

**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)	WC Docket No. 14-228
Is Inconsistent with the Communications Act of)	
1934, as Amended, and the Commission’s)	
Implementing Rules and Policies)	

**Reply Comments of
the Multi-State Small Local Exchange Carrier Litigants**

The thirty-one Multi-State Small Local Exchange Carrier (“LEC”) Litigants (the “Small LEC Litigants”) identified in Attachment A hereto¹ hereby file these reply comments in response to the comments submitted by various parties regarding the November 10, 2014 “Petition for Declaratory Ruling of the LEC Petitioners” (the “Petition”) submitted by over four hundred

¹ As noted in their original comments, each of the Small LEC Litigants is a named defendant in a federal district court case filed by MCI Communications Services, Inc. and Verizon Select Services, Inc. (the “Verizon IXCs”), and therefore each is a party in interest in this proceeding. *See* Comments of the Multi-State Small Local Exchange Carrier Litigants, WC Docket No. 14-228, filed February 9, 2015 (the “*Small LEC Litigants Comments*”) at 1, fn.1. Since the time of the submission of the *Small LEC Litigants Comments*, Ringgold Telephone Company (“Ringgold”) has joined the group. Ringgold is one of the named defendants in the Georgia litigation filed by the Verizon IXCs. *See id.* Ringgold is both an Incumbent Local Exchange Carrier and a Rural Telephone Company as those terms are defined in 1996 revisions (the “1996 Act”) to the Communications Act of 1934, as amended (the “Act”) (*see id.* at 6-7 and fns. 9 and 10, respectively) and is a rate-of-return carrier for purposes of its interstate recovery as well as an issuing carrier in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5. *See id.* at 7. Likewise, Ringgold has in place a similar intrastate exchange access tariff to that filed by other Georgia Small LEC Litigants. *See id.* at 7, fn. 15. Moreover, the same facts outlined in Section II.B of the *Small LEC Litigants Comments* are also equally applicable to Ringgold. Accordingly, based on these facts, Ringgold’s addition to the Small LEC Litigants group simply enlarges the group.

LECs (the “Petitioners”) and docketed as the above-captioned proceeding.² The Small LEC Litigants will not repeat the legal and factual bases filed by the vast majority of commenters in this proceeding which demonstrate that the Interexchange Carrier (“IXC”)-proffered claims regarding the “intraMTA rule”³ can and must be rejected. Contrary to the three sets of comments that support the IXCs’ position,⁴ the intraMTA rule *cannot* be used by the IXCs as a basis for refusing to pay for the exchange access services the IXCs have ordered and used.⁵ Accordingly, the Small LEC Litigants respectfully request that the Federal Communications Commission (the “Commission” or the “FCC”) should promptly end this “needless controversy

² See *Wireline Competition Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic, Public Notice*, CC Docket No. 01-92, WC Docket Nos. 10-90, 14-228, DA 14-1808, released December 10, 2014.

³ See 47 C.F.R. § 51.701(b); see also *Small LEC Litigants Comments* at 2, fn.3.

⁴ See Comments of Verizon, WC Docket No. 14-228, filed February 9, 2015 (“Verizon Comments”); Comments of Sprint Corporation and Level 3 Communications, LLC, WC Docket No. 14-228, filed February 9, 2015 (“Sprint Comments”); Comments of CTIA – The Wireless Association^R, WC Docket No. 14-228, filed February 9, 2015 (“CTIA Comments”). Verizon indicates that its comments include the position of not only “Verizon Wireless” but also those “Verizon companies” that “are the regulated, wholly owned subsidiaries of Verizon Communications, Inc.” Verizon Comments a 1, fn.1 For purposes of these reply comments, therefore, the Small LEC Litigants will presume that the entities that Verizon mentions include the Verizon IXCs, and thus, Verizon, Sprint Corporation (“Sprint”) and Level 3 Communications, LLC are collectively referred to as the “IXCs” or individually as an “IXC.”

⁵ To be sure, the IXCs present no evidence that they have, in fact, carried and currently do, in fact, carry some level of Commercial Mobile Radio Service (“CMRS”) provider traffic nor do these IXCs demonstrate that any such alleged CMRS traffic originates and terminates in a given Metropolitan Trading Area (“MTA”) within which any of the Small LEC Litigants operate. Yet, consistent with the position stated in their comments, the Small LEC Litigants file these reply comments with the assumption that any purported traffic is, in fact, CMRS intraMTA traffic. See *Small LEC Litigants Comments* at 3-4; see also *id.* at 22-23 (the IXCs must bear the burden for producing evidence that the alleged traffic fits their description).

initiated by these IXCs”⁶ and grant the relief requested in the Petition and in the *Small LEC Litigants Comments*.

