

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF  
VOICESTREAM WIRELESS CORPORATION**

Brian T. O'Connor, Vice President  
Legislative and Regulatory Affairs

Robert Calaff, Corporate Counsel  
Governmental and Regulatory Affairs

Dan Menser, Corporate Counsel  
Regulatory Affairs

401 9<sup>th</sup> Street, N.W., Suite 550  
Washington, D.C. 20004  
202-654-5900

November 5, 2001

## Table of Contents

Summary .....	ii
I. The Commission Has the Statutory Obligation to Establish a “Federal Regulatory Framework” for All CMRS Interconnection .....	1
A. Under the Communications Act, the Commission Cannot Avoid Establishing National Rules Governing All CMRS Interconnection .....	2
B. The Current State-by-State Process Does Not Achieve the “Federal Regulatory Framework” That Congress Wants Established for the CMRS Industry.....	5
II. The Components of a “Federal Regulatory Framework” for All CMRS Interconnection .....	12
A. The Commission Should Adopt Bill-and-Keep for All CMRS-LEC Interconnection .....	12
B. Alternatively, the Commission Must Establish a “Federal Regulatory Framework” for CMRS Recovery of Their Actual Call Termination Costs	16
C. The Commission Should Extend the CLEC Access Charge Model to CMRS Access Charges .....	17
D. The Commission Should Clarify the Rules Applicable to Transit Traffic..	20
1. The Commission should reaffirm that CMRS carriers enjoy a federal “right of interconnection”.....	21
2. The Commission should reaffirm the obligation of ILEC tandem switch owners to support CMRS transit service.....	22
3. The Commission should require that all Type 2B trunks be two-way trunks.....	23
4. The Commission should reaffirm that the originating carrier has the obligation to pay for transit service, not the terminating carrier .....	24
5. The Commission should confirm that transit service prices must be based on forward-looking costs, not access charges .....	25

6.	The Commission should require transit providers to supply the information CMRS carriers need to bill for incoming traffic .....	25
E.	The Commission Should Reaffirm the Use of Flexible Rating (a.k.a. “Virtual NXX Codes”) for CMRS .....	26
F.	The Commission Should Remind “Independent” ILECs That Commission Interconnection Orders and Rules Apply to Them .....	30
1.	The Commission should reaffirm that a CMRS carrier need establish only one Point of Interconnection (“POI”) per LATA, that Commission transport rules apply to CMRS/“independent” ILEC interconnection, and that direct CMRS/“independent” ILEC connection is not required.....	31
2.	The Commission should remind “independent” ILECs that reciprocal compensation, not access charges, applies to all intraMTA CMRS-LEC traffic .....	33
3.	The Commission should remind “independent” ILECs that they may not recover loop costs in their rate for reciprocal compensation .....	34
4.	The Commission should reaffirm than an “independent” ILEC engages in bad faith when it unilaterally files an interconnection/call termination tariff .....	34
5.	The Commission should remind state regulators that “independent” ILECs cannot avoid Commission rules governing interconnection and reciprocal compensation simply by filing state tariffs .....	35
6.	If the Commission retains reciprocal compensation for CMRS-LEC traffic, it should adopt a bill-and-keep exception when carriers exchange <i>de minimus</i> amounts of traffic .....	36
G.	The Commission Should Require Mandatory Bill-and-Keep for the Exchange of SS7 Signaling Messages.....	37
III.	Conclusion .....	40

## Summary of VoiceStream Reply Comments

### I. THE COMMISSION HAS THE STATUTORY OBLIGATION TO ESTABLISH A “FEDERAL REGULATORY FRAMEWORK” FOR ALL CMRS INTERCONNECTION

Regardless of the reforms that it may adopt in this proceeding, the Commission must establish promptly a Federal regulatory framework for all CMRS interconnection, including CMRS-LEC interconnection, so as to discharge Congressional directives. CMRS carriers cannot obtain reasonable and timely interconnection agreements with hundreds of small incumbent LECs and hundreds of interexchange carriers (“IXCs”) if they must negotiate/arbitrate/litigate essentially the same issues with each small ILEC or IXC in each state. Congress has directed the Commission to promote CMRS interconnection and to establish “a Federal regulatory framework for all CMRS.” These objectives will be realized only if the Commission plays a more active role in establishing rules with nationwide effect.

### II. THE COMPONENTS OF A “FEDERAL REGULATORY FRAMEWORK” FOR ALL CMRS INTERCONNECTION

Below are the components of a Federal regulatory regime for CMRS interconnection:

A. The Commission should adopt bill-and-keep for CMRS-LEC interconnection. The Commission has statutory authority to impose bill-and-keep under Section 332(c), and bill-and-keep would enable CMRS carriers to reduce their costs which, in turn, would be reinvested into carriers’ business and passed on to customers in the form of lower prices.

B. Alternatively, the Commission should establish a Federal regulatory framework for CMRS recovery of their actual call termination costs if it decides to retain the Calling Party’s Network Pays (“CPNP”) regime. CMRS carriers incur substantially larger call termination costs than LECs, and it is reasonable to expect that CMRS carriers will begin submitting cost studies to recover all of their costs. States do not have authority over CMRS interconnection rates, so

the Commission should establish federal procedures that CMRS carriers may use such cost studies.

C. The Commission should extend the CLEC access charge model to CMRS carriers. CMRS can no longer provide their access services for free if they are to compete meaningfully with ILECs that receive access charges for toll termination. The regulatory model that the Commission recently established for CLEC access charges should be extended to CMRS carriers as well.

D. The Commission should clarify the rules applicable to transit traffic. VoiceStream identifies several specific issues where Commission resolution would remove ongoing disputes and promote CMRS/ILEC interconnection.

E. The Commission should reaffirm the use of flexible rating (a.k.a. “virtual codes”) for CMRS. While rate center consolidation is a long term goal, flexible rating is a good near term solution. The controversy over CLEC use of “virtual NXX” codes does not apply to CMRS carriers, as CLEC opponents recognized.

F. The Commission should remind “independent” ILECs that Commission interconnection orders and rules apply to them. There are growing disputes between CMRS carriers and “independent” ILECs, and VoiceStream identifies six issues where Commission resolution would eliminate many of these disputes and promote prompt and reasonable interconnection.

G. The Commission should require mandatory bill-and-keep for the exchange of SS7 signaling messages even if it decides to retain a CPNP regime for voice traffic. The Commission also should confirm that its transport rules apply to the signaling links connecting two carriers’ SS7 networks.



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY COMMENTS OF  
VOICESTREAM WIRELESS CORPORATION**

VoiceStream Wireless Corporation (“VoiceStream”) hereby replies to the comments submitted in response to the Notice of Proposed Rulemaking addressing numerous interconnection issues, including the feasibility of bill-and-keep for the exchange of local telecommunications traffic.

**I. THE COMMISSION HAS THE STATUTORY OBLIGATION TO ESTABLISH A  
“FEDERAL REGULATORY FRAMEWORK” FOR ALL CMRS INTERCONNECTION**

Congress amended the Communications Act in 1993 so the Commission could “establish a *Federal regulatory framework* to govern the offering of *all* commercial mobile services.”<sup>1</sup>

This “Federal regulatory framework” is necessary, Congress determined, because of the impracticality of applying state regulation to services that operate “without regard to state lines” and to “foster the growth and development of mobile services.”<sup>2</sup> Congress specifically directed the Commission to “promote” LEC-CMRS interconnection because such interconnection “serves to enhance competition and advance a seamless *national* network.”<sup>3</sup>

---

<sup>1</sup> H.R. CONF. REP. NO. 103-213, 103d Cong., 1<sup>st</sup> Sess. 490 (1993)(emphasis added)(“Conference Report”).

<sup>2</sup> H.R. REP. NO. 103-111, 103d Cong., 1<sup>st</sup> Sess. 260 (1993)(“House Report”).

<sup>3</sup> *Id.* at 261 (emphasis added).

The Commission, in its seminal 1996 *Local Competition Order*, noted its special jurisdiction over interconnection with CMRS providers but declined to exercise this authority, deciding instead that CMRS carriers should use the state-by-state process that Congress established for LEC-LEC interconnection.<sup>4</sup> The Commission does not have the discretion to avoid establishing “a *Federal regulatory framework* to govern the offering of *all* commercial mobile services.” But even if it does possess some discretion in this area, experience to date confirms that the state-by-state process that CMRS carriers have been required to follow has not achieved the “Federal regulatory framework” that Congress has mandated for CMRS. In addition, national rules are essential if CMRS carriers are to obtain timely and reasonable interconnection with the hundreds of “independent” incumbent local exchange carriers (“ILECs”) and interexchange carriers (“IXCs”).

**A. Under the Communications Act, the Commission Cannot Avoid Establishing National Rules Governing All CMRS Interconnection**

The Communications Act requires the Commission to establish rules governing the interconnection of CMRS providers with any common carrier — be it a LEC or an IXC, with Section 332(c)(1)(B) providing:

Upon reasonable request of any person providing commercial mobile service, the Commission *shall* order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title.<sup>5</sup>

The Commission has repeatedly recognized that “Section 332(c)(1)(B) *requires* the Commission to order a common carrier to interconnect with a [CMRS] provider on reasonable request.”<sup>6</sup>

---

<sup>4</sup> See *First Local Competition Order*, 11 FCC Rcd 15499, 15517 ¶ 34, 16005-06 ¶¶ 1022-26 (1996).

<sup>5</sup> 47 U.S.C. § 332(c)(1)(B)(emphasis added). Commission authority under Section 201 is “quite broad” and includes, among other things, the authority “to order an interim billing and collection system and to direct a [LEC] to file a tariff detailing the charges and regulations covering interconnection.” Brief of FCC, *Qwest v. FCC*, No. 00-1375, at 36 (D.C. Cir., Feb. 14, 2001).

