

**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. 14-228

**COMMENTS
of
BIRCH COMMUNICATIONS, INC.; GRANITE TELECOMMUNICATIONS,
HYPERCUBE TELECOM LLC; SAGE TELECOM COMMUNICATIONS, LLC;
TELSCAPE COMMUNICATIONS, INC.; U.S. TELEPACIFIC CORP.; and XCHANGE
TELECOM LLC**

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Dated: February 9, 2015

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I. INTRODUCTION AND SUMMARY

Birch Communications, Inc.; Granite Telecommunications; Hypercube Telecom LLC; Sage Telecom Communications, LLC; Telscape Communications, Inc.; U.S. TelePacific Corp.; and XChange Telecom LLC (collectively, “the Commenting LECs”) hereby submit these comments with respect to the *Petition for Declaratory Ruling*¹ filed by the LEC Coalition² on November 10, 2014.

The LEC Coalition submitted the petition in response to complaints filed by Sprint Communications Company, L.P. (“Sprint”) and MCI Communications Services, Inc. and Verizon Select Services, Inc. (“Verizon”) pursuant to Section 207 of the Communications Act (the “Act”) in federal district courts across the country. Sprint and Verizon, as interexchange carriers, purchase switched access services from LECs’ federal and state tariffs. Having paid the LECs’ billed switched access charges for years without dispute, Sprint and Verizon are now seeking refunds in the courts, claiming that some of the traffic they routed over these switched access services was actually intraMTA wireless traffic, although until very shortly before filing their lawsuits they never informed LECs that they were using switched access for this type of traffic.

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*”).

² The LEC Coalition consists of representatives from several local exchange carriers and their parent companies. These companies include CenturyLink LECs; Consolidated Communications, Inc.; Cox Communications, FairPoint Communications; Frontier Communications; LICT Corp; Time Warner Cable Inc.; Windstream Corporation; the Iowa RLEC Group of 108 RLECs; and the Missouri RLEC Group of 31 RLECs.

Sprint and Verizon argue that the intraMTA rule adopted in the 1996 *Local Competition Order*³ prohibits billing of access charges for origination or termination of intraMTA calls. The Petition requests that the Commission declare that 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.”⁴ Additionally, the Petition asks the FCC to 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... and the Commission's implementing rules and policies.”⁵

The Commenting LECs submit these comments in support of the LEC Coalition’s Petition. The intraMTA rule only applies to traffic between wireless carriers and LECs. Contrary to Sprint and Verizon’s interpretation of the law, there is no judicial precedent that would inhibit the Commission’s ability to confirm as such. Additionally, the Commission should declare that Verizon’s and Sprint’s attempts to misapply the rule to gain retroactive refunds run contrary to the Communications Act of 1934 and Commission rules and policies because LECs have no choice but to charge the applicable tariff rates under the filed rate doctrine and because Verizon and Sprint failed to raise the dispute in a timely manner and in good faith in accordance with tariff dispute provisions.

³ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (subsequent history omitted).

⁴ *Petition* at 2.

⁵ *Id.*

II. BACKGROUND

Sprint and Verizon are IXCs that, by their own choice, purchase access to, and route their interexchange traffic over, LEC Feature Group D (“FGD”) trunks.⁶ The price and terms for such access are established by each LEC’s federal and state tariffs. The calls that Verizon and Sprint chose to route over these trunks include alleged intraMTA traffic that they carried between LECs and wireless carriers. Significantly, LECs have no way of distinguishing intraMTA calls from any other calls using their switched access trunks. Nothing in the call signaling transmitted with the calls or the call detail provided by the access tandem⁷ identifies them as intraMTA. Sprint and Verizon never advised LECs that they were originating or terminating these calls over switched access trunks, nor did either of them ever seek any other arrangement for delivery of these calls.

In accordance with filed tariffs, the LECs billed switched access charges at the tariffed rates for all traffic that Sprint and Verizon routed over the LECs’ FGD trunks. Sprint and Verizon paid those charges without dispute for years. Sprint and Verizon now argue that they are

⁶ Feature Group D trunks are a form of long distance wireline access facilities.

