services to terminate the call; or (ii) a LEC originates a 1+ 10-digit call and transmits it via switched access facilities to a customer's presubscribed IXC,²⁴ and the IXC in turn routes the call to a CMRS carrier that terminates the call to an individual within the same MTA as the calling party.²⁵ If the Commission concludes that the intraMTA rule applies to such traffic at all (which it should not), then the Commission should provide guidance to the industry regarding how any such traffic may or should be identified (such as by means of IXC-LEC negotiations) and hold that in the absence of an agreement regarding how to identify such traffic, the default rule is that traffic exchange between IXCs and LECs by means of tariffed LEC access services is subject to the tariffed charges governing such services.

For these reasons, and others set forth herein, the Commission should issue a declaratory ruling to confirm the compensation owed between a LEC and an IXC where an IXC transmits LEC-CMRS intraMTA traffic via tariffed access services, and thereby end the needless controversy initiated by these IXCs. More specifically, the Commission should confirm that:

1. Even though intraMTA traffic is non-access traffic in the context of direct billing from a LEC to a CMRS provider, *any* traffic that is voluntarily routed by means of a LEC's tariffed switched access facilities outside of an ICA (or other negotiated agreement with the LEC) is subject to access charges—and an IXC's historical payment of such charges without dispute is evidence that the access arrangement was entered into voluntarily.

²⁴ In such cases, the IXC typically is compensated through long-distance rates paid by the end-user caller.

²⁵ Some of the parties to the litigation have sought to have the cases consolidated pursuant to the multidistrict litigation ("MDL") process. But there is no assurance of consolidation and, even if the cases are consolidated, the transferee court would benefit from the Commission's expertise on this key issue of industry-wide importance.

2. The Commission's prior orders confirm that: (i) absent a LEC's agreement to an alternative billing arrangement, any traffic routed through an IXC and utilizing a LEC's access facilities is access traffic exchanged between the IXC and the originating/terminating LEC and may be treated as such; and (ii) where traffic is routed via an IXC (and, in turn, through a LEC's access facilities) the IXC bears the burden of demonstrating that the LEC has agreed to exempt the traffic from access charges.
3. Where a LEC makes access facilities (e.g., Feature Group D trunks) available pursuant to switched access tariffs, an IXC that orders and routes or receives traffic (even intraMTA traffic) through those access facilities must pay tariffed rates in connection with such traffic if provided, consistent with duly filed tariffs.
4. It is unjust and unreasonable for an IXC to engage in self-help by refusing to pay access charges incurred in connection with unrelated, undisputed traffic in order to award itself a *de facto* refund of payments already made in connection with intraMTA wireless traffic routed via a LEC's access facilities.

If the Commission does not confirm the applicability of the framework set forth above, the Commission will be left with dozens of questions that will need to be resolved on a case-by-case basis by the Commission and/or various courts. These questions include (among others) the following:

- When an IXC avails itself of a LEC's tariffed access services, is it required to pay the tariffed access charges for all traffic transmitted over the LEC's access trunks to or from that IXC, or may it later claim entitlement to retroactive refunds for unidentified intraMTA traffic that the IXC claims has been routed over those facilities on behalf of a CMRS carrier? Would the answer be different in the case of non-CMRS traffic routed by an IXC but with endpoints within the same wireline local calling area? What would justify any such differential treatment of "local" wireline and wireless traffic?
- Must a CMRS carrier and/or IXC routing intraMTA wireless traffic attempt to negotiate a reciprocal compensation or other contractual arrangement with an originating or terminating LEC to explicitly include terms for intraMTA traffic to be exchanged as local traffic (including appropriate routing)? Are parties free to agree as part of this negotiation process that access charges are owed or to choose to utilize arrangements that result in access charges? Does it matter if the IXC is routing traffic on behalf of a CMRS affiliate and/or that the CMRS carrier involved in the call flow has chosen to route traffic through an affiliated IXC that originates or terminates traffic via tariffed access services instead of via direct connection through the terms of an available ICA or alternative reciprocal compensation arrangement? Does it matter if the terms of an available ICA expressly specify that intraMTA traffic routed via tariffed access services are

subject to access charges? Prior to the negotiation of a Section 251 agreement or comparable arrangement, what is the default?

- Can the classification of intraMTA traffic as non-access traffic effectively transform an IXC into a local transit carrier and exempt it from the terms of tariffed access services it purchases as an IXC? If an IXC is effectively transformed into some sort of a transit carrier, does it have an obligation (as do other transit carriers) to provide industry-standard meet-point billing records to the terminating LEC that would give the terminating LEC sufficient information to bill the originating wireless carrier? Should the IXC be required to utilize separate local trunks with respect to intraMTA traffic originating on the LEC's network? Where the IXC seeks to characterize a call as "intraMTA," should the IXC be prohibited from charging end users or be obligated to refund collected revenues associated with such calls?
- Does Commission precedent regarding intraMTA traffic enable an IXC to avoid the payment of access charges where the IXC recovers such costs from its retail or wholesale customers (*e.g.*, where the IXC is the presubscribed interexchange carrier for the originating calling party, or where the IXC charges a CMRS carrier to transport the call)? Is it just and reasonable for an IXC that utilizes switched access services for intraMTA calls and receives such compensation to assume the status of a transit carrier and thereby avoid the terms of tariffed access services it purchases as an IXC? For these purposes, can intraMTA wireless traffic accurately be identified as such and, if so, given that a LEC has no way to identify traffic as intraMTA wireless traffic on a unilateral basis, which party is responsible for ensuring that traffic is so identified either for billing or routing purposes? How does the answer change if traffic is routed indirectly between the CMRS carrier and IXC through one or more intermediary carriers, such that there is no "privity" between the CMRS carrier and the IXC seeking to avoid access charges?

These questions demonstrate that the intraMTA rule cannot possibly be construed in the manner proposed by the IXCs without complicating and upending years of settled practice and jurisprudence. The Commission therefore should issue forthwith the declaratory ruling requested herein.

If the Commission does not do so and instead chooses to establish an exemption from access charges for intraMTA traffic routed via switched access facilities—notwithstanding the many legal, equitable, and practical obstacles to doing so—it should ensure that any such exemption applies only prospectively. Subjecting over 1,000 LECs to substantial retroactive

refund liability not only would be inconsistent with Section 204 of the Act and Commission precedent, but would wreak havoc on the telecommunications industry, forcing countless carriers to try to determine (among other things) how much intraMTA wireless traffic was transmitted via tariffed access services, over what period of time, and what offset should be calculated based on the difference between the applicable access rates and appropriate reciprocal compensation fees. Calling into question historical billing practices that have been universally applied by LECs (including affiliates of Sprint and Verizon) for nearly two decades, just as access charges are being phased out altogether, would be enormously disruptive and a monumental waste of resources,²⁶ and would threaten to undermine the carefully designed transitions the Commission included in its 2011 intercarrier compensation reform and the legal and policy decisions that rest upon them.²⁷

BACKGROUND

A. Intercarrier Compensation and IntraMTA Wireless Traffic

There are two main types of intercarrier compensation through which a LEC may recover from other carriers some of the costs of carrying traffic on its network: access charges and reciprocal compensation. Tariffed access charges generally apply to calls that begin and end in different local calling areas. In contrast, “reciprocal compensation” agreements—or “bill and keep” arrangements (under which carriers exchange traffic without cash compensation)—generally apply to calls that begin and end within the same local calling area.

The Commission has sought to apply this same framework to calls that originate or terminate on CMRS networks, with adjustments to account for differences in wireline and

²⁶ This waste of resources is entirely avoidable and under the sole control of CMRS carriers, which have entered into ICAs permitting the direct termination of local traffic over local facilities subject to bill-and-keep reciprocal compensation arrangements.

²⁷ *USF/ICC Transformation Order* ¶¶ 739, 792, 793, 798-805.

wireless network architectures and the varying applicability of state regulatory authority. In the *Local Competition First Report and Order*, the Commission concluded that wireless carriers provided local exchange service and that they therefore should have the same interconnection rights as LECs.²⁸ As a result, just as local traffic exchanged between an ILEC and a competitive local exchange carrier (“CLEC”) is subject to reciprocal compensation, so too would CMRS carriers have the ability to enter into reciprocal compensation arrangements with LECs under Section 251(b)(5) of the Act.²⁹ Yet the exchange of long-distance traffic between a LEC and an IXC would remain subject to access charges, regardless of whether wireline or wireless callers are parties to the call.³⁰ At the same time, the Commission recognized that it would not be appropriate to rely on states to define the relevant “local” calling areas for CMRS carriers “in light of this Commission’s exclusive authority to define the authorized license areas of wireless carriers”³¹ The Commission therefore defined the MTA as the relevant “local” area “for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5),” because using the largest Commission-authorized wireless license territory would “avoid[] creating artificial distinctions between CMRS providers.”³²

The “intraMTA rule” reflects these determinations and provides that “traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and

²⁸ See *Local Competition First Report and Order* ¶ 33.

²⁹ *Id.* ¶¶ 1033-38, 1043.

³⁰ *Id.* The Commission has made clear that IXCs are entitled to interconnect with LECs and to negotiate reciprocal compensation arrangements with respect to non-interexchange traffic they may exchange with LECs. See *id.* ¶ 190.

³¹ *Id.* ¶ 1036.

³² *Id.*

termination rates under section 251(b)(5), rather than interstate and intrastate access charges.”³³ But, critically, the Commission preserved its “existing practice” under which intraMTA traffic “carried by an IXC” was subject to access charges.³⁴ The Commission explained that it was relying on its “authority under section 251(g) to preserve the current interstate access charge regime,” and accordingly sought to subject LEC-CMRS traffic-exchange to the reciprocal compensation regime only insofar as was necessary to ensure that “CMRS providers *continue[d] not to pay interstate access charges for traffic that currently [was] not subject to such charges,*” whereas traffic carried by IXCs “that *[was]* currently subject to interstate access charges” *remained* subject to the access charge regime.³⁵

More recently, the *USF/ICC Transformation Order* clarified the application of the intraMTA rule in certain minor respects.³⁶ In particular, the Commission resolved a dispute involving Halo Wireless, which claimed to offer “Common Carrier wireless exchange service to ESP and enterprise customers,” by clarifying that “a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider.”³⁷ By contrast, “the ‘re-origination’ of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation.”³⁸

The Commission further clarified that “intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange

³³ *Id.*

³⁴ *Id.* ¶ 1043.

³⁵ *Id.* (emphasis added).

³⁶ *See USF/ICC Transformation Order* ¶¶ 1003-1008.

³⁷ *Id.* ¶¶ 1005-1006.

³⁸ *Id.*

traffic indirectly via a transit carrier.”³⁹ But in doing so, the Commission made clear that its order would “maintain ... distinctions in the compensation available under the reciprocal compensation regime *and compensation owed under the access regime.*”⁴⁰ Consistent with that statement, the Commission declined to order LECs to amend their switched access tariffs to create any exemption from access charges for any intraMTA wireless traffic that a CMRS carrier might choose to route via an IXC using switched access services. That decision to leave LECs’ tariffs intact contrasts starkly with other portions of the *USF/ICC Transformation Order* that did require tariff amendments—most notably, to effectuate the rate reductions mandated by the Commission.⁴¹

The *USF/ICC Transformation Order* did not speak to, much less change, the obligations of IXCs to pay access charges when they route traffic (including intraMTA traffic) using tariffed access services. If anything, and far from suggesting that IXCs could simply disregard payment obligations when purchasing tariffed switched access services, the Commission confirmed that the appropriate way for a CMRS carrier to exchange traffic with a LEC through an intermediary IXC while availing itself of the intraMTA rule would be through a negotiated ICA or comparable agreement. In particular, the Commission observed in a footnote that apparent difficulties experienced in trying to apply the intraMTA rule “when a call is routed through interexchange

³⁹ *Id.* ¶ 1007. This language does nothing more than reiterate that carriers generally may route non-access traffic directly or indirectly using transit service. As the Commission has explained, transit service, which typically is offered via ICAs and not tariffs, is to be distinguished from transport service, which is “tariffed exchanged access service.” *Id.* ¶ 1311 n. 2366. Moreover, transit service typically is provided by LECs, not IXCs. *See, e.g., Developing a Unified Inter-carrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, at ¶ 120 & n.341 (2005).