We read Section 332(c)(1)(B) of the Communications Act, as added by the Budget Act, to mean that the Commission is *required* to respond to requests for interconnection with proceedings to determine whether it is necessary or desirable in the public interest to order interconnection in particular cases.<sup>7</sup>

Thus, under the plain language of the statute and its own prior orders, the Commission does not have the discretion to avoid adopting national CMRS rules when requested to do so.<sup>8</sup>

California, alone among the 70-plus commenters, contends that Commission authority under Section 332(c)(1)(B) is limited to interstate CMRS traffic and does not apply to intrastate CMRS traffic. In short, California would have the Commission believe that Congress amended Section 332(c) and removed the limitation on Commission authority contained in Section 2(b) for no reason (since the Commission had exclusive jurisdiction over interstate CMRS prior to the 1993 Act amendments).<sup>9</sup>

The simple response is that the Commission has repeatedly rejected California's argument and courts have consistently affirmed the Commission's plenary jurisdiction over CMRS interconnection. As it recognized in its NPRM, the Commission has regulatory authority over intrastate CMRS interconnection:

[I]n the 1993 Budget Act, Congress also added an exception to section 2(b) of the Communications Act. Section 2(b) generally reserves to the states jurisdiction

---

<sup>6</sup> *1993 Budget Act NPRM*, 8 FCC Rcd 7988, 8001 ¶ 69 (1993)(emphasis added). *See also Specialized Mobile Radio NPRM*, 9 FCC Rcd 4405, 4410 ¶ 19 (1994)(“Section 332(c)(1)(B) . . . requires the Commission pursuant to Section 201 to order common carriers to interconnect with CMRS providers.”)(emphasis added).

<sup>7</sup> *Second CMRS Interconnection NPRM*, 10 FCC Rcd 10666, 10685-86 ¶ 39 (1995)(emphasis added).

<sup>8</sup> Given these explicit statutory directives, the Commission certainly cannot forbear from regulating CMRS-LEC interconnection. *See Intercarrier Compensation NPRM* at ¶ 88.

<sup>9</sup> California is able to make its argument only by ignoring all relevant precedent and by quoting only a portion of the second sentence of Section 332(c)(1)(B), with the omitted clause undercutting its argument. *See CPUC Comments* at 10-13.

over intrastate communication service by wire or radio of any carrier. The 1993 Budget Act amended section 2(b) to exempt section 332 from its provisions.<sup>10</sup>

Courts have similarly recognized FCC authority to adopt “rules of special concern to the CMRS providers,” including rules applicable to interconnection involving intrastate CMRS.<sup>11</sup>

California’s “fall back” argument — states also have jurisdiction to regulate the rates CMRS providers charge other carriers for intrastate call termination<sup>12</sup> — is legally erroneous. Section 332(c)(3) broadly provides that “no State . . . shall have any authority to regulate . . . the rates charged by any commercial mobile service.”<sup>13</sup> This statute does not, as California would like to believe, distinguish between “retail” prices a CMRS provider charges its own customers and the “wholesale” prices it charges other interconnecting carriers. To the contrary, courts have held that there can be “no doubt that Congress intended complete preemption when it said ‘no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service.’ This clause completely preempted the regulation of rates and market entry.”<sup>14</sup>

Moreover, the argument that California advances — states have jurisdiction over intrastate CMRS interconnection rates — is one that the Commission has already rejected. The

---

<sup>10</sup> *Inter-carrier Compensation NPRM* at ¶ 84. See also *AirTouch Cellular v. Pacific Bell*, FCC 01-194, 16 FCC Rcd 13502 (2001); *TSR Wireless v. U S WEST*, 15 FCC Rcd 111666 (2000).

<sup>11</sup> *Iowa Utilities Board v. FCC*, 120 F.3d 753, 800 n.21 (8<sup>th</sup> Cir. 1997). See also *Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

<sup>12</sup> CPUC Comments at 11-12. California does concede that states do not have authority over interstate CMRS rates and that the FCC possesses exclusive jurisdiction over such rates. See *id.* at 11; 47 U.S.C. § 152(a).

<sup>13</sup> 47 U.S.C. § 332(c)(3)(A).

<sup>14</sup> *Bastien v. AT&T Wireless*, 205 F.3d 983, 986-87 (7<sup>th</sup> Cir. 2000). This court has similarly rejected the “savings clause” arguments that California advances in its comments.

Commission has specifically ruled that Section 332(c)(3) “clearly preempt[s] state regulation of the rates for [CMRS] interconnection.”<sup>15</sup>

We agree . . . that the statutory language is clear that . . . the statute preempts state regulation of interconnection rates of CMRS providers.<sup>16</sup>

In summary, the Commission has not just the authority but the statutory obligation to “establish a *Federal* regulatory framework to govern the offering of *all* commercial mobile services” — whether the interconnection involves interstate traffic or intrastate traffic.

**B. The Current State-by-State Process Does Not Achieve the “Federal Regulatory Framework” That Congress Wants Established for the CMRS Industry**

The Commission decided in 1996 to require CMRS carriers to use the Section 251/252 process that Congress developed for LEC-LEC interconnection because it believed that this process would “expedite the parties’ negotiations and drive voluntary CMRS-LEC interconnection agreements” and “will facilitate consistent resolution of interconnection issues.”<sup>17</sup> The experience of the past five years has been that the state-by-state process as applied to CMRS interconnection has not achieved the objectives that the Commission hoped for and has instead delayed negotiated interconnection and resulted in inconsistent state decisions. Thus, even if the Commission decides that it possesses the discretion to rely on a state-by-state process for CMRS interconnection, subsequent experience now confirms that the “Federal regulatory framework” that Congress wants established for CMRS is not being achieved.

---

<sup>15</sup> *CMRS Interconnection Obligations*, 9 FCC Rcd 5408, 5463 ¶ 131 (1994).

<sup>16</sup> *Second CMRS Report*, 9 FCC Rcd 1411, 1500 ¶ 237 (1994).

<sup>17</sup> *First Local Competition Order*, 11 FCC Rcd at 16005 ¶ 1024.

AT&T Wireless notes correctly that the state-by-state process has been “burdensome,” “cumbersome,” and “not ideal.”<sup>18</sup> It further observes that having to “negotiate and enforce inter-connection rights with each ILEC in fifty different jurisdictions does increase the transaction costs, particularly when, as is often the case, the states are less knowledgeable about the issues relating to the CMRS providers and their network.”<sup>19</sup> The public interest is not served by increased transaction costs, because increased operating costs necessarily are reflected in the prices that consumers pay.

But the real problem with application of a state-by-state process to CMRS interconnection is much worse. It is not surprising that inconsistent decisions are rendered when over fifty different arbiters are interpreting the same federal law — a statute the Supreme Court has recognized is “a model of ambiguity or indeed even self-contradiction.”<sup>20</sup> Reviewing the litigation involving one interconnection issue with one ILEC makes the point.

U S WEST, shortly after release of the 1996 *Local Competition Order*, decided unilaterally that CMRS carriers must meet a “functional equivalency” test as a condition to receiving compensation at U S WEST’s tandem rate. U S WEST took this position even though Commission rules do not include such a requirement.<sup>21</sup> This U S WEST position forced CMRS carriers to litigate the identical issue in at least 13 of U S WEST’s 14 states. The result:

- U S WEST was successful in obtaining the end office rate in seven states, but lost (having to pay its tandem rate) in the other six states.<sup>22</sup>

---

<sup>18</sup> AT&T Wireless Comments at 16 and 21.

<sup>19</sup> *Id.* at 21.

<sup>20</sup> *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 397 (1999).

<sup>21</sup> Under Commission rules, CMRS carriers are entitled to reciprocal compensation at the incumbent LEC’s tandem rate if the mobile switch “serves a geographic area comparable to the area served by the incumbent LEC’s tandem switch.” 47 C.F.R. § 51.711(a)(3).

<sup>22</sup> A list of these PUC decisions is available at Exhibit 1, Sprint PCS Reply Comments, Docket No. 95-185 (June 13, 2000).

- U S WEST appealed to the federal courts the PUC decisions where it was unsuccessful, and then appealed to the appellate court when the district rejected its arguments, but it lost each of these appeals.<sup>23</sup>
- CMRS carriers devoted resources to appeal only one of the seven decisions where they could not convince the PUC to follow Commission rules, and they were successful in this appeal.<sup>24</sup>

By last count, despite its national rules that the Commission has found are “clear,”<sup>25</sup> U S WEST was able to re-litigate the identical issue before at least twenty different state commissions and federal courts.

This redundant and expensive activity certainly is not efficient — especially when the Commission mooted further controversy through a single, three-sentence paragraph.<sup>26</sup> But the inconsistent results achieved — with some mobile switches serving multiple states being inconsistently classified, depending on the state, as the equivalent of an end office switch or the equivalent of a tandem switch — hardly promotes the uniform “Federal regulatory framework” that Congress has determined is essential for the CMRS industry.

Perhaps the most perverse result of this state-by-state process is, as AT&T Wireless notes, that CMRS carriers have been “forced to agree to some contracts in which [they] did not receive the full tandem rate and to make other compromises as well” simply because of “resource constraints.”<sup>27</sup> Judgements were made that, rather than spend considerable time and expense to arbitrate, to take agreements that were not just and reasonable. Just and reasonable in-

---

<sup>23</sup> *See id.*

<sup>24</sup> *See U S West v. Washington Utilities and Transportation Commission*, 255 F.3d 990 (9<sup>th</sup> Cir. 2001).

<sup>25</sup> *See Intercarrier Compensation NPRM* at ¶ 105.

