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FEDERAL COMMUNICATIONS COMMISSION
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June 13, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply Comments of VoiceStream Wireless Corporation in CC Docket Nos. 96-98, 95-185 and WT Docket No. 97-207

Dear Ms. Salas:

Enclosed for filing are an original plus four copies of the Reply Comments of VoiceStream Wireless Corporation in the above-captioned dockets.

Please date-stamp the enclosed additional copy of the Reply Comments upon receipt and return it to the courier. Should you have any questions, please contact the undersigned.

Respectfully submitted,

Sana D. Coleman

Douglas G. Bonner
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Counsel for VoiceStream Wireless

cc: Ms. Stacy Jordan (hand delivery)
Ms. Wanda Harris (hand delivery)
Mr. Jonathan M. Chambers (via facsimile)

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF
VOICESTREAM WIRELESS CORPORATION

The Commission's authority to implement national guidelines for CMRS reciprocal compensation is undisputed.[1/] VoiceStream urges the Commission to exercise its authority to clarify that CMRS providers are entitled to recover the full symmetrical tandem rate for terminating calls that do not originate on their networks. Moreover, in accordance with the "pick and choose" rules affirmed by the Supreme Court,[2/] the Commission should clarify further that

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1/ Commenters do not dispute, and PCIA expressly acknowledges, that *AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721 (1990) provides that in cases arising specifically out of the *Local Competition First Report and Order*, the 1996 Act establishes a new paradigm in which "the state commission's participation in the administration of the new *federal* regime is to be guided by Federal-agency regulations." 119 S.Ct. 721, 730 (emphasis in original).

2/ 47 C.F.R. § 51.809.

ILECs must provide, on a consistent basis, previously arbitrated symmetrical tandem interconnection rates between ILECs and CMRS providers.

I. Discussion.

A. VoiceStream Agrees that Congruity in Cost Recovery Makes Sense in Determining Reciprocal Compensation Entitlements Owed to CMRS Providers.

AT&T coins it best when its states that "congruity in cost recovery makes sense."[3] VoiceStream could not agree more. What makes sense in establishing an equitable cost recovery regime is for the Commission to account for the additional costs incurred by CMRS providers when terminating calls that originate on the networks of other LECs. As noted by Western Wireless, CMRS providers incur significant traffic sensitive costs that traditional wireline networks do not incur (*e.g*, the cost of transmitting traffic over the scarce spectrum used to complete the last leg of a CMRS call).[4] Factoring in such costs is not a novel concept - - in fact, as cited by Western Wireless, the Commission has determined that legally compensable "additional costs" are the "traffic-sensitive" components of the various network elements for traffic termination.[5] Moreover, the Commission has clearly indicated that the states must consider new technologies, including wireless networks, in determining additional costs incurred

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[3] AT&T Comments at 6.

[4] Western Wireless Comments at 4.

[5] Western Wireless Comments at 3 (citing *Local Competition Order* at 1057).

by a LEC when transporting and terminating a call that originates on a competing carrier's network.

Oddly, AT&T, US WEST, and BellSouth do not address this clear admonishment in their comments. AT&T even goes so far as to state that "the 1996 Act does not require the Commission to establish disparate charges based on the type of technology chosen by the terminating carrier."[6] It is unclear what basis AT&T has for making this statement. It is clear, however, that AT&T has chosen to ignore the express provisions of paragraph 1090 of the *Local Competition Order*[7] and FCC rules that attempt to even the playing field in cost recovery, in order to cloud the record with respect to what factors may be assessed to determine additional costs incurred by CMRS providers when terminating the traffic of other LECs. To settle the apparent confusion of opponents to Sprint PCS's proposal, the Commission should establish a model for evaluating costs incurred by CMRS providers that accounts for the additional costs incurred by the unique architecture of wireless networks.

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[6] AT&T Comments at 2-3.

[7] "[S]tates may establish transport and termination rates in the arbitration process that vary according to whether the traffic is routed through a tandem switch or directly to the end-office switch. In such event, states shall also consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by an incumbent LEC's tandem switch and thus, whether some or all calls terminating on the new entrant's network should be priced the same as the sum of transport and termination via the incumbent LEC's tandem switch." *Local Competition Order* at 1090.

B. Commission Guidance is Required to Prevent the State-by-State Stratification of Nationwide Wireless Footprints Currently Being Established by CMRS Providers.

