Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic	)))	WC Docket No. 14-228

REPLY COMMENTS OF THE WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION

The Wisconsin State Telecommunications Association (the "***WSTA***") hereby submits these Reply Comments pursuant to the December 10, 2014 Public Notice with respect to the Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic (the "***Petition***").[1]

The principal issue before the Commission is the interpretation and applicability of the "intraMTA rule." The dispute is relatively straight forward. Local exchange carriers ("***LECs***") contend that the intraMTA rule applies only to intercarrier compensation between commercial mobile radio service ("***CMRS***") carriers and LECs, and does not apply to intercarrier compensation between LECs and interexchange carriers ("***IXCs***"). The IXCs, on the other hand, contend that the intraMTA rule applies not only to intercarrier compensation between CMRS carriers and LECs, but also to intercarrier compensation between LECs and IXCs.

All commenters agree that the intraMTA rule establishes that reciprocal compensation shall be the manner of intercarrier compensation between LECs and CMRS carriers with respect to intraMTA calls. There likewise seems to be agreement that the use of an intermediate carrier

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[1] *Petition for Waiver 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)(the "*Petition*")

(such as an IXC) to deliver intraMTA calls does not alter the compensation arrangement between LECs and CMRS carriers. This, however, is where the accord ends and the disagreement begins. The IXCs contend that the intraMTA rule has always prohibited LECs from billing IXCs switched access charges for intraMTA calls that either originated from or were terminated to CMRS carriers. The WSTA disagrees. Not only is the IXCs' contention false, but it is disingenuous. For nearly two decades the IXCs clearly have not interpreted the intraMTA rule so broadly, otherwise they would not have readily and willingly without dispute paid access charges for intraMTA calls comingled with non-intraMTA calls over the LECs' access facilities.

The arguments in favor of the intraMTA rule interpretation advocated by the LECs are set forth in the Petition and the Comments filed by those entities or groups[2] supporting a determination that the intraMTA rule does not apply to intercarrier compensation between LECs and IXCs. In these Reply Comments the WSTA will not restate those arguments, nor will it waste the Commission's time addressing the court decisions repeatedly cited by the IXCs that do nothing more than confirm what the LECs do not dispute - i.e., that the use of an IXC to deliver intraMTA calls does not permit LECs to charge CMRS carriers access charges for intraMTA calls.

The IXCs' Jekyll and Hyde interpretation of the "filed tariff doctrine," however, cannot escape comment. As Dr. Jekyll the IXCs contend that the intraMTA rule prevents LECs from billing IXCs tariffed access charges for intraMTA calls, thereby rendering the LEC tariffs inapplicable to intraMTA calls. As Mr. Hyde the IXCs contend that the filed tariff doctrine precludes implied contracts because the only means by which the LECs can bill the IXCs access charges is pursuant to the LEC tariffs. It cannot be the case that LECs are prohibited from

[2] For example: (1) NTCA-The Rural Broadband Association; WTA-Advocates for Rural Broadband; The Eastern Rural Telecom Association; and The National Exchange Carrier Association; and (2) The Minnesota Telecom Alliance; and (3)The Texas Telephone Association.

billing access charges under a tariff while at the same time being prohibited from billing under a contract (e.g., an implied contract) under the theory that the LEC charges must be set forth in a tariff.

The principal purpose of these Reply Comments is to address an issue which the WSTA hopes there is no need for the Commission to address -- that being whether LECs should be required to provide refunds if the Commission determines (which it should not) that the intraMTA rule serves as a bar to LECs billing access charges to IXCs that deliver intraMTA calls commingled with non-intraMTA calls over the LECs' access facilities.

If the Commission were to agree with the IXCs that the intraMTA rule serves as a bar to LECs billing access charges to IXCs for intraMTA calls, then the Commission should apply such a ruling only prospectively and not retroactively. The WSTA agrees with Comments filed by AT&T Services, Inc., on this issue.[3] As AT&T correctly asserts, where the Commission's determination is a substitution of new law for old law that was reasonably clear, the new law may justifiably be given prospectively-only effect.[4] However, even if the Commission's determination is a clarification of existing law, it should not be applied retroactively if doing so would lead to manifest injustice.[5]

As it relates to the issues before the Commission and Judge Sidney A. Fitzwater in the Northern District of Texas, retroactive application of a Commission determination that the intraMTA rule serves as a bar to LECs billing access charges to IXCs for intraMTA calls would be improper regardless of whether such determination is deemed to be a new rule or a clarification. There is no dispute that for nearly two decades the industry practice was for LECs

[3] *Comments of AT&T Services, Inc.*, pp 13 -15.
[4] *AT&T v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006)("judicial hackles are raised when an agency alters an established rule defining permissible conduct which has been generally recognized and relied on throughout the industry that it regulates."(internal quotations omitted).
[5] *Id.*

to bill IXCs access charges for intraMTA traffic exchanged between a LEC and a CMRS carrier and delivered by an IXC and for the IXCs to pay the LEC access charges without dispute. Had the law been reasonably clear to the contrary, IXCs would not have paid billions of dollars in access charges that the law did not require them to pay. Retroactive application of a Commission determination that would result in the issuance of refunds by the LECs to IXCs would seriously undermine the principle that agency decisions should not subject regulated entities to "unfair surprises."[6] Here, a change in long standing industry practice, which the LECs relied upon and which the IXCs allowed the LECs to rely upon by never objecting, would be an enormous unfair surprise to the LECs. Until 2014 the LECs had no notice and certainly not the "fair warning" that the United States Supreme Court has held regulated entities are entitled to have[7], that the billing treatment of intraMTA traffic as between LECs and IXCs was about to be upended. Sudden change in long-standing industry practice and the IXCs acceptance thereof would result in manifest injustice.

Conclusion

For the reasons set forth in the Petition, the WSTA's Comments, and the Comments filed by various other entities or groups, the Commission should determine that the intraMTA rule does not apply to intercarrier compensation between LECs and IXCs. If the Commission determines that the intraMTA rule serves as a bar to LECs billing access charges to IXCs for intraMTA calls, the Commission should apply that determination prospectively, and not retroactively.

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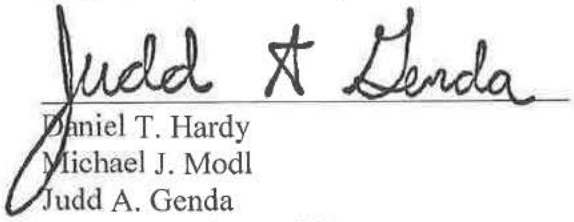
[6] *Christopher v. SmithKline Beecham Corp.*, 132 S. CT. 2156, 2167 (2012).
[7] *Id.*

March 9, 2015

Respectfully submitted,



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