The IXCs (now with CTIA’s support) continue to assert their concocted theory that an IXC may stand in the shoes of a CMRS provider and thereby legitimately claim that an IXC’s use of the exchange access services provided by a LEC to the IXC is free and without any charge.⁷ Thus, it was entirely appropriate for the Small LEC Litigants to note that,

[h]aving already received a windfall by the use of the terminating LECs’ networks at rates that are being reduced to zero, the IXCs are simply trying to concoct a new theory to add to that windfall at the expense of the LECs and their end users, together with the possibility of the IXCs attempting to retain a further windfall associated with the retention of toll revenue associated with such traffic that could be reclassified.⁸

The IXC comments confirm that they seek this result. The Commission should reject the positions advanced by the IXCs.

As indicated above, the Small LEC Litigants will not burden the Commission’s record in this matter by repeating positions previously advanced in opposition to the IXCs’ claims. The legal authorities cited in filed comments, including those submitted by the Small LEC Litigants,

⁶ Petition at 8.

⁷ See, e.g., Verizon Comments at 2-10; Sprint Comments at 1, 8-9 (arguing that all intraMTA “traffic” cannot be subject to access charges), 13-14 (arguing that “regulatory policy” requires the no-access charge for IXC handled traffic is appropriate since to do otherwise would result in inefficient routing). As to Sprint’s last point, the Small LEC Litigants note that the presubscription requirements require that calls dialed on a 1+ basis must be routed to the calling party’s presubscribed carrier thus the contention by Sprint that “IXC exception to the intraMTA rule would provide LECs an incentive to collect originating access charges by needlessly routing calls through an IXC” is wholly misplaced. *Id.* at 14; see also 47 C.F.R. §51.209(b)(“A LEC shall implement toll dialing parity through a presubscription process that permits a customer to select a carrier to which all designated calls on a customer's line will be routed automatically.”).

⁸ *Small LEC Litigants Comments* at 3; see also *id.* at 26. To the extent that an IXC is also a wholesale provider of long distance services, this windfall may also include that wholesale revenue that was collected.

demonstrate that the proper application of the intraMTA rule is limited to the context of interconnection and intercarrier compensation arrangements between CMRS providers and LECs. Nonetheless, the Small LEC Litigants will address two aspects of the IXCs' comments herein.

First, Sprint contends that “[n]o court of appeals has arrived at a contrary conclusion”⁹ with respect to Sprint’s attempt as an IXC to construe the intraMTA rule to allow it to avoid payment for the lawful exchange access services it has consumed and continues to consume. Sprint’s contention artfully attempts to side-step the ruling by the United States District Court for the Northern District of Iowa (the “Iowa Court”) which, in the context of the IXC-LEC intercarrier compensation dispute regarding application of the intraMTA rule, properly recognized that the underlying factual circumstances presented in the appellate cases noted by Sprint – *Alma Communications Co. v. Missouri Public Service Comm’n*, 490 F.3d 619 (8th Cir. 2007); *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006); and *Atlas Telephone Co. v. Oklahoma Corp. Commission*, 400 F.3d 1256 (10th Cir. 2005)¹⁰ – were in the context of CMRS provider/LEC intercarrier compensation disputes. Or, as the Iowa Court stated, “the federal appellate decisions on which Sprint relies also *do not* involve interpretation or policy analysis of FCC regulations regarding payment arrangements between LECs and

⁹ Sprint Comments at 11.

¹⁰ See Sprint Comments at 10-11; see also Verizon Comments at 5-7. Like Sprint, CTIA also cites these three court decisions (see CTIA Comments at 4-5) for its proposition that an IXC may utilize the intraMTA rule to avoid the exchange access service charges that the IXC has ordered from a LEC and used. CTIA’s reliance on these cases as a basis for non-payment of legitimate access charges by the IXCs is therefore equally without merit.

