

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications)	
Act of 1996)	
)	
Interconnection between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	
)	
Calling Party Pays Service Offering)	WT Docket No. <u>97-207</u>
in the Commercial Mobile Radio Services)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its
Comments in the above captioned proceeding.²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Comment Sought on Reciprocal Compensation for CMRS Providers, CC Docket Nos. 96-98, 95-185, and WT Docket No. 97-207, *Public Notice*, DA 00-1050 (rel. May 11, 2000) ("Notice").

I. INTRODUCTION AND SUMMARY

CMRS providers right to interconnection has been well established by the Commission.³ The right to interconnect alone, however, is not the end of the matter. Both Congress and the Commission have recognized the importance of a carrier's ability to recover interconnection charges and, specifically, the additional cost of terminating traffic. In Section 252 of the Communications Act of 1934 ("Act"), as amended, Congress expressly provided for the recovery of the additional cost of terminating traffic from other carriers.⁴ In the House Report, Congress

³ See Regulatory Treatment of Mobile Services, Second Report and Order in GN Docket 93-252, *Second Report and Order*, 9 FCC Rcd 1411, ¶ 235 (1994) ("CMRS Second Report") ("[C]ommercial mobile radio service interconnection with the public switched network will be an essential component in the successful establishment and growth of CMRS offerings. From the perspective of customers, the ubiquity of such interconnection arrangements will help facilitate the universal deployment of diverse commercial mobile radio services."); see also The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, *Declaratory Ruling*, 2 FCC Rcd 2910, 2915-2916 (1987).

Throughout the 1970s and 1980s the FCC took many steps to promote cellular carriers as co-carriers and requiring LECs to establish interconnection with mobile services on fair terms and conditions. The FCC initially encouraged, and shortly thereafter required, LECs to provide technically feasible trunk-side interconnection as requested by cellular carriers. The FCC's statements and rules in this regard, however, did not prevent anticompetitive activities by certain LECs. These problems led to the FCC's corrective efforts throughout the 1980s. See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, *Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408, ¶¶ 102, 118 (1994) ("The period following the Commission's early licensing of cellular service was marked, however, by difficult negotiations between LECs and cellular licensees. Further, at divestiture the BOCs renegotiated their arrangements with private carriers. For a time, several BOCs refused to provide trunkside interconnection to non-wireline carriers. . . . We recognize that new market entrants, such as PCS providers, might be concerned that despite the obligation that they negotiate in good faith, LECs would treat these new entrants in much the same way the LECs treated cellular providers in the early 1980s.").

⁴ 47 U.S.C. § 252(d)(2)(A).

clarified that "any interconnection agreement entered into must provide for mutual and reciprocal recovery of costs, and may include a range of compensation schemes. . . ." ⁵ In implementing Congress' mandate, the Commission determined that using the incumbent LECs' cost-based termination prices would be reasonable. ⁶ Recognizing, however, that this may not always be the case, the Commission adopted rules permitting carriers to submit their own forward-looking cost studies and to recover higher compensation rates when supported by those cost studies. ⁷

The growth of CMRS networks along with technological advances and increased competitive pricing has lead to more balanced traffic patterns between CMRS providers and LECs. CMRS providers are terminating significantly more LEC-originated traffic than four years ago when the Commission concluded that the vast majority of CMRS traffic originates on CMRS networks and terminates on LEC networks. As a result, the need for termination charges based on CMRS costs for CMRS terminated traffic is more important now than ever before.

As shown by Sprint PCS, certain states have apparently ignored the Commission's Rules which permit carriers to offer their own cost-based studies. While CTIA does not address the economic cost study provided by Sprint PCS, CTIA does believe that the Commission should

⁵ H.R. Rep. No. 104-204, pt. 1, at 73 (1995) (incorporated by reference in S. Rep. No. 104-230, at 125 (1996)).

⁶ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, *First Report and Order*, 11 FCC Rcd 15499, ¶ 1085 (1996) ("First Report and Order").

⁷ Id. at ¶ 1089; 47 C.F.R. 51.711(b).

make clear that state commissions are not permitted to ignore such studies, and, where appropriate, mandate the recovery of termination charges based on them.⁸

II. CMRS CARRIERS ARE ENTITLED TO COST-BASED ASYMMETRIC COMPENSATION FOR TERMINATING LEC-ORIGINATED TRAFFIC.

A. The Terms Of The Act, And The Commission's Interpretation Of It, Clearly Permit CMRS Providers To Recover Their Additional, Unique Costs For Terminating Traffic.

Section 251, while adding to the Commission's authority in Section 201, generally directs the Commission to adopt rules requiring LECs to unbundle their networks and to provide interconnection to competitors. Specifically, Section 251 requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."⁹ In addition, incumbent LECs must provide telecommunications carriers¹⁰ interconnection to the LEC network that is, among other things, "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of [Section 251] and section 252."¹¹

⁸ The Sprint PCS white paper prepared by Bridger Mitchell and Padmanabhan Srinagesh of Charles River Associates provides for an economic methodology consistent with the Commission's TELRIC requirements for calculating cost-based termination on CMRS networks. If other CMRS providers choose to proffer different analyses that meet the conditions set forth in the Commission's Rules, they should be free to do so.

