

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Developing a Unified Intercarrier) CC Docket No. 01-92
Compensation Regime)
)

**REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

Philip L. Verveer
Sue D. Blumenfeld
David M. Don
Kelly N. McCollian

Michael F. Altschul
Senior Vice President, General Counsel

WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Suite 600
Washington, D.C. 20036
(202) 328-8000

CELLULAR TELECOMMUNICATIONS

& INTERNET ASSOCIATION

1250 Connecticut Avenue, N.W.
Suite 800

Washington, D.C. 20036
(202) 785-0081

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The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits its reply comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The comments filed in response to the Notice demonstrate that there is widespread agreement that the Commission has independent jurisdiction under section 332 of the Communications Act of 1934, as amended (“Act”), to regulate LEC-CMRS interconnection. A few commenters, however, mistakenly assert that the Commission’s jurisdiction does not extend

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, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. Apr. 27, 2001) (“Notice”).

to LEC-CMRS interconnection rates, and thus believe that the Commission lacks authority to mandate bill and keep for LEC-CMRS interconnection under section 332. As CTIA has previously explained, however, the Commission and the courts have repeatedly confirmed the Commission's authority under sections 332 and 201 of the Act to not only require LEC-CMRS interconnection, but also to set the rates for such interconnection. The Commission should take this opportunity to assert its jurisdiction over interconnection rates, and immediately order bill and keep for LEC-CMRS interconnection.

The Commission should also confirm that the MTA is the CMRS local calling area boundary. Certain carriers continue to ignore this rule, and the Commission should clarify that those carriers will be subject to enforcement action if they continue to disregard the Commission's rules. Similarly, the Commission should confirm that CMRS carriers are entitled, by law, to collect access charges for inter-MTA traffic that terminates on CMRS networks.

Finally, since no commenter addressed CMRS carriers' use of virtual NXXs and consumers derive important benefits from the use of virtual NXXs, the Commission should allow CMRS providers to continue to have the right to use them. As CTIA explained in its comments, many of the issues raised in the Notice, and subsequently by commenters, with respect to virtual NXXs are not applicable to CMRS providers, and thus no change in the Commission's rules is warranted.

II. THE COMMISSION HAS PLENARY AUTHORITY UNDER SECTION 332 TO REGULATE CMRS INTERCONNECTION RATES.

In its comments, CTIA explained the well established authority of the Commission under section 332 of the Act to order bill and keep for LEC-CMRS interconnection.³ Section 332,

³ Comments of CTIA, at 3-15 (filed Aug. 21, 2001).

along with section 201, gives the Commission independent authority, distinct from the authority granted in sections 251 and 252, to regulate not only CMRS interconnection, but also the rates for CMRS interconnection. The Commission has found this authority previously in sections 332(c)(1)(B) and 201, and courts have found such authority in section 332(c)(3)(A). Nothing in the comments offers any reason why the Commission should not follow these precedents.

As an initial matter, all but two of the commenters addressing the matter agree that section 332 grants the Commission exclusive jurisdiction over all CMRS rates.⁴ The Rural Telecommunications Group notes in its comments that section 332 “clearly establishes the Commission’s exclusive, plenary jurisdiction” over CMRS rates and entry, and LEC-CMRS interconnection.⁵ PCIA also agrees that Congress adopted section 332, in part, to give the Commission authority to implement a nationwide, uniform CMRS regime.⁶ It notes that the Eighth Circuit “agreed that the Commission’s authority with respect to CMRS is broader than its authority under [sections] 251/252 and that the Commission had the authority to adopt rules of ‘special concern’ for CMRS carriers.”⁷ AT&T Wireless comments that “the *Iowa Board*

⁴ See, e.g., Comments of AT&T Wireless Services, Inc., at 16-19 (filed Aug. 21, 2001) (“AT&T Wireless”); Comments of Verizon Wireless, at 5-8 (filed Aug. 21, 2001); Comments of VoiceStream Wireless Corporation, at 2-4 (filed Aug. 21, 2001); Comments of Triton PCS License Company, L.L.C., at 3-5 (filed Aug. 21, 2001); Comments of Mid-Missouri Cellular, at 25 (filed Aug. 21, 2001); Comments of the Allied Personal Communications Industry Association of California, at 7-8 (filed Aug. 21, 2001).