VoiceStream has established a national and international presence through quality service provision in numerous states and Major Trading Areas ("MTAs").[8] As noted by PCIA, the Commission has properly acknowledged in the past that wireless services operate largely without regard to state boundaries.[9] CMRS providers' license areas are established under federal rules, and in many cases are larger than the areas that state commissions have established for incumbent LECs' local service areas.[10] Because wireless licensed territories are federally authorized and vary in size, the Commission has concluded that the MTA serves as the most appropriate definition of "local service area" as applicable to CMRS traffic for purposes of reciprocal compensation under section 251(b)(5), as it avoids creating artificial distinctions between CMRS providers. Thus, the Commission requires that traffic to or from a CMRS network that originates and terminates within the same MTA be subject to transport and termination rates under Section 251(b)(5), rather than interstate and intrastate access charges.[11]

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[8] Different types of wireless carriers have different FCC-authorized licensed territories - the largest of which is the Major Trading Area ("MTA").

[9] PCIA Comments at 8.

[10] *Local Competition Order* at 1043.

[11] *Local Competition Order* at 1036. The Commission's conclusion in this regard also illustrates that in many respects the Commission has already contemplated the notion that reciprocal compensation for local calls is intimately interrelated with other carrier compensation schemes, and is therefore, not the slippery slope that AT&T would have the Commission fear. See AT&T Comments at 6.

At least one state Commission, the Minnesota Commission, has concluded correctly that an incumbent LEC has an obligation under section 251(b)(5) to compensate a CMRS carrier, on a reciprocal basis, for any transport and termination service which that carrier provides with regard to any intraMTA traffic, including that which crosses any LATA boundaries. As affirmed by the U.S. District Court, District of Minnesota, it is the MTA that controls, not the LATA.[12] The Commission should clarify this important distinction as it seeks to adopt a CMRS reciprocal compensation cost model that accurately reflects the architecture of CMRS networks.

C. Current Procedures for Proving Up Asymmetrical Rates do Not Present a Viable Remedy for Most CMRS Providers at this Time

US West argues that the alternate asymmetrical cost procedure is a "solution" for the problem identified by Sprint PCS concerning the failure of states to accurately consider the additional costs incurred due to the unique network configurations of CMRS carriers.[13] VoiceStream disagrees. Proving up asymmetrical rates is costly, burdensome, and simply not a viable alternative for many CMRS carriers at this time. CMRS carriers would have to develop individual cost studies for each state based on state-specific market variables. The cost would be even higher in rural states where there are proportionately fewer customers to justify such a cost. It is cost prohibitive for CMRS providers to conduct multiple state cost studies as each study may cost $300,000 or more. Further, because of the proprietary and confidential nature of data

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[12] *US West Communications, Inc. v. Minnesota PUC*, No. 98-914 ADM/AJB at 19 (D.Minn.1999).

[13] US West Comments at 3; *See also* GTE Comments at 2-4.

collected for cost studies, CMRS carriers are not able to benefit from the efficiencies of performing studies with similarly situated, competing carriers.

Significantly, without any national standards established by the Commission, even if CMRS carriers could devise a cost-efficient means to perform multistate asymmetrical cost studies, there is no assurance that state commissions will reach the correct determination that a CMRS carrier is entitled to the asymmetrical rate so requested.[14] State commissions should not have to make determinations by analogy to other networks- - the Commission should exercise its authority to provide a clear assessment of traffic-sensitive costs for CMRS networks and to clarify that CMRS providers can recover full symmetrical tandem rates.

II. Conclusion

In accordance with the foregoing, VoiceStream urges the Commission to establish national guidelines to clarify that CMRS providers are entitled to recover the full symmetrical tandem rate for terminating calls that do not originate on their networks.

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[14] As Western Wireless points out, at least two state commissions failed to permit paging carriers to recover the traffic-sensitive portions of their delivery networks. Western Wireless Comments at 5 (citing *Petition for Arbitration of an Interconnection Agreement Between AirTouch Paging, and US West Communications, Inc.*, Order Modifying Arbitrator's Report, and Approving Interconnection Agreement with Modifications, Docket No. UT-990300, 1999 Wash. UTC LEXIS 1999 (Washington Utilities and Transportation Comm'n) (July 1, 1999) ("*AirTouch Paging*"); *Petition of Cook Telecom, Inc, for Arbitration Pursuant to §252(b) of the Telecommunications Act of the Rates, Terms and Conditions of Interconnection with Pacific Bell*, Order Denying Rehearing of Decision, Cal.Pub.Util.Comm'n, No. A. 97-02-003, 1997 Cal. PUC LEXIS 993 (California Public Utilities Commission (Sept. 24, 1997), *aff'd Pacific Bell v. Cook Telecom, Inc.*, 197 F.3d 1236 (9th Cir. 1999) ("*Cook Telecom*").

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Dated: June 13, 2000

CERTIFICATE OF SERVICE

I, Joan Rice, do hereby certify that on the 13th day of June, 2000, a copy of the foregoing **Reply Comments of VoiceStream Wireless Corporation** was caused to be served, via first-class United States Mail, postage prepaid, upon the persons listed below.

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