



Advocates for Rural Broadband

Mark M. Gailey
President

Kelly Worthington
Executive Vice President

May 21, 2015

Filed Via ECFS

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

RE: WC Docket No. 14-228

Dear Ms. Dortch:

On Wednesday, May 20, 2015, Josh Seidemann representing NTCA – The Rural Broadband Association (“NTCA”), Rick Askoff (via telephone) representing the National Exchange Carrier Association, Inc. (“NECA”), and Gerry Duffy representing WTA – Advocates for Rural Broadband (“WTA”) met with Amy Bender, Legal Advisor, Wireline, to Commissioner Michael O’Rielly, to discuss intraMTA wireless traffic disputes and issues.

The Rural Associations indicated that many of their member local exchange carriers (“LECs”) are among the more than 850 defendants in the approximately seventy intraMTA lawsuits brought by Sprint Communications Company, L.P. (“Sprint”), and by MCI Communications Services, Inc. and Verizon Select Services Inc. (“MCI/Verizon”) in various federal district courts around the country. Most of these lawsuits are presently included in Multidistrict Litigation before the United States District Court for the Northern District of Texas (Civil Action No. 3:14-MD-2587-D). Initial motions to dismiss were filed with that court on May 1, 2015.

The Rural Associations support the Petition for Declaratory Ruling of the LEC Coalition that initiated this proceeding. In addition to the arguments advanced by the LEC Coalition and others, the Rural Associations have asserted: (a) that the intraMTA rule was adopted to address traffic exchange arrangements between commercial mobile radio service (“CMRS”) providers and LECs, and has focused upon such CMRS-LEC relationships without ever previously being extended or interpreted by the Commission to allow its invocation directly by interexchange carriers (“IXCs”) and other transiting or intermediary service providers¹; and (b) that, even if they had been eligible to invoke the rule, Sprint and MCI/Verizon would not be entitled to its benefits because they have wholly failed to meet their obligations to provide the timely notice and information (*e.g.*, cell site, sampling and/or traffic study data) necessary to satisfy the implementation requirement of the intraMTA rule that parties cooperate to identify, measure and/or estimate their intraMTA traffic.² The Rural Associations noted that Sprint and MCI/Verizon appear to have received monthly bills for many years from LECs containing access charges for what these IXCs knew to be comingled intraMTA traffic, and that the IXCs knowingly and repeatedly paid the intraMTA portion of these bills without dispute or complaint.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Red 15499 (1996) (“*Local Competition Order*”), at paras. 1034 and 1043; *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663 (2011) (“*USF/ICC Transformation Order*”), at paras. 990 and 1006.

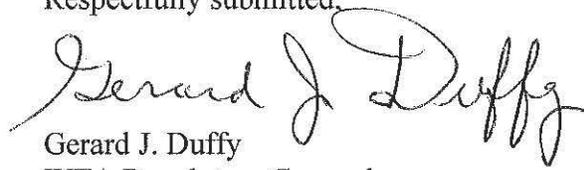
² *Local Competition Order*, at para. 1044; *USF/ICC Transformation Order* at n.2132.

The Rural Associations want the Commission issue a declaratory ruling to terminate this industry-wide controversy that not only is running up litigation costs, but also is producing operational and financial uncertainty regarding potential damages that increasingly discourages broadband investment. In particular, the Rural Associations urge the Commission to declare that retroactive refunds or damages are not appropriate or just given the absence of any prior indication that the intraMTA rule was intended or permitted to be invoked by IXC's, as well as the absence of any of the required cooperation by Sprint or MCI/Verizon to identify, measure or estimate intraMTA traffic. Sprint and MCI/Verizon have yet to provide any reasonable or credible explanation why they both paid access charges without complaint or dispute for many years for alleged intraMTA traffic they were exchanging over access trunks, or why they both failed to "discover" the intraMTA rule until 2014.

If, for any reason, the Commission does not issue a prompt declaratory ruling resolving the intraMTA traffic and retroactive refunds/damages issues, the Rural Associations request that it at least state expressly that the intraMTA rule is a federal regulation, and that the two-year statute of limitations in Section 415 of the Communications Act (rather than state contract statute of limitation periods) applies to any complaints or actions at law regarding it.

Pursuant to Section 1.1206(b) of the Commission's Rules, this submission is being filed for inclusion in the public record of the referenced proceedings.

Respectfully submitted,


Gerard J. Duffy
WTA Regulatory Counsel

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Email: gjd@bloostonlaw.com

cc: Amy Bender