<sup>26</sup> *See id.* at ¶ 105.

<sup>27</sup> AT&T Wireless Comments at 11.

terconnection should not be denied because the heavy demands of the state-by-state process exceed carrier resources.

CMRS carriers, the firms with the most direct, “hands on” experience, strongly encourage the Commission to exercise its plenary authority and to play a more active role in CMRS interconnection issues.<sup>28</sup> The one exception is AT&T Wireless. Although AT&T Wireless recognizes that the Commission has “plenary jurisdiction” over CMRS interconnection issues,<sup>29</sup> it nonetheless recommends that the Commission “continue to apply the Section 251/252 framework to CMRS providers.”<sup>30</sup> According to AT&T Wireless, the Commission should abdicate its responsibility to promote uniform CMRS interconnection rules out of concern that the Commission “does not have the procedural mechanisms in place to approve and, if necessary, arbitrate CMRS-ILEC interconnection agreements.”<sup>31</sup> Just and reasonable interconnection should not be denied because the Commission might have resource constraints.

AT&T Wireless misinterprets what is necessary to establish a “Federal regulatory framework” for CMRS interconnection. The Commission need not “reinvent the wheel and devis[e] a separate interconnection regime.”<sup>32</sup> Nor need the Commission “insert itself into the day-to-day approval process,”<sup>33</sup> because interconnection contracts voluntarily executed by two corporations do not require redundant regulatory approval. Rather, a “Federal regulatory framework” would require only two steps:

---

<sup>28</sup> See, e.g., CTIA Comments at 3-15; Nextel Comments at 5-9; Rural Telecommunications Group Comments at 5-8; Triton Comments at 3-5; Verizon Wireless Comments at 3-10.

<sup>29</sup> See AT&T Wireless Comments at 4 and 8.

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 20.

<sup>33</sup> *Id.* at 16.

1. CMRS carriers would be required to file their interconnection contracts with the Commission, which the Commission ideally would post on its Web page so all CMRS and interconnecting carriers have ready access to voluntarily-negotiated agreements; and
2. The Commission would resolve disputes raised by petitions filed pursuant to Section 332(c)(1)(B) of the Act — rulings that, as a practical matter, would have nationwide effect (*e.g.*, one ruling vs. the twenty required for the frivolous U S WEST end office/tandem litigation).<sup>34</sup>

The Commission is already required to entertain Section 332(c)(1)(B) petitions.<sup>35</sup> Thus, the only new step required for a “Federal regulatory framework” would be the filing of all CMRS interconnection contracts. The savings in transaction costs — to carriers (CMRS and LECs), state regulators, and federal courts — would be enormous.<sup>36</sup> The savings in time — some state utility commissions hold submitted agreements pending for up to 90 days — would also be significant. In the end, the American consumer would benefit from the reduction in transaction, regulatory and litigation expenses.

Moreover, AT&T Wireless’ view of the state-by-state process — “not ideal” but tolerable — ignores the plethora of new CMRS interconnection issues that are beginning to surface. To date, CMRS carriers have focused their interconnection efforts on the large and mid-sized incumbent LECs — perhaps a total of 15-20 ILECs. But as they expand their networks, CMRS carriers are beginning to deal with the 1,000-plus small, or “independent,” ILEC. s. CMRS carriers now face the prospect of thousands of arbitrations with “independent” ILECs in over fifty jurisdictions.

---

<sup>34</sup> Negotiating parties should also have the flexibility to invoke private mediation or arbitration.

<sup>35</sup> See notes 5-7 *supra* and accompanying text.

<sup>36</sup> Among other things, carriers that interconnect in multiple states could execute one contract rather than a different contract for each state. For reciprocal compensation, parties could negotiate one “blended” rate applicable in all states. National uniformity would be achieved and disputes would be resolved once — with a Commission decision involving two parties that would have precedential effect for all carriers. PUCs would realize considerable resources if they were relieved of having to approve each LEC/CMRS contract and were relieved of having to litigate the same issues that other PUCs are addressing.

In fact, CMRS/"independent" ILEC disputes are already gaining prominence. For example, the Commission has squarely ruled that LECs may not recover in reciprocal compensation the costs of their local loops, because loop costs are not traffic sensitive and are not therefore an "additional cost" under the Communications Act.<sup>37</sup> Yet, over the objection of CMRS carriers, "independent" ILECs were able to convince the Missouri Commission to include an "adder" of \$0.02 per minute to their reciprocal compensation rate to recover a portion of their loop costs from CMRS providers. Not only did the Missouri ILECs concede that this sum was a completely "arbitrary figure," but the Missouri Commission approved the proposal despite being flatly contrary to the Commission's controlling interconnection rules.<sup>38</sup> And to add insult to injury, the Missouri ILECs are now proposing to charge CMRS carriers for the costs they incur in disconnecting CMRS carriers that fail to pay the unlawful "adder" charge<sup>39</sup> — although the Commission has stated repeatedly that carriers may not disable interconnection until the legality of the charges is resolved.<sup>40</sup>

Of course, now that the Missouri Commission has "approved" this unlawful charge, "independent" ILECs in other states have every incentive to attempt to recover the same loop costs in their reciprocal compensation rates — despite Commission rules to the contrary. The Missouri issues have now moved to Iowa and undoubtedly will soon spread to other states. Will

---

<sup>37</sup> See *First Local Competition Order*, 11 FCC Rcd at 16025 ¶ 1057. See also *Local Competition Reconsideration Order*, 11 FCC Rcd 13042, 13045 ¶ 6 (1996).

<sup>38</sup> See *Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service*, Report and Order, Case No. TT-2001-139 (Feb. 8, 2001), *reh, denied*, Order Denying Rehearing (March 7, 2001) ("*Wireless Termination Service Tariff Order*").

<sup>39</sup> See *KLM Telephone Company's Proposed Wireless Termination Service Tariff*, Order Consolidating Cases, Suspending Tariffs and Scheduling Prehearing Conference Case No. TT-2002-73, Tariff File No. 200200078 (MoPSC, Aug. 30, 2001).

<sup>40</sup> See, e.g., *Declaratory Ruling on CLEC Access Charge Issues*, CCB/CPD No. 01-02, FCC 01-313 (Oct. 22, 2001); *CLEC Access Order*, 16 FCC Rcd 9923 at ¶ 93 (2001).

CMRS carriers be required to re-litigate this same issue in every state — an issue that the Commission has already resolved?

The issue is not just interconnection with “independent” ILECs, but also with the hundreds of IXCs. The Commission’s long term goal for the CMRS industry is to compete directly with ILECs. In order to achieve this objective, CMRS carriers are beginning to seek from IXCs the same access charges that ILECs receive as compensation for terminated traffic, so they can further reduce their prices and become more competitive with ILECs. IXCs obviously have no incentive to voluntarily begin paying for a service they have received for free, so without Commission intervention, CMRS carriers face the prospect of re-litigating the identical intrastate access charge issue in each state.

It is important to emphasize that the subject of how CMRS interconnection rules should be established — negotiation followed by Commission decisionmaking vs. negotiation followed by state-by-state arbitration — is *not* an issue involving “states’ rights.” Rather, as the Supreme Court has held, the question of the proper interpretation of the Communications Act is not a “states’ rights” issue at all, but a question of “whether it will be FCC or the federal courts [following PUC arbitration] that draw the lines to which [the states] must hew.”<sup>41</sup>

Congress, however, expects the Commission to do more with regard to CMRS interconnection, specifically directing the Commission “to establish a Federal regulatory framework to govern the offering of all” CMRS, and further directing the Commission to “promote” CMRS interconnection because such interconnection “serves to enhance competition and advance a seamless national network.”<sup>42</sup> Given these Congressional directives and the experience gained to

---

<sup>41</sup> *AT&T v. Iowa Utilities Board*, 525 U.S. 336, n.6 (1999).

<sup>42</sup> *See* notes 1-3 *supra*.

date, VoiceStream submits that the Commission must, finally, establish national rules governing all aspects of CMRS interconnection.

## **II. THE COMPONENTS OF A “FEDERAL REGULATORY FRAMEWORK” FOR ALL CMRS INTERCONNECTION**

The comments in this proceeding provide a reasonably comprehensive discussion of the rules the Commission should establish in order to ensure that “a Federal regulatory framework” for CMRS is achieved, and VoiceStream below sets forth its views on these issues. However, it is important to emphasize that the rules that VoiceStream and other CMRS providers ask the Commission to adopt would be “default” rules only, because interconnecting carriers should always have the flexibility to adopt different arrangements if their unique circumstances so warrant.

### **A. The Commission Should Adopt Bill-and-Keep for All CMRS-LEC Interconnection**

The most important step that the Commission can take to promote CMRS interconnection and to facilitate the ability of CMRS carriers to compete directly with LECs is to adopt bill-and-keep for all CMRS-LEC interconnection. VoiceStream will not engage here in the policy debate over whether the calling party is the sole cost-causer or whether the costs of a call should instead be shared between the calling and called parties — because bill-and-keep is the appropriate compensation regime *regardless* of cost-causation principles.

LECs today recover in reciprocal compensation all of their additional costs of call termination. CMRS carriers do not. CMRS carriers will be unable to compete meaningfully with LECs until CMRS providers recover all of their call termination costs and earn a reasonable return on their investment. While bill-and-keep will not likely result in CMRS carriers recovering

all of their call termination costs, the imposition of bill-and-keep (coupled with the cost savings of eliminating recording, billing, audits, *etc.*) would enable CMRS carriers to recover a somewhat higher percentage of their costs compared to the current arrangement — and, as a result, would enable CMRS providers to compete more meaningfully with LECs. Bill-and-keep would also greatly facilitate CMRS-rural ILEC interconnection by eliminating what has become the most contentious issue between the parties.