⁷ When the FGD traffic is tandem routed, the end office LEC generally receives call detail from the tandem provider called “Inflow Records.” ATIS has prescribed specifications for these “11-01-01” call records. Some of the fields and characters do contain relevant information, but it is not definitive because none of it provides an indication of the actual physical location of a wireless user at the time a call begins. The wireless carriers do not provide JIP (“Jurisdictional indication parameter”) or even OLI (“Originating Line Indicator”) on all calls they originate, nor can they on calls that are terminated to them. When a wireless carrier uses an IXC to deliver wireless traffic over Feature Group D trunks, the LEC cannot reliably discern which wireless carrier is involved. Indeed, it is not truly possible from these records for a LEC to reliably identify all “wireless” calls, much less whether a call is “intraMTA” or “interMTA” or which CMRS provider serves the end user.

entitled to refunds for intraMTA traffic that supposedly should not have been subject to access charges.

III. DISCUSSION

A. The “IntraMTA Rule” Does Not Apply to Traffic Carried by IXCs

Sprint’s and Verizon’s arguments are based principally on the intraMTA rule. Sprint and Verizon believe that their interpretation of this rule has been upheld by various federal courts and by the Commission’s 2011 clarification in the *Connect America Fund Order*.⁸ The Commenting LECs join the LEC Coalition in requesting a declaration that the intraMTA rule does not apply to LEC charges billed to an IXC when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services.

1. The 1996 and 2011 Orders Only Apply to Traffic Exchanged Between Wireless Carriers and Local Telephone Companies

The Commission should reiterate that it does not permit an IXC to use a LEC’s switched access service without paying for it, even when some of the calls being carried may be intraMTA wireless traffic. Additionally, the Commission should confirm that the IntraMTA rule only prohibits LECs and wireless carriers from charging *each other* for the origination or termination of intraMTA calls. Sprint and Verizon are not wireless carriers, and therefore cannot benefit from the rule.⁹

FCC rules governing intraMTA traffic—including the specific local compensation rules Sprint and Verizon rely on—are contained in Part 51 of the FCC’s regulations, and address how

⁸ *In re Connect America Fund*, 26 FCC Rcd 17663 (2011) (subsequent history omitted).

⁹ *See, e.g., Local Competition Order* ¶ 1041 (“[R]eciprocal compensation obligations ... apply to all local traffic transmitted between LECs and CMRS providers”); *id.* ¶ 1045 (“CMRS providers ... will receive reciprocal compensation”).

CMRS providers and LECs should compensate each other.¹⁰ By contrast, the rules governing the exchange of traffic between an IXC and a LEC are contained in Part 69, say nothing about intraMTA traffic, and provide no exclusion to IXCs from the application of tariffed access charges for the tariffed access services they purchase merely because they use those services to route intraMTA traffic.¹¹

The Commission already made this distinction in the *Local Competition Order*, when it recognized that traffic between LECs and CMRS providers but carried by an IXC was subject to switched access charges.¹² In short, the Commission has not disturbed its Part 69 rules applicable to service arrangements between a LEC and an IXC.

The Commission should re-confirm that, as it made clear in the *Local Competition Order*, its intraMTA rules do not apply to tariffed access arrangements. Paragraph 1043 expressly preserved access arrangements that existed at the time the 1996 Act went into effect:

Based on our authority under section 251(g) [of the 1996 Act] to preserve the current interstate access charge regime, we conclude that the new transport and termination rules [*i.e.*, the rules Sprint and Verizon invoke] should be applied to

¹⁰ Although the FCC revised Part 51.701 of its rules in late 2011 as part of its *Connect America Order* to address new intercarrier service and compensation arrangements between telecommunications carriers that the FCC prospectively authorized in that order under Section 251(b)(5) of the 1996 Act, those rules did not revise (nor could they revise) the statutory requirement that a carrier must request such service and compensation arrangements pursuant to Sections 251 and 252 of the Communications Act, which Sprint and Verizon have not done.

¹¹ See 47 C.F.R. § 69.5(b) (“Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”); 47 C.F.R. § 69.2(b) (“Access service includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication.”).

¹² See, e.g., *Local Competition Order* ¶ 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...*”) (emphasis added).

LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, *and are assessed such charges for traffic that is currently subject to interstate access charges.*¹³

The *Connect America Order*, which the Commission issued 15 years later, does not provide otherwise. Rather, the FCC stated only that a LEC may not bill *a CMRS carrier* access charges if an intraMTA call is routed through an IXC.¹⁴ But nowhere did the Commission say that the LEC may not impose tariffed access charges *on the IXC* for those calls where the IXC routes the traffic over tariffed FGD services rather than requesting a separate service arrangement with reciprocal compensation rates. And the Commission took pains to emphasize that it was “clarifying,” not modifying, the 1996 intraMTA rule, so it cannot have intended to impose a new prohibition that did not exist under the original rule.

2. The Judicial Precedent Upon Which Sprint and Verizon Rely Does Not Inhibit the Commission’s Ability to Fulfill the Petitioners’ Request

In the federal district courts, Sprint and Verizon claim that switched access charges cannot be imposed on calls made from a wireless phone to a wireline phone, or *vice versa*, in the same MTA. In making this argument, they rely heavily on the Eighth Circuit’s ruling in *Iowa Network Servs., Inc. v. Qwest Corp.*,¹⁵ and on *Alma Commc’ns Co. v. Mo. Pub. Serv. Comm’n.*¹⁶ But both cases are distinguishable and do not stand for the prospect that a LEC’s switched access charges cannot be imposed on IXCs for calls originating or terminating with a LEC pursuant to a

¹³ 11 FCC Rcd 15499 ¶ 1043 (emphasis added).

¹⁴ See 26 FCC Rcd 17663 ¶ 1007 n.2132 (LECs have “extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers”).

¹⁵ 466 F.3d 1091, 1096 (8th Cir. 2006) (“*INS*”).

¹⁶ 490 F.3d 619 (8th Cir. 2007) (“*Alma*”).

tariff's switched access rates. These cases do not provide any precedent that would inhibit the Commission from confirming that the intraMTA rule does not apply to IXCs.

In *Iowa Network Servs., Inc. v. Qwest Corp.*, the Eighth Circuit and the district court affirmed the Iowa Utilities Board (IUB) decision that the LEC and intermediate carrier that were parties to the case must negotiate (or arbitrate) an interconnection agreement that would provide reciprocal compensation terms for the intraMTA calls at issue.¹⁷ But the Eighth Circuit did so by affirming that the IUB had jurisdiction and did not act contrary to federal law.¹⁸ The Eighth Circuit repeatedly emphasized it was deferring to the IUB's analysis for this party-specific, Iowa-specific dispute.¹⁹

Importantly, in both *Alma* and *INS*, there was no party acting as an IXC. In *Alma*, the parties included a LEC and a wireless carrier, not an IXC. It did not even involve charges to an IXC, nor a claim for refunds.²⁰ In *INS*, the IUB and the courts found that Qwest, the intermediate carrier in the case, was *not* acting as an IXC.²¹ The IUB even recognized an "IXC exception" to the intraMTA rule,²² recognizing that the *Local Competition Order* preserved IXCs' obligation to pay access charges when carrying intraMTA traffic.²³

¹⁷ See *Iowa Network Serv's., Inc. v. Qwest Corp.*, 385 F.Supp.2d 850, 866 (S.D. Iowa 2005) ("*Qwest I*"), affirmed by 466 F.3d 1091 ("*Qwest II*"); 466 F.3d at 1096. Notably, Sprint and Verizon have never asked the LECs to enter into such an agreement.

¹⁸ See 466 F.3d at 1097.

¹⁹ *Id.* at 1094-98.

²⁰ See 490 F.3d at 620.

²¹ See 385 F. Supp. 2d at 871-876, 893.

²² *Id.* at 871 ("[t]he regulatory classification of Qwest is, however, pertinent as there exists within the reciprocal compensation rules an exception for IXCs").

²³ *Id.* at 893.

B. LECs Have No Choice but to Enforce the Terms of Their Tariffs

LECs cannot, by law, provide Sprint and Verizon a refund for the tariffed services provided them. Doing so would effectively cause the LECs to deviate from the price of a switched access tariff. The filed rate doctrine prohibits any deviation from the terms of such tariffs. LECs must charge the prices specified in their switched access tariffs, and for good reason. To allow otherwise would grant LECs, particularly those with market power, the ability to unjustly discriminate between connecting carriers. The FCC should therefore declare that Sprint's and Verizon's attempts to avoid paying these access charges and to receive refunds are inconsistent with the Communications Act of 1934 and Commission policy.