⁵ Comments of The Rural Telecommunications Group, at 2 (filed Aug. 21, 2001).

⁶ Comments of Personal Communications Industry Association, at 36 (filed Aug. 21, 2001) (“PCIA”).

⁷ Comments of PCIA, at 37 (citing *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part, rev’d in part sub. nom.*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), *decision on remand*, *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert.*

decision unequivocally establishes that the Commission has the right to establish rates for CMRS-ILEC interconnection and to preempt any rates the state might establish.’⁸ AT&T Wireless also states that under section 332, “state commissions must follow the Commission’s direction on CMRS-ILEC interconnection and the state commissions’ actions under section 252 are subject to preemption by the Commission to the extent it chooses to exercise its jurisdiction.’⁹

Despite the agreement among many commenters that the Commission has plenary authority over CMRS interconnection rates, two commenters contend that the Commission’s section 332 jurisdiction extends only to end-user rates, and thus the Commission does not have authority to establish bill and keep for LEC-CMRS interconnection. The People for the State of California and the California Public Utilities Commission (“California PUC”) and the Michigan Exchange Carriers Association (“MECA”) seek a narrow interpretation of section 332 that is inconsistent with judicial and FCC precedent. Specifically, the California PUC and MECA assert that although section 332(c)(3)(A) precludes states from regulating CMRS end-user rates, it permits state commissions to regulate the rates charged for carrier-to-carrier interconnection compensation.¹⁰ These commenters ignore precedent that acknowledges that section 332

granted in part sub nom., Verizon Communications Inc. v. FCC, 121 S.Ct. 877-79 (2001) (“Iowa Utilities”).

⁸ Comments of AT&T Wireless, at 17.

⁹ Id. at 18-19.

¹⁰ Comments of the People of the State of California and the California Public Utilities Commission, at 11 (filed Aug. 21, 2001) (“California PUC”); Comments of the Michigan Exchange Carriers Association at 35-36 (filed Aug. 21, 2001) (“MECA”). Specifically, MECA asserts that it does not suggest “that the states should be allowed to start regulating CMRS providers and their relationships with their end users, but there is a role

confines state regulation to CMRS “terms and conditions,” which does not encompass LEC-CMRS interconnection rates.

Finally, MECA also requests that the Commission forbear from interfering in state regulation of CMRS calling arrangements in rural LEC exchanges and the filing of tariffs by small rural ILECs.¹¹ MECA asserts that “[s]tate commissions should not be preempted from maintaining jurisdiction over [these] specific CMRS interconnection issues.”¹²

A. The Commission’s Section 332 Jurisdiction Over CMRS Interconnection Rates Is Well Established.

As an initial matter, no commenter disputes that section 332 provides the framework for regulating LEC-CMRS interconnection. The comments of the California PUC and MECA are directed solely toward the scope of the Commission’s jurisdiction over interconnection rates under section 332, not the application of that provision to LEC-CMRS interconnection generally. Both the California PUC and MECA fail to recognize, however, that any questions concerning the Commission’s jurisdiction to regulate CMRS interconnection rates already have been resolved by the Commission, Congress and the federal courts.

In 1994, the Commission concluded that under sections 332(c)(1)(B) and 201 of the Act, it not only has the right to order interconnection, but it also has the right to preempt state regulation of LEC-CMRS interconnection rates, if it decides that preemption is necessary.¹³ In

for state commissions ... to exercise authority regarding [some] aspects of interconnection and intercarrier compensation.” MECA, at 36.

¹¹ Id. at 35.

¹² Id.

¹³ Section 332(c)(1)(B) provides, in relevant part, “[u]pon reasonable request of any person providing commercial mobile radio service, the Commission shall order a common

effect, the Commission acknowledged the well-settled view that the obligation to provide interconnection upon reasonable request cannot be divorced from the pricing of that interconnection service. In the CMRS Second Report and Order, the Commission ordered LECs to provide interconnection to CMRS carriers, subject to several requirements.¹⁴ It concluded that for LEC-CMRS interconnection, “the principle of mutual compensation shall apply,” and that “LECs shall establish reasonable charges for interstate interconnection provided to commercial mobile radio service licensees.”¹⁵ In applying the terms “mutual compensation” and “reasonable charges” to the rates that LECs and CMRS carriers may set for LEC-CMRS interconnection, the Commission established its authority, pursuant to sections 201 and 332(c)(1)(B), to regulate LEC-CMRS interconnection rates.¹⁶ Furthermore, it provided for relief under section 208, whereby the Commission would judge the reasonableness of any rates charged by LECs for LEC-CMRS interconnection.¹⁷

carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title.” 47 U.S.C. § 332(c)(1)(B).