⁴⁰ *USF/ICC Transformation Order* ¶ 1004 (emphasis added).

⁴¹ *See id.* ¶ 813 (discussing required revisions to access tariffs); *see also id.* ¶ 961 (discussing requirements for tariffing of charges for VoIP-PSTN traffic).

carriers” were not insurmountable, given that many LECs already had “extended reciprocal compensation arrangements *with CMRS providers* to intraMTA traffic without regard to whether a call is routed through interexchange carriers.”⁴² The Commission did not disturb the longstanding principle that, *absent* the establishment of such a “reciprocal compensation arrangement” *between a LEC and CMRS carrier* expressly exempting such traffic from access charges (and actual routing by the IXC consistent with the conditions of that exemption), or another similar arrangement, an IXC purchasing switched access services to carry traffic on behalf of a CMRS carrier or to originate traffic on behalf of its presubscribed long-distance customers must pay the tariffed charge for those services, regardless of the jurisdictional nature of the traffic it transmits.

Many of the petitioning ILECs and CLECs have entered into negotiated agreements with CMRS carriers to exchange intraMTA traffic via local trunk groups. These agreements comprehensively govern the method of interconnection and the agreed-upon form of compensation between the LEC and the CMRS carrier for the exchange of wireless traffic between the parties’ networks, including, as specified, the use of local intermediate/transit carriers. The agreements, however, do *not* contemplate or provide that IXCs could act as intermediate carriers and route intraMTA traffic over access facilities.

For example, CenturyLink’s ICAs with Sprint, which cover 14 states, preclude reciprocal compensation for intraMTA traffic delivered using an IXC.⁴³ CenturyLink’s ICAs with Verizon

⁴² *Id.* ¶ 1007 n.2132 (emphasis added).

⁴³ *See, e.g.*, Type 2 Wireless Interconnection Agreement between Qwest Corporation f/k/a U S West Communications, Inc. and Sprint Spectrum L.P. for the State of Colorado (dated Mar. 15, 2002), § (B)2.3.5.2 (“IntraMTA Switched Access Traffic. Notwithstanding any other provisions of this Agreement, for traffic originated by Sprint PCS, IntraMTA traffic delivered to Qwest via an Interexchange Carrier shall not be subject to reciprocal compensation.”) (“*Qwest/Sprint CMRS ICA*”).

Wireless for the same states require a specific agreement between the parties before an intermediate carrier may be used to exchange any traffic between the parties' networks.⁴⁴ ICAs between CMRS carriers and smaller LECs contain similar provisions; for example, the ICA between Sprint Spectrum and Chariton Valley Telephone Corporation (a Missouri RLEC) provides explicitly that the ICA "does not cover traffic for which the originating party has contracted with an [IXC] to assume responsibility for terminating the traffic, or traffic originated by an IXC"⁴⁵

It is much more common for carriers other than IXCs to serve a transiting function with respect to LEC-CMRS traffic, whether pursuant to such LEC-CMRS agreements or in the absence of a reciprocal compensation agreement. For example, where a relatively small LEC (either a CLEC or a small, rural ILEC) subtends a larger LEC's tandem, it is common for CMRS carriers to exchange traffic with the smaller LEC by means of transiting the larger LEC's tandem. Virtually all of CenturyLink's ICAs with Sprint PCS and Verizon Wireless, for example, contemplate CenturyLink's provision of transiting service *to the wireless provider* to facilitate its interconnection with other LECs or CMRS carriers.⁴⁶

⁴⁴ See, e.g., Type 2 Wireless Interconnection Agreement between Qwest Corporation and Verizon Wireless for the State of Arizona (dated Sept. 23, 2010), §§ 6.2.1.1 ("Unless otherwise agreed to by the Parties, by an amendment to this Agreement, the Parties will directly exchange traffic between their networks without the use of third party transit providers).

⁴⁵ See Traffic Termination Agreement between Chariton Valley Telephone Corporation and Sprint Spectrum, L.P. d/b/a Sprint PCS (dated Feb. 5, 2004), § 1.1.

⁴⁶ See, e.g., CMRS Interconnection Agreement between [CenturyLink f/k/a Embarq f/k/a Sprint] and Verizon Wireless for the State of Minnesota (dated May 1, 2001), Part C § 3.2 ("To the extent network and contractual arrangements exist with all necessary parties throughout the term of this Agreement, [CentruryLink] will provide intermediary tandem switching and transport services for [Verizon Wireless's] connection of its end user to a local end user of: (1) CLECs, (2) another incumbent local exchange telecommunications Carrier other than [CenturyLink], (3) IXCs, and (4) other CMRS carriers.");

Moreover, LEC-CMRS ICAs generally contemplate that all traffic between the parties' networks will be exchanged pursuant to the terms of the applicable agreement. The agreements thus provide for the exchange of "non-access" wireless traffic (*i.e.*, intraMTA traffic) as well as the exchange of wireless access traffic (*i.e.*, interMTA traffic). Given the difficulty of distinguishing between intraMTA and interMTA traffic, the agreements may provide for the development or adoption of intraMTA/interMTA usage factors, and may specify more granular intrastate or interstate usage factors to allow billing from the appropriate interstate or intrastate access tariff.⁴⁷

Nothing comparable exists to facilitate LECs' ability to bill reciprocal compensation rather than access charges to an IXC for intraMTA traffic (assuming the LEC were obliged to do so) where the IXC commingles such traffic with all other traffic routed over tariffed access facilities. There is no industry-standard method of distinguishing intraMTA wireless traffic that is commingled with access traffic.⁴⁸ Notably, the industry's Ordering and Billing Forum, under

Interconnection and Reciprocal Compensation Agreement for the State of Michigan by and between CenturyLink and Verizon Wireless (dated Dec. 22, 2010), § 4.1 ("CenturyLink will accept Transit Traffic originated by Verizon Wireless' customers for termination to a third-party telecommunications carrier that is connected to CenturyLink's Tandem Switch. CenturyLink will also transit traffic to Verizon Wireless for termination when the call originates from a third-party telecommunications carrier that is connected to CenturyLink's Tandem Switch."); *Qwest/Sprint CMRS ICA*, § (B)2.2.3.1 ("Qwest will accept traffic originated by Sprint PCS for termination to an existing LEC, CLEC, or another Wireless carrier that is connected to Qwest's Local and/or Toll/Access Tandems. Qwest will also terminate traffic to Sprint PCS from these other Telecommunications Carriers.").

⁴⁷ See, e.g., *Qwest/Sprint CMRS ICA* § (B) 2.3.7 (requiring Sprint PCS to provide percent intraMTA and interMTA usage factors); Commercial Mobile Radio Services (CMRS) Interconnection Agreement for the State of Minnesota between Sprint Spectrum, *et al.*, and [CenturyLink] (dated July 1, 2002), Part C § 2.3.

⁴⁸ Indeed, such a method is unnecessary and inappropriate, as CMRS carriers generally are or should be encouraged to establish direct local connections with LECs so as to benefit from bill-and-keep or, at most, to interconnect with LECs indirectly and pay an intermediate transit carrier (without paying access charges to LECs).

the auspices of the Alliance for Telecommunications Industry Solutions (“ATIS”),⁴⁹ has not developed any such allocation standard through which LECs could identify intraMTA traffic routed by an IXC, likely in large part because of the complexities associated with determining the physical location of a wireless caller (or called party, in the case of LEC-originated calls that are terminated to wireless numbers). Industry-standard practice has *always* been for LECs to bill for access charges and for IXCs to pay such charges for *all* traffic—including CMRS traffic—routed through tariffed switched access facilities.⁵⁰

B. The Unreasonable IXC Conduct at Issue

In recent months, Sprint, Verizon, and Level 3 have asserted that, for years, they routed intraMTA wireless traffic to terminating LECs using the LECs’ access facilities (including Feature Group D trunks) and in some cases received intraMTA wireless traffic from originating LECs using the LECs’ access facilities. These IXCs have not provided any meaningful explanation of how they came to be in the position to handle such traffic, nor any meaningful explanation to the industry of how, if at all, they have estimated the amount of such traffic they claim to have delivered.⁵¹ Nevertheless, these IXCs now are seeking retroactive refunds (for a period dating back as long as 10 years, depending on state statutes of limitations that the IXCs allege apply to intrastate, intraMTA traffic)—from virtually the entire LEC industry, including

⁴⁹ See ATIS Ordering and Billing Forum Homepage, at <http://www.atis.org/OBF/index.asp> (last visited Oct. 20, 2014).

⁵⁰ This includes even physically local wireline traffic. For example, if a local landline end user in Dallas dials an “800” number for a vendor’s call center that also happens to be located in Dallas, the wireline LEC charges full access charges (as well as special charges for the “800” functionality), notwithstanding the fact that the call physically begins and ends in the same local calling area.

⁵¹ In many cases, IXCs have provided *no* data to support their claims, and in other cases and “supporting” data provided have been incomplete.

price cap ILECs, rate-of-return ILECs, and CLECs—in connection with access charges they paid for this alleged intraMTA wireless traffic.

To the extent that these IXCs actually did exchange intraMTA wireless traffic with LECs, these IXCs failed to notify the affected LECs that this was occurring or to submit timely objections to the payment of the access charges they were billed in connection with that traffic. Significantly, the relevant LECs would have had no other basis for determining that traffic being routed through their access trunks was intraMTA wireless traffic—regardless of whether the traffic in question was LEC-terminated or LEC-originated CMRS traffic.⁵² The relevant IXCs, in contrast, would have been (and remain) in a better position to address the jurisdictional nature of individual calls, particularly where they have direct relationships with the CMRS carriers

⁵² As noted above, LECs cannot determine the location of CMRS callers because they are inherently mobile. LEC networks are designed to classify all traffic for billing purposes based on the NPA-NXX codes of the calling and called telephone numbers as a proxy for geographic location. This generally works for wireline calls because wireline telephone numbers are typically assigned on a LATA/Rate Center geographic basis, with each NPA-NXX code corresponding to a specific, relatively small geographic area. However, this process of jurisdictionalization was never designed to account for the MTA-based geography that wireless jurisdictionalization is based upon, nor is the wireline network capable of accounting for the roaming nature of wireless technology. This approach is particularly problematic in the case of LEC-originated CMRS traffic because LECs cannot determine the terminating carrier or location of the called party because the access trunks route calls directly to the caller's IXC of choice through 1+ dialing and the LEC is not aware of the final routing of the call.

involved in those calls.⁵³ As such, it would have made little sense for LECs to second-guess the IXCs' payment of access charges in connection with *any* traffic.⁵⁴

Indeed, consistent with standard industry practice, the IXCs paid the tariffed access charges they were billed for *all* traffic routed over access trunks—including any traffic they characterize as intraMTA wireless traffic. It is only now, many years after the fact, that these IXCs assert that they should not have been charged those rates and seek the refund of such payments.⁵⁵ As noted above, Sprint and Verizon have filed dozens of nearly identical actions against hundreds of LECs in courts across the country. And Level 3 has acted without bothering to file lawsuits seeking to establish a right to refunds and Sprint (in some cases) has not waited for the conclusion of its lawsuits to obtain the refunds that it seeks. Instead, Level 3 and Sprint have engaged in unlawful self-help and chosen to withhold payment of undisputed balances for

⁵³ Ultimately, CMRS carriers are in the best position to understand the jurisdictional nature of the calls in question, as called for by the Commission's definition of an intraMTA call. *See* 47 C.F.R. § 51.701(b)(2); *Local Competition First Report and Order* ¶ 1044. For this reason (among others), the Commission has encouraged LECs and CMRS carriers to address the exchange of intraMTA wireless traffic through negotiated ICAs. In the absence of such negotiations, a wireline LEC originating or terminating a call is not in a position to identify calls as intraMTA in nature.