The vast majority of LEC-CMRS traffic today is exchanged using the Commission's symmetrical compensation rule — that is, a CMRS carrier receives in reciprocal compensation the same per-minute price that the LEC charges for terminating a CMRS call over its landline network.<sup>43</sup> The LEC's price is based largely on its additional end office switching costs.<sup>44</sup> What this means, then, is that a CMRS carrier receives in reciprocal compensation a sum that covers its additional switching costs in terminating a call. However, CMRS carriers incur many additional costs in terminating traffic, including the traffic sensitive costs of base station controllers, back-haul links, base station/antennas, and spectrum.<sup>45</sup> Available studies of CMRS call termination costs show a TELRIC cost in the range of \$0.04 and \$0.06 per minute.<sup>46</sup> Thus, if a CMRS carrier today receives in reciprocal compensation only \$0.0015 per minute, it is receiving from the ILEC only two to three percent of its actual additional costs in terminating an ILEC call.

While traffic flows between LECs and CMRS providers have not traditionally been thought to be perfectly balanced, the disparity in traffic flows is becoming smaller as customers increase their usage of their mobile services. Merrill Lynch has estimated that current traffic ra-

---

<sup>43</sup> See 47 C.F.R. § 51.711(a).

<sup>44</sup> See, e.g., *First Local Competition Order*, 11 FCC Rcd 15499, 16025 ¶ 1057 (1996); *Local Competition Reconsideration Order*, 11 FCC Rcd 13042, 13045 ¶ 6 (1996).

<sup>45</sup> See *Intercarrier Compensation NPRM* at ¶ 104.

tios for LEC-CMRS traffic range between 55/45 percent and 70/30 percent.<sup>47</sup> VoiceStream's experience is that traffic flows for local traffic are nearing 50/50, once IXC toll traffic (which is overwhelmingly one way, inbound) is excluded from consideration.

Under the current symmetrical compensation regime, a CMRS carrier would recover only three percent of its costs of terminating ILEC calls while it pays to the ILEC 100 percent of the ILEC's additional call termination costs. With a bill-and-keep arrangement (where traffic flows would be assumed to be 50 percent rather than a ratio of a traditionally assumed default ratio of 70/30 percent), a CMRS carrier would instead recover approximately five percent of its actual additional call termination costs.

In the end, the real benefit of bill-and-keep is that it would enable all carriers — CMRS, “dominant” ILECs, “independent” ILECs, CLECs — to reduce their respective operating costs. As VoiceStream and others noted in the comments, with bill-and-keep a carrier would no longer incur costs to record incoming local calls, identify the originating carrier responsible for payment, generate bills to the originating carriers, maintain auditable records, account for unpaid or contested bills and arbitrate or litigate billing disputes — simply to recover \$0.0007 or \$0.0015 per minute.<sup>48</sup> Mobile customers benefit when their service providers can reduce their operating costs because the intense competition in the CMRS market ensures that the cost savings will be reinvested in the business or passed through to customers.

The comments reveal a vigorous debate over whether the Commission has the statutory authority under Section 252(d) to mandate bill-and-keep for LEC-LEC interconnection. That debate, however, is not relevant to CMRS-LEC interconnection because as VoiceStream and

---

<sup>46</sup> See VoiceStream Comments at 20.

<sup>47</sup> See Merrill Lynch, THE NEXT GENERATION IV: WIRELESS IN THE U.S., at 54 (March 10, 2001).

<sup>48</sup> See VoiceStream Comments at 11.

others have demonstrated, the Commission has independent statutory authority under Section 332(c) to order bill-and-keep for CMRS-LEC interconnection.<sup>49</sup>

There is widespread support for imposition of bill-and-keep with CMRS-LEC interconnection.<sup>50</sup> As Illinois observes, there are “strong policy arguments to adopt a bill-and-keep regime for the exchange of traffic between a wireline and a wireless carrier”:

Growth in wireless traffic continues to outpace any other type of traffic, and anecdotal evidence suggests that some consumers in some markets may consider wireless service to be a reasonable substitute for wireline service. Bill-and-keep for LEC-CMRS interconnection has at least the potential to further this positive development.<sup>51</sup>

“Dominant” ILECs also support bill-and-keep for CMRS-LEC interconnection.<sup>52</sup> They realize that they would realize substantial savings by bill-and-keep if the choice is between bill-and-keep and cost-based CMRS call termination rates.

“Independent” ILECs and a handful of states continue to oppose bill-and-keep. California, for example, asserts that bill-and-keep “could subsidize CMRS at the expense of basic end user customers” to the extent “LEC-CMRS traffic flows are not in balance, with more traffic terminating on the landline networks.”<sup>53</sup> This reasoning is fundamentally flawed because what is relevant is not whether traffic flows are in balance (because every carrier has different costs), but whether costs are roughly in balance. As demonstrated above, even with bill-and-keep at current traffic flows, LECs would pay only a small portion of CMRS call termination costs — or to put

---

<sup>49</sup> See, e.g., VoiceStream Comments at 14-15; Verizon Wireless Comments at 11-14.

<sup>50</sup> See, e.g., CTIA Comments at 15-30; Nextel Comments at 17-25; Rural Telecommunications Group at 2-5; Triton Comments at 5-10; Verizon Wireless Comments at 14-25 and 47-48.

<sup>51</sup> ICC Comments at 3.

<sup>52</sup> See, e.g., BellSouth Comments at 20-22, Qwest Comments at 4; SBC Comments at 24; Sprint Comments at 2.

<sup>53</sup> CPUC Comments at 9.

in the parlance that California likes to use, CMRS carriers would continue to subsidize customers of basic residential service.

In summary, the Commission should adopt mandatory bill-and-keep for all CMRS-LEC interconnection.

**B. Alternatively, the Commission Must Establish a “Federal Regulatory Framework” for CMRS Recovery of Their Actual Call Termination Costs**

The Commission must prepare for a new environment — CMRS call termination cost studies — if it rejects bill-and-keep for CMRS-LEC interconnection and decides to maintain a “Calling Party’s Network Pays” (“CPNP”) regulatory regime.

The Commission recently reaffirmed that CMRS carriers may submit cost studies to recover in reciprocal compensation all their additional (or traffic sensitive) costs of call termination.<sup>54</sup> Given the intense competition that exists in the CMRS market, coupled with the fact that CMRS carriers currently recover with symmetrical (LEC surrogate) compensation only a tiny fraction of their costs, the Commission should expect CMRS to begin submitting forward-looking TELRIC cost studies so they can recover all their additional call termination costs from the originating network and, thereby, further reduce their retail prices. A federal regulatory framework is needed for these CMRS cost studies for both legal and practical reasons.

Legally, state regulators cannot entertain and approve CMRS call termination cost studies. As discussed above, Section 332(c)(3) precludes states from having any regulatory authority over CMRS rates, including interconnection rates, and state review of a cost study used to establish cost-based call termination rates would involve states in the very rate regulation that the Act explicitly prohibits. Accordingly, only the Commission has the lawful authority to review and

---

<sup>54</sup> See *Inter-carrier Compensation NPRM* at ¶ 104.

approve CMRS call termination cost studies. (As discussed more fully below, this task imposes little incremental burden on the Commission because the same cost studies will be used to support cost-based rates for CMRS access charges.)

However, Commission involvement in establishing cost-based call termination rates is also required for practical reasons. CMRS networks, like their local calling areas, are constructed “without regard to state lines.”<sup>55</sup> For example, VoiceStream’s network serving the Chicago metropolitan area includes northwest Indiana and southeastern Wisconsin. Even assuming that states had the authority to establish CMRS call termination rates, would VoiceStream be required to submit the same cost study for approval by the Illinois, Indiana and Wisconsin Commissions? Would VoiceStream be required to prepare three different cost studies for one Chicago metropolitan area network if the three states cannot agree on the appropriate cost elements or the appropriate methodologies to quantify those elements? Besides, as Illinois recognizes (and again assuming PUC jurisdiction), “a carrier-by-carrier cost study investigation for all wireless carriers is [not] very cost effective.”<sup>56</sup>

VoiceStream urges the Commission to adopt bill-and-keep for all CMRS-LEC interconnection. If, however, it decides to maintain the current CPNP regime, the Commission should establish national rules governing CMRS call termination cost studies.

**C. The Commission Should Extend the CLEC Access Charge Model to CMRS Access Charges**

---

<sup>55</sup> H.R. REP. NO. 103-111, 103d Cong., 1<sup>st</sup> Sess. 260 (1993)(“House Report”).

<sup>56</sup> ICC Comments at 4. While VoiceStream applauds the ICC for its creative thinking — set CMRS call termination rates based on “a single cost study of one CMRS provider” (*id.* at 5) — this proposal overlooks the fact that PUCs lack jurisdiction to set CMRS rates and further overlooks that many Chicago metro CMRS networks actually encompass three states.

There is a fundamental difference between CMRS-IXC interconnection arrangements (exchange access), on the one hand, and CMRS-LEC interconnection arrangements (local interconnection), on the other hand.<sup>57</sup> CMRS-LEC interconnection involves a reciprocal arrangement, with CMRS carriers sending traffic to the LEC and the LEC sending traffic to the CMRS carrier. In stark contrast, CMRS-IXC interconnection does not involve a reciprocal arrangement because traffic flows are almost entirely one-way, inbound (*i.e.*, the IXC delivers its toll calls to a CMRS provider for completion.)<sup>58</sup>

No one meaningfully disputes the right of CMRS carriers to recover access charges from IXCs when CMRS carriers terminate IXC toll calls.<sup>59</sup> Even AT&T concedes that CMRS carriers “undoubtedly incur costs in delivering calls to and from AT&T’s network.”<sup>60</sup> CMRS carriers perform a valuable function for IXCs, as IXCs receive revenues for their services only if the CMRS carrier successfully terminates the IXC customer calls. Moreover, from a broader policy perspective, CMRS carriers will never be able to compete meaningfully with LECs if LECs recover access charges when they terminate toll calls but CMRS carriers receive nothing for terminating the same toll traffic.