IXCs.”¹¹ The IXCs’ reliance on *Rural Iowa Independent Telephone Association v. Iowa Utilities Board*, 476 F. 3d 572 (8th Cir. 2007) and *Western Radio Services Co. v. Qwest Corp.*, 678 F. 3d 970 (9th Cir. 2012)¹² fares no better since these cases arose in the context of a carrier acting as a “transit” provider (not as an IXC which is a provider of toll services as in the instant case),¹³ or in the context of a dispute between a CMRS provider and a LEC with regard to an interconnection agreement between those two entities.¹⁴

¹¹ *Sprint Communs. Co., L.P. v. Butler-Bremer Mutual Tele Co. et al.*, 2014 U.S. Dist. Lexis 141758 (N.D. Iowa Oct. 6, 2014) (Memorandum Opinion and Order Regarding Defendants’ Motion to Dismiss or Stay) at 8-9 (emphasis in original); *see also Small LEC Litigants Comments* at 14-15.

¹² *See* Sprint Comments at 3, 11; Verizon Comments at 6-7.

¹³ *See Rural Independent Telephone Association*, 476 F.3d at 575 (“ . . . Qwest filed a petition with the [Iowa Utilities Board] for a declaratory order regarding its obligations, as a transiting carrier, with respect to wireless traffic exchanged between cellular telephone companies and the rural carriers using Qwest’s network”). As noted in the Petition, a transit arrangement is one in which a tandem switch provider’s (typically a large LEC) network is utilized to indirectly connect other LECs or a CMRS provider for the exchange of traffic between those entities. *See* Petition at 16. The IXCs are not transit providers. Moreover, the FCC has recognized the distinction between the service offered by a transit provider and an IXC. “The term transport is often used interchangeably with transit service. These are two different services. Transport service is a tariffed exchanged access service. *See, e.g.*, 47 C.F.R. § 69.4. Transit service is typically offered via commercially-negotiated interconnection agreements rather than tariffs.” *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.*, 26 FCC Rcd 17663 (2011), *aff’d* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. pending* at ¶ 1311, fn. 2366; *see also* Comments of the Concerned Rural LECs, WC Docket No. 14-228, filed February 9, 2015 at 5.

¹⁴ *See Western Radio*, 678 F.3d at 973 (since both parties apparently agreed to use an IXC for the transport of certain traffic, the “case arises out of a dispute between two telecommunications carriers over their interconnection agreement. . . .”) CTIA’s reliance on *Western Radio* (*see* CTIA Comments at 5) is equally in error for the same reasons noted herein.

Second, the Small LEC Litigants note that the issues that the IXCs fail to rationally address are as telling as the extent to which the IXCs seek to have the Commission bless their efforts to unlawfully withhold payments for the exchange access services that the IXCs have ordered and used. These issues include:

1. Why, if the intraMTA rule allegedly is as clear as each of Sprint and Verizon contend it to be, did these IXCs make payments for the exchange access services they ordered and used from the implementation of the 1996 Act until only recently when the IXCs began withholding payments?
2. How can an IXC stand in the shoes of the CMRS provider when the intraMTA rule is specifically limited to the exchange of traffic between a CMRS provider and a LEC, the two parties that are exchanging the traffic that is the subject of the rule?¹⁵
3. Assuming *arguendo* that the construction of the intraMTA rule proffered by the IXCs is correct (which it is not), how are the rates, terms and conditions for the treatment of traffic established other than by application of the Act's Section 251/252 framework that governs the intercarrier arrangements for non-access telecommunications traffic (including, but not limited to, compensation), and what legal basis exists for the IXCs to claim a right to negotiate an interconnection agreement for the exchange of intraMTA traffic between a LEC and a CMRS provider?¹⁶

¹⁵ See *Small LEC Litigants Comments* at 10-13. Thus, Sprint's inference that the Commission's statements regarding "traffic studies and samples" can apply to an IXC (*see* Sprint Comments at 5) cannot be reconciled with what the Small LEC Litigants have demonstrated to be the fact – the FCC was discussing traffic exchanged between a CMRS provider and a LEC in both instances where traffic studies and samples were being addressed. *See Small LEC Litigants Comments* at 11-13.

