

**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
)	
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 Implementing Rules and Policies)	WC Docket No. 14-228

To: The Wireline Competition Bureau

COMMENTS OF NINESTAR CONNECT

Hancock Rural Telephone Corporation d/b/a NineStar Connect (“NineStar Connect”), by its attorneys, hereby submits comments in response to the petition for declaratory ruling filed by the group of local exchange carriers (“LEC Petitioners”) in the above-captioned proceeding.¹ In their petition,² the LEC Petitioners request that the Federal Communications Commission (“FCC” or “Commission”) issue a declaratory ruling confirming that the intraMTA rule 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 LEC Petitioners further request that the FCC declare that the attempts of certain IXCs to “misapply” the

¹ *Wireline Competition Bureau Seeks Comment On Petition For Declaratory Ruling Regarding Applicability Of The IntraMTA Rule To LEC-IXC Traffic*, CC Docket No. 01-92, WC Docket Nos. 10-90 and 14-228, DA 14-1808 (Dec. 10, 2014).

² *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 Implementing Rules and Policies*, WC Docket No. 14-228 (filed Nov. 10, 2014) (*Petition for Declaratory Ruling*).

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 FCC's rules and policies. NineStar Connect supports the *Petition for Declaratory Ruling* and respectfully requests that the Commission recognize the unique impact its decision could have with respect to matters that are wholly intrastate in nature.³

I. BACKGROUND

Hancock Rural Telephone Corporation traces its roots back to 1895, when telephone factory worker Loren Helms, residing in McCordsville, Indiana, strung a wire across a back fence from his mother's house to the home of his sister and installed the first telephone the farming community east of Indianapolis had ever known. Just more than a half-century later, what had become known as the McCordsville Telephone Company joined with four other small telephone start-ups in Hancock County to form Hancock Rural Telephone Company. Steady growth continued throughout the last quarter of the 20th century, and the company began doing business as Hancock Telecom in 1999 to better reflect the array of services available. In 2011, Hancock Telecom merged with another cooperative, Central Indiana Power, to form what is known today as NineStar Connect.

II. DISCUSSION

NineStar Connect is a defendant in a legal action filed by Sprint Communications Company, L.P. ("Sprint") in the United States District Court for the Southern District of Indiana,⁴ in which Sprint, in its capacity as an IXC, is seeking a refund of originating and

³ As explained herein, NineStar Connect presents its comments primarily in the context of intrastate, intraMTA traffic exchanged between an IXC and NineStar Connect pursuant to NineStar Connect's intrastate access tariff.

⁴ *Sprint Communications Company, L.P., v. Indiana Bell Telephone Company Incorporated, et al.*, Case No. 1:14-cv-1006, Complaint (S.D. Ind., June 17, 2014).

terminating intrastate switched access charges it claims it was improperly billed. Sprint has filed at least 33 similar lawsuits against 360 LECs in other states. Sprint's legal action against NineStar Connect is built upon Sprint's misinterpretation of the FCC's "intraMTA rule." Pursuant to the intraMTA rule, a call exchanged between a LEC and a commercial mobile radio service ("CMRS") provider that originates and terminates within the same Major Trading Area (MTA), as determined at the time the call is initiated, is subject to reciprocal compensation obligations.⁵ The Commission adopted the intraMTA rule in 1996 in the *Local Competition First Report and Order*,⁶ and made a number of clarifications to it in the 2011 *USF/ICC Transformation Order*, including adopting a default compensation rate for traffic subject to the rule.⁷ However, as the United States District Court for the Northern District of Iowa recognized in its October 2014 stay order involving a Sprint lawsuit against a number of Iowa and Minnesota LECs, neither of these orders apply to LEC-IXC traffic exchanged pursuant to a tariff:

[N]either the FCC's 1996 Local Competition Order nor its 2011 Connect America Fund Order expressly applies to compensation between a LEC and an IXC for intraMTA calls. As the LECs point out, the 1996 Local Competition 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

⁵ In the *Local Competition First Report and Order*, the FCC determined that CMRS providers' local service areas should be sized to MTAs, which at the time were the largest FCC spectrum licenses on a geographical basis. Many MTAs include portions of multiple states. For example, the Minneapolis-St. Paul MTA, MTA 12, covers all of North Dakota, most of South Dakota, all of Minnesota, and portions of Iowa, Wisconsin, and Michigan.

⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325 (Aug. 8, 1996) (*Local Competition First Report and Order*).

⁷ See *Connect America Fund*, et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶¶976-1008 (Nov. 18, 2011) (*USF/ICC Transformation Order*).