---

<sup>57</sup> With one small exception (mobile customer calls to 8YY numbers), there is no CMRS-IXC interconnection for mobile-to-land toll calls. This is because almost all CMRS carriers provide to their customers their own toll services (which in many customers’ calling plans is billed as a local call). *See* 47 U.S.C. § 332(c)(8).

<sup>58</sup> The vast majority (well over 95%) of traffic involved in CMRS-IXC interconnection constitutes calls dialed by IXC toll customers terminating on CMRS handsets. A small minority of calls involve 8YY calls dialed by CMRS customers to IXC 8YY customers.

<sup>59</sup> For example, one IXC, Sprint, acknowledges that “CMRS carriers are entitled to compensation for the provision of exchange access to IXCs so long as the access charge regime is in place” (Sprint Comments at 42-43), while WorldCom ignores the issue altogether. Although AT&T opposes CMRS access charges in passing (AT&T Comments at 53-54), it does not recite a single Commission order prohibiting such charges.

<sup>60</sup> AT&T Petition for Declaratory Ruling, *AT&T v. Sprint Spectrum*, at 14 (Oct. 22, 2001).

The principal problem that CMRS carriers face is that there has been no ready means of recovering their access costs.<sup>61</sup> IXCs obviously have no incentive to execute access contracts with CMRS carriers because such contracts would only result in their paying for what they have been getting for free.<sup>62</sup> Unless the Commission acts promptly on this CMRS access charge issue, it should expect to receive numerous complaints against IXCs because of their refusal to recognize either (a) their obligation to pay access or (b) the costs CMRS carriers actually incur in terminating IXC toll traffic. Besides, even if IXCs were willing to negotiate in good faith, there remains a major practical obstacle: how does a CMRS carrier negotiate with several hundred IXCs? As the Commission noted recently in a comparable context, the sizable transaction costs associated with negotiating separate access contracts with dozens (or hundreds) of IXCs can and should be avoided through “the convenience of a tariffed service.”<sup>63</sup>

There is a simple solution that the Commission could adopt to avoid the substantial transaction costs caused by duplicative CMRS-IXC negotiations and the inevitable litigation that will ensue without regulatory invention — namely, as VoiceStream proposed in its initial comments,<sup>64</sup> apply to CMRS carriers the same “tariff safe harbor” approach that the Commission recently developed for another set of competitive carriers, CLECs.<sup>65</sup> Under this approach, CMRS carriers would have the option of filing Commission tariffs for their exchange access services, both interstate and intrastate, but only so long as the prices do not exceed the access charges imposed by the ILEC. The approach VoiceStream recommends would be entirely optional. Thus, for example, if AT&T Wireless, which recognizes the “major inequity and asymmetry” in the

---

<sup>61</sup> CMRS carriers are precluded by rule from filing any tariffs, including access tariffs. *See* 47 C.F.R. § 20.15(c).

<sup>62</sup> Indeed, one CMRS carrier has filed a lawsuit against AT&T because of AT&T’s refusal to pay access charges.

<sup>63</sup> *CLEC Access Reform Order*, Docket No. 96-262, FCC 01-146, 16 FCC Rcd 8823, at ¶ 42 (2001).

<sup>64</sup> *See* VoiceStream Comments at 15-19.

current convention (“the CMRS provider receives no compensation, but pays access charges, while the other carriers receive access charges for the termination of such traffic”<sup>65</sup>) does not want to impose access charges, it need not do so.

VoiceStream does not oppose bill-and-keep as the long-term solution to access charges. But until ILECs stop recovering access charges and until IXCs remove access charge costs from their retail rates charge, the Commission cannot prohibit CMRS carriers from recovering access charges as well. Indeed, the current asymmetric arrangement is unreasonably discriminatory and violative of the Communications Act so long as IXCs charge end-to-end rates but then refuse to pay CMRS carriers access charges for the valuable services they perform for IXCs.

**D. The Commission Should Clarify the Rules Applicable to Transit Traffic**

The Commission should clarify the rules applicable to transit traffic, even if it determines that bill-and-keep should not be utilized for CMRS-LEC interconnection. Transit traffic occurs when the originating carrier and terminating carrier interconnect indirectly — *via* a third carrier. In almost all circumstances, the “transit” carrier is the “dominant” ILEC that operates the LATA tandem switches.

Transit carriers may not have a contractual arrangement with either the calling party’s network or the called party’s network (*e.g.*, CMRS-to-CLEC or “independent” ILEC-to-CMRS). VoiceStream therefore agrees that transit carriers are entitled to compensation for performing their critically important transit function — including in a bill-and-keep environment for local

---

<sup>65</sup> See *CLEC Access Reform Order*, Docket No. 96-262, FCC 01-146, 16 FCC Rcd 8823, at ¶ 42 (2001).

<sup>66</sup> AT&T Wireless Comments at 47.

compensation.<sup>67</sup> Nevertheless, numerous controversies are arising that the Commission could easily eliminate through a few brief pronouncements.

1. The Commission should reaffirm that CMRS carriers enjoy a federal “right of interconnection.” The Communications Act specifies that “[u]pon reasonable request of any person providing commercial mobile service, the Commission *shall* order a common carrier to establish physical connections with such service pursuant to the provisions of section 201.”<sup>68</sup> As noted above, Congress also amended Section 2(b) so the Commission could order interconnection applicable to intrastate CMRS.<sup>69</sup> In addition, the Commission has recognized that “separate interconnection arrangements for interstate and intrastate [CMRS] are not feasible” and that “state regulation of the right and type of interconnection would negate the important federal purpose of ensuring CMRS interconnection to the interstate network.”<sup>70</sup> Accordingly, the Commission has “preempt[ed] state and local regulations of the kind of interconnection to which CMRS providers are entitled.”<sup>71</sup>

CMRS carriers generally interconnect with LECs using either Type 2A (tandem connection) or Type 2B (end office connection). The Commission should reaffirm that the right to choose the form of interconnection is a right held by each CMRS carrier, and not a right possessed by the terminating carrier or a transit carrier.<sup>72</sup> The Commission should further confirm that the “right of interconnection” is a federal right and that states have no jurisdiction in this

---

<sup>67</sup> See *Intercarrier Compensation NPRM* at ¶ 71.

<sup>68</sup> 47 U.S.C. § 332(c)(1)(B)(emphasis added).

<sup>69</sup> See 47 U.S.C. § 152(b)(“Except as provided in . . . section 332 of this title, nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to” intrastate services.).

<sup>70</sup> *Second CMRS Order*, 9 FCC Rcd 1411, 1498 ¶ 230 (1994).

<sup>71</sup> *Id.*

<sup>72</sup> See, e.g., *Bowles v. United Telephone*, 12 FCC Rcd 9840 (1997).

area (e.g., a state cannot direct a CMRS carrier to take Type 2A, rather than Type 2B, interconnection).

2. The Commission should reaffirm the obligation of ILEC tandem switch owners to support CMRS transit service. The Public Switched Telephone Network would collapse if tandem switch owners stopped providing their transit services. CMRS carriers simply do not have the traffic volumes with most of the thousands of other carriers — be they ILECs, CLECs, IXC's or other CMRS carriers — to justify direct connections. Indeed, Congress recognized the need for transit services when it held that CMRS and other competitive carriers may interconnect with others using indirect interconnection — a form of interconnection that necessarily requires use of transit services.<sup>73</sup> ILECs are required to provide transit services, a form of transport, under the Act and Commission implementing rules,<sup>74</sup> and this obligation does not disappear simply because the compensation methods for termination change.<sup>75</sup>

There is growing evidence that some ILEC tandem owners are beginning to claim the power to deny transit services to CMRS carriers.<sup>76</sup> The Commission cannot sanction this view, as ILECs would then determine how CMRS carriers should design their own mobile networks (networks that are increasingly competing with the ILECs own services). VoiceStream therefore

---

<sup>73</sup> See 47 U.S.C. § 251(a).

<sup>74</sup> See, e.g., 47 C.F.R. § 51.701(c) (“Transport is the transmission *and any necessary tandem switching* of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between two carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.”)(emphasis added); *First Local Competition Order*, 11 FCC Rcd at 16015-16 ¶¶ 1039-40.

<sup>75</sup> See generally *First Local Competition Order*, 11 FCC Rcd at 16016 ¶ 1041 (“[W]e conclude that we need to treat transport and termination as separate functions — each with its own cost.”).

<sup>76</sup> See SBC Comments at 27-28 (SBC intimates that it has no obligation to provide transit service). See also CTIA Comments at 41; Sprint Comments at 33-34 (“Some RBOCs have refused, or have announced their intention to refuse, to provide such indirect interconnection.”); Verizon Wireless Comments at 26-27.

agrees with the unanimous view of all competitive carriers that tandem switch owners must be required to provide non-discriminatory access to their transit services.<sup>77</sup>

VoiceStream acknowledges that some tandem switch owners have been slow to add additional tandem capacity to meet growth in traffic volumes and that some tandem switches may be nearing exhaustion. VoiceStream is not opposed to converting certain Type 2A traffic to Type 2B traffic (and therefore bypassing the tandem switch) when exchanged traffic volumes justify direct MSC-to-end office connections — whether the end offices are owned by the tandem owner or by another carrier.<sup>78</sup> However, the tandem owner may not unilaterally require CMRS carriers to convert to Type 2B connections regardless of traffic volumes. While there may be rare circumstances where existing tandem exhaust precludes additional Type 2A traffic, the Commission should confirm that, in these rare circumstances, the tandem owner is responsible for paying for the new Type 2B interconnection facilities.<sup>79</sup> A CMRS carrier should not be faced with increased transport costs simply because the tandem switch owner is slow in adding extra capacity to its tandem/transit network. CMRS carriers also should not be [forclosed] from accessing tandems once capacity has been expanded.