¹⁴ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, ¶ 230 (1994) (“CMRS Second Report and Order”).

¹⁵ Id. ¶¶ 232-233.

¹⁶ The Commission also recently confirmed its conclusion in the 1994 CMRS Second Report and Order that “Section 332(c)(3)’s preemption of state rate regulation extends to CMRS interconnection rates.” Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Order, GN Docket No. 93-252, 15 FCC Rcd 5231, n.6 (2000).

¹⁷ CMRS Second Report and Order, ¶ 233. (In a recent decision by the D.C. Circuit, the court concluded that the Commission can only provide section 208 relief if it has jurisdiction to adjudicate the matter in the first place. See infra n.22).

Section 332(c)(3)(A) also provides that “no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service...”¹⁸ In this regard, the statute is clear that the Commission has plenary authority to regulate CMRS rates. The California PUC contends that this authority is limited to end-user rates. It selectively relies upon passages of the legislative history of section 332 to demonstrate its point. When viewed in totality, however, the legislative history indicates that the Commission’s authority to regulate “rates” extends to all CMRS rates, not merely end-user rates. Congress recognized that commercial mobile services do not operate along state lines, and thus should not be regulated on a state-by-state basis.¹⁹ Thus, to ensure that the Commission has the authority to regulate the national CMRS infrastructure and that the CMRS industry is able to operate on a nationwide basis, Congress granted the Commission, not the states, the authority to regulate all types of CMRS rates. What was reserved to the states was authority over “other terms and conditions.” The legislative history of section 332 describes “other terms and conditions” as referring to, among other things, consumer protection measures such as “customer billing information and practices and billing disputes,” but importantly does not mention rates of any type, including interconnection rates.²⁰

Several federal courts have held that the Commission’s section 332(c)(3)(A) jurisdiction over rates encompasses CMRS interconnection rates. The Eighth Circuit decision in Iowa

¹⁸ 47 U.S.C. § 332(c)(3)(A) (emphasis added).

¹⁹ The House Report explains that, “[t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure, new section 332(c)(3)(A) also would preempt state rate and entry regulation of all commercial mobile services.” H.R. Rep. No. 103-111, at 260 (1993).

²⁰ Id. at 261.

Utilities Board v. FCC (“Iowa Utilities”), makes clear that the Commission has authority under section 332 to regulate not only CMRS end-user rates, but also CMRS wholesale and interconnection rates.²¹ The court specifically upheld the Commission’s regulations establishing symmetrical reciprocal compensation pricing arrangements for transport and termination of traffic between LECs and CMRS providers, even where the court felt the Commission lacked such authority for LEC interconnection under sections 251 and 252.²² The court determined that Congress expressly created an exemption for section 332 in section 2(b) for regulation of CMRS providers, and thus, since the section 2(b) reservation of authority to the states does not apply, the Commission has plenary authority to establish interconnection pricing rules for LEC-CMRS interconnection. Notably, the California PUC makes no effort to distinguish its own analysis from that of the court in Iowa Utilities.

Under the court’s reasoning, the term “rates” is not limited to the prices that CMRS providers charge end-users. By upholding the Commission’s rules establishing rates for LEC-CMRS transport and termination, the court concluded that Congress’ prohibition on state regulation of CMRS rates under section 332(c)(3)(A) also includes the rates CMRS providers pay and charge for carrier-to-carrier interconnection. The D.C. Circuit recently affirmed this holding, concluding that the Iowa Utilities decision had definitively resolved the issue of the Commission’s jurisdiction with respect to LEC-CMRS interconnection. Under that decision, and following with the Commission’s argument before the court, the Commission has authority pursuant to section 332 both to order LECs to interconnect with CMRS carriers, and specifically

²¹ Iowa Utilities, 120 F.3d 753.

²² Id. at 800, n.21.

to promulgate section 51.703, which regulates rates for such traffic.²³ Thus, the D.C. Circuit's holding confirms that section 332 gives the Commission authority to establish and regulate LEC-CMRS interconnection rates.

