

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petition of Bright House Networks LLC *et al.* for)
Declaratory Ruling Regarding the Applicability of) WC Docket No. 14-228
the IntraMTA Rule to LEC-IXC Traffic)

To: The Chief, Wireline Competition Bureau

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION[®]

I. INTRODUCTION AND SUMMARY

CTIA–The Wireless Association[®] (“CTIA”) urges the Commission to deny the above-captioned petition (“Petition”),¹ and instead re-affirm that the ‘intraMTA rule’ – providing that intraMTA calls exchanged between local exchange carriers (“LECs”) and commercial mobile radio service (“CMRS”) carriers are subject to reciprocal compensation. Treating all intraMTA CMRS traffic under the reciprocal compensation regime is consistent with the Commission’s goals for intercarrier compensation reform, which will “promote the transition to IP networks, provide a more predictable path for the industry and investors, and anchor the reform process

¹ Petition for Declaratory Ruling of Bright House Networks LLC, the CenturyLink LECs, Consolidated Communications, Inc., Cox Communications, Inc., FairPoint Communications, Inc., Frontier Communications Corporation, LICT Corporation, Time Warner Cable Inc., Windstream Corporation, the Iowa RLEC Group, and the Missouri RLEC Group, WC Docket No. 14-228 (filed Nov. 10, 2014) (“Petition”). The petition was placed on public notice on December 10, 2014. See *Wireline Competition Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic*, Public Notice, 29 FCC Rcd 14795 (WCB 2014).

that will ultimately free consumers from shouldering the hidden multi-billion dollar subsidies embedded in the current system.”²

There is no merit to the Petition’s claim that intraMTA CMRS traffic carried by an interexchange carrier (“IXC”) is subject to access charges rather than reciprocal compensation. The intraMTA rule has always provided that all intraMTA CMRS traffic is “local,” even if carried by an intermediate carrier such as an IXC. Thus, as between LECs and CMRS carriers, intraMTA traffic is subject to reciprocal compensation rather than access charges.

Allowing LECs to collect access charges from IXCs for intraMTA CMRS traffic that IXCs carry – even if the traffic continues to be treated as local as between the LEC and the CMRS carrier – raises a number of concerns. It is not clear that the Commission’s rules contemplate the same traffic being subject to two different compensation regimes simultaneously. Also, such a holding could lead to arbitrage and inefficient routing as LECs seek to route intraMTA CMRS traffic through IXCs in order to collect access charges.

II. ALL INTRAMTA TRAFFIC EXCHANGED WITH CMRS CARRIERS IS SUBJECT TO RECIPROCAL COMPENSATION, NOT ACCESS CHARGES.

Under the Commission’s rules and orders, intraMTA traffic exchanged with CMRS carriers is subject to reciprocal compensation, not access charges – even if exchanged via an intermediate carrier, and even if that intermediate carrier is an IXC.³ Since 1996, the

² *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17904 ¶ 736 (2011), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (“*Transformation Order*”).

³ 47 U.S.C. § 51.701(b)(2); *Transformation Order*, 26 FCC Rcd at 17678 ¶ 41 (“[W]e affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception.”); *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9173 ¶ 47 (2001) (subsequent history omitted) (“*ISP Remand Order*”) (“[R]eciprocal compensation, rather than interstate or intrastate access charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA).”);

Commission’s rules have provided unequivocally that intraMTA traffic between LECs and CMRS carriers is treated as “local” and not subject to access charges.

The Commission resolved this issue definitively in the *Transformation Order*. There, the Commission stated that “intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.”⁴ The Commission explicitly included traffic exchanged via an IXC in this discussion, declining to adopt a different construction of the intraMTA rule for calls that are routed through an IXC.⁵ The Commission framed this statement as a “clarification”⁶ – thus, this has always been the law. This approach is also consistent with the Commission’s broader intent in the *Transformation Order* to “supersede the traditional access charge regime and ... regulate terminating access traffic in accordance with the section 251(b)(5) framework”⁷ – under which

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16016 ¶ 1043 (1996) (“*Local Competition Order*”) (“[T]raffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties’ locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.”).

⁴ *Transformation Order*, 26 FCC Rcd at 18043 ¶ 1007.

⁵ *Id.* at 18043 n.2132 (rejecting calls from a commenter to “proceed with caution” with regard to the rating and routing of intraMTA calls involving IXCs due to implementation issues).

⁶ *Id.* at 18043 ¶ 1007 (“We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC.”).

⁷ *Transformation Order*, 26 FCC Rcd at 17916 ¶ 164.

“local” traffic is regulated. The Commission has found that this approach will benefit consumers in myriad ways.⁸

The Commission’s conclusion in the *Transformation Order* is consistent with federal appellate court precedent on the issue. Several federal appellate courts have concluded that the Commission’s precedent admits of no exceptions to the rule that intraMTA CMRS traffic is subject to reciprocal compensation, not access. For instance, in *Alma Communications Co. v. Missouri Public Service Commission*, the Eighth Circuit held that “calls from a land line to a cell phone placed and received within the same major trading area are local calls, subject to the reciprocal compensation arrangements ordained by the 1996 Telecommunications Act,” even when such calls are routed through an interexchange carrier.⁹ Prior to that decision, the Eighth Circuit had addressed cell phone to landline calls originating and terminating within an MTA in *Iowa Network Services, Inc. v. Qwest Corp.*, holding that an intermediary carrier was not required to pay access charges for such calls.¹⁰ And in *Atlas Telephone Company v. Oklahoma Corporation Commission*, the Tenth Circuit likewise held that “[n]othing in the text of the reciprocal compensation rules] provides support for the ... contention that reciprocal compensation requirements do not apply when traffic is transported by an IXC network.”¹¹ The Commission cited these cases favorably in the *Transformation Order*, noting that its own

⁸ *Id.* at 17909-11 ¶¶ 748-52.

