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 Nos. 10-90, 14-228 CC Docket No. 01-92

INITIAL COMMENTS OF EASTEX TELEPHONE COOPERATIVE, INC. AND BIG BEND TELEPHONE COMPANY, INC.

Eastex Telephone Cooperative, Inc. and Big Bend Telephone Company, Inc. are small, rural incumbent local exchange carriers (collectively, the "Small ILECs") who are filing these initial comments in support of the Petition for Declaratory Ruling of the LEC Petitioners, and respectfully state as follows:

The Small ILECs believe that the LEC Petitioners provided a well-reasoned, thorough petition addressing and rebutting the IntraMTA issue raised by Verizon, Sprint, and others against many LECs throughout the country. The Small ILECs urge the Commission to issue a ruling that the IntraMTA rule does not apply to LEC-IXC transactions when the IXC is taking switched access service from the LEC. Specifically, the Small ILECs support the LEC Petitioners request that the Commission should confirm the specific issues set forth on pages 8-9 of the LEC Petitioners petition, summarized as follows:

- Any traffic that is voluntarily routed by means of a LEC's tariffed switched access facilities outside of an ICA (or other negotiated agreement) is subject to access charges.

- An IXC that orders and routes or receives traffic (including IntraMTA traffic) through the LEC's access facilities (such as Feature Group D trunks) must pay tariffed rates in connection with such traffic.

- 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 provide itself a *de facto* refund of past payments in connection with IntraMTA wireless traffic routed over a LEC's access facilities.

The LEC Petitioners have correctly set forth the state of the law in interpreting the FCC orders and relevant case law that the IntraMTA rule does not apply in the instances where an IXC is taking tariffed switched access services from a LEC. The service at issue in these IXC cases typically involves Feature Group D switched access services, which has been available and provided to IXCs for well over two decades.

The IXCs are trying to upend nearly two decades of inter-carrier compensation structure and industry practice by their various complaints brought in multiple jurisdictions. The IXCs reliance on the IntraMTA rule to avoid payment of access charges fails because that rule applies to CMRS providers, not IXCs. By their actions, the IXCs are attempting to step into the shoes of the CMRS providers, claiming the IntraMTA rule applies to them as it applies to CMRS providers. Such a contorted interpretation is nonsensical.

Having waited nearly two decades to raise their novel claim that they are somehow exempt from paying access charges, the IXCs do not have "clean hands." The IXCs have voluntarily used and paid for switched access service for years, through no coercion from the Small ILECs (or LECs generally). There is no "carve out" or IntraMTA exception in the Small ILECs switched access tariffs applicable to the IXCs. While rates may have changed over the years, the general structure and operational features of the Small ILECs' switched access tariffs have remained intact.

Furthermore, the IXCs' use of a wireless interconnection agreement (or similar form of agreement) to avoid payment of access charges may be inapposite. While the IntraMTA rule provisions would typically be included in such an agreement, that agreement would be between a LEC and a CMRS provider, not a LEC and an IXC.

Finally, the Commission should clearly state that LECs are not liable for retroactive refunds of payments made by IXCs under lawful tariffs. Nor should IXCs be permitted to engage in self help recoupment of past payments by wrongly withholding current payments. As the LEC Petitioners state, allowing such actions would be "Manifestly Unjust" and in violation of the filed-rate doctrine.

The Small ILECs respectfully urge the Commission to grant the LEC Petitioners filing. Granting their petition would reaffirm and clarify the intercarrier compensation policies that have been in effect for about twenty years, under which the telecommunications industry (including the Small ILECs) has structured itself and operated during that time.

Respectfully submitted

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