Additionally, the California PUC also ignores that it has previously concluded, under section 332(c)(3)(A), that it does not have jurisdiction over any type of CMRS rates. In Nova Cellular West, Inc. v. AirTouch Cellular of San Diego, Nova Cellular West ("Nova"), a cellular reseller, complained that AirTouch Cellular ("AirTouch") refused to sell it promotional plans at lower rates that would reflect electronic billing cost savings.²⁴ The California PUC dismissed the complaint, finding that if it required AirTouch to sell its promotional plans to Nova at lower rates, the California PUC would be engaging in rate regulation. It recognized that under section 332, "the [California] Commission lacks jurisdiction to hear complaints regarding the lawfulness of rates charged by cellular carriers....[and] to set cellular rates."²⁵ In a similar case, the California PUC also determined that it lacked subject matter jurisdiction to hear "disputes regarding the level or reasonableness of any [CMRS] rates," and therefore determined that it could not actually establish wholesale rates.²⁶

²³ See Respondents' Brief, at 31, Qwest Corp. v. FCC, 252 F.3d (D.C. Cir. Jun. 15, 2001) (Nos. 00-1376, 00-1377), *rehearing and rehearing en banc denied* (Aug. 10, 2001).

²⁴ Nova Cellular West, Inc. v. AirTouch Cellular of San Diego, Case 98-02-036, Decision 98-09-037, 1998 WL 1013098, at *1. (CA PUC, Sept. 3, 1998).

²⁵ Id. at *2, *4.

²⁶ California Wireless Resellers Ass'n v. Los Angeles Cellular Telephone Co. and AirTouch Cellular, Case No. 98-06-055, Decision No. 98-11-016, 1998 CA PUC LEXIS 793, *6 (CA PUC Nov. 5, 1998) (citation omitted). In this case, the California PUC addressed whether it has the jurisdiction to hear a complaint that facilities based cellular carriers must resell services on a wholesale basis. Again, the California PUC determined that this would require state regulation of CMRS rates, and since it has no jurisdiction to set wholesale rates, the case was dismissed for lack of subject matter jurisdiction.

Although these California decisions concern matters between CMRS providers and resellers, the cases clarify that the FCC's section 332 jurisdiction over rates includes more than those rates CMRS carriers charge to end-users. All of these cases, from the Iowa Utilities decision to the California PUC decisions, broadly address carrier-to-carrier compensation issues, and thus make clear that the term "rates" in section 332 includes all CMRS rates. The California PUC and MECA misinterpret the extent of states' authority under section 332, and must recognize, as several courts have, that Congress intended the Commission's authority over CMRS rates to include all rates, including interconnection rates.

Not only does section 332 grant the Commission plenary authority to regulate all types of CMRS rates, but the Act also leaves to the Commission's discretion whether state commissions should have any role in interconnection and intercarrier compensation issues. Section 332(c)(3)(A) provides, in relevant part, that "a State may petition the Commission for authority to regulate the rates for any commercial mobile service."²⁷ Thus, states do not have any separate jurisdiction over interconnection rates unless the Commission decides that market conditions warrant a delegation of this authority to any individual state.²⁸ Accordingly, it is within the FCC's discretion to determine the level of state participation in establishing LEC-CMRS interconnection compensation rules.

²⁷ 47 U.S.C. § 332(c)(3)(A).

²⁸ See id. (providing that the Commission shall grant a state petition for authority to regulate CMRS rates "if such State demonstrates that (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.").

Finally, the Commission need not preempt all existing state sponsored interconnection arrangements. However, to the extent that any arrangements of the type described by MECA, or other state regulation of LEC-CMRS interconnection, conflict with the Commission's efforts to adopt uniform and efficient LEC-CMRS interconnection arrangements, the Commission should be prepared to assert its jurisdiction to resolve any such conflicts.

The language of the statute, recent court cases, and Commission precedent make clear that the Commission possesses broad, plenary authority over CMRS rates and entry that includes interconnection rates. Accordingly, section 332 gives the Commission the authority to immediately order bill and keep for LEC-CMRS interconnection separate from and without conflict with state authority or agreements reached pursuant to sections 251 and 252 of the Act. The Commission should affirmatively recognize its section 332 jurisdiction over LEC-CMRS interconnection, and mandate bill and keep for LEC-CMRS interconnection without delay.