⁹ *Alma Communc’ns. Co. v. Missouri Pub. Svc. Comm’n*, 490 F.3d 619, 627 (8th Cir. 2007).

¹⁰ *Iowa Network Svc. Inc. v. Qwest*, 466 F.3d 1091, 1096-97 (8th Cir. 2006).

¹¹ *Atlas Telephone Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256, 1264 (10th Cir. 2005).

clarification of the intraMTA rule “is consistent with how the ... rule has been interpreted by the federal appellate courts.”¹²

Following the *Transformation Order*, the Ninth Circuit reached the same conclusion in *Western Radio Services Company v. Qwest Corporation*.¹³ In that case, the court held that the Public Utility Commission of Oregon and a reviewing federal district court had “erred in determining that the involvement of an IXC altered the parties’ obligation to pay reciprocal compensation for telecommunications traffic that originates and terminates within the same MTA.”¹⁴ The court found it “plain that the involvement of an IXC has no effect on the obligations of LECs and CMRS providers to pay reciprocal compensation for traffic ‘that, at the beginning of the call, originates and terminates within the same Major Trading Area.’”¹⁵

In adopting the intraMTA rule in the *Local Competition Order*, the Commission stated simply that “traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.”¹⁶ As codified in the Code of Federal Regulations in the *Local Competition Order* (and as it exists today), the rule contains no qualifications: “local telecommunications traffic means ... telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major

¹² *Transformation Order*, 26 FCC Rcd at 18043 n.2133.

¹³ 678 F.3d 970 (9th Cir. 2012).

¹⁴ *Id.*, at 988.

¹⁵ *Id.* at 989.

¹⁶ *Local Competition Order*, 11 FCC Rcd at 16014 ¶ 1036.

Trading Area.”¹⁷ The phrase in the body of the order suggesting that intraMTA traffic is treated as local “unless carried by an IXC” is a description of then-current practice, not a description of the new rule.¹⁸ Similarly, the dicta in the *TSR Wireless Order* indicating that intraMTA traffic falls under the “access charge rules if carried by an interexchange carrier”¹⁹ appears to be simply a misreading of the *Local Competition Order*, and was non-dispositive dicta in that case. To the extent that either of these sentences conflicts with the unqualified language codified in the rule, the codified rule governs.²⁰ In any event, any lack of clarity on this issue based on earlier decisions was resolved definitively in the *Transformation Order* as discussed above.

III. ALLOWING LECS TO COLLECT ACCESS CHARGES FROM IXCS FOR INTRAMTA CMRS TRAFFIC ROUTED THROUGH IXCS WOULD RAISE SEVERAL CONCERNS.

Treating intraMTA traffic routed to or from a CMRS carrier via an IXC as access traffic for the IXC would raise several concerns.²¹ The Commission’s rules do not appear to contemplate that the same traffic could be subject to one compensation regime with respect to

¹⁷ 47 C.F.R. § 51.701(b)(2).

¹⁸ *Local Competition Order*, 11 FCC Rcd at 16016-17 ¶ 1043 (“Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some ‘roaming’ traffic that transits incumbent LECs’ switching facilities, which is subject to interstate access charges.”).

¹⁹ *TSR Wireless Order, LLC*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11184 ¶ 31 (2000).

²⁰ *See C.F. Communc’ns. Corp. v. FCC*, 128 F.3d 735, 738 (D.C. Cir. 1997); *Capital Network Sys. v. FCC*, 28 F.3d 201, 206 (D.C. Cir. 1994).

²¹ The Petition argues that the intraMTA rule does not preclude LECs from collecting access charges from IXCs where the traffic is routed through an IXC and originated or terminated using switched access services, even though the same traffic would be subject to reciprocal compensation as between the LEC and the CMRS carrier. Petition at 27 *et seq.* CTIA expresses no opinion about whether such routing is appropriate under the terms of any specific interconnection agreement. *See id.* at 25-26.

one carrier and a different compensation regime with respect to another. For example, the intraMTA rule, as codified, does not by its terms contemplate any exceptions. Moreover, this approach could lead to arbitrage and inefficient routing, because it would create incentives for LECs to send CMRS-bound intraMTA traffic to IXC's so they can collect access charges. It also would subject more traffic to the access charge regime, as opposed to the reciprocal compensation regime, contrary to the Commission's stated goal of transitioning all traffic to the more efficient reciprocal compensation regime and, ultimately, to bill-and-keep.²²

If the Commission concludes that there are circumstances under which IXC's may owe access charges to LEC's for intraMTA CMRS traffic, the Commission should make clear that this provision does not apply to CMRS carriers, to avoid inadvertently abrogating the intraMTA rule as to CMRS carriers.²³

²² *Transformation Order*, 26 FCC Rcd at 17916 ¶ 164. *See also supra* Section II.

²³ *See, e.g., Local Competition Order*, 11 FCC Rcd at 16016-17 ¶ 1043 (suggesting that there may be certain circumstances under which CMRS carriers act as IXC's).

IV. CONCLUSION

For the reasons discussed above, CTIA urges the Commission to deny the Petition and re-affirm the intraMTA rule for CMRS carriers.

Respectfully submitted,

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