Attachment A

History of LEC/CMRS Reciprocal Compensation

USTA claims that Sprint PCS "has forgotten its past."[1] In fact, it is USTA and the other Sprint PCS opponents that have "forgotten" the past. Specifically, there is no basis to the opponents' assertions that it is Sprint PCS that seeks "a rule change" and wants establish an "entirely new intercarrier compensation principle."[2] To the contrary, while U S WEST on the one hand says that "Sprint PCS asks the Commission to reverse an earlier decision,"[3] it inconsistently recognizes the FCC has "acknowledged the possibility that some non-incumbents could have substantially different network costs from the incumbent LECs . . . [and it] specifically contemplated that wireless carriers' concerns would be addressed through this [state arbitration] process."[4]

When cellular networks were constructed 15 or so years ago, ILECs charged cellular carriers to terminate mobile-to-land calls but refused to compensate them for terminating land-to-mobile calls (one form of asymmetrical compensation). In 1987

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[1] USTA at 4.

[2] BellSouth at i and AT&T at 5. *See also* USTA at 3 (Sprint PCS analysis is "at odds with the Commission's existing pricing rules."); AT&T at 5 (Sprint PCS wants FCC to "reverse" course); at 7 (FCC should "refrain from considering changes" to its existing rules); USTA at 3 (Sprint PCS position is "at odds with the Commission's existing pricing rules"); at 10 (Sprint PCS seeks "illegal reciprocal compensation); BellSouth at 6 ("Sprint PCS is clearly asking the Commission to change the rules").

[3] U S WEST at i.

[4] *Id.* at 4. *See also* GTE at 2 ("The Commission has already recognized that a CMRS provider is entitled to compensation for its 'additional costs' and has established a mechanism for recovery of these costs.").

the FCC ordered ILECs to compensate cellular carriers for terminating the ILEC's traffic — at least for interstate land-to-mobile calls.[5] (At the time, Section 2(b) of the Communications Act preserved to states authority over intrastate interconnection compensation arrangements). Most ILECs ignored this FCC directive.

Congress, in the Omnibus Budget Reconciliation Act of 1993, fundamentally altered the federal/state relationship relative to CMRS providers and LEC/CMRS interconnection in order to establish "a federal regulatory framework to govern the offering of all commercial mobile services" that "by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[6] With its 1993 amendments, Congress prohibited states from regulating CMRS entry or rates.[7] It also modified Sections 2(b) and 332(c)(1) to give the FCC express authority to regulate LEC/CMRS interconnection, including interconnection pertaining to intrastate traffic.[8]

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[5] *See Need to Promote Competition and Efficient Use of Spectrum* 2 FCC Rcd 2910, 2915-16 ¶¶ 42-49 (1987), *aff'd*, 4 FCC Rcd 2369, 2372-73 ¶¶ 20-29 (1989). For example, in its unsuccessful reconsideration petition, BellSouth argued that reciprocal compensation for LEC/cellular interconnection "is inappropriate. BellSouth maintains that the Commission's pro-competitive goals would be better promoted by requiring cellular companies to recover their costs either from end users or interexchange carriers." *Id.* at 2372 ¶ 21.

[6] H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 490 (1993); H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 260 (1993).

[7] *See* 47 U.S.C. § 332(c)(3)(A). The FCC has held that this prohibition on state rate regulation encompasses the rates CMRS providers charge for call termination. *See CMRS Interconnection Obligations,* 9 FCC Rcd 5408, 5463 ¶ 131 (1994)(This statute "clearly preempts state regulation of the rates of [CMRS] interconnection."); *Second CMRS Report,* 9 FCC Rcd 1411, 1500 ¶ 237 (1994)("We agree . . . that the statutory language is clear that . . . the statute preempts state regulation of interconnection rates of CMRS providers."). *Compare Louisiana CMRS Rate Regulation Order,* 10 FCC Rcd 7898, 7908 ¶ 47 (1995)("Louisiana's regulation of the intercon-nection rates changed by [LECs] to CMRS providers appears to involve rate regulation only of [LECs], not the CMRS providers, and thus does not appear to be circumscribed in any way by Section 332(c)(3).").

[8] *See* 47 U.S.C. §§ 152(b), 332(c)(1)(B). Section 332(c)(1)(B) empowers the FCC to order LECs to provide interconnection to CMRS providers "pursuant to the provisions of section 201." Section 201(b), in turn, authorizes the FCC to regulate "[a]ll charges . . . for and in connection with such communication service."