⁵⁴ In analogous contexts, such as in addressing disputes over "phantom traffic," the Commission has recognized that "responsibility—and liability—should lie with the party that failed to provide the necessary information" to ensure appropriate compensation. *USF/ICC Transformation Order* ¶ 732. So too here: requiring IXCs to bear the cost of failing to ensure that originating and terminating LECs have sufficient information regarding the traffic they exchange would impose appropriate incentives on IXCs and any CMRS carriers whose traffic they carry.

⁵⁵ The IXCs' assertions are even more puzzling because LECs affiliated with these IXCs appear to have engaged in the very same billing practices the IXCs now challenge as unlawful.

tariffed access services they purchased from many different LECs to effect *de facto* refunds of switched access charges they voluntarily paid but now dispute.⁵⁶

C. Judicial Referral of Related Issues to the Commission under the Primary Jurisdiction Doctrine

The lawsuits described above will require dozens of courts to grapple with the same complex substantive questions of federal communications law. Given the Commission's expertise in such matters, and to ensure that those questions are resolved in a uniform manner, several LECs named as defendants in those lawsuits have argued in motions to dismiss that it would be appropriate for courts to refer those questions to the Commission under the primary jurisdiction doctrine. While several such requests remain pending, as noted above the U.S. District Court for the Northern District of Iowa recently stayed a case brought by Sprint until such time as the Commission has resolved underlying substantive issues related to the scope and applicability of the intraMTA rule.⁵⁷ In taking such action, the court made a number of key determinations, including that:

1. Neither the *Local Competition First Report and Order* nor the *USF/ICC Transformation Order* expressly addresses the intercarrier compensation obligations that apply to any intraMTA wireless traffic that may be exchanged between a LEC and an IXC;⁵⁸

⁵⁶ See Declaration of Stephen B. Weeks, Vice President—Carrier Billing and Interconnection, Windstream Corporation, attached as Exhibit B hereto; Declaration of Janice Williams, Carrier Access Billing Coordinator, Northeast Missouri Rural Telephone Company, attached as Exhibit C hereto.

⁵⁷ See *Sprint Communs Co., L.P. v. Butler-Bremer Mutual Tel. Co.*, 2014 U.S. Dist. LEXIS 141758 (N.D. Iowa Oct. 6, 2014) (Memorandum Opinion and Order Regarding Defendants' Motion to Dismiss or Stay).

⁵⁸ *Id.* at *11.

2. The judicial decisions on which IXCs have relied in drafting their court complaints “do not involve interpretation or policy analysis of FCC regulations regarding payment arrangements between LECs and IXCs;”⁵⁹ and
3. The failure of the IXCs to invoke the intraMTA rule to avoid payments for intraMTA traffic allegedly routed between LECs and IXCs “for more than 18 years . . . suggests that the interpretation of the FCC’s ruling that [those IXCs] press[] is not as obvious as [they] contend[].”⁶⁰

The court’s primary jurisdiction referral underscores the need for Commission action to address the substantive issues underlying the numerous pending lawsuits. As discussed further below, the Commission should issue a declaratory ruling holding that, while CMRS carriers are entitled to negotiate agreements that explicitly provide for applying reciprocal compensation rather than access charges to intraMTA traffic exchanged with LECs, where a CMRS carrier forgoes such an agreement (or forgoes alternative routing options available under such an agreement) and instead elects to route intraMTA traffic via an IXC using a LEC’s switched access services, the IXC must pay the charges specified by the LEC’s tariffs.

DISCUSSION

I. THE INTRAMTA RULE DOES NOT BAR LECS FROM ASSESSING ACCESS CHARGES ON IXCS THAT USE TARIFFED SWITCHED ACCESS SERVICES

The Commission’s intraMTA rule governs LECs’ billing of CMRS carriers for the exchange of intraMTA wireless calls pursuant to reciprocal compensation arrangements or similar agreements, but it does not apply to the LEC-IXC intercarrier compensation relationship for intraMTA wireless traffic where the IXC originates traffic on or terminates traffic to the LEC’s network over tariffed switched access facilities. Even if the rule could be construed (contrary to established precedent) to apply to the LEC-IXC relationship, it would have to be effectuated through an agreement with the LEC, and the IXC would bear the burden of

⁵⁹ *Id.* at *11-12.

⁶⁰ *Id.* at *14.

demonstrating that the LEC agreed to exempt that portion of the IXC's traffic from switched access charges and that the IXC complied with the conditions of such an exemption.

A. The IntraMTA Rule Creates a Default Right That Must Be Effectuated Through an Agreement Between a CMRS Carrier and a LEC

As explained above, the Commission has classified intraMTA traffic as non-access traffic in certain contexts and for certain carrier relationships. But the Commission's determination in the *Local Competition Order* (as reaffirmed in the *USF/ICC Transformation Order*) that intraMTA calls "between a LEC and a CMRS provider" are "subject to reciprocal compensation obligations under Section 251(b)(5)"⁶¹ means only that a CMRS carrier is *entitled* to negotiate an appropriate reciprocal compensation agreement with a LEC. That process can be initiated by the CMRS carrier under Section 252(a)(1) of the Act and/or Section 20.11(a) of the Commission's rules or the LEC under Section 20.11(e) of the Commission's rules.⁶² Critically, nothing in Section 251(b)(5) or the Commission's implementing rules and policies *requires* the CMRS carrier to negotiate terms that give effect to the intraMTA rule or precludes a CMRS carrier from voluntarily agreeing to or accepting alternative arrangements for the exchange of traffic with LECs.

Indeed, Section 20.11 of the Commission's rules requires only that LECs "provide the type of interconnection *reasonably requested* by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or

⁶¹ *USF/ICC Transformation Order* ¶ 1003 (citing *Local Competition First Report and Order* ¶ 1036).

⁶² 47 U.S.C. § 252(a)(1); 47 C.F.R. §§ 20.11(a), (e).

economically reasonable.”⁶³ Furthermore, the Commission made clear in the *T-Mobile Declaratory Ruling* that Section 20.11 and the reciprocal compensation rules establish only “default rights to intercarrier compensation,” and “do not preclude carriers from accepting alternative compensation arrangements.”⁶⁴ And, of course, the foundational structure of the statutory interconnection regime is to create default rights that *may* be invoked by requesting carriers, but *need not* be. In particular, Section 252(a)(1) of the Act provides that parties to an ICA may, through “voluntary negotiations,” enter into agreements “without regard to the standards set forth in [Section 251(b) and (c)]” and the Commission’s implementing rules.⁶⁵ The Commission also acknowledged in the *TSR Wireless Order* that “requesting carriers, including CMRS carriers, may agree to forgo rights established by section 251 and the Commission’s rules, for instance, in return for other consideration from the ILEC” and anticipated that the ICA negotiation process would “utilize the sections 251(b) and (c) obligations and the Commission’s implementing rules as a starting point for negotiations”⁶⁶ Consistent with Section 252(a)(1), the *USF/ICC Transformation Order* repeatedly manifests the Commission’s intention that carriers of all types be free to negotiate arrangements and rates that vary from any applicable intercarrier compensation rules.⁶⁷

⁶³ 47 C.F.R. § 20.11(a) (emphasis added). Section 20.11(b) now provides that any such agreement between a LEC and a CMRS provider must effectuate “a bill-and-keep arrangement. . . . unless they mutually agree otherwise.” *Id.* § 20.11(b).

⁶⁴ *T-Mobile Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, at ¶ 12 (2005) (“*T-Mobile Declaratory Ruling*”).

⁶⁵ 47 U.S.C. § 251(a)(1).

⁶⁶ *TSR Wireless Order* ¶ 28 n.97.

⁶⁷ *See, e.g., USF/ICC Transformation Order* ¶ 978 (adopting bill-and-keep as the “default” compensation for non-access traffic exchanged between LECs and CMRS providers).

In light of this precedent, there is no doubt that a CMRS carrier can avoid access charges under the intraMTA rule by entering into an appropriate agreement with the relevant LEC—as many CMRS carriers have done, including the wireless affiliates of Sprint and Verizon. The access charge regime cannot be abrogated, however, where a CMRS carrier *unilaterally* elects to route intraMTA traffic via an IXC that relies on LECs’ tariffed switched access services (*i.e.*, in the *absence* of a LEC-CMRS ICA that explicitly creates an exemption from tariffed access charges)—particularly where this is accomplished without the LECs’ knowledge.⁶⁸ In fact, if an ILEC were to waive normally applicable access charges to give effect to Section 251(b)(5) *without* entering into a state- approved ICA, it could face liability under the Commission’s precedent.⁶⁹

As noted above, many of the LEC Petitioners *have* entered into ICAs with CMRS providers, including the CMRS affiliates of Sprint and Verizon. These ICAs are designed to govern the exchange of all traffic between the LEC and the CMRS provider for the area covered and dictate the manner of physical interconnection, the rating and routing of traffic, and the compensation between the parties for terminating each other’s traffic. Notably, these ICAs provide for reciprocal compensation between the parties for intraMTA traffic and access charges

⁶⁸ The *TSR Wireless Order* does suggest that certain restrictions on LECs’ ability to charge originating access charges in connection with “local” traffic may apply even prior to the negotiation of a LEC-CMRS ICA. *See TSR Wireless Order* ¶ 28. However, the order does not purport to classify CMRS traffic routed through IXCs as “local” for these purposes, and, in any event, leaves open the possibility that CMRS carriers can “request” other arrangements—including through their course of conduct (*i.e.*, routing traffic through inherently non-“local” access facilities).

⁶⁹ *See Qwest Commc’ns Int’l Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, Memorandum Opinion and Order, 17 FCC Rcd 19337, at ¶ 8 (2002) (“[W]e find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).” (emphasis in original)).

for interMTA traffic, and develop factors as necessary for accurate billing. Many of these ICAs also provide for the indirect exchange of traffic through transit providers, subject to provisions of the ICA.⁷⁰

Critically, though, the IXCs whose unreasonable conduct has instigated the need for this petition (namely, Sprint, Verizon, and Level 3) are not providing transit service within the scope of a LEC-CMRS ICA. The provision of such transit services by IXCs would require the establishment of ICAs between the relevant LECs and the IXCs *acting as transit providers* that spell out the details of how indirect interconnection would be accomplished—*i.e.*, what facilities would be used, where points of interconnection would be located, how intraMTA traffic would be distinguished from other traffic for billing purposes, how each carrier-party would be compensated, etc.⁷¹ Here, the relevant IXCs are acting wholly outside the confines of any applicable ICAs, and evidently are simply commingling intraMTA traffic with other traffic routed over LECs' access facilities and labeling themselves "intermediate carriers" in an attempt to take advantage of reciprocal compensation arrangements between the LEC and the CMRS provider. But there is no basis for allowing IXCs to recharacterize the traffic they route in a

⁷⁰ See, e.g., Interconnection Agreement between Verizon Wireless and Nevada Division of Central Telephone Company, at § 1.17 (defining indirect traffic as "traffic that is originated by one Party and terminated to the other Party in which a third-party telecommunications carrier provides the intermediary transiting service.") and §§ 4.3-4.4. As noted above, an ICA may have in place specific restrictions on the use of intermediate carriers, such as requiring a separate agreement or eliminating reciprocal compensation if the intermediate carrier is an IXC.