⁹ 47 U.S.C. § 251(b)(5).

¹⁰ CMRS providers are considered by the 1996 Act to be telecommunications carriers. CMRS providers are, as a general rule, not considered local exchange carriers except to the extent that the Commission so determines. See 47 U.S.C. § 153(44), (49); First Report and Order at ¶ 1004 (declining to treat CMRS providers as LECs).

¹¹ 47 U.S.C. § 251(c)(2)(D).

Section 252, which generally subjects all interconnection agreements to state approval,¹² also specifies the standards governing state consideration of the reasonableness of the rates charged. Importantly, Section 252(d) states that the terms and conditions of "reciprocal compensation" will be just and reasonable only if:

- (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
- (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.¹³

Thus, under the express terms of the statute, each carrier, whether wireline or wireless, is entitled to recover from the originating carrier its additional cost of terminating traffic.

In the First Report and Order, the Commission established pricing rules pursuant to Section 252 applicable to all interconnecting carriers based on forward-looking long run economic cost.¹⁴ For the purpose of setting termination charges, the Commission made clear its interpretation that "only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes an 'additional cost' to be

¹² While Section 252 accords authority to the states to consider and approve all interconnection agreements, the standards they must use to review and approve them must be those adopted by the Commission in accordance with the pricing policies of Section 252. See 47 U.S.C. § 251(d)(1), (3); 47 C.F.R. § 51.1 et seq. In effect the role of the state under Section 252 is that of arbitrator and administrator. See AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 384-85 (1999) (holding that the Commission is charged under the Act with prescribing the requisite pricing methodology, namely TELRIC, while the states are limited to applying those standards and implementing that methodology in each particular case).

¹³ 47 U.S.C. § 252(d)(2)(A) (emphasis added).

¹⁴ First Report and Order at ¶ 672.

recovered through termination charges."¹⁵ Rather than require each carrier to conduct its own forward-looking cost study to calculate usage-sensitive termination charges, and acting within its discretionary authority, the Commission determined that the incumbent LEC's cost study could be used as a "presumptive proxy" for others to use, thus resulting in symmetrical rates for termination of local traffic.¹⁶ The Commission reasoned that using the incumbent LEC's cost-based termination prices would be reasonable because "the forward-looking economic costs should be similar in most cases . . . [and because] larger LECs are generally in a better position to conduct a forward-looking economic cost study than smaller carriers."¹⁷

When the First Report and Order was adopted, most traffic between LECs and other carriers, including wireless carriers, terminated on incumbent LEC networks. Thus, it made little sense for the Commission or competing carriers to undertake their own cost studies to recover their unique, additional costs for terminating traffic. Four years later, Sprint PCS' significant efforts suggest this may no longer be the case.

The Commission's Rules anticipate this change of circumstances. Recognizing that as competition develops traffic patterns will likely become more balanced, the Commission adopted rules that permitted carriers to submit their own forward-looking cost studies and to recover higher compensation rates when supported by those cost studies.¹⁸ Section 51.711(b) of the

¹⁵ Id. at ¶ 1057.

¹⁶ Id. at ¶ 1085.

¹⁷ Id.

¹⁸ Id. at ¶ 1089 ("If a competing local service provider believes that its cost will be greater than that of the incumbent LEC for transport and termination, then it must submit a forward-looking economic cost study to rebut this presumptive symmetrical rate. In that case, we direct state commissions, when arbitrating interconnection arrangements, to

Commission's Rules provides that carriers are entitled to asymmetrical rates for termination of local telecommunications traffic if the carrier is able to demonstrate that the network costs of the carrier exceed the costs incurred by the incumbent carrier, and that the higher rate is justified under TELRIC.¹⁹ Specifically, the Commission has stated that "LEC networks and CMRS networks use different technologies that may have different costs" and that "asymmetrical, cost-based rates have the benefit of providing each of the carriers . . . incentives to use resources such as interconnection commensurate with the actual cost of those resources."²⁰

Thus, it is clear under the Commission's Rules, and pursuant to the terms of the Act, that CMRS providers, like all telecommunications carriers, should be permitted to recover from other carriers the additional cost of terminating their traffic. To the extent the Commission can improve the state arbitration process by specifically identifying the "additional" wireless costs for termination, it should do so. At a minimum, it must make clear to states that their indifference toward the additional, unique costs of wireless carriers is contrary to the Act and contrary to the express terms of the First Report and Order.²¹

depart from symmetrical rates only if they find that the costs of efficiently configured and operated systems are not symmetrical and justify a different compensation rate.").

¹⁹ 47 C.F.R. 51.711(b).