LECs and IXCs. Likewise, the 2011 Connect America Fund Order only “clarified” payment arrangements between LECs and CMRS providers, but did not address payment arrangements between LECs and IXCs.⁸

NineStar Connect has an intrastate access tariff on file with the Indiana Utility Regulatory Commission. Pursuant to this state access charge tariff, NineStar Connect bills Sprint originating and terminating switched access charges for traffic exchanged between the two parties that originates and terminates within the state of Indiana. Until Sprint filed its lawsuit against NineStar Connect, Sprint had voluntarily paid such intrastate access charges billed to it by NineStar Connect for years without issue. Now, Sprint is purposely misapplying the intraMTA rule in an attempt to avoid paying such charges. NineStar Connect agrees with the LEC Petitioners’ view that Sprint and other IXCs involved in similar ongoing litigation “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.”⁹ It is difficult to find any aspects of fairness, good-faith, or honesty in Sprint’s scheme.

In their *Petition for Declaratory Ruling*, the LEC Petitioners have provided the Commission with a detailed and thorough explanation of the intraMTA rule and the manner in which it has been applied by the Commission and telecommunications industry at large for the more than 18 years since its promulgation. The LEC Petitioners have also expressed the hardships visited upon small, local exchange carriers nationwide by litigation related to the interexchange carriers’ distortion of the intraMTA rule, noting that “the spate of litigation has

⁸ *Sprint Communications Company, L.P., v. Butler-Bremer Mutual Telephone Company*, No. C 14-3028-MWB, 2014 U.S. Dist. LEXIS 141758, Memorandum Opinion and Order Regarding Defendants’ Motion to Dismiss or Stay, p. 8 (N.D. Iowa, Oct. 6, 2014).

⁹ *Petition for Declaratory Ruling* at 5.

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."¹⁰ NineStar Connect commends the LEC Petitioners for the clarity with which they have presented the intraMTA issues to the Commission and joins in and supports the arguments set forth in the *Petition for Declaratory Ruling*. As explained herein, the Commission should confirm that absent an agreement to an alternative billing arrangement, any traffic routed through an IXC and utilizing a LEC's switched access facilities is access traffic exchanged between the IXC and the originating/terminating LEC to which access charges apply.

In addition to its support of the *Petition for Declaratory Ruling*, NineStar Connect respectfully submits these comments to bring to the Commission's attention one unique issue that has arisen specifically in the context of its own case. Sprint's claim against NineStar Connect in the lawsuit originally filed in the United States District Court for the Southern District of Indiana and subsequently consolidated and transferred to the Northern District of Texas by the Judicial Panel on Multi-district Litigation arises exclusively under a theory of Indiana contract law. All of the traffic for which Sprint seeks a refund of the access charges it voluntarily paid is purportedly intrastate, intraMTA in nature. Therefore, the access charges Sprint hopes to recoup were voluntarily paid pursuant to NineStar Connect's Indiana intrastate tariff.

Sprint argues that NineStar Connect's Indiana filed tariff represents a contract between Sprint and NineStar Connect under state law and further argues that, to the extent NineStar Connect's Indiana filed tariff allows NineStar Connect to collect switched access charges for a

¹⁰ *Petition for Declaratory Ruling* at 6.

call allegedly made to or from an intrastate, intraMTA wireless phone, yet routed via an interexchange carrier and terminated or originated using an NineStar Connect's switched access services, the tariff is unenforceable. Essentially, Sprint is asking a federal court to interpret an FCC order and subsequent opinions in a manner that Sprint would then use in an attempt to invalidate an Indiana intrastate tariff over which the FCC would normally have no jurisdiction.¹¹ As the Commission considers the pending *Petition for Declaratory Ruling*, NineStar Connect respectfully requests that the Commission recognize the unique impact its decision could have in this regard. Accordingly, when the Commission rules on the *Petition for Declaratory Ruling*, the Commission should confirm that the intraMTA rule does not apply to LEC intrastate access charges billed to an IXC when the IXC terminates wholly intrastate traffic to or receives wholly intrastate traffic from a LEC via tariffed switched access services.

III. CONCLUSION

When acting on the *Petition for Declaratory Ruling*, the Commission must carefully consider how its action will impact NineStar Connect and any other LEC who unexpectedly finds itself defending a state tariff before the FCC as a result of Sprint's (or any other IXC's) attempt to increase its wealth at the expense of small communities like those in Hancock County, Indiana. For this and other reasons set out herein, NineStar Connect supports the LEC Petitioners' request that the Commission issue a declaratory ruling confirming 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. Additionally, NineStar

¹¹ If Sprint availed itself of NineStar Connect's intrastate switched access services in routing what Sprint claims to be intraMTA wireless traffic, it did so without ever informing NineStar Connect. Therefore, Sprint unilaterally conflated two independent aspects of telecommunications, one of which is federally-regulated and one of which is state-regulated, hoping that what it views as the more advantageous federal regulation can be used to avoid the obligation it assumed under state regulation.

Connect respectfully requests that the Commission recognize the unique impact that its decision could have with respect to matters that are wholly intrastate in nature, and act in accordance with the views expressed herein.

Respectfully submitted,

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