⁷¹ See, e.g., *Iowa Network Service, Inc., v. Qwest Corp.* 385 F. Supp. 2d 850, 863 (S.D. Iowa 2005) (noting with approval the Iowa Utility Board's recommendation that rates and terms applicable to third-party transiting arrangements—including with respect to the use of separate trunk groups and how to distinguish intraMTA traffic from interMTA traffic—are good examples of the types of issues to be addressed in interconnection agreements), *aff'd*, 466 F.3d 1901 (8th Cir. 2006).

manner that is at odds with existing law and longstanding Commission policy—not to mention the relevant LEC-CMRS ICAs.

B. The IntraMTA Rule Does Not Preclude LECs from Collecting Access Charges from IXCs for IntraMTA Wireless Traffic Routed Through IXCs

The intraMTA rule does not preclude LECs from collecting access charges from *IXCs* for intraMTA wireless traffic where a CMRS carrier routes intraMTA traffic via an IXC, and that IXC exchanges traffic with LECs by purchasing switched access services. Nor does the intraMTA rule preclude LECs from collecting access charges from *IXCs* for intraMTA wireless traffic where *IXCs* originate traffic on LEC networks on behalf of the IXC's presubscribed end-user customer. Assuming, *arguendo*, that it were appropriate in *any* case for *IXCs* to avoid access charges where they originate or terminate intraMTA traffic over LEC switched access facilities, that result clearly would not lie absent an agreement establishing the specific rates, terms and conditions under which such traffic would be exchanged outside of the access regime.

The Commission has expressly held that “[b]y routing traffic to LECs in the absence of a request to establish reciprocal or mutual compensation,” a carrier “accept[s] the terms of otherwise applicable . . . tariffs.”⁷² To be sure, Section 20.11(d) of the Commission’s rules prohibits LECs from using tariffs to impose *reciprocal compensation charges* on *CMRS carriers*,⁷³ because such unilateral tariffs would undermine a CMRS carrier’s ability to negotiate an agreement with the LEC. But Section 20.11(d) says nothing about *IXCs*, and, indeed, the Commission has never prohibited LECs from enforcing their tariffed *switched access charges* against *IXCs*. This is especially the case where a CMRS carrier elects to forgo its right under Section 20.11(a) to enter into a reciprocal compensation agreement with the LEC (or forgoes

⁷² *T-Mobile Declaratory Ruling* ¶ 12.

⁷³ 47 C.F.R. § 20.11(d).

alternative routing options available under such an agreement) and instead routes intraMTA traffic via an IXC that exchanges traffic with LECs by purchasing switched access services. As noted above, in adopting the intraMTA rule, the Commission recognized that “most traffic between LECs and CMRS providers [was] not subject to interstate access charges *unless it [was] carried by an IXC.*”⁷⁴ And the Commission declined to require LECs to amend their switched access tariffs either in the *Local Competition First Report and Order* or the *USF/ICC Transformation Order*, recognizing that the appropriate means for a CMRS carrier to invoke the intraMTA rule was to negotiate an agreement with LECs. Moreover, nothing in Section 20.11 creates an exemption for IXCs from LEC tariffs where an IXC purchases switched access services under those tariffs.

Similarly, Section 51.703(b) is intended only to preclude an originating LEC from assessing originating access charges for intraMTA traffic on a CMRS carrier. Section 51.703(b) provides that “[a] LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic”—defined to include intraMTA wireless traffic “exchanged between a LEC and a CMRS provider”⁷⁵—“that originates on the LEC’s network.”⁷⁶ As the Commission made clear in the *TSR Wireless Order*, Section 51.703(b) does not apply outside of the reciprocal compensation context—*i.e.*, outside of the direct relationship between the LEC and CMRS carrier. The Commission there explained that “LEC-originated traffic that originates and terminates within the same MTA” and is exchanged with a CMRS carrier “falls under our reciprocal compensation rules if carried by the incumbent LEC, *and under our access charge*

⁷⁴ *Local Competition First Report and Order* ¶ 1043 (emphasis added).

⁷⁵ 47 C.F.R. § 51.701(b)(2) (emphasis added).

⁷⁶ 47 C.F.R. § 51.703(b).

rules if carried by an interexchange carrier.”⁷⁷ Accordingly, the Commission’s rules and precedent confirm that any intraMTA traffic routed by an IXC outside the framework of an agreement under which that traffic is exempt, or outside of the agreed framework for the exchange of traffic on a non-access basis, is properly subject to access charges.

Notably, the U.S. District Court for the Northern District of Iowa recognized in its recent referral order that neither the *Local Competition First Report and Order* nor the *USF/ICC Transformation Order* precludes LECs from imposing access charges on IXCs that route intraMTA wireless traffic to or from LECs. As the court stated:

[N]either the FCC’s 1996 *Local Competition [First Report and Order]* nor its 2011 [*USF/ICC Transformation Order*] expressly applies to compensation between a LEC and an IXC for intraMTA calls. As the LECs point out, the 1996 *Local Competition [First Report and Order]* distinguishes between service arrangements between LECs and CMRS providers and service arrangements between LECs and IXCs, and did not apply its conclusion that service arrangements involving intraMTA traffic between CMRS providers and LECs are subject to reciprocal compensation, not access charges, to service arrangements involving such traffic between LECs and IXCs. . . . Likewise, the 2011 [*USF/ICC Transformation Order*] only “clarified” payment arrangements between LECs and CMRS providers, but did not address payment arrangements between LECs and IXCs.⁷⁸

Consequently, IXCs that exchange intraMTA wireless traffic with LECs outside of any LEC-CMRS arrangement governing such traffic do so subject to, and are bound by, “the terms of otherwise applicable . . . tariffs.”⁷⁹

⁷⁷ See *TSR Wireless Order* ¶ 31 (emphasis added).

⁷⁸ See *Sprint Communs Co., L.P. v. Butler-Bremer Mutual Tel. Co.*, 2014 U.S. Dist. LEXIS 141758, at *11 (N.D. Iowa Oct. 6, 2014) (Memorandum Opinion and Order Regarding Defendants’ Motion to Dismiss or Stay).

⁷⁹ *T-Mobile Declaratory Ruling* ¶ 12.

For all of the reasons discussed above, the intraMTA rule does not preclude LECs from collecting access charges from IXCs for intraMTA wireless traffic that those IXCs exchange with LECs by means of switched access services—and, indeed, simply does not apply to the LEC-IXC relationship in that context. But assuming, *arguendo*, that the intraMTA rule (or Section 20.11(d) or Section 51.703(b)) could be read to permit an IXC exchanging intraMTA traffic with a LEC to avoid tariffed access charges, it would be unreasonable to treat the rule as self-effectuating in that context. Indeed, even if the intraMTA rule applied in that context, it would be arbitrary and capricious to bar a LEC from imposing access charges on IXCs where: (i) there is no agreement with the LEC providing for such a result; (ii) the LEC does not know that traffic being routed through its access facilities includes intraMTA wireless calls, and (iii) there is no agreed-upon basis for identifying, verifying, and exempting certain calls from access charges.⁸⁰

As noted above, none of the IXCs involved in these disputes has entered into agreements with LECs through which traffic sent over access facilities, including the traffic at issue here, could be exempted from access charges and billed on some alternative basis. To the contrary, the lawsuits initiated by Sprint and Verizon and the demands made by Level 3 and Sprint all involve situations where the traffic did not have to be routed via an IXC at all, and where the imposition of access charges was an entirely avoidable result of voluntary decisions made by

⁸⁰ Notably, in the lawsuits it has initiated, Sprint argues that it has no duty even to identify intraMTA traffic to the LECs whose access services it utilizes, and it offers no explanation as to how such traffic otherwise could be identified by the originating or terminating LEC. See Sprint's Memorandum in Opposition to the Small LECs' Motion to Dismiss, *Sprint Comm. Co. L.P. v. Qwest Corp., et al.*, Civil Action 0:14-cv-01387-MJD-LIB, at 5, n.5 (D Minn. Sept. 5, 2014).

CMRS carriers and the IXCs they relied on regarding how to route intraMTA traffic.⁸¹ In particular, such CMRS carriers *chose* not to avail themselves of alternative arrangements (*e.g.*, ICAs with the relevant LECs providing for the exchange of intraMTA traffic over local trunk groups or via identified and mutually approved transit arrangements). Such CMRS carriers also *chose* not to notify originating and terminating LECs of their routing of intraMTA traffic via IXCs that rely on switched access services. The IXCs likewise *chose* to route the traffic over Feature Group D facilities, *chose* not to provide notification to LECs, and *chose* to pay tariffed access charges for years without dispute. Consequently, there is no lawful basis for those IXCs to claim entitlement to retroactive refunds at this stage.⁸²

C. Requiring Retroactive Refunds Cannot Be Squared with the Status of Filed Tariffs Under the Act And Would Be “Manifestly Unjust”

In all events, even if the Commission were to hold that a LEC should not be permitted to impose access charges on IXCs for intraMTA traffic in the circumstances addressed here, any such prohibition would have to be prospective only. Indeed, the attempts by some IXCs to obtain retroactive refunds for access charges they paid in connection with their alleged transmission of intraMTA traffic not only are inconsistent with Commission precedent, but are foreclosed by Section 204(a)(3) of the Act. Furthermore, the Commission has recognized that

⁸¹ If an IXC seriously believed that it was carrying any material amount of intraMTA traffic and that such traffic was not subject to access charges, at an absolute minimum the IXC would have to either identify the affected traffic at the time it is routed or negotiate an agreed-to traffic factor to be applied at the time of billing, rather than raising the issue at a later date months or years after the traffic has been exchanged.

⁸² This result is consistent with the “voluntary payment rule” recognized by most courts, which provides that “where money has been voluntarily paid with full knowledge of the facts, it cannot be recovered on the ground that the payment was made under a misapprehension of the legal rights and obligations of the person paying.” *See, e.g., Nieves v. All Star Title, Inc.*, 2010 WL 2977966 at *6 (Del. Super. July 27, 2010).

new applications and interpretations of legal requirements should not be applied retroactively if, as is the case here, such a retroactive application would result in a “manifest injustice.”⁸³

1. Requiring Retroactive Refunds Cannot be Squared with the Status of Filed LEC Tariffs Under the Act

By their terms, LECs’ switched access tariffs apply to all traffic routed by or through access facilities, including Feature Group D trunks, to an end user.⁸⁴ Under Section 204(a)(3) of the Act, these tariffs (and their treatment of access trunk traffic as access traffic) are “deemed lawful” once they become effective.⁸⁵ As a result, the reasonableness of the terms of such tariffs can be challenged only on a prospective basis, and any remedies against carriers charging lawful rates later found unreasonable must be prospective only.⁸⁶

Relatedly, the “filed-rate” (or “filed-tariff”) doctrine requires carriers, as well as their customers, to abide by the terms of a filed tariff and precludes them from departing from the

⁸³ See *Communications Vending Corp. of Arizona, Inc. v. Citizens Communications Co.*, 17 FCC Rcd 24201, at ¶ 33 (2002).