²⁰ Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Radio Service Providers, CC Docket No. 95-185; CC Docket No. 94-54, *Notice of Proposed Rulemaking*, 11 FCC Rcd 5020, ¶ 79 (1996).

²¹ See First Report and Order at ¶ 1089; see also id. at ¶ 1025 ("Although we are applying sections 251 and 252 to LEC-CMRS interconnection at this time, we preserve the option to revisit this determination in the future. We note that Section 332 generally precludes states from rate and entry regulation of CMRS providers, and thus, differentiates CMRS providers from other carriers. We also recognize that, based on the combined record in CC Docket No. 95-185 and CC Docket No. 96-68, there have been instances in which

B. Changed Circumstances Require The FCC To Revisit The Issue Of LEC-CMRS Interconnection Compensation Rates And To Make Clear That CMRS Providers Are Entitled To Recover Cost-Based Terminating Compensation For LEC-Originated Traffic.

When the Commission adopted the First Report and Order, LEC-CMRS traffic was substantially unbalanced, with most LEC-CMRS traffic originating on CMRS networks and terminating on LEC networks.²² Accordingly, the focus of the Commission's attention was directed at LEC termination charges. Logically, if most traffic was terminated on LEC networks, the Commission's scarce resources should be focused on the charges for those services.

Advances in wireless technology and revised pricing mechanisms have significantly modified the way wireless telecommunications are used today. Where subscribers once left their wireless phones off because of shorter battery lives and the concern for costs associated with receiving incoming calls, many subscribers today keep their phones on for days without recharging batteries and with less concern for costs associated with incoming calls.²³ In fact, these changes in technology along with progressive pricing mechanisms offered by many CMRS providers, such as "first incoming minute free," have encouraged a broader segment of the

state commissions have treated CMRS providers in a discriminatory manner with respect to the terms and conditions of interconnection. Should the Commission determine that the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory, the Commission may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates.") (citations omitted).

²² See First Report and Order at ¶ 1087, n.2624.

²³ See The Unwired Consumer: Consumer Telephony in a Wireless World, The Insight Research Corporation, September 1999, <www.insight-corp.com/unwired.html> (indicating that the reduction in per minute prices for wireless service is driving consumers to use wireless service as their primary means of communication).

population to increase their use of wireless phones.²⁴ Ultimately, this trend has led to shifts in traffic patterns and more balanced LEC-CMRS traffic as wireline callers initiate more calls to wireless subscribers.

The shift toward more balanced traffic requires that the Commission take steps to ensure that carriers terminating traffic are adequately compensated for the service they are providing to others.²⁵ The Commission should reexamine the status of LEC-CMRS interconnection and make clear that CMRS providers are entitled to cost-based compensation (pursuant to TELRIC) based on the unique aspects of their networks.²⁶ Both the Act and the Commission's Rules firmly establish such rights. To the extent states are denying CMRS providers adequate compensation, the Commission must step in and prevent this discriminatory treatment.

²⁴ See CREDIT SUISSE / FIRST BOSTON, Hey Babe, Take a Walk on the Wireless Side . . ., U.S./Wireless Telecommunications Services, Industry Update, at 22 (May 5, 2000); Bob J. Kurtz, "Smaller? Lighter? Smarter?," PCS Focus 97/98, at 15.

²⁵ See Pacific Bell v. Cook Telecom, Inc., 1998 U.S. Dist. LEXIS 14430, *20 (N.D. Cal. 1998), aff'd, 197 F.3d 1236 (9th Cir. 1999) (noting that carriers "receive[] a benefit when another carrier terminates a call . . . [and t]he Act . . . require[s] carriers to pay compensation for calls that originate in their network facilities and that are terminated on the facilities of another network. In short, the Act requires the originating carrier to pay compensation for the benefit of having its calls delivered.").

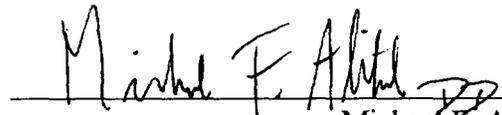
²⁶ See generally, Regulatory Treatment of Mobile Services, GN Docket 93-252, PR Docket 93-144, PR Docket 89-553, Third Report and Order, 9 FCC Rcd 7988, ¶ 39 (1994) (" . . . the best way to ensure that we create an enduring regulatory system that applies comparable technical and operational rules to similar CMRS licensees, is to anticipate the potential for increasing competition by providing sufficient flexibility to licensees in our rules. This flexibility will enable them to adapt their services to meet customer demands. If the Commission were to ignore the accelerating pace of technology or the ability of CMRS providers to respond to growing and changing consumer demand for mobile radio services, our technical and operational rules might inhibit rather than promote competition and growth in the mobile services marketplace.").

III. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission clearly establish the right of CMRS providers to recover asymmetrical compensation for their additional costs for terminating local traffic and ensure that states act accordingly.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
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