¹⁶ Both Sprint and Verizon effectively claim that, assuming their interpretation of the intraMTA rule is adopted by the Commission, there is no need for an agreement to be in place between the LEC and an IXC for implementing the intraMTA rule as applied to IXC-carried traffic. *See* Sprint Comments at 21-24; Verizon Comments at 11-13. Sprint and Verizon have not rationally explained why their use of the LEC's network for the exchange access services that the IXCs have ordered and used can now magically be turned into a use of the LEC's networks without any rates, terms and conditions being in place or why the only service the IXCs have ordered – exchange access -- does not bind them to the LEC's tariffs under which such service is provided. Whether the traffic is non-access telecommunications traffic or is exchange access, each of these frameworks require that use of a carrier's network be subject to rates, terms and conditions. For exchange access traffic the rates, terms and conditions are established by filed tariffs. For non-access telecommunications traffic, the terms and conditions are established through

4. Assuming *arguendo* that construction of the intraMTA rule proffered by the IXCs is correct (which again it is not), on what basis may an IXC retain the windfall from the charges associated with the traffic delivered to it on 1+ presubscribed basis?¹⁷

The absence of any rational explanation or sustainable rationale from the IXCs on these issues is telling. Notwithstanding the IXCs' claims that the intraMTA rule clearly supports their positions,¹⁸ the overwhelming record developed in response to the Petition demonstrates that the opposite is true.

For the reasons stated herein and in the *Small LEC Litigants Comments*, the Small LEC Litigants support the Petition and respectfully request that the Commission reject the IXCs' claims and grant the Petition and the relief requested by the Small LEC Litigants in all respects and with due dispatch. In the absence of such action, the Small LEC Litigants respectfully

interconnection agreements under the Act's Section 251/252 framework. Both the Act and Commission-sanctioned frameworks fully anticipate that traffic shall be exchanged between parties pursuant to rates, terms and conditions not absent such terms as the IXCs apparently claim.

¹⁷ Sprint contends, albeit improperly, that the LECs should not keep the access charges they have lawfully assessed against Sprint. *See* Sprint Comments at 26-29. However, it is ironic that nowhere in this discussion is there any mention by Sprint of its return of the toll charges for the 1+ traffic that it assessed or any flow-through of any returned charges to those carriers that may have used Sprint as a wholesale carrier.

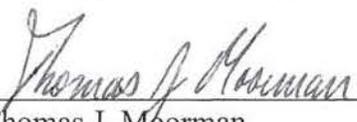
¹⁸ *See, e.g.*, Sprint Comments at 9-10; Verizon Comments at 3-10. CTIA makes a similar claim. CTIA's assertion regarding the intraMTA rule – "The intraMTA rule has always provided that all intraMTA CMRS traffic is 'local,' even if carried by an intermediate carrier such as an IXC" (CTIA Comments at 2) – is in error. As is true with respect to "transit" carriers (*see, e.g., Small LEC Litigants Comments* at 22), CTIA has not demonstrated what basis exists for classifying an IXC as an "intermediate carrier" let alone any definition for what an "intermediate carrier" actually is and any legal rights it may possess *vis-à-vis* the intraMTA rule.

request that the Commission fully explain the legal, factual and public policy basis for the construction of the intraMTA rule that is being urged upon the Commission by the IXCs.

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Respectfully submitted,

**Multi-State Small Local
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Attachment A

Multi-State Small Local Exchange Carrier Litigants

Georgia

Alma Telephone Company
Bulloch Telephone Cooperative
Darien Telephone Company
Ellijay Telephone Company
Hart Telephone Company
Pembroke Telephone Company, Inc.,
 d/b/a Pembroke Advanced Communications, Inc.
Pineland Telephone Cooperative
Plant Telephone Company dba Plant Telecommunications
Planters Rural Telephone Cooperative, Inc.
Progressive Telephone CO-OP
Public Service Telephone Company
Ringgold Telephone Company

Nebraska

Arlington Telephone Company
The Blair Telephone Company
Eastern Nebraska Telephone Company
Great Plains Communications, Inc.
The Hamilton Telephone Company
Huntel Cablevision, Inc.
The Nebraska Central Telephone Company
Northeast Nebraska Telephone Company
Rock County Telephone Company

New York

The Champlain Telephone Company,
Delhi Telephone Company
Empire Telephone Corporation
The Middleburgh Telephone Company
Ontario Telephone Company, Inc.

Pennsylvania

North Penn Telephone Company
The North-Eastern Pennsylvania Telephone Co.
Palmerton Telephone Company
South Canaan Telephone Company
Venus Telephone Corporation