The filed rate, or filed tariff, doctrine “forbids a regulated entity from charging a rate for its services other than the rate on file with the appropriate regulatory authority.”²⁴ “[T]he rate of the carrier duly filed is the only lawful charge,” and “[d]eviation from it is not permitted upon any pretext.”²⁵ The Act is explicit: “Every common carrier ... shall ... file with the [FCC] and keep open for public inspection schedules showing all charges for itself and its connecting carriers ... and showing the classifications, practices and regulations affecting such charges.”²⁶ Furthermore, “[n]o carrier ... shall engage or participate in any such [interstate wire or radio] communication unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder, and no carrier shall ... charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any

²⁴ *Crumley v. Time Warner Cable, Inc.*, 556 F.3d 879 (8th Cir. 2009).

²⁵ *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 127 (1990) (quoting *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)). See also *Firstcom, Inc. v. Qwest Corp.*, 555 F.3d 669, 679 (8th Cir. 2009) (filed rate doctrine also applies to state tariffs).

²⁶ 47 U.S.C. § 203(a).

service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect[.]”²⁷

Sprint and Verizon purchased services from the LECs’ federal and state switched access tariffs and routed their alleged intraMTA traffic over the LECs’ switched access trunks, primarily Feature Group D. In accordance with the terms of their respective federal and state tariffs, the LECs billed Sprint and Verizon switched access charges for their use of those trunks, and Sprint and Verizon paid the billed access charges. Neither Sprint nor Verizon has ever filed a complaint with this Commission challenging any of the LEC tariffs on the ground that they should not apply to intraMTA traffic.

The LECs are *required* to charge Sprint and Verizon the rates set out in their filed tariffs. “Under the Interstate Commerce Act [the predecessor to the 1934 Act], the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext. Shippers and travelers are charged with notice of it, and they as well as the carrier must abide by it, unless it is found by the Commission to be unreasonable.... This rule is undeniably strict and it obviously may work hardship in some cases, but it embodies the policy which has been adopted by Congress in the regulation of interstate commerce in order to prevent unjust discrimination.”²⁸

²⁷ *Id.* § 203(c).

²⁸ *American Telephone & Telegraph Company v. Central Office Telephone, Inc.*, 524 U.S. 214, 222-23 (1998) (quoting *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)). Although the filed tariff doctrine can “work hardship in some cases,” this is not one of them. Sprint and Verizon chose to purchase switched access services from LECs and chose to route intraMTA traffic over long distance switched access trunks, thereby incurring switched access charges under the filed tariffs. Sprint and Verizon paid the charges without complaint until shortly before they filed these actions, when they apparently decided that the FCC’s 18-year-old *Local Competition Order*—which they plainly knew about all along (it is the foundational FCC order under the 1996 Telecommunications Act)—entitles them to a refund of access charges they

Thus, Sprint and Verizon cannot be entitled to a refund as matter of law, and the Commission should recognize as such by declaring that they are misapplying the intraMTA rule.

C. Sprint and Verizon Failed To Dispute the Billed Access Charges in Accordance with Applicable Tariffs and in Good Faith

The Commission expects members of the telecommunications industry to interact in good faith. Sprint and Verizon have failed to act in good faith in two respects: 1) they failed to use the dispute process provided for in LEC tariffs, and 2) they have not attempted to identify the intraMTA traffic to the LECs or even reveal the CMRS provider identities with which they have agreements.

1. Because Verizon and Sprint and the CMRS Providers They Serve Have Not Attempted to Provide or Even Enable the Provision of the Necessary IntraMTA Data, LECs Could Not Have Accurately Applied Local Rates to Such Traffic, Even if the IntraMTA Rule Applies

Assuming *arguendo* that the intraMTA rule did grant IXCs the right to use switched access trunks for intraMTA traffic without paying, LECs would need a way to determine the amount of exempt traffic. To do this, LECs must receive data regarding the originating and terminating end user locations. Without such information, or at least a reasonable estimate of the traffic that is originating or terminating at cellular towers in their MTA, LECs cannot know to which traffic the intraMTA rule should apply. The best source for such information is the CMRS provider.

voluntarily incurred and paid. Moreover, with respect to any alleged intraMTA traffic that originated with the LECs' landline end-users and was transported by Sprint and Verizon, Sprint and Verizon presumably charged those end-users (who would have presubscribed to Sprint and Verizon as their long distance carrier) Sprint's and Verizon's rates for long distance service.