As the Eighth Circuit has held, with these 1993 amendments "the Commission has the authority to issue rules of special concern to the CMRS providers," including interconnection rules governing *intrastate* LEC/CMRS interconnection.[9]

The FCC exercised its new authority in 1994 and again required LECs to compensate CMRS providers for terminating land-to-mobile traffic. Rule 20.11(b)(1) provides:

> A local exchange carrier *shall* pay reasonable compensation to a [CMRS] provider in connection with terminating traffic that originates on facilities of the local exchange carrier (emphasis added).

Most ILECs ignored this new reciprocal compensation rule as well.[10] Some ILECs even charged CMRS providers to receive land-to-mobile traffic.[11] In addition, some ILECs magnified the discrimination by charging CLECs for call termination only a small fraction of what they were charging CMRS providers.[12] The FCC ruled in August 1996 that these ILEC practices were unlawful and contravened Rule 20.11:

> Based on the extensive record in the LEC-CMRS Interconnection proceeding . . . , we conclude that, in many cases, incumbent LECs appear to have imposed arrangements that provide little or no compensation for calls terminated on wireless networks, and in

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[9] *Iowa Utilities Board* v. *FCC,* 120 F.3d 753, 800 n.21 (8th Cir. 1997). Notably, no one challenged this holding before the Supreme Court.

[10] According to AT&T, even two years after the adoption of Rule 20.11, only one LEC (NYNEX) had agreed to pay reciprocal compensation to AT&T Wireless. *See* AT&T Comments, Docket 95-185, at 8 (March 4, 1996). *See also* Bell Atlantic NYNEX Mobile Comments, Docket 95-185, at 4 (March 4, 1996)(BAM receives reciprocal compensation in only one of the 19 states where it provides CMRS). In 1995, BAM paid LECs $50 million in reciprocal compensation while receiving only $1 million from LECs. *See id.* at 5.

[11] *See* Bell Atlantic NYNEX Mobile Comments, Docket 95-185, at 4-5 (March 4, 1996)(identifying states where it was required to pay the LEC to receive LEC traffic).

[12] *See* Bell Atlantic NYNEX Mobile Comments, Docket 95-185, at 5-6 (March 4, 1996)(NYNEX charges CLECs 0.98 cents per minute for call termination with discounts of up to 70% for off peak calls, while charging BAM 2.59 cents per minute with no off peak discounts).

> some cases imposed charges for traffic originated on CMRS providers' networks, both in violation of section 20.11 of our rules.[13]

On December 15, 1995, just weeks before the 1996 Act was enacted, the FCC commenced its Docket 95-185 rulemaking because of its "concern" that its existing LEC/CMRS interconnection compensation policies may not be doing "enough to encourage the development of CMRS, especially in competition with LEC-provided wireline service":

> LECs unquestionably still possess substantial market power in the provision of local telecommunications services. If commercial mobile radio services . . . are to begin to compete directly against LEC wireline services, it is important that the prices, terms, and conditions of interconnection arrangements not serve to buttress LEC market power against erosion by competition.[14]

The FCC proposed that LECs and CMRS providers use "bill and keep," stating that bill-and-keep appeared to represent "the best interim solution" to govern the compensation arrangements between LECs and CMRS providers.[15]

Sprint PCS supported bill-and-keep,[16] as did most other non-paging CMRS providers.[17] In contrast, ILECs uniformly opposed bill-and-keep, arguing that

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[13] *First Local Competition Order,* 11 FCC Rcd 15499, 16044 ¶ 1094 (1996).

[14] *LEC/CMRS Interconnection NPRM,* 11 FCC Rcd 5020, 5022 ¶ 2 (1995).

[15] *See id.* at 5048 ¶ 69.

