

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Connect America Fund)	WC Docket No. 10-90
)	
<i>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</i>)	WC Docket No. 14-228
)	
)	

**COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING**

Alexicon Telecommunications Consulting (Alexicon) hereby provides these comments in response to the Public Notice released by the Wireline Competition Bureau seeking comment on a Petition for Declaratory Ruling regarding the applicability of the intraMTA rule to LEC-IXC traffic.¹

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return (RoR) Incumbent Local Exchange Carriers (ILECs) and their affiliates who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated

¹ *Wireline Competition Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rules to LEC-IXC Traffic*, Public Notice, CC Docket No. 01-92, WC Docket Nos. 10-90, 14-228, rel. December 10, 2014, DA 14-1808 (*Public Notice*)

ILECs, not only provide a wide range of technologically advanced services to their customers but also are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs are committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including Broadband and IP-enabled services.

The Petition for Declaratory Ruling was filed by a group of local exchange carriers (LECs), both incumbent and competitive, and requests the Commission rule on issues surrounding the exchange of and compensation for intraMTA traffic.² Specifically, the *Petition* addresses actions taken by certain interexchange carriers (IXCs) to stop payment of access charges related to intraMTA wireless traffic and, in some cases, to demand retroactive refunds of such payment. Alexicon fully supports the *Petition* for the reasons set forth below.

I. TREATMENT OF INTRAMTA TRAFFIC

The Petitioners request a declaratory ruling from the Commission in large part due to a court ruling that stated the issues surrounding compensation for the exchange of intraMTA traffic should be referred to the FCC under the “primary jurisdiction doctrine.”³ One of the issues is how intraMTA traffic exchanged between LECs and IXCs should be treated and, more importantly, how compensation flows between the parties. The impetus for the *Petition* is the claim by several IXCs that a statement made by the Commission in the November 2011 *Transformation Order* dictates that all intraMTA traffic is to be treated as “local” traffic, and

² Petition for Declaratory Ruling of the LEC Petitioners, (filed Nov. 10, 2014) (*Petition*). The Petitioners include 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.

³ *Petition* at 7

thus subject to reciprocal compensation, and not access charges.⁴ The so-called “intraMTA rule” was clarified in the *Transformation Order*:

“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. Similarly, 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.”⁵

This clarification has led certain IXCs, including Level 3, Sprint, and Verizon, to claim interexchange traffic exchanged with LECs is to be classified as local traffic. However, the plain meaning of the Commission’s clarification contradicts the IXCs’ claims - specifically, the intraMTA rule applies to “all traffic exchanged between a LEC and a CMRS provider...” Just as clearly, the intraMTA rule, according to this clarification, is not applicable to traffic exchanged between a LEC and an IXC (long distance carrier).

The intraMTA rule has long applied to traffic exchanged between LECs and CMRS carriers.⁶ Until the *Transformation Order* was released, compensation for the exchange of intraMTA traffic was governed by reciprocal compensation rules, and was typically handled through the negotiation of an interconnection or traffic exchange agreement. In those negotiated agreements, interMTA traffic was determined and compensated at normal access rates. With the adoption of the *Transformation Order*, the default reciprocal compensation rate for local (non-access) traffic between LECs and CMRS carriers is bill and keep (i.e., no compensation flow).⁷

⁴ *In the Matter of Connect America Fund, et. al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, *et. al.*, rel. November 18, 2011 (FCC 11-161) (*Transformation Order*) at 1003-1008

⁵ *Transformation Order* at 1007

⁶ *Id.*, at 1003

⁷ *Id.*, at 994

It is this issue that appears to be causing certain IXCs new found interest in the business arrangements between LECs and CMRS carriers.

The *Petition* lays out the argument against the IXCs actions clearly. The answer to this manufactured controversy is truly simple - the intraMTA rule does not apply to or instruct the business relationships between IXCs and LECs. It applies, according to the Commission's clear language quoted above, to traffic exchanged between LECs and CMRS carriers only. For the IXCs to attempt to take advantage of the intraMTA rule to further reduce their payment for use of LEC networks is disingenuous at best. Accordingly, the Commission should take this opportunity to clarify the intraMTA rule as requested by the Petitioners, and put a stop to the borderline illegal activities by the IXCs.

II. IXC ACTIONS

As stated in the *Petition*, and as experienced by hundreds of LECs across the country, the IXCs in question have taken certain steps to (1) cease payments on access traffic claimed to fall under the intraMTA rule⁸, and (2) seek refunds of payments previously made on the traffic under question.⁹ The IXCs, as stated above and as argued convincingly in the *Petition*, "have misconstrued the Commission's guidance...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."¹⁰ The IXCs are plainly acting in contravention to Commission rules, guidance (in the form of statements made in the *Transformation Order*), and precedent in unilaterally withholding, without adequate (or in many cases, any) support, access payments to LECs. Furthermore, to exacerbate this unreasonable activity by demanding, via

⁸ *Petition* at 4

⁹ *Id.*, at 18

¹⁰ *Id.*, at 4

court filings, retroactive refunds for such access charge payments that go back as far as ten years¹¹, the IXCs' actions demand a clear and final declaration by the Commission that intraMTA wireless traffic cannot be treated in this way.

While Alexicon will not reiterate arguments made in the *Petition*, some of the arguments bear repeating in that they form a clear and concise basis as to why the IXCs' actions border on the illegal. First, IXCs are seeking to avoid access charge payment on calls the subject LECs "had no reason to suspect...were intraMTA in nature and were never notified of the purportedly wireless intraMTA nature of the calls by any CMRS carrier or IXC."¹² Alexicon's informal investigation of this issue shows this to be the case - traffic exchanged over interexchange facilities is deemed to be switched access in nature, unless the LEC has an agreement with a CMRS carrier that calls for local treatment of such traffic. The LEC billing for this traffic cannot determine the wireless intraMTA nature of the call, and must therefore (as is consistent with industry practice) treat the traffic as originating in or terminating to a number that is outside the LEC's local calling area (and thus toll).¹³

Also important to note from the *Petition* is that the "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..."¹⁴ This is a very key point - the IXCs have paid the switched access bills, suddenly under scrutiny, for years without objection. The intraMTA rule is not new - it was adopted by the Commission in the Local Competition First Report and Order, issued nearly nineteen years ago. Thus, for the IXCs to suddenly claim that intraMTA wireless

¹¹ *Id.*, at 18

¹² *Id.*, at 4-5

¹³ See also *Petition*, footnote 17 "Even if the intraMTA rule applied to this traffic (which it does not...), the IXCs' failure to identify the traffic as intraMTA traffic makes it impossible for access providers to bill anything but access charges."

¹⁴ *Id.*, at 5

traffic is a topic of controversy is at best disingenuous, and is at worst a clear picture of the cynicism these companies employ when furthering their never-ending goal of eliminating access charges altogether.

III. CONCLUSION

The Commission should immediately and clearly grant the Petitioners' request, and issue a Declaratory Ruling that states the intraMTA rule "does not apply to LEC charges billed to an interexchange carrier when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services." In addition, and in order to maintain some semblance of order in what has become a fairly unstable portion of many LECs' businesses, the Commission "declare that the attempts of certain IXCs to misapply the intraMTA rule to avoid paying access charges to and claim entitlement to substantial retroactive refunds are inconsistent with the Communications Act of 1934, as amended, and the Commission's implementing rules and policies." The issues are clear, and the IXCs are in the wrong by making the claims and taking the actions described in the *Petition*.

Respectfully Submitted,

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