⁸⁴ See, e.g., *The FairPoint Telephone Companies, Tariff F.C.C. No. 1*, § 6.7.6 (providing that for calls originated or terminated over Feature Group D facilities, “the measured minutes are the chargeable access minutes”).

⁸⁵ 47 U.S.C. § 204(a)(3).

⁸⁶ See, e.g., *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 411 (DC Cir. 2002) (noting that once an agency deems a rate “lawful,” refunds are thereafter impermissible as a form of retroactive ratemaking). Certain access tariffs filed by nondominant carriers are “presumed lawful” once filed. These tariffs may be suspended only if a complaining party establishes: (i) that there is a high probability that the tariff would be found to be unlawful after investigation (likelihood of success on the merits); (ii) that any harm alleged to competition would be more substantial than that to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing; (iii) that irreparable injury would be suffered if suspension does not issue; and (iv) that the suspension would not otherwise be contrary to the public interest. See *Competitive Common Carrier Services*, 85 FCC.2d 1, at ¶ 107 (1980). No IXC has ever sought to suspend LEC tariffs because of their treatment of “intraMTA wireless” traffic, and such suspension would not be justified in any event. Certainly, it would be unreasonable to grant retroactive effect to any such suspension for the reasons set forth herein.

tariff's provisions.⁸⁷ As the U.S. Supreme Court has explained, "[t]he rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."⁸⁸ Even assuming that a LEC and an IXC may negotiate individual arrangements for the provision of access services, and even assuming that an ICA addressing intraMTA traffic can supersede the terms of an otherwise applicable tariff, in the absence of such an express agreement,, an IXC cannot prevail based on an argument that a LEC owes a duty inconsistent with the terms of its filed tariff.⁸⁹

Here, the IXCs seeking refunds ordered access services using the procedures set forth in LECs' filed switched access tariffs, they received the services they ordered, those services were consistent with the terms of the underlying tariffs,⁹⁰ those IXCs were billed under those tariffs, and they paid the charges that were assessed over the course of many years. Their attempt to secure refunds of these charges at this late date amounts to a collateral attack on the reasonableness of those charges that is barred by the Act and the filed-rate doctrine.

⁸⁷ See *AT&T v. Central Office Telephone*, 524 U.S. 214, 222-23 (1998).

⁸⁸ *Id.*, 524 U.S. at 227.

⁸⁹ *Id.*, 524 U.S. at 223-24 (quoting 47 U.S.C. § 203(c) to note that carriers may not "'extend to any person any privileges or facilities in [interstate] communication, or employ or enforce any classifications, regulations, or practices affecting such charges' except those set forth in the tariff").

⁹⁰ In some cases, IXCs have claimed that tariffs are inapplicable to intraMTA traffic because the Commission has deemed such traffic to be local, not long distance. But the IXCs' conduct belies such claims; if the IXCs believed the tariffs inapplicable to the traffic in question, they would not have ordered services from the tariff or paid access charges incurred thereunder.

2. Requiring Retroactive Refunds Would be “Manifestly Unjust”

Whether a reinterpretation of the intraMTA rule could be applied retroactively also is “a question grounded in notions of equity and fairness.”⁹¹ Here, the equities demand that LECs not be held retroactively liable for complying with the settled, industrywide understanding of the intraMTA rule, even in the unlikely event that the Commission were to alter that understanding now. Accepting the IXCs’ interpretation of the intraMTA rule would amount to “an abrupt departure from well established practice” upon which the entire telecommunications industry relied for nearly two decades.⁹² LECs would be severely burdened not only by the amount of the refunds potentially at issue but also by the massive administrative undertaking that would be required to identify the affected charges. At the same time, retroactive refunds likely would result in a windfall for IXCs, as there is no indication that they would pass recovered access charges through to *their* customers, even though IXCs were never intended as the intraMTA rule’s beneficiaries.⁹³ As discussed above, for 18 years the complaining IXCs raised no objection to settled practices applying access charges to any intraMTA traffic that might have been exchanged with LECs, and indeed in many cases engaged in the same practices through their LEC affiliates, and billed their own customers rates set to cover the same access charges the

⁹¹ *Petition for Declaratory Ruling That AT&T’s Phone-to-Phone IP Telephony Services are Exempt From Access Charges*, 19 FCC Rcd 7457, 7471 (2004) (quoting *Cassell v. FCC*, 154 F.3d 478, 486 (D.C. Cir. 1998)).

⁹² *See Clark-Cowlitz Joint Operating Agency v. F.E.R.C.*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (noting relevant factors in determining whether retroactive application of new rule results in manifest injustice).

⁹³ *See Federal-State Joint Board on Universal Service, Order on Reconsideration*, 23 FCC Rcd. 6221, at ¶¶ 15 *et seq.* (2008) (noting that “manifest injustice” analysis focuses on “the benefits and burdens to the affected parties,” including whether allegedly injured parties would actually receive refunds or whether refunds would result in windfall to carriers).

IXCs now claim they should be able to recover from LECs. It would be manifestly unjust to allow IXCs to realize a windfall under such circumstances.

II. AN IXC MAY NOT ENGAGE IN SELF-HELP BY REFUSING TO PAY UNDISPUTED CHARGES IN ORDER TO EFFECT A *DE FACTO* REFUND OF ACCESS PAYMENTS ALREADY MADE FOR INTRAMTA WIRELESS TRAFFIC

As discussed above, Sprint and Verizon have filed lawsuits seeking retroactive refunds of access charges based on their flawed interpretation and application of the intraMTA rule. However, Level 3 and Sprint (in some cases) have not bothered to seek a judicial declaration establishing an entitlement to relief, but instead have helped themselves to *de facto* refunds by withholding payment for unrelated and undisputed tariffed access services purchased from many different LECs. This behavior has the potential to create significant disruptions in the telecommunications industry and the ability of LECs to provide connectivity to end-user customers—particularly if the tactics of Level 3 and Sprint are adopted by other IXCs. Accordingly, it is critical that the Commission act quickly to confirm that those tactics are inconsistent with the requirements of the Act and the Commission’s implementing rules and policies.

A. IXC Self-Help Violates Section 201(b) of the Act, which Prohibits Any Common Carrier Practice that Is “Unjust or Unreasonable”

The Commission has concluded that the Act requires LECs to originate and terminate all IXC traffic without blocking or degrading that traffic.⁹⁴ LECs also must route all calls to the

⁹⁴ See generally *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013) (reaffirming the Commission’s prohibition on call blocking and imposing new obligations designed to monitor performance with respect to rural call completion); *USF/ICC Transformation Order* ¶ 839 (noting that Section 201 “generally restricts carriers from blocking traffic”).

IXC selected by the IXC's end-user customer.⁹⁵ Level 3 and Sprint have exploited these requirements by continuing to route traffic to terminating LECs and accepting traffic from originating LECs with no intention of compensating them for the services provided. Level 3 and Sprint apparently have engaged in this course of conduct to effect *de facto* refunds of access payments already made for their alleged transmission of intraMTA wireless traffic.⁹⁶ The Commission can and should declare that, in these circumstances, any IXC that terminates or receives telecommunications traffic over switched access trunks and refuses to pay for services rendered is engaging in a practice that is inherently "unjust" and "unreasonable" under Section 201(b)—and therefore unlawful.⁹⁷

As an initial matter, such conduct constitutes an unjust and unreasonable practice with respect to an IXC's own end-user customers to the extent that the IXC has recovered the costs of access charge payments from those customers (whether through its general rates or as a separate line-item charge). IXCs generally may recover the costs of paying access charges as long as they accurately describe the nature of the fee; the Commission has prohibited the gross overbilling of customers for fictitious charges and confirmed that unjust or unreasonable line-item charges are subject to challenge under Section 201(b).⁹⁸ Where an IXC chooses to withhold access charge payments absent any legitimate basis for disputing the LEC's current charges, it is manifestly

⁹⁵ See 47 C.F.R. § 51.209(b).

⁹⁶ See Declaration of Stephen B. Weeks, Vice President—Carrier Billing and Interconnection, Windstream Corporation, attached as Exhibit B hereto; Declaration of Janice Williams, Carrier Access Billing Coordinator, Northeast Missouri Rural Telephone Company, attached as Exhibit C hereto.

⁹⁷ 47 U.S.C. § 201(b) (providing that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate and foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful").

⁹⁸ See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, at ¶ 58 (1999).

unjust and unreasonable for the IXC to “recover” the associated “costs” from the relevant end-user customers. And where customers that have placed “intraMTA wireless” calls already have paid access charge recovery fees billed by an IXC, the IXC’s efforts to effect a *de facto* refund of the underlying access charge payments without refunding those fees to the relevant end-user customers also are unjust and unreasonable.

In addition, such conduct is an unjust and unreasonable practice with respect to originating and terminating LECs because IXCs are taking such action to effect a result that is prohibited by the Act. Notably, under Section 204 of the Act, a carrier may not provide a refund, directly or indirectly, that is inconsistent with its filed tariffs.⁹⁹ Furthermore, under Section 503(a) of the Act, no customer may “receive or accept . . . any . . . valuable consideration as a rebate or offset against [tariffed] charges”¹⁰⁰ Consequently, an IXC’s attempt to effect a *de facto* refund by withholding payment of unrelated charges not only is inconsistent with its obligations under Section 201(b), but also violates other provisions of the Act.

This case is distinguishable from those in which the Commission has refused to adjudicate “collection actions” and found that a customer’s non-payment of billed charges generally does not constitute an independent violation of the Act.¹⁰¹ Here, the IXC not only is refusing to pay an outstanding bill, but also is actively routing traffic to terminating LECs and accepting traffic from originating LECs for the purpose of effecting an impermissible refund of lawfully tariffed charges. Those are *carrier* practices that violate the Act. Furthermore, the IXC is engaging in self-help instead of availing itself of its prescribed legal remedies—namely, the

⁹⁹ 47 U.S.C. § 204.

¹⁰⁰ 47 U.S.C. § 503(a).

¹⁰¹ See *All American Telephone Co. v. AT&T Corp.*, FCC 11-5 (2011).

Section 208 complaint process and court actions.¹⁰² The Commission has concluded that it has the requisite jurisdiction to review IXC conduct under such circumstances.¹⁰³

B. IXC Self-Help Violates Section 251(c)(1) and the Obligation to Negotiate the Terms of Interconnection in Good Faith

IXCs generally are not party to ICAs with originating or terminating LECs. However, as a result of the disputes underlying this petition, some IXCs have proposed that “allocation factors” be used to determine the percentage of the IXC’s traffic that would be treated as intraMTA wireless traffic for purposes of intercarrier compensation.¹⁰⁴

Given the discussion above, and given the IXCs’ apparent positions in these disputes, it is possible that the Commission would conclude that the IXCs’ conduct amounts to negotiations subject to Section 251 of the Act.¹⁰⁵ Under Section 251(c)(1), a telecommunications carrier that seeks to negotiate a reciprocal compensation arrangement with an incumbent LEC has “the duty to negotiate in good faith the terms and conditions of such agreements.”¹⁰⁶ Section 51.301 of the Commission’s rules expands on this obligation, setting forth a non-exhaustive list of impermissible “bad-faith” practices and, in particular, establishing that a requesting carrier may

¹⁰² Indeed, the fact that Sprint and Verizon have recognized the need to obtain court rulings awarding them refunds (however misplaced the legal theories included in their complaints) only underscores the unreasonableness of Level 3 and Sprint deciding to forgo legal proceedings and award themselves refunds by withholding payment of current undisputed charges.