[16] *See* USTA at 5-6. USTA claims that the position Sprint PCS is taking today is "radically different" from that it took four years ago. *Id.* at 10. Sprint PCS still favors bill-and-keep. USTA and other ILECs opposed bill-and-keep and argued against mandatory symmetrical rates. The FCC sided with the ILEC industry. Accordingly, Sprint PCS today seeks only to apply the FCC's *existing* rules — *the very rules that ILECs favored.*

[17] *See First Local Competition Order,* 11 FCC Rcd at 16052 ¶ 1107 ("CMRS providers, with the exception of paging providers, generally support the Commission's proposal to adopt an interim bill-and-keep compensation mechanism."). There is, therefore, no support whatever for U S WEST's repeated (and unsupported) assertion that CMRS providers favored an arrangement were only symmetrical compensation was available. *See* U S WEST at i, 1, 4, and 6.

such an arrangement would fail the "additional costs" requirement of section 252(d)(2) because, they said, it would effectively price termination at zero.[18]

In February 1996, Congress enacted the Telecommunications Act of 1996 in order to establish "a new model for interconnection."[19] Section 251(b) imposes a duty on LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[20] Congress further explained in considerable detail what was required for reciprocal compensation. It specified in Section 252(d) that "each carrier" may recover its "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."[21] Congress also defined with precision the specific costs that each carrier may recover: "a reasonable approximation of the additional costs of terminating such calls."[22]

The Commission commenced its Docket 96-98 rulemaking in April 1999, and it requested comment on the Section 252(d) reciprocal compensation statute.[23] Sprint PCS and other CMRS providers again argued in favor of mandatory bill-and-keep.[24] ILECs again opposed bill-and-keep and further argued that the Act precluded the FCC from requiring symmetrical rates. BellSouth stated, for example, that "[t]he Act is quite specific that reciprocal compensation must be based on 'the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's

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[18] *See First Local Competition Order,* 11 FCC Rcd at 16047 ¶ 1107.

[19] H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess., at 121 (Jan. 31, 1996).

[20] 47 U.S.C. § 251(b)(5).

[21] *Id.* at § 252(d)(2)(A)(i).

[22] *Id.* at § 252(d)(2)(A)(ii).

[23] *See Local Competition NPRM,* 11 FCC Rcd 14171, 14250-51 ¶¶ 235-38 (1996).

[24] *See, e.g.,* USTA at nn. 8 and 10-12.

network facilities of calls that originate on the network facilities of the other carrier's network'":

> The Commission is not free to rewrite the statutory requirements and require symmetry. . . . The Act allows for these differences [in costs among interconnecting carriers] as well as the opportunity of the carriers to recover their respective costs.[25]

USTA similarly argued that Section 252(d)(2) "requires — in no uncertain terms — that state commissions provide for mutual compensation based on cost":

> This language [in Section 252(d)(2)] strong implies that "each carrier" should recover its own costs. And one carrier's costs are likely to be quite different from another carrier's costs.[26]

The FCC, in its Dockets 95-185/96-98 *First Local Competition Order*, decided not to adopt its proposal to use bill-and-keep for all LEC/CMRS interconnection.[27] Largely adopting the ILEC arguments, the FCC determined that the costs of call termination "are not *de minimis*" and consequently, that bill-and-keep was appropriate only when traffic between two carriers is "roughly balanced."[28] In circumstances where bill-and-keep is not appropriate, the FCC decided to use a presumptive symmetrical reciprocal compensation regime, whereby the ILEC would pay the interconnecting carrier the same rate that it charged that carrier.[29] The FCC adopted a "presumptive symmetrical rate"

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[25] BellSouth Comments, Docket 96-98, at 73 (May 16, 1996), *quoting* 47 U.S.C. § 252(d)(2).

[26] USTA Comments, Docket 96-98, at 82-83 (May 16, 1996).

[27] *See First Local Competition Order,* 11 FCC Rcd at 16054-58 ¶¶ 1111-18.

[28] *Id.* at 10055 ¶ 1112.

[29] *See id.* at 16042 ¶ 1089. The FCC did carve out an exception for paging carriers, ruling that they were not entitled to take advantage of reciprocal compensation and that had to prepare cost studies as a condition to receiving reciprocal compensation. *See id.* at 16043-44 ¶¶ 1092-93.

regime largely for administrative efficiency and to relieve competitive carriers of the burden of preparing cost studies.[30]

Importantly, to address the concerns raised by ILECs and others, the FCC also gave interconnecting carriers the option to submit a forward-looking economic cost study to rebut this presumptive symmetrical rate so that they could receive in reciprocal compensation rates based on their own costs rather than the costs of the ILEC.[31] FCC Rule 51.711(b) provides in pertinent part:

> A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC . . . proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology . . . that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC . . . exceed the costs incurred by the incumbent LEC . . . and, consequently, that such that a higher rate is justified.