3. The Commission should require that all Type 2B trunks be two-way trunks. As noted above, VoiceStream is not opposed to bypassing a tandem switch where traffic volumes between its MSC and a particular end office are sufficiently large to justify a direct connection (Type 2B). However, as AT&T Wireless notes, some ILECs are insisting that such direct connections use one-way trunks only — from the CMRS carrier to the ILEC — at the CMRS providers' sole ex-

---

<sup>77</sup> See, e.g., Sprint PCS Comments at 34; Triton PCS Comments at 13-14; Verizon Wireless Comments at 42.

<sup>78</sup> Such 2A-to-2B conversions are problematic, however, if the ILEC chooses to provide only at its tandem switches default routing for non-queried LNP traffic.

<sup>79</sup> See, e.g., CTIA Comments at 42; Verizon Wireless Comments at 28-29.

pense.<sup>80</sup> AT&T Wireless is correct when it observes that this ILEC position “increases CMRS providers’ costs not only to deliver traffic to the ILEC for termination, but also to terminate traffic delivered by the ILEC at the initial POI by requiring the CMRS provider to use more of its network to ‘back haul’ the ILEC’s traffic.”<sup>81</sup> VoiceStream therefore joins in AT&T Wireless’ request that the Commission require that all interconnect transport facilities between two networks be two-way facilities, absent agreement to the contrary.<sup>82</sup>

4. The Commission should reaffirm that the originating carrier has the obligation to pay for transit service, not the terminating carrier. Under the current CPNP regulatory regime (as well as under the COBAK proposal) the originating carrier is responsible for transporting its traffic to the terminating carrier. The originating carrier may decide to interconnect with the terminating carrier directly, or, as is more common for most carriers, it may use available transit services and interconnect indirectly. Under settled principles of cost-causation and consistent with the current CPNP convention, the costs of any transit service should be paid by the originating carrier. After all, it is the originating carrier that chooses to use the transit services in delivering its traffic to the terminating carrier.

The Commission has engendered some confusion in this area by virtue of a single sentence in a footnote to a lengthy order involving a paging carrier complaint against an ILEC. The Commission there stated:

---

<sup>80</sup> See AT&T Wireless Comments at 42.

<sup>81</sup> *Id.*

<sup>82</sup> VoiceStream also agrees that, if interconnecting carriers use multiple POIs, the terminating carrier should be able to designate the routing of traffic to a specific POI so that the originating carrier does not deliver the traffic to certain points on the network that may create network or traffic problems. *See id.*

Complainants are required to pay for “transiting traffic,” that is, traffic that originates from a carrier other than the interconnecting LEC but nonetheless is carried over the LEC network to the paging carrier’s network.<sup>83</sup>

It is possible that the Commission intended that this “terminating carrier pays transit cost” rule would apply only to one-way interconnection agreements such as those involved with paging carriers. The Commission should make such a clarification if this is the case. But, in any event, the Commission should reaffirm that at least for two-way interconnection agreements, the originating carrier, and not the terminating carrier, pays the costs of transit service.

5. The Commission should confirm that transit service prices must be based on forward-looking costs, not access charges. Transit is one form of transport and under both the Act and Commission implementing rules, transport is to be priced at a carrier’s forward looking economic cost (i.e., TELRIC).<sup>84</sup> Yet, dominant ILECs routinely price their transit services using the prices contained in their access tariffs. The Commission should confirm that prices for transit service must be based on TELRIC and not access charge methodologies.<sup>85</sup> In addition, since the dominant ILECs face no meaningful competition in their provision of transit services, continued regulation of such services remains imperative.<sup>86</sup>

6. The Commission should require transit providers to supply the information CMRS carriers need to bill for incoming traffic. CMRS carriers are entitled to compensation for the costs they incur in terminating traffic, whether reciprocal compensation for intra-MTA traffic or access charges for inter-MTA traffic. Most incoming traffic that a CMRS carrier receives is

---

<sup>83</sup> See *TSR Wireless v. U S WEST*, 15 FCC Rcd 11166, 11177 n.70 (2000). In support, the Commission cited the *First Local Competition Order*, 11 FCC Rcd at 16016-17. However, there is no discussion of transit traffic in this portion of the *Local Competition Order*.

<sup>84</sup> See 47 U.S.C. § 252(d)(2); *First Local Competition Order*, 11 FCC Rcd at 16023 ¶ 1054.

<sup>85</sup> See, e.g., AT&T Wireless Comments at 38; Sprint Comment at 35.

<sup>86</sup> See, e.g., AT&T Wireless Comments at 38.

routed through the transit services provided by the dominant ILEC (with the traffic commingled over a large trunk group). For the CMRS carrier to bill the originating carrier (or IXC), the CMRS carrier needs the transit service provider to forward information concerning the identity of the originating carrier (or IXC).

Transit carriers have access to this information, which they use to bill the originating carrier for their transit services. Sometimes transit carriers forward this same information to the terminating carrier; sometimes they do not. As a practical matter, a terminating carrier cannot bill the originating carrier without knowing the originating carrier's identity, especially now that the NXX code in the caller's telephone number may no longer be associated with the originating carrier. A terminating carrier should not be deprived of the opportunity to recover its call termination costs simply because the transit provider chooses not to provide the critical information – information only it can provide – that the terminating carrier needs to render the bill.

Admittedly, the problem is not with the tandem owners alone, because the SS7 signaling in use today has never been modified to identify and convey in the trunk signaling messages the carrier to be billed.<sup>87</sup> But the necessary SS7 modifications will never be undertaken without the active support of the dominant ILECs. VoiceStream therefore urges the Commission to direct transit switch owners to provide by a date certain the identity of the carrier to be billed with each call. Such an order should give the dominant ILECs the incentive they need to support the necessary modifications to the SS7 signaling protocol.

**E. The Commission Should Reaffirm the Use of Flexible Rating (a.k.a. “Virtual NXX Codes”) for CMRS**

---

<sup>87</sup> See VoiceStream Comments at 11.

The Commission inquired into the use of “virtual” NXX codes by CLECs, and the comments reveal a vigorous debate between ILECs and CLECs over CLEC use of such codes. VoiceStream does not take a position in that debate. But whatever it may do with respect to CLEC use of “virtual” NXX codes, the Commission should take no action that inhibits CMRS carriers from continuing to use “virtual” codes (or thousands blocks). As even the most forceful opponent of CLEC use of “virtual” codes recognizes, CMRS carriers use “virtual” codes in a very different fashion than CLECs:

[T]hese CLEC arrangements are also different from those employed by CMRS providers because CMRS providers actually have facilities and customers in the areas for which the numbers are assigned.<sup>88</sup>

In fact, CMRS carriers do not use “virtual NXX codes” as the Commission has defined the term.<sup>89</sup> In the context of CMRS, it would be more appropriate to refer to “flexible rating” or “virtual rating” than “virtual NXX codes.”<sup>90</sup>

The Commission should reaffirm the use of “virtual rating” with CMRS-LEC interconnection. “Virtual rating” is necessary because LECs have established small local calling areas, LECs do not know the physical location of the mobile customer being called, and mobile customers expect that their inbound mobile local calling area will correspond to the landline outbound local calling area. Put another way, “virtual rating” is necessary because LEC customers do not expect to incur toll charges in calling a mobile handset when the same call to a landline phone would be deemed a local call.

---

<sup>88</sup> Verizon Comments at 8 n.16.

<sup>89</sup> See *Inter-carrier Compensation NPRM* at n.188 (“Virtual NXX codes are central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area.”). CMRS carriers use “virtual” codes only in areas where they provide service and, therefore, have facilities (*e.g.*, base stations). Indeed, CMRS carriers have no need for numbering resources in areas where they do not provide service. See Verizon Wireless Comments at 32-33 (“CMRS carriers do not order NXX codes in rate centers where they cannot provide CMRS service, which is a critical distinction between CLEC and CMRS use of this service.”).

The most common example occurs where a suburb is located in a different local calling area than the city.<sup>91</sup> CMRS carriers often locate their mobile switching centers (“MSCs”) in the city, near the ILEC tandem switch. Assume a mobile customer resides in the suburb and expects to receive most of his or her calls from people in the suburb. On a land-to-mobile call where both the landline customer and mobile customer are located in the suburb, the LEC would transmit the call from its suburban end office to its tandem switch in the city for delivery to the nearby MSC. The CMRS carrier then transmits the call to the base station (or cell site) serving the suburb so the call can be completed.

If the mobile customer has a telephone number containing an NXX code associated with the rate center where the MSC is physically located, all land-to-mobile calls made by people residing in the suburb would be billed toll charges for the call — even though the mobile customer may be located next door to the calling party at the time of the call (*i.e.*, within the LEC’s suburban rate center). The landline customer would be billed toll charges because the serving LEC does not know the physical location of the mobile customer. The LEC instead rates the call as local or toll by examining the NXX code of the called party and determining the rate center associated with the NXX. If the mobile customer’s NXX is rated in the city, all LEC customers residing in the suburb will incur toll charges in calling the handset (because the LEC “pretends” that the mobile customer is always located in the city).

If, however, the mobile customer has a telephone number containing an NXX code associated with the suburban rate center, LEC callers from the suburb will not be billed toll charges (even though the physical routing of the call is the same in both instances). Because mobile

---

<sup>90</sup> See Verizon Wireless Comments at 31.