¹⁰³ See, e.g., *Allnet Communication Services, Inc. v. Bell Atlantic Telephone Cos.*, 8 FCC Rcd 5438 (1993); see also 47 U.S.C. § 208.

¹⁰⁴ That these IXCs have belatedly proposed intraMTA factors indicates that they could have done so previously but chose not to do so.

¹⁰⁵ See generally 47 U.S.C. § 251(a) (extending interconnection obligations to all “telecommunications carriers”) and § 251(b)(5) (imposing on LECs the obligation to establish “reciprocal compensation arrangements” without limitation as to the nature of the counterparty).

¹⁰⁶ 47 U.S.C. § 251(c)(1).

not attempt to “[i]ntentionally . . . coerc[e] another party into reaching an agreement that it would not otherwise have made[.]”¹⁰⁷

As noted above, some IXC’s have proposed arrangements that would govern their exchange of traffic with LECs on a going-forward basis. In doing so, these IXC’s have explicitly tied such proposals to the resolution of existing intercarrier compensation disputes. In some cases, the IXC’s have proposed prospective “allocation factors” in the same documents in which they have demanded retroactive refund payments. The obvious implication is that, from the IXC’s perspective, any resolution of existing disputes over intraMTA wireless billing should include the use of their unilaterally determined and unverified allocation factors on a going-forward basis.

Consequently, any leverage that IXC’s might gain with respect to such disputes—including by withholding payments for undisputed access charges—is being used to coerce LECs to accept allocation factors that they otherwise would not. The IXC’s attempt to tie their proposals to resolution of a separate dispute raises questions about whether an IXC is acting in good faith.¹⁰⁸ And withholding payment for undisputed amounts due as a coercive tactic inherently constitutes “bad faith” and a violation of Section 251(c)(1) and Section 51.301. Assuming those provisions apply, the Commission should declare as much and ensure that IXC’s are fully aware of the potential ramifications of their unjustified self-help.

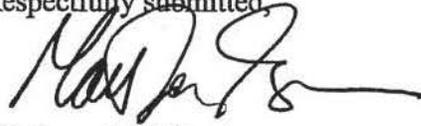
¹⁰⁷ 47 C.F.R. § 51.301(c)(5).

¹⁰⁸ See *Local Competition First Report and Order* ¶ 153 (discussing potential for linking interconnection negotiations to other pending disputes to constitute bad faith in negotiation).

CONCLUSION

For the reasons set forth herein, the LEC Petitioners urge the Commission to clarify its intercarrier compensation policies in a manner consistent with this Petition.

Respectfully submitted,



Adam Caldwell
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
Counsel for Bright House Networks

Yaron Dori
Covington & Burling LLP
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Counsel for the CenturyLink LECs

Timothy M. Boucher
CenturyLink
1801 California Street, 10th Floor
Denver, Colorado 80202
Counsel for the CenturyLink LECs

Michael J. Shultz
Vice President, Regulatory & Public Policy
Consolidated Communications
350 S. Loop 336 W
Conroe, TX 77304
Counsel for Consolidated Communications

Susan L. Sowell
Senior VP and Assistant General Counsel
FairPoint Communications, Inc.
521 E. Morehead St., Suite 250
Charlotte, NC 28202
Counsel for FairPoint Communications

Matthew A. Brill
Jarrett S. Taubman
LATHAM & WATKINS LLP
555 11th Street, NW, Suite 1000
Washington, D.C. 20004
*Counsel for Cox Communications, Inc.,
Frontier Communications Corp., LICT Corp.,
Time Warner Cable Inc., and Windstream
Corporation*

John C. Pietila
Davis Brown Law Firm
The Davis Brown Tower
214 10th Street, Suite 1300
Des Moines, IA 50309
*Counsel for the Members of the Iowa RLEC
Group Identified in Exhibit A*

William R. England III
Brian T. McCartney
Brydon, Swearingen & England P.C.
312 East Capitol Avenue, P.O. Box 456
Jefferson City, MO 65102
*Counsel for the Members of the Missouri
RLEC Group Identified in Exhibit A*

Craig S. Johnson
Johnson & Sporleder, LLP
2420 Hyde Park Road, Suite C
Jefferson City, MO 65109
*Counsel for the Members of the Missouri
RLEC Group Identified in Exhibit A*

November 10, 2014

EXHIBIT A

Exhibit A: LEC Petitioners

The instant petition for declaratory ruling is being filed by a broad coalition consisting of the following entities:

1. Bright House Networks LLC
2. The CenturyLink LECs, which consist of the following 90 LECs:

Carolina Telephone & Telegraph Company LLC d/b/a CenturyLink;
Central Telephone Company d/b/a CenturyLink;
Central Telephone Company of North Carolina d/b/a CenturyLink;
Central Telephone Company of Texas, Inc. d/b/a CenturyLink;
Central Telephone Company of Virginia d/b/a CenturyLink;
CenturyTel Midwest – Michigan, Inc. d/b/a CenturyLink;
CenturyTel of Adamsville, Inc. d/b/a CenturyLink Adamsville;
CenturyTel of Alabama, LLC d/b/a CenturyLink;
CenturyTel of Arkansas, Inc. d/b/a CenturyLink;
CenturyTel of Central Arkansas, LLC d/b/a CenturyLink;
CenturyTel of Central Indiana, Inc. d/b/a CenturyLink;
CenturyTel of Central Louisiana, LLC d/b/a CenturyLink;
CenturyTel of Central Wisconsin, LLC;
CenturyTel of Chatham, LLC d/b/a CenturyLink;
CenturyTel of Chester, Inc. d/b/a CenturyLink;
CenturyTel of Chester, Inc. d/b/a CenturyLink;
CenturyTel of Claiborne, Inc. d/b/a CenturyLink Claiborne;
CenturyTel of Colorado, Inc. d/b/a CenturyLink;
CenturyTel of Cowiche, Inc. d/b/a CenturyLink;
CenturyTel of Eagle, Inc. d/b/a CenturyLink;
CenturyTel of East Louisiana, LLC d/b/a CenturyLink;
CenturyTel of Eastern Oregon, Inc. d/b/a CenturyLink;
CenturyTel of Evangeline, LLC d/b/a CenturyLink;
CenturyTel of Fairwater-Brandon-Alto, LLC;
CenturyTel of Forestville, LLC;
CenturyTel of Idaho, Inc. d/b/a CenturyLink;
CenturyTel of Inter Island, Inc. d/b/a CenturyLink;
CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink;
CenturyTel of Larsen-Readfield, LLC;
CenturyTel of Michigan, Inc. d/b/a CenturyLink;
CenturyTel of Minnesota, Inc. d/b/a CenturyLink;
CenturyTel of Missouri, LLC d/b/a CenturyLink;
CenturyTel of Monroe County, LLC;
CenturyTel of Montana, Inc. d/b/a CenturyLink;
CenturyTel of Mountain Home, Inc. d/b/a CenturyLink;
CenturyTel of North Louisiana, LLC d/b/a CenturyLink;
CenturyTel of North Mississippi, Inc. d/b/a CenturyLink;
CenturyTel of Northern Michigan, Inc. d/b/a CenturyLink;

CenturyTel of Northern Wisconsin, LLC;
CenturyTel of Northwest Arkansas, LLC d/b/a CenturyLink;
CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink;
CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink;
CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink;
CenturyTel of Northwest Wisconsin, LLC;
CenturyTel of Odon, Inc. d/b/a CenturyLink;
CenturyTel of Ooltewah-Collegedale, Inc. d/b/a CenturyLink Ooltewah-Collegedale;
CenturyTel of Oregon, Inc. d/b/a CenturyLink;
CenturyTel of Port Aransas, Inc. d/b/a CenturyLink;
CenturyTel of Postville, Inc. d/b/a CenturyLink;
CenturyTel of Redfield, Inc. d/b/a CenturyLink;
CenturyTel of Ringgold, LLC d/b/a CenturyLink;
CenturyTel of San Marcos, Inc. d/b/a CenturyLink;
CenturyTel of South Arkansas, Inc. d/b/a CenturyLink;
CenturyTel of Southeast Louisiana, LLC d/b/a CenturyLink;
CenturyTel of Southern Wisconsin, LLC;
CenturyTel of Southwest Louisiana, LLC d/b/a CenturyLink;
CenturyTel of the Gem State, Inc. d/b/a CenturyLink;
CenturyTel of the Gem State, Inc. d/b/a CenturyLink;
CenturyTel of the Midwest-Kendall, LLC;
CenturyTel of the Midwest-Wisconsin, LLC;
CenturyTel of the Southwest, Inc.;
CenturyTel of Upper Michigan, Inc. d/b/a CenturyLink;
CenturyTel of Washington, Inc. d/b/a CenturyLink;
CenturyTel of Wisconsin, LLC;
CenturyTel of Wyoming, Inc. d/b/a CenturyLink;
Coastal Utilities, Inc. d/b/a CenturyLink;
Embarq Florida, Inc. d/b/a CenturyLink;
Embarq Minnesota, Inc. d/b/a CenturyLink;
Embarq Missouri, Inc. d/b/a CenturyLink;
Gallatin River Communications L.L.C. d/b/a CenturyLink GRC;
Gulf Telephone Company d/b/a CenturyLink;
Mebtel, Inc. d/b/a CenturyLink;
Qwest Corporation d/b/a CenturyLink QC;
Spectra Communications Group, LLC d/b/a CenturyLink;
Telephone USA of Wisconsin, LLC;
The El Paso County Telephone Company d/b/a CenturyLink;
United Telephone Company of Eastern Kansas d/b/a CenturyLink;
United Telephone Company of Indiana, Inc. d/b/a CenturyLink;
United Telephone Company of Kansas d/b/a CenturyLink;
United Telephone Company of New Jersey, Inc. d/b/a CenturyLink;
United Telephone Company of Pennsylvania d/b/a CenturyLink;
United Telephone Company of Southcentral Kansas d/b/a CenturyLink;
United Telephone Company of Texas, Inc. d/b/a CenturyLink;
United Telephone Company of the Carolinas LLC d/b/a CenturyLink;
United Telephone Company of the Northwest d/b/a CenturyLink;

United Telephone Company of the Northwest d/b/a CenturyLink;
United Telephone Company of the West d/b/a CenturyLink;
United Telephone Company of the West d/b/a CenturyLink of the West;
United Telephone Southeast LLC d/b/a CenturyLink; and
United Telephone Southeast LLC d/b/a CenturyLink.

3. Consolidated Communications, Inc. and the following eight LEC affiliates:

Consolidated Communications of Fort Bend Company;
Consolidated Communications of Texas Company;
Consolidated Communications of Pennsylvania Company, LLC;
Heartland Telecommunications Company of Iowa;
Illinois Consolidated Telephone Company;
Mankato Citizens Telephone Company;
Mid-Communications, Inc.; and
SureWest Telephone

4. Cox Communications, Inc. and the following 16 LEC affiliates:

Cox Arizona Telcom, LLC;
Cox Arkansas Telcom, LLC;
Cox California Telcom, LLC;
Cox Connecticut Telcom, LLC;
Cox Florida Telcom, LP;
Cox Georgia Telcom, LLC;
Cox Idaho Telcom, LLC;
Cox Iowa Telcom, LLC;
Cox Kansas Telcom, LLC;
Cox Louisiana Telcom, LLC;
Cox Nebraska Telcom, LLC;
Cox Nevada Telcom, LLC;
Cox Ohio Telcom, LLC;
Cox Oklahoma Telcom, LLC;
Cox Rhode Island Telcom, LLC; and
Cox Virginia Telcom, Inc.