The Commission and the Eighth Circuit have expressly recognized this problem. If an “intermediate provider” does not supply information so the LEC can identify the wireless provider serving the mobile end user and seek negotiations with that provider to exclude wireless intraMTA traffic from access billing, then the intermediate provider can properly be required to pay access charges.²⁹

Indeed, even today, the Commenting LECs do not know how Sprint and Verizon are measuring the amount of intraMTA traffic allegedly transmitted over their switched access services. Some Commenting LECs have been provided with dispute amounts, but with no idea of how they were determined; others have not even received this information. If (contrary to the law) the IXCs were entitled to refunds, the Commenting LECs would have no way to determine the amounts of those refunds.

When CMRS providers use IXCs to carry their traffic, any attempt by a LEC to identify the necessary traffic is exacerbated as the traffic is mingled with interMTA traffic and wireline traffic. Additionally, this CMRS-IXC arrangement prevents the LEC from determining the identity of the CMRS provider and thereby prevents the LEC from contacting the CMRS provider to attempt to gain the necessary information.

By hiding intraMTA traffic on switched access trunks, IXCs effectively deny LECs the ability to pursue the interconnection agreements with the CMRS providers to which the LECs are

²⁹ See *Pet. of Cavalier Tel. LLC Pursuant to § 252(e)(5) of the Commc’ns Act for Preemption of the Jurisdiction of the Va. State Comm’n Regarding Interconnection Disputes with Verizon, Va., Inc. and for Arbitration*, 18 FCC Rcd. 25887, 25911-14, ¶¶ 42-43 (2003) (“*Cavalier*”); *Iowa Network Serv., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850, 881, 886, 894, 899, 909, 915 (S.D. Iowa 2005), *aff’d*, 466 F.3d 1091 (8th Cir. 2006); *Rural Iowa Indep. Tel. Ass’n v. Iowa Utils. Bd.*, 385 F. Supp. 2d 797, 811 (S.D. Iowa 2005) (“*RIITA I*”), *aff’d*, 476 F.3d 572 (8th Cir. 2007) (“*RIITA II*”).

entitled under section 20.11(f) of the Commission’s rules. Additionally, when a LEC is subtending another LEC’s tandem, routing intraMTA traffic through IXCs instead of through local trunks increases LEC network costs. Unlike the local trunks, LECs must pay to lease the switched access facilities that connect them to an access tandem. By routing local traffic through IXCs, wireless carriers increase the size of the trunks necessary to support traffic termination. As long as IXCs pay for these increased costs through switched access charges, the LECs are compensated fairly. But application of the intraMTA rule to this traffic would unjustly shift these unnecessary costs imposed solely by the actions of IXCs and CMRS providers onto the LECs.

It would be wholly unjust and unfair if this blatant lack of good faith cooperation on the part of IXCs and CMRS providers allowed them to hide the intraMTA traffic and increase costs for LECs and then use the intraMTA rule as a sword against the LECs. Even if the intraMTA rule were to apply to the traffic at issue, good faith cooperation must be a prerequisite to its application.

2. Sprint and Verizon Failed To Dispute the Billed Access Charges in Accordance with Applicable Tariffs and in Good Faith

Acting in good faith requires parties to raise disputes between each other in attempts to resolve disputes as those disputes arise and *before* involving third parties for resolution. By doing so, parties can often avoid imposing on costly government resources to resolve their disputes.

Many, if not all, of the Commenting LECs’ tariffs provide for a dispute resolution process.³⁰ These processes even include means by which Sprint and Verizon could have withheld

³⁰ See, e.g., National Exchange Carrier Association, Inc. Tariff F.C.C.-No. 5 § 2.4.1(D)(1) (“NECA Tariff”); John Staurulakis, Inc. Tariff FCC-No. 1 (“JSI Tariff”). Both state that “[a]

funds in good faith.³¹ Yet neither Sprint nor Verizon ever disputed any of the switched access bills they received from the LECs on the ground that some of the traffic billed at access rates was intraMTA traffic that should instead be billed at local rates.