<sup>91</sup> See Verizon Wireless Comments at 32 (discussing the situation in Indianapolis, Indiana).

customers do not expect that their callers will incur toll charges for making “local” calls, a CMRS carrier serving both the city and the suburb is compelled to obtain telephone numbers rated in the city and in the suburb.<sup>92</sup>

It is important that the FCC reaffirm the use of “flexible rating” because there is growing evidence that some “independent” ILECs are refusing to agree to such arrangements.<sup>93</sup> The example above assumed that the LEC serving the suburb and the city are the same carrier. But the analysis and impact to consumers is the same when the suburban landline service is provided by an “independent” ILEC while the tandem switch is owned by the “dominant” ILEC. If an “independent” ILEC refuses to engage in flexible rating, its customers can never call a mobile customer who is associated with the service area of the “independent” ILEC — even when the call is local because both the LEC and mobile customers are located within the suburban local calling area. As Verizon Wireless notes:

It simply does not make sense to require a landline customer to pay a toll call to reach the wireless customer when the wireless customer might be a few blocks away.<sup>94</sup>

But more fundamentally, the position of these “independent” ILECs is discriminatory and anti-competitive. For most “independent” ILECs, mobile service represents a greater competitive threat than does the threat posed by CLECs.<sup>95</sup> By depriving CMRS carriers and their mobile customers from enjoying the same local calling area that they have created for their own serv-

---

<sup>92</sup> This ILEC arrangement — basing its local/toll decision on a telephone number when the physical routing of the call is the same regardless of the rating — is not rational. Nevertheless, given all the other issues pending before the Commission in this docket, this is an issue the Commission should save for another day.

<sup>93</sup> See, e.g., Sprint PCS Petition for Order Directing Brandenburg Telephone to Provide Interconnection on Reasonable and Non-Discriminatory Terms (Sept. 18, 2001).

<sup>94</sup> Verizon Wireless Comments at 33.

<sup>95</sup> See, e.g., Michigan Exchange Carriers Association Comments at 25 (“The most likely carriers to take these [ILEC] customers, at least in rural areas, are CMRS carriers.”); Ronan Telephone Comments at 12 (“Ronan Telephone is also experiencing plenty of wireless service competition.”).

ices, “independent” ILECs can hobble their CMRS competitors from providing an effective competitive alternative to the ILEC’s own services. This is a matter that deserves the Commission’s immediate attention if competition is to flourish in areas served by “independent” ILECs.

**F. The Commission Should Remind “Independent” ILECs That Commission Interconnection Orders and Rules Apply to Them**

“Independent” ILECs are becoming a “growing problem,” as AT&T Wireless has observed.<sup>96</sup> The problem is growing because CMRS carriers like VoiceStream are beginning to expand their network coverage areas to include areas served by “independent” ILECs. But the problem also is growing because “independent” ILECs are increasingly taking the position that Commission interconnection orders and rules do not apply to them. Verizon Wireless’ description of the situation is regrettably all too accurate:

The growing conflict between rural carriers and CMRS carriers in their interpretations of the Act and the FCC’s rules has already generated extensive litigation at the expense of productive negotiations. Further litigation in additional states is certain to follow, with a high risk of inconsistent rulings that will muddy the rules of engagement between rural LECs and CMRS carriers even further.<sup>97</sup>

This is an area that requires the Commission’s immediate attention, especially given the huge number of “independent” ILECs (over 1,000). A “Federal regulatory framework” for CMRS will never be established unless the Commission makes clear that its interconnection orders and rules apply to all carriers — including “independent” ILECs. VoiceStream submits that Commission adoption of the rulings below would greatly narrow areas of disputes between CMRS carriers and “independent” ILECs and thereby facilitate interconnection.

---

<sup>96</sup> See AT&T Wireless Comments at 51.

<sup>97</sup> Verizon Wireless Comments at 44.

1. The Commission should reaffirm that a CMRS carrier need establish only one Point of Interconnection (“POI”) per LATA, that Commission transport rules apply to CMRS/”independent” ILEC interconnection, and that direct CMRS/”independent” ILEC connection is not required. Each carrier establishes a POI that is most efficient for it. A CMRS carrier generally locates its POI at its mobile switching center (“MSC”), while an “independent” ILEC generally locates its POI at one of its end office switches. Under the transport rules in effect today (and under the default COBAK transport rule being considered for bill-and-keep), the originating carrier is responsible for transporting its traffic to the terminating carrier’s POI. Thus, for a mobile-to-land call, the CMRS carrier is responsible for paying the costs of delivering the call to the “independent” ILEC’s POI (end office switch). For a land-to-mobile call, the “independent” ILEC has the obligation to pay the costs of delivering its call to the MSC.

This arrangement for dividing responsibilities for transport is fair, reciprocal and equitable — regardless of the distance between the CMRS POI and the “independent” ILEC POI. But this arrangement is also rarely efficient, because traffic volumes often are not large enough to cost-justify a direct connection between two carriers (even if they use a two-way trunk and share the cost of the trunk group).<sup>98</sup> Accordingly, in most instances, carriers choose to route traffic to each other indirectly — *via* the dominant ILEC’s transit services. Because each carrier already has large trunk groups connecting its respective switch to the dominant ILEC’s tandem switch, carriers often exchange traffic with each other using each carrier’s switch-to-tandem switch trunk group.<sup>99</sup> By using these large installed tandem trunk groups, the incremental cost of transport of

---

<sup>98</sup> See, e.g., AT&T Wireless Comments at 12-13; Nextel Comments at 10-11; Triton Comments at 13.

<sup>99</sup> Under this arrangement, all traffic (including the “independent” ILEC’s land-to-mobile calls) is carried over the CMRS carrier’s MSC-to-tandem trunk group. Between the “independent” ILEC and the tandem switch, all traffic (including the CMRS provider’s mobile-to-land traffic) is carried over the “independent” ILEC’s and “dominant” ILEC’s tandem facility.

traffic between the independent ILEC and the CMRS carrier becomes negligible, and interconnecting carriers generally will find it more cost-effective to use bill-and-keep for transport over these facilities.

A growing number of “independent” ILECs have decided that they need not be reasonable — or, for that matter, follow the Commission’s established transport rules. These “independent” ILECs are asserting that as a condition to receiving reciprocal compensation, a CMRS carrier must establish a direct connection to their end office switch — in effect, establish a new POI at their switch.<sup>100</sup> These “independent” ILECs make this demand even though they recognize full well that traffic volumes with each CMRS carrier are too small to cost-justify a direct connection.

These demands by a growing number of “independent” ILECs are entirely unreasonable and result in a totally unjustified economic windfall. To eliminate further controversy and state-by-state litigation, the Commission should reaffirm that CMRS carriers need establish only one POI per LATA (just as “independent” ILECs may establish only one POI per LATA) and that for land-to-mobile calls, the originating “independent” ILEC has the responsibility for transporting its traffic to the CMRS provider’s existing POI. Simply put, the Commission should remind “independent” ILECs that they may not demand that a CMRS provider install a POI in the “independent” ILEC’s local calling area (just as a CMRS carrier may not demand that an “independent” ILEC establish a new POI nearby its MSC). The Commission should further remind “independent” ILECs that for land-to-mobile traffic, they are responsible for compensating the domi-

---

<sup>100</sup> See Triton Comments at 14.

nant ILEC for its tandem/transit switching costs (just as the CMRS carriers assume this responsibility for mobile-to-land traffic).<sup>101</sup>

2. The Commission should remind “independent” ILECs that reciprocal compensation, not access charges, applies to all intra-MTA CMRS-LEC traffic. The Commission ruled in its seminal *Local Competition Order* that “traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA . . . is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.”<sup>102</sup> The Commission reaffirmed this rule earlier this year in holding that the access charge “carve out” provision in Section 251(g) does not apply to intra-MTA traffic exchanged with CMRS carriers.<sup>103</sup>

As discussed above, CMRS carriers often find it most efficient to transport traffic destined to an “independent” ILEC *via* the “dominant” ILEC’s tandem switch. However, a growing number of “independent” ILECs are assessing access charges on such traffic, simply because the CMRS carrier finds it more cost effective to deliver this traffic indirectly *via* transit services rather than delivering the traffic to the “independent” ILEC directly.<sup>104</sup>

This ILEC position also is an entirely unreasonable and totally unjustified economic windfall, as well as being flatly inconsistent with the Commission’s reciprocal compensation rules.<sup>105</sup> The Commission should therefore remind “independent” ILECs that they may not assess access charges on intra-MTA calls with CMRS carriers, but may charge only forward-

---

<sup>101</sup> See Triton Comments at 13-14.

<sup>102</sup> *First Local Competition Order*, 11 FCC Rcd 15499, 16016 ¶ 1043 (1996).

<sup>103</sup> *Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-141, 16 FCC Rcd 9251 ¶ 47 (April 27, 2001).

<sup>104</sup> See, e.g., CTIA Comments at 43-44; Nextel Comments at 26-27; Sprint Comments at 32-33; Verizon Wireless Comments at 44-46.

<sup>105</sup> See 47 C.F.R. § 51.701(b)(2).

looking TELRIC-based reciprocal compensation for terminating intra-MTA calls originating on CMRS networks.

3. The Commission should remind “independent” ILECs that they may not recover loop costs in their rate for reciprocal compensation. Section 252(d) of the Act authorizes an ILEC to recover in reciprocal compensation “a reasonable approximation of the additional costs” of call termination.<sup>106</sup> The Commission has squarely ruled that loop costs are not an “additional” cost under the statute because the “costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities.”<sup>107</sup> Nevertheless, a growing number of “independent” ILECs are demanding that CMRS carriers pay rates for reciprocal compensation that include loop costs.<sup>108</sup> The Commission should therefore enter an order reaffirming that reciprocal compensation rates that ILECs charge may not include any loop costs and that inclusion of such costs is unlawful and contrary to existing rules. CMRS carriers should be not required to litigate this same issue again and again, state-by state, ILEC-by-ILEC.