5. FairPoint Communications, Inc. and the following 32 operating company subsidiaries:

Bentleyville Communications Corporation;
Berkshire Telephone Corporation;
Big Sandy Telecom, Inc.;
Bluestem Telephone Company;
Chautauqua and Erie Telephone Corporation;
China Telephone Company;
Chouteau Telephone Company;
Columbine Telecom Company;
The Columbus Grove Telephone Company;

Community Service Telephone Co.;
C-R Telephone Company;
The El Paso Telephone Company;
Ellensburg Telephone Company;
ExOp of Missouri, Inc.;
FairPoint Business Services LLC;
FairPoint Communications Missouri, Inc.;
FairPoint Vermont, Inc.;
The Germantown Independent Telephone Company ;
GTC, Inc.;
Maine Telephone Company;
Marianna and Scenery Hill Telephone Company;
Northern New England Telephone Operations LLC;
Northland Telephone Company of Maine, Inc.;
Odin Telephone Exchange, Inc.;
The Orwell Telephone Company;
Peoples Mutual Telephone Company;
Sidney Telephone Company;
Standish Telephone Company;
Sunflower Telephone Company, Inc.;
Taconic Telephone Corp.;
Telephone Operating Company of Vermont LLC; and
YCOM Networks, Inc.

6. Frontier Communications Corporation and the following 61 operating company subsidiaries:

Citizens Telecommunications Company of California Inc.;
Citizens Telecommunications Company of Idaho;
Citizens Telecommunications Company of Illinois;
Citizens Telecommunications Company of Minnesota, LLC;
Citizens Telecommunications Company of Montana;
Citizens Telecommunications Company of Nebraska;
Citizens Telecommunications Company of Nevada;
Citizens Telecommunications Company of New York, Inc.;
Citizens Telecommunications Company of Oregon;
Citizens Telecommunications Company of Tennessee L.L.C.;
Citizens Telecommunications Company of the Volunteer State LLC;
Citizens Telecommunications Company of the White Mountains, Inc.;
Citizens Telecommunications Company of Utah;
Citizens Telecommunications Company of West Virginia;
Citizens Utilities Rural Company, Inc.;
Commonwealth Telephone Company, LLC;
CTSI, LLC;
Frontier Communications - Midland, Inc.;
Frontier Communications - Prairie, Inc.;
Frontier Communications - Schuyler, Inc.;

Frontier Communications - St. Croix LLC;
Frontier Communications of Alabama, LLC;
Frontier Communications of AuSable Valley, Inc.;
Frontier Communications of Breezewood, LLC;
Frontier Communications of Canton, LLC;
Frontier Communications of DePue, Inc.;
Frontier Communications of Fairmount LLC;
Frontier Communications of Georgia LLC;
Frontier Communications of Illinois, Inc.;
Frontier Communications of Indiana LLC;
Frontier Communications of Iowa, LLC;
Frontier Communications of Lakeside, Inc.;
Frontier Communications of Lakewood, LLC;
Frontier Communications of Lamar County, LLC;
Frontier Communications of Michigan, Inc.;
Frontier Communications of Minnesota, Inc.;
Frontier Communications of Mississippi LLC;
Frontier Communications of Mondovi LLC;
Frontier Communications of Mt. Pulaski, Inc.;
Frontier Communications of New York, Inc.;
Frontier Communications Northwest Inc.;
Frontier Communications of Orion, Inc.;
Frontier Communications of Oswayo River, LLC;
Frontier Communications of Pennsylvania, LLC;
Frontier Communications of Rochester, Inc.;
Frontier Communications of Seneca-Gorham, Inc.;
Frontier Communications of Sylvan Lake, Inc.;
Frontier Communications of the Carolinas LLC;
Frontier Communications of the South, LLC;
Frontier Communications of the Southwest Inc.;
Frontier Communications of Thorntown LLC;
Frontier Communications of Viroqua LLC;
Frontier Communications of Wisconsin LLC;
Frontier Midstates Inc.;
Frontier North Inc.;
Frontier Telephone of Rochester, Inc.;
Frontier West Virginia Inc.;
Navajo Communications Company, Inc.;
Ogden Telephone Company;
Rhineland Telephone LLC; and
The Southern New England Telephone Company.

7. LICT Corporation and the 14 rural LECs it controls, which include:

Bear Lake Telephone Company;
Belmont Telephone Company;
Bretton Woods Telephone Company;

Cal-Ore Telephone Company, Inc.;
Cassadaga Telephone Company;
Central Scott Telephone Company;
Central Utah Telephone Company, Inc.;
Cuba City Telephone Exchange Company;
Dunkirk and Fredonia Telephone Company;
Haviland Telephone Company;
J.B.N. Telephone Company, Inc.;
Skyline Telephone Company;
Upper Peninsula Telephone Company; and
Western New Mexico Telephone Company, Inc.

8. Time Warner Cable Inc. and the following 29 operating company subsidiaries:

Time Warner Cable Information Services (Alabama), LLC;
Time Warner Cable Information Services (Arizona), LLC;
Time Warner Cable Information Services (California), LLC;
Time Warner Cable Information Services (Colorado), LLC;
Time Warner Cable Information Services (Hawaii), LLC;
Time Warner Cable Information Services (Idaho), LLC;
Time Warner Cable Information Services (Illinois), LLC;
Time Warner Cable Information Services (Indiana), LLC;
Time Warner Cable Information Services (Kansas), LLC;
Time Warner Cable Information Services (Kentucky), LLC;
Time Warner Cable Information Services (Maine), LLC;
Time Warner Cable Information Services (Massachusetts), LLC;
Time Warner Cable Information Services (Michigan), LLC;
Time Warner Cable Information Services (Missouri), LLC;
Time Warner Cable Information Services (Nebraska), LLC;
Time Warner Cable Information Services (New Hampshire), LLC;
Time Warner Cable Information Services (New Jersey), LLC;
Time Warner Cable Information Services (New Mexico), LLC;
Time Warner Cable Information Services (New York), LLC;
Time Warner Cable Information Services (North Carolina), LLC;
Time Warner Cable Information Services (Ohio), LLC;
Time Warner Cable Information Services (Pennsylvania), LLC;
Time Warner Cable Information Services (South Carolina), LLC;
Time Warner Cable Information Services (Tennessee), LLC;
Time Warner Cable Information Services (Texas), LLC;
Time Warner Cable Information Services (Virginia), LLC;
Time Warner Cable Information Services (Washington), LLC;
Time Warner Cable Information Services (West Virginia), LLC; and
Time Warner Cable Information Services (Wisconsin), LLC.

9. Windstream Corporation and the following 77 operating company subsidiaries:

Cavalier Telephone Mid-Atlantic, L.L.C.;

Cavalier Telephone, L.L.C.;
Georgia Windstream, LLC;
Intellifiber Networks, Inc.;
LDMI Telecommunications, Inc.;
McLeodUSA Telecommunications Services, L.L.C.;
Network Telephone Corporation;
Oklahoma Windstream, LLC;
PaeTec Communications of Virginia, Inc.;
PaeTec Communications, Inc.;
Talk America of Virginia, Inc.;
Talk America, Inc.;
Texas Windstream, Inc.;
The Other Phone Company, Inc.;
US LEC Communications LLC;
US LEC of Alabama LLC;
US LEC of Florida LLC;
US LEC of Georgia LLC;
US LEC of Maryland LLC;
US LEC of North Carolina LLC;
US LEC of Pennsylvania LLC;
US LEC of South Carolina LLC;
US LEC of Tennessee LLC;
US LEC of Virginia LLC;
Valor Telecommunications of Texas, LLC;
Windstream Accucomm Telecommunications, LLC;
Windstream Alabama, LLC;
Windstream Arkansas, LLC;
Windstream Buffalo Valley, Inc.;
Windstream Communications Kerrville, LLC;
Windstream Communications Telecom, LLC;
Windstream Communications, Inc.;
Windstream Concord Telephone, Inc.;
Windstream Conestoga, Inc.;
Windstream D&E Systems, Inc.;
Windstream D&E, Inc.;
Windstream Direct, LLC;
Windstream EN-TEL, LLC;
Windstream Florida, Inc.;
Windstream Georgia Communications, LLC;
Windstream Georgia Telephone, LLC;
Windstream Georgia, LLC;
Windstream Iowa Communications, Inc.;
Windstream Iowa-Comm, Inc.;
Windstream IT-Comm, LLC;
Windstream KDL, Inc.;
Windstream KDL-VA, Inc.;
Windstream Kentucky East, LLC;

Windstream Kentucky West, LLC;
Windstream Lakedale Link, Inc.;
Windstream Lakedale, Inc.;
Windstream Lexcom Communications, Inc.;
Windstream Mississippi, LLC;
Windstream Missouri, Inc.;
Windstream Montezuma, Inc.;
Windstream New York, Inc.;
Windstream Norlight, Inc.;
Windstream North Carolina, LLC;
Windstream NorthStar, LLC;
Windstream NTI, Inc.;
Windstream NuVox Arkansas, Inc.;
Windstream NuVox Illinois, Inc.;
Windstream NuVox Indiana, Inc.;
Windstream NuVox Kansas, Inc.;
Windstream NuVox Missouri, Inc.;
Windstream NuVox Ohio, Inc.;
Windstream NuVox Oklahoma, Inc.;
Windstream NuVox, Inc.;
Windstream of the Midwest, Inc.;
Windstream Ohio, Inc.;
Windstream Oklahoma, LLC;
Windstream Pennsylvania, LLC;
Windstream South Carolina, LLC;
Windstream Standard, LLC;
Windstream Sugar Land, Inc.;
Windstream Systems of the Midwest, Inc.; and
Windstream Western Reserve, Inc.