Sprint and Verizon's failure to dispute the LECs' bills is more than mere oversight. Sprint and Verizon are charged not only with knowledge of the law (including the provisions of the FCC's orders), but also the terms of the tariffs under which they purchase services.³² Accordingly, the billing dispute provisions of the LECs tariffs are as binding on them as they are on the LECs.

Instead of attempting to resolve any perceived dispute in good faith, Sprint and Verizon have instead decided to impose a great burden on both private and government resources by filing cumulatively at least 67 lawsuits nationwide. The Commission should not be an unwitting accomplice to such behavior. The Commission should declare that Sprint's and Verizon's attempts to misapply the intraMTA rule to gain retroactive refunds is inconsistent with the Communications Act and the Commission's rules and policies. Such a declaration would be

good faith dispute requires the customer to provide a written claim to the Telephone Company.”). At least some of the LECs incorporate these sections of the NECA Tariff and JSI Tariff by reference in their filed tariffs.

³¹ See, e.g., NECA Tariff § 2.4.1(D)(1); JSI Tariff §2.4.1(D)(1). Both the NECA Tariff and the JSI Tariff state that the disputing party's claim “must identify in detail the basis for the dispute, and *if the customer withholds the disputed amounts*, it must identify the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed to permit the Telephone Company to investigate the merits of the dispute.” (emphasis added)

³² See *Global Crossing Telecommunications, Inc. v. 3L Commc'ns Missouri, LLC*, 2013 WL 3893321 (E.D. Mo. July 26, 2013) (“Because Section 203(a) of the Communications Act requires every common carrier ... to file with the FCC tariffs showing all charges, classifications, practices, and applicable regulations, [the carrier's] customers are charged with notice of Tariff F.C.C. No. 1, and its provisions”).

consistent with judicial treatment of carriers who have failed to dispute tariff terms in good faith.³³

D. IXCs Should Not Be Allowed to Engage in Self-Help Tactics

As this comment proceeding and the 67 lawsuits (at least) are progressing, Verizon and Sprint are engaging in self-help tactics by refusing to pay the amounts of disputed charges for access traffic. Despite having a process by which they could have in good faith disputed LEC charges, and without waiting for the Commission to confirm the law or the courts to interpret it, they have decided to effectively usurp the authority of the Commission and the courts and decide for themselves the verdict and the damages.

These tactics run counter to the purpose of the intraMTA rule. The purpose of the rule was to provide standardized and predictable treatment of wireless calls. IXC self-help tactics, by contrast, invite doubt and unpredictability in the LEC industry where there were previously consistent and well understood compensation customs. The Commission should declare that such practices are forbidden and confirm that IXCs, like all other members of the industry, must cooperate and abide by the legal processes made available to them, including the timelines required to ensure justice is appropriately dispensed.

³³ See, e.g., *MCI WorldCom, Inc. v. Teletower, Inc.*, 2002 WL 378424 (S.D.N.Y. Mar. 11, 2002) (court entered judgment in favor of carrier where tariff required customer to dispute bills within six months or waive the dispute, and there was no allegation that customer had disputed the bills); accord, *MFS Intern., Inc. v. International Telcom Ltd.*, 50 F.Supp.2d 517, 523 n.14 (E.D. Va. 1999) (customer could not prosecute counterclaim against carrier because tariff provision required customer to dispute bills within 30 days or waive dispute); *MCI Telecomm. Corp. v. Best Tel. Co.*, 898 F. Supp. 868, 874-75 (S.D. Fla. 1994) (noting that invoice under a tariff is deemed correct and binding if not disputed).

IV. CONCLUSION

For the reasons stated above, the Commenting LECs support the LEC Coalition Petition for Declaratory Ruling to clarify the applicability of the intraMTA rule to LEC-IXC traffic. Specifically the FCC should 1) confirm that the intraMTA rule does not apply to LEC charges billed to an IXC when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services and 2) declare that Sprint and Verizon's attempt 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, and the Commission's implementing rules and policies because LECs have no choice but to charge the applicable tariff rates under the filed rate doctrine and because Verizon and Sprint failed to raise the dispute in a timely manner and in good faith in accordance with tariff dispute provisions.

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