III. THE COMMISSION SHOULD REAFFIRM THAT CARRIERS ARE PROHIBITED FROM IGNORING THE LOCAL CALLING BOUNDARIES IT HAS ESTABLISHED FOR CMRS TRAFFIC.

In its comments, CTIA requested that the Commission use this proceeding to resolve certain issues involving the existing network compensation regime between CMRS providers and rural ILECs and IXCs. As explained, certain rural ILECs have ignored the Commission's rules and adopted boundaries other than the MTA to define the CMRS local calling area. By attempting to reduce the CMRS local calling area, these rural ILECs are effectively reclassifying local CMRS calls as toll calls in order to collect access charges from CMRS carriers. In a similar fashion, IXCs have generally ignored the fact that calls which terminate on CMRS networks and traverse MTA boundaries are subject to access charges. To the extent that intercarrier compensation regimes, other than bill and keep, continue to provide for compensation between carriers for local and interstate traffic, the Commission should act

expeditiously to ensure that those regimes are put into practice pursuant to the Commission's rules.

A. Calls Between A LEC And A CMRS Provider That Originate And Terminate Within The Same MTA Are Local Calls.

The comments filed, along with recent *ex parte* meetings held between Commission staff and CMRS providers, demonstrate that certain rural ILECs are ignoring the Commission's rules and disregarding the MTA as the CMRS local calling area boundary.²⁹ The comments of Ronan Telephone Co. and Hot Springs Telephone Co. ("RTC") describe how some rural ILECs view the CMRS local calling area boundary. RTC asserts that the Commission's definition of the local calling area for CMRS providers, as compared to the states' definitions for wireline traffic, effectively prevents RTC from collecting the same access charges it collects for wireline calls made in the same area.³⁰ RTC describes these different local calling area definitions as "ludicrous," since CMRS calls within the MTA boundary "implies reciprocal compensation," and thus "generates essentially no revenue" for RTC.³¹

The Commission has carefully considered and firmly established MTAs as the CMRS local calling area boundary. Calls within the MTA are subject to reciprocal compensation. In response to those carriers that seek to avoid this rule, the Commission should take this

²⁹ See Sprint PCS, *Ex Parte* Presentation, CC Docket No. 01-92 (Oct. 22, 2001) (describing the "continuing refusal of independent local exchange carriers to acknowledge the local calling scope of wireless traffic."); Nextel Communications, Inc., *Ex Parte* Presentation, CC Docket No. 01-92 (Oct. 2, 2001) (stating that some ILECs ignore the MTA boundary and "use their landline boundaries as the relevant area to measure their interconnection obligations with CMRS carriers.").

³⁰ Comments of Ronan Telephone Co. and Hot Springs Telephone Co., at 8-9 (filed Aug. 24, 2001) ("RTC Comments").

³¹ *Id.* at 9.

opportunity to reiterate its position and clarify that the Commission may take enforcement action against those carriers who choose to ignore the Commission's rules by redefining the local calling area simply because they dislike how the Commission's rules affect their revenue streams.³² Rural ILECs are not entitled to ignore those Commission rules that affect their perception of their bottom line -- if this were true, carriers could simply refuse to pay universal service fees, support TRS, or pay for numbering administration.

Not only should the Commission be concerned about compliance with its rules, but enforcing the MTA boundaries continues to be the most effective policy. The CMRS industry is federally licensed, and thus its rates and rate boundaries are subject to federal regulation. The Commission established the MTA as the CMRS local calling area for purposes of LEC-CMRS interconnection in 1996, explaining that CMRS traffic that originates and terminates within the same MTA is considered a local call and is not subject to interstate or intrastate access charges.³³ The Commission has decided that BTAs and MTAs best "promote the rapid deployment and ubiquitous coverage of [CMRS]" because they are "based on the natural flow of commerce."³⁴

³² As Chairman Powell has stated, the Commission in recent months has become more focused on enforcing its rules. It has shifted its focus from "constantly expanding the bevy of permissive regulations to strong and effective enforcement of truly necessary ones." See Summary of Testimony of FCC Chairman Michael K. Powell Before the Subcommittee on Commerce, Justice, State and the Judiciary of the Senate Committee on Appropriations, at 6 (June 28, 2001). Continued disregard of the Commission's interconnection rules warrants such action.