* * *

Based on the foregoing, it is apparent that the opponents are wrong when they assert that Sprint PCS seeks "a rule change" and wants to establish "an entirely new intercarrier compensation principle." To the contrary, Sprint PCS wants only to invoke *existing* FCC rules to its mobile network so that it can recover in reciprocal compensation rates based on its own costs rather than the costs of another carrier.

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[30] *See id.* at 16041-42 ¶ 1088.

[31] *See id.* at 16042 ¶ 1089. Notably, the FCC adopted its asymmetrical compensation rule with full knowledge that CMRS call termination costs may be higher than LEC call termination costs. *See, e.g., id.* at 16057 ¶ 1117 and n.2727.

Equally baseless is U S WEST's charge that Sprint PCS wants the Commission "to *bar* states from using symmetrical rates."[32] Sprint PCS does not challenge the Commission's presumptive symmetrical rate regime set forth in Rule 51.771(a).

[32] U S WEST at 7 (emphasis in original). *See also* U S WEST at I ("Sprint PCS asks . . . whether CMRS providers should be exempt from the general presumption that interconnecting carriers will charge symmetrical prices for transport and termination.").

Sprint PCS Exhibit 1
CC Docket Nos. 95-185, 96-98. 97-207
13-Jun-00

U S WEST/CMRS Symmetrical Rate Arbitrations and Appeals

At issue in the decisions below was which symmetrical rate a CMRS provider may use with U S WEST Communications: USWC's end office rate or its tandem rate.

State	Symmetrical Comp. Rate	
Arizona	Tandem	Federal court rejects USWC's arguments and affirms PUC decision to use USWC tandem rate. *U S WEST v. Jennings,* 46 F. Supp. 2d 1004 (D. Az., May 4, 1999).
Colorado	End Office	*Western Wireless Corp.,* Docket No. 96A-410T (Colorado, Dec. 31, 1996).
Idaho	End Office	*Western Wireless Corp.,* WST-T-96-1 (Idaho, Dec. 26, 1996).
Minnesota	Tandem	Federal court affirms PUC decision to use USWC tandem rate. *U S WEST* v. *Minnesota PUC,* 55 F. Supp. 2d 968 (D. Minn., March 31, 1999). USWC's appeal of this decision is pending. *See* No. 99-3080 (8th Cir.).
Montana	End Office	*Western Wireless Corp.*, Order No. 59496 (Montana, Dec. 27, 1996), *aff'd on other grounds*, *U S WEST* v. *Anderson,* CV 97-9-H-CCL (D. Mont., Sept. 14, 1999).
Nebraska	End Office	PUC rejects ALJ recommendation to use USWC tandem rate. *Western Wireless Corp.,* No. C-1409 (Nebraska, Feb. 28, 1997).
New Mexico	Tandem	Federal court affirms PUC decision to use USWC tandem rate. *U S WEST* v. *Serna,* Civ. No. 97-124 (D.N.M., Aug. 25, 1999).
North Dakota	Tandem	Federal court affirms PUC decision to use USWC tandem rate.

		U S WEST v. *Reinbold,* No. A1-97-025 (D.N.D., May 14, 1999).
Oregon	End Office	*Western Wireless Corp.,* ARB 7, Order No. 97-033 (Oregon, Jan. 24, 1997).
South Dakota	End Office	*Western Wireless Corp.,* TC96-160 (South Dakota, Dec. 24, 1996).
Utah	Tandem	Federal court affirms PUC decision to use USWC tandem rate. *U S WEST* v. *Utah PSC,* 75 F. Supp. 2d 1284 (D. Utah, Nov. 23, 1999).
Washington	End Office	*AT&T Wireless Services,* No. UT-960381 (Washington, Oct. 6, 1997). However, the same PUC further found that CLEC switches were entitled to compensation at USWC's tandem rate, and this PUC decision was affirmed in the courts. *See U S WEST* v. *MFS,* No. CV-97-00222-WLD (W.D. Wash.), *aff'd,* 193 F.3d 1112 (9th Cir., Oct. 8, 1999).
Wyoming	Tandem	*Western Wireless Corp.,* Docket No. 70000-TF-96-308 (Wyoming, Dec. 27, 1996).

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 13th day of June 2000, I served a copy of the foregoing Sprint PCS Reply Comments by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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