

May 1, 2015

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In re Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic*, WC Docket No. 14-228

Dear Ms. Dortch:

On April 29, 2015 along with Keith Buell of Sprint, Curtis Groves of Verizon, and Joe Cavender of Level 3, I met with David Gossett, Richard Welch, Nick Bourne, and Rick Mallen (by phone) of the Office of General Counsel, Deena Shetler, Pam Arluk, Robin Cohn, and Doug Sloten of the Wireline Competition Bureau, and Peter Trachtenberg of the Wireless Telecommunications Bureau. Janette Luehring and Mark Felton from Sprint participated in the meeting by phone.

We informed the group that briefing in the district court litigation involving issues relating to those in this FCC proceeding will be completed in July and that Judge Fitzwater intends to hold oral argument in August or September.

Sprint, Verizon, and Level 3's position on the key threshold issue in both proceedings is that, as the FCC stated in ¶ 1007 of the 2011 *Connect America Fund Order*, 26 FCC Rcd 17,663, the intraMTA rule covers "all traffic exchanged between a LEC a CMRS provider that originates and terminates in the same MTA ... regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier." We pointed out that the FCC established that rule in 1996 in ¶ 1036 the *Local Interconnection Order*, 11 FCC Rcd 15,499. We also noted that in 2007 the Eighth Circuit said in its decision in *Alma Communications Co. v. Missouri PSC*, 490 F.3d 619, 625 (8th Cir. 2007), that its prior decision in *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006), "explodes the idea that a cell-phone call made and received within a major trading area is transformed into a long-distance call simply by being routed through a long-distance carrier;" and the FCC cited *Alma* and *Iowa Network Services* approvingly in the 2011 Order.

In their reply filing the LEC Petitioners for the first time attempted to distinguish those federal appellate cases, but their attempt shows the weakness of their position. On pages 20-21 of their reply comments, the LEC Petitioners say that the 2011 *CAF Order* "simply clarified that LECs must compensate CMRS providers through reciprocal compensation for terminating intraMTA calls, even when routed through an IXC and even when the call is 1+ dialed." Thus, the LEC Petitioners concede that the intraMTA rule applies, even when an IXC is involved, when a call is initiated on a LEC network and carried by an IXC to a CMRS provider. That

concession is fatal to the LEC Petitioners' position that the LECs are entitled to receive higher access charges for the identical call if it originates on a CMRS network. The notion that reciprocal compensation involves LECs paying low rates while receiving high rates for identical calls finds no support in sound policy or decisions of the Commission's or the courts. It also is inconsistent with the essence of *reciprocal* compensation.

We also pointed out that the LEC Petitioners' retroactivity argument is undermined by the Commission's recent *VoIP Symmetry Order*.

In addition, we stated that the LEC Petitioners' quasi-contract arguments based on the "voluntary payment" of access charges in the past implicated state law issues best left to the district court. Similarly, the courts are best-positioned to calculate damages.

We urged the Commission to quickly reiterate that the intraMTA rule applies to all traffic exchanged between a LEC and a CMRS provider in the same MTA, regardless of whether an IXC is involved.

Sincerely,

/s/ Christopher J. Wright

Christopher J. Wright
Counsel to Sprint Communications Co., L.P.

cc: David Gossett
Richard Welch
Nick Bourne
Rick Mallen
Deena Shetler
Pam Arluk
Robin Cohn
Doug Slotten
Peter Trachtenberg