³³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, ¶ 1043 (1996) ("Local Competition Order").

³⁴ Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, GEN Docket No. 90-314, 8 FCC Rcd 7700, ¶ 73 (1993).

Moreover, contrary to RTC's assertion that MTAs are too big and thus "ludicrous," the Commission specifically noted that the large service areas would facilitate roaming and "allow licensees to tailor their systems to the natural geographic dimensions" of the markets.³⁵ In contrast to the Commission's pro-consumer policy, RTC's comments offer exactly the opposite policy prescription: that new technologies, with greater network efficiencies, should be forced to configure their systems to the boundaries of less efficient networks, and to continue to implicitly subsidize these inefficiencies. A bill and keep regime, implemented in a manner consistent with CTIA's comments, would effectively resolve such disputes. In the interim, however, ILECs must continue to respect the Commission's decision to define the CMRS local calling area within the confines of the MTA boundary.

B. Inter-MTA Traffic Carried By IXCs To CMRS Carriers Is Subject To Access Charges.

The Commission already has decided that CMRS providers are entitled to collect access charges for inter-MTA calls.³⁶ In the Local Competition Order, the Commission concluded that CMRS carriers provide exchange access,³⁷ and inter-MTA traffic carried by IXCs to CMRS

³⁵ Id. ¶ 74. Similarly, in 1996 the Commission revised its rules for its common carrier paging services and adopted BTAs and MTAs as the boundaries for paging services because they provide flexibility, "facilitate[] build-out of wide area systems, and enable[] paging operators to act quickly to meet the needs of their customers." Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-18, PP Docket No. 93-253, 12 FCC Rcd 2732, ¶ 15 (1997).

³⁶ See CTIA Comments, at 46-47; Sprint Corp. Comments, at 37-42.

³⁷ Local Competition Order, ¶ 1012 ("CMRS providers meet the statutory definition of 'telecommunications carriers' . . . CMRS providers (specifically, cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act.").

carriers is subject to access charges.³⁸ As Sprint explained in its comments, however, “some interexchange carriers have asserted that CMRS providers are not entitled to be compensated for the use of their networks.”³⁹ AT&T Corp. does not deny that it is excusing itself from having to pay access charges, instead it suggests that it does so because “industrywide voluntary [bill and keep] arrangements have developed and proven sustainable” between CMRS carriers and IXCs.⁴⁰

Even if a *de facto* bill and keep regime has developed between CMRS providers and IXCs and this regime has proven sustainable over time, it would be a mistake for the Commission to confuse the present facts with what is legally permissible. AT&T Corp. is merely describing the fact that wireless carriers have been unable to collect access charges (and suggesting that they accede to these facts). As a legal matter, the Commission must reaffirm that CMRS providers are indeed entitled to collect access charges from IXCs for traffic that qualifies as inter-exchange.

IV. CMRS PROVIDERS SHOULD CONTINUE TO HAVE THE RIGHT TO USE VIRTUAL NXXS.

Although many commenters address the use of virtual NXX codes, these comments discussed the virtual NXX issue with respect to interconnection between LECs and CLECs. No commenter addressed the use of virtual NXXs by CMRS carriers. Thus, many of the issues raised in both the Notice and the comments are not applicable to CMRS providers, or to LEC-CMRS interconnection.

³⁸ See *id.* ¶ 1043 (“[M]ost traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC . . .”) (emphasis added).

³⁹ Sprint Corp. Comments, at 40.

⁴⁰ AT&T Corp. Comments, at 53.

As CTIA explained in its comments, CMRS carriers use virtual NXXs to simulate a calling area similar to the incumbents', thereby avoiding customer confusion. Virtual rate centers are also important for promoting efficient use of numbering resources since they allow CMRS carriers to use number blocks for more than one rate center. Based on these benefits, and the fact that no commenter specifically objected to CMRS use of virtual NXXs, the Commission should treat CMRS carriers' use of virtual NXXs separately from that of CLECs and allow CMRS carriers to continue to have the right to use virtual NXXs.

V. CONCLUSION

For all the above-stated reasons, CTIA respectfully urges the Commission to move promptly to a bill and keep regime for LEC-CMRS interconnection.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

/s/ Michael F. Altschul

Michael F. Altschul
Senior Vice President, General Counsel

1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

WILLKIE FARR & GALLAGHER

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Its Attorneys

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