10. The Iowa RLEC Group, which consists of the following 108 rural LECs:

Alpine Communications, L.C.;
Arcadia Telephone Cooperative;
Atkins Telephone Company, Inc.;
Ayrshire Farmers Mutual Telephone Company;
Baldwin-Nashville Telephone Company;
Bernard Telephone Company, Inc.;
Breda Telephone Corp. d/b/a Western Iowa Networks;
Brooklyn Mutual Telecommunications Cooperative;
Butler-Bremer Communications;
Cascade Communications Company;
Casey Mutual Telephone Company;
Center Junction Telephone Company;
Citizens Mutual Telephone Cooperative;
Clarence Telephone Company;
Clear Lake Independent Telephone Company;

C-M-L Telephone Cooperative Association;
Colo Telephone Company;
Communications 1 Network, Inc.;
Coon Creek Telephone Company;
Coon Valley Cooperative Telephone Association;
Cooperative Telephone Company;
Cooperative Telephone Exchange;
Danville Telecom;
Dixon Telephone Company;
Dumont Telephone Company;
Dunkerton Telephone Cooperative;
East Buchanan Cooperative Telephone Association;
Ellsworth Cooperative Telephone Association;
F & B Communications, Inc.;
Farmers & Merchants Mutual Telephone Company (Wayland);
Farmers Cooperative Telephone Company (Dysart);
Farmers Mutual Cooperative Telephone Company (Moulton);
Farmers Mutual Cooperative Telephone Company (Harlan);
Farmers Mutual Telephone Company (Jesup);
Farmers Mutual Telephone Company (Nora Springs) d/b/a OmniTel Communications;
Farmers Mutual Telephone Company of Stanton;
Farmers Mutual Telephone Cooperative of Shellsburg d/b/a USA Communications;
Farmers Telephone Company (Essex);
Goldfield Telephone Company;
Grand Mound Cooperative Telephone Association;
Griswold Cooperative Telephone Company;
Hawkeye Telephone Company;
Heart of Iowa Communications Cooperative;
Hospers Telephone Exchange d/b/a HTC Communications;
Hubbard Cooperative Telephone Association;
Huxley Communications Cooperative;
IAMO Telephone Company;
Interstate 35 Telephone Company;
Jefferson Telephone Company;
Kalona Cooperative Telephone Company;
Keystone Communications;
La Motte Telephone Company;
La Porte City Telephone Company;
Lehigh Valley Cooperative Telephone Association;
Lone Rock Cooperative Telephone Company;
Lost Nation-Elwood Telephone Company;
Marne & Elk Horn Telephone Company;
Martelle Cooperative Telephone Association;
Massena Telephone Company;
Mechanicsville Telephone Company;
Mediapolis Telephone Company d/b/a MTC Technologies;
Miles Cooperative Telephone Association;

Minerva Valley Telephone Company;
Minburn Telephone Company;
Modern Cooperative Telephone Company;
Mutual Telephone Company (Morning Sun);
Mutual Telephone Company (Sioux Center) d/b/a Premier Communications;
North English Cooperative Telephone Company;
Northeast Iowa Telephone Company;
Northern Iowa Telephone Company d/b/a Premier Communications;
Northwest Telephone Cooperative Association d/b/a Northwest Communications;
Ogden Telephone Company;
Olin Telephone Company;
Onslow Cooperative Telephone Association;
Oran Mutual Telephone Company;
Palmer Mutual Telephone Company;
Palo Cooperative Telephone Association;
Panora Communications Cooperative;
Partner Communications Cooperative;
Preston Telephone Company;
Radcliffe Telephone Company;
Readlyn Telephone Company d/b/a RTC Communications;
Ringsted Telephone Company d/b/a RingTel Communciations;
River Valley Telecommunications Cooperative;
Rockwell Cooperative Telephone Association;
Royal Telephone Company;
Sac County Mutual Telephone Company;
Schaller Telephone Company;
Scranton Telephone Company;
Sharon Telephone Company;
South Slope Cooperative Telephone Company;
Springville Cooperative Telephone Association;
Stratford Mutual Telephone Company;
Sully Telephone Association;
Templeton Telephone Company;
Terril Telephone Cooperative;
Titonka Telephone Company d/b/a Titonka-Burt Communications;
Van Buren Telephone Company;
Van Horne Cooperative Telephone Company;
Walnut Telephone Company d/b/a Walnut Communications;
Webster-Calhoun Cooperative Telephone Association;
West Liberty Telephone Company d/b/a Liberty Communications;
Wellman Cooperative Telephone Association;
Western Iowa Telephone Company d/b/a WesTel Systems;
Western Iowa Telephone Association;
Winnebago Cooperative Telecom Association; and
WTC Communications, Inc.

11. The following three members of the Missouri RLEC Group, which are represented by Craig Johnson of Johnson & Sporleder, LLP:

Alma Communications Company d/b/a Alma Telephone Company;
Chariton Valley Telephone Corporation; and
Otelco Mid-Missouri, LLC;

12. The following 28 members of the Missouri RLEC Group, which are represented by William R. England III and Brian T. McCartney of Brydon, Swearingen & England P.C.:

BPS Telephone Company;
Citizens Telephone Company of Higginsville, Mo.;
Craw-Kan Telephone Cooperative, Inc.;
Ellington Telephone Company;
Fidelity Telephone Company;
Goodman Telephone Company;
Granby Telephone Company;
Grand River Mutual Telephone Corp.;
Green Hills Telephone Corp.;
Holway Telephone Company;
Iamo Telephone Company;
Kingdom Telephone Company;
K.L.M. Telephone Company;
Lathrop Telephone Company;
Le-Ru Telephone Company;
Mark Twain Rural Telephone Company;
McDonald County Telephone Company;
New Florence Telephone Company;
New London Telephone Company;
Northeast Missouri Rural Telephone Company;
Orchard Farm Telephone Company;
Oregon Farmers Mutual Telephone Company;
Ozark Telephone Company;
Peace Valley Telephone Co., Inc.;
Rock Port Telephone Company;
Seneca Telephone Company;
Steeleville Telephone Exchange, Inc.; and
Stoutland Telephone Company.

EXHIBIT B

Declaration of Stephen B. Weeks

1. My name is Stephen B. Weeks. I am Vice President – Carrier Billing and Interconnection for Windstream Corporation (“Windstream”). I am responsible for managing Windstream’s intercarrier billing and collections activities, including with respect to switched access charges and charges pursuant to interconnection agreements. In that capacity, I am familiar with Windstream’s billing relationships with interexchange carriers (“IXCs”) generally and Sprint Communications Company L.P. (together with its affiliates, “Sprint”) and Level 3 Communications, Inc. (together with its affiliates, “Level 3”) specifically.

2. I have reviewed the foregoing Petition for Declaratory Ruling of the LEC Petitioners (“Petition”) and, in particular, the Petition’s discussion of how Sprint and Level 3 have withheld payment of undisputed balances for tariffed access services they purchased from many different LECs to effect de facto refunds of switched access charges that those IXCs voluntarily paid but now dispute. This discussion accurately characterizes the practices of Sprint and Level 3 with respect to Windstream specifically.

3. Windstream’s switched access tariffs prescribe specific procedures to be followed in the event that billed charges are disputed by an IXC. For example, Windstream’s interstate access tariff (FCC No. 6) provides that a customer may withhold disputed amounts not yet paid and may seek refunds for disputed amounts that already have been paid (subject to certain limitations). What an IXC cannot do, however, is refuse to pay an entire bill or any portion thereof without written supporting documentation (or, even to be generous beyond what is required in Windstream’s tariff, a dispute). IXCs generally have followed these procedures without objection or issue.

4. The following hypothetical scenario illustrates how billing disputes generally are handled under Windstream’s access tariffs: Imagine that ABC Long Distance (“ABC”), an IXC, is billed tariffed switched access charges of \$50,000 per month by Windstream. If ABC were to come to believe that it was being overcharged by \$5,000 per month, ABC could: (i) file a dispute and withhold that amount when paying monthly invoices on a going-forward basis (i.e., pay only \$45,000 each month) and (ii) file a dispute and seek refunds of \$5,000 for each month in which that claimed overpayment allegedly had been made (subject to applicable limitations periods). Upon resolution of any such dispute, and depending on the outcome, ABC would pay withheld amounts found to have been correctly billed, and/or Windstream would refund collected amounts found to be overpayments. Critically, though, any withholding by ABC in connection with a given monthly bill would be limited to the portion of that monthly bill associated with disputed service charges incurred during that month.

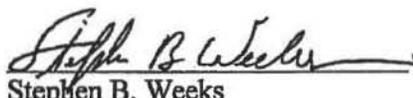
5. Neither Sprint nor Level 3 has limited its withholding in connection with access disputes in this fashion. Instead, both Sprint and Level 3 have engaged in a practice I refer to as “claw-back withholding” and have openly acknowledged this to Windstream— although Sprint refers to this practice euphemistically as “Accounts Payable Debit Balance Withholding” or “AP Debit Balance Withholding.” This behavior is fundamentally inconsistent with the process prescribed by Windstream’s tariffs. “Claw-back withholding” occurs where an IXC withholds amounts from a current monthly bill in excess of the portion of that monthly bill associated with

disputed service charges incurred during that month. The IXC does this to recoup disputed amounts that already have been paid—circumventing the dispute procedures specified in the applicable access tariffs. In the hypothetical discussed in paragraph 4, above, “claw-back withholding” would occur if ABC were to pay only \$40,000 of the \$50,000 invoiced in a given month in order to “claw back” a claimed \$5,000 overpayment made during a previous month.

6. Both Sprint and Level 3 have engaged in claw-back withholding with respect to the allegedly intraMTA wireless traffic that is the subject of the Petition. Sprint notified Sprint of the existence of disputes on April 4, 2014 and provided Billing Account Number (“BAN”) detail on or about April 11, 2014. Soon thereafter, Sprint began not only withholding payments in connection with traffic purported to be “intraMTA wireless” traffic, but also began failing to pay undisputed amounts so as to claw back amounts previously paid in connection with such traffic.

7. Similarly, Level 3 filed its initial disputes with Windstream at different times in March 2014, primarily on or about March 24, 2014. It is difficult to determine precisely when Level 3 initiated claw-back withholding in connection with alleged “intraMTA wireless” traffic, or to estimate the extent of such withholding due to Level 3’s chronic late payment practices. Level 3’s payment practices, however, suggest its belief that failures to pay balances due prior to March 2014 can now be excused by disputes filed in or after March 2014 (and therefore, when Windstream threatens to impose a credit hold on Level 3, need not be paid). Further, there are BANs for which Level 3 was relatively current in March 2014, and for which Level 3 filed substantial disputes with respect to previously paid access bills, but soon thereafter began to cease to pay (or shortpay) current undisputed charges. Both of these practices are consistent with Level 3’s past acknowledgment of engaging in claw-back withholding.

I declare that the foregoing is true to the best of my knowledge, information and belief.



Stephen B. Weeks

Vice President – Carrier Billing and Interconnection

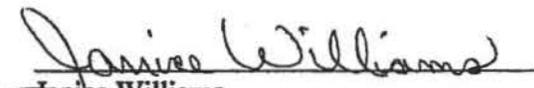
November 10, 2014

EXHIBIT C

DECLARATION OF JANICE WILLIAMS

1. My name is Janice Williams. I am employed by Northeast Missouri Rural Telephone Company ("NEMR") as Carrier Access Billing Coordinator. In that capacity, I am responsible, among other things, for carrier access billing (CAB) to interexchange carriers (IXCs). Specifically, I am familiar with accounts payable and receivable involving CABS billing to IXCs, including amounts billed, amounts paid, amounts disputed, and amounts withheld or not paid.
2. The purpose of this declaration is to describe how Level 3 has engaged in self-help to not only withhold payments on current CABS bills related to disputed amounts, but to withhold payments of undisputed amounts on current CABS bills in an effort to reimburse itself for access payments previously made without timely protest or dispute.
3. On or about March 8, 2014, Level 3 first notified NEMR that it was disputing CABS bills insofar as those bills assessed access charges on intraMTA wireless traffic. Level 3 issued additional claims in April, June, and August 2014; again disputing the assessment of access charges on intraMTA wireless traffic that was unilaterally determined by Level 3. CABS bills disputed in these claims ranged from February 1, 2012 billing up to and including April 1, 2014 billing. Level 3 did not dispute these bills at the time they were issued. To reimburse itself for these disputed amounts, Level 3 began withholding payment on current CABS bills. Nonpayment on one account began with February 1, 2014 billing. Nonpayment on other Level 3 accounts began with April 1, 2014 billing.

4. The net effect of Level 3's unilateral withholding of amounts on current CABS bills for intraMTA wireless traffic, which includes bills issued and paid over two years ago, has resulted in Level 3 paying little to nothing on CABS bills since March, 2014; even though Level 3 acknowledges that a certain amount of the charges on the current bills are for undisputed amounts of interexchange (i.e., access) traffic.
5. I declare the foregoing as true as to the best of my knowledge, information and belief.


Janice Williams
Carrier Access Billing Coordinator

November 10, 2014