4. The Commission should reaffirm that an “independent” ILEC engages in bad faith when it unilaterally files an interconnection/call termination tariff. In the early days of the CMRS (cellular) industry, the Bell Operating Companies (“BOCs”) adopted a practice of preempting interconnection negotiations by unilaterally filing interconnection tariffs. In 1987, the Commission directed that “tariffs reflecting charges to cellular carriers will be filed *only after the co-carriers have negotiated agreements* on interconnection,” and that a LEC that files a tariff before an agreement has been reached engages in bad faith, which is actionable in a Section 208

---

<sup>106</sup> 47 U.S.C. § 252(d)(2)(A)(ii).

<sup>107</sup> *First Local Competition Order*, 11 FCC Rcd at 16025 ¶ 1057.

<sup>108</sup> For example, as noted above, “independent” ILECs were able to convince the Missouri Commission to include a per minute charge of \$0.02 in their reciprocal compensation rate designed to recover loop costs.

complaint.<sup>109</sup> Two years later, the Commission “reaffirm[ed] that *tariffs should not be filed before* the co-carriers have conducted good faith negotiations on an interconnection agreement”:

Our statement regarding “pre-tariff negotiation agreements” was intended to reflect our recognition that, as CTIA suggests, *if a telephone company is able to file tariffs before reaching an interconnection agreement, a cellular carrier’s bargaining power will be diminished. . . .* [U]nder our “pre-tariff negotiation agreement” policy, we would not expect the BOC to file a tariff pertaining to the “unresolved issue.” To interpret our statement otherwise . . . would mean that, when an impasse is reached, the landline company could proceed unilaterally to file its tariffs, *thereby rendering meaningless the negotiations already conducted on this matter.*<sup>110</sup>

“Independent” ILECs are now engaging in the very tactic that the BOCs attempted over a decade ago. The comments note that tariff disputes are pending in Iowa and Missouri.<sup>111</sup> Unless “nipped in the bud,” this issue could soon spread to other states. The Commission should therefore remind “independent” ILECs that they may not file CMRS interconnection/call termination tariffs — regardless of how ILECs may style them — without first completing interconnection negotiations with CMRS carriers.

5. The Commission should remind state regulators that “independent” ILECs cannot avoid Commission rules governing interconnection and reciprocal compensation simply by filing state tariffs. Voice-Stream is not opposed *per se* to the concept of “independent” ILECs’ submitting reasonable tariffs after all material terms have been agreed to with the CMRS industry and so long as the tariffs incorporate the ILEC’s reciprocal obligations. However, the Commission should confirm that “independent” ILECs may not evade their statutory and regulatory in-

---

<sup>109</sup> *Need to Promote Competition Declaratory Ruling*, 2 FCC Rcd 2910, 2916 ¶ 56 (1987)(emphasis added).

<sup>110</sup> *Need to Promote Competition Reconsideration Order*, 4 FCC Rcd 2369, 2370-71 ¶¶ 13-14 (1989) (emphasis added). The Commission later extended this good-faith negotiation/pre-tariff policy to LEC-PCS interconnection. *See Second CMRS Report*, 9 FCC Rcd 1411, 1497-98 ¶¶ 227-230 (1994).

<sup>111</sup> *See, e.g.*, CTIA Comments at 44-45; Nextel Comments at 11-54; Verizon Wireless Comments at 40-42.

terconnection obligations through the simple expedient of filing state interconnection/call termination tariffs that are inconsistent with federal requirements.

As noted above, “independent” ILECs in Missouri filed interconnection tariffs where they sought approval of reciprocal compensation rates that included \$0.02 per minute for the recovery of their loop costs. This proposed charge is flatly inconsistent with the Communications Act and Commission implementing orders. The Missouri Commission nonetheless approved the tariffs, taking the position that the Act and Commission rules “simply do not apply to the proposed tariffs herein.”<sup>112</sup>

No one, including “independent” ILECs, possess the authority to ignore federal requirements simply by preparing and filing inconsistent state tariffs. As Verizon Wireless notes, an ILEC’s “choice of form (agreement or tariff) does not dictate carrier obligations and rights pertaining to interconnection.”<sup>113</sup> The Commission should therefore remind both “independent” ILECs and state regulators that federal interconnection requirements, whether set forth in the Communications Act, Commission rules or Commission orders, must be followed, including in state tariffs.

6. If the Commission retains reciprocal compensation for CMRS-LEC traffic, it should adopt a bill-and-keep exception when carriers exchange *de minimus* amounts of traffic. AT&T Wireless urges the Commission to adopt a bill-and-keep exception for carriers passing *de minimus* amounts of traffic if it decides to retain reciprocal compensation for CMRS-LEC interconnection.<sup>114</sup> VoiceStream agrees.

---

<sup>112</sup> *Missouri PSC Order* at 15, *quoted in* Nextel Comments at 12.

<sup>113</sup> Verizon Wireless Comments at 47.

<sup>114</sup> *See* AT&T Wireless Comments at 50.

It makes no sense for carriers (CMRS or LEC) to spend time negotiating a reciprocal compensation agreement, to prepare bills, to verify bills submitted by the other, and to maintain audit trails when the associated transaction costs exceed the amounts that carriers would exchange through reciprocal compensation. As Verizon Wireless notes, the “prospect of arbitrating 150 different contracts in Iowa is not a realistic option for even the largest wireless carrier.”<sup>115</sup>

Accordingly, VoiceStream recommends if the Commission retains a CPNP regime for CMRS-LEC interconnection as a general rule, that it establish a *de minimus* “bill-and-keep exception” when the reciprocal compensation payments between carriers would be less than \$20,000 annually. The Commission should further rule that any CMRS/”independent” ILEC traffic that is exchanged (directly or indirectly) without an interconnection agreement or a reciprocal compensation agreement is to be exchanged on a bill-and-keep basis until one of the parties to the relationship specifically requests a reciprocal compensation arrangement. Especially since “independent” ILECs have the option to file tariffs when CMRS carriers do not possess the same flexibility, “[c]ompetitive neutrality and fairness dictate that bill-and-keep be the default rule for CMRS-rural ILEC traffic.”<sup>116</sup>

The Commission should find VoiceStream’s position to be compelling for many reasons. It is a much more efficient utilization of PSTN facilities. And it eliminates an unjustified economic windfall that subsidizes “independent” ILECs at the expense of their CMRS competitors. The status quo further delays competition by CMRS carriers for “independent” ILEC customers.

**G. The Commission Should Require Mandatory Bill-and-Keep for the Exchange of SS7 Signaling Messages**

---

<sup>115</sup> Verizon Wireless Comments at 47.

<sup>116</sup> Verizon Wireless Comments at 48.

The Commission should adopt bill-and-keep for the exchange of SS7 signaling messages even if it decides to retain a CPNP regime for the exchange of telecommunications traffic.

A LEC's reciprocal compensation obligation extends to "the transport and termination of telecommunications."<sup>117</sup> This obligation also logically extends to the signaling necessary to support telecommunications services, whether the signaling is "in-band" (*e.g., multi-frequency (MF)*) or "out-of-band" (*e.g., SS7*) — because there would be no telecommunications services without the necessary inter-network signaling that carriers exchange.

Carriers have historically exchanged SS7 messages on a bill-and-keep basis because the amounts of data bits involved are small and because interconnecting carriers exchange SS7 messages on every call — whether mobile-to-land or land-to-mobile. Some ILECs, however, have begun to charge CMRS carriers for use of their SS7 network on mobile-to-land calls, even though the same ILEC uses CMRS SS7 networks for land-to-mobile calls. In order to maintain a reciprocal arrangement in a CPNP regime, a CMRS carrier would need to acquire a SS7 message billing system. The problem CMRS carriers face is that the cost of purchasing, installing and operating such a billing system is significant while the net billable revenue is minimal.

Dominant ILECs do not face this same problem because they can spread the costs of their SS7 billing system across a much larger base of SS7 messages. In effect, if not in purpose, an ILEC's decision to bill for SS7 messages converts what had been a reciprocal arrangement into a non-reciprocal arrangement. ILECs should not be permitted to increase CMRS transaction costs (and disadvantage their competitors) simply because they enjoy scale efficiencies that CMRS carriers will not be able to achieve for a substantial period of time. Accordingly, VoiceStream

---

<sup>117</sup> See 47 U.S.C. § 251(b)(5).

urges the Commission to direct that all SS7 messages exchanged with call set-up or takedown (ISUP messages) be subject to bill-and-keep.<sup>118</sup>

The Commission also should clarify that its transport rules apply to SS7 signaling links between SS7 “switches” (Signaling Transfer Points or “STPs”).<sup>119</sup> Carriers generally deploy STPs in mated pairs (for redundancy purposes), resulting in four “D links” between the two sets of mated STP pairs. Because carriers exchange SS7 messages on every call attempt, the Commission should establish a default rule that each of the interconnected carriers is responsible for two of the four “D links.” Such a default rule would encourage the interconnecting carriers to negotiate a “meet point” applicable to all four D links that is efficient for each carrier.

Finally, the Commission should remind the ILEC Bell companies that the LATA restriction no longer applies to SS7 D links and that, as a result, their SS7 transport link obligation applies even when a LATA boundary separates the RBOC’s STPs and the interconnecting CMRS provider’s STPs. The 1996 Act gave the RBOCs the authority to provide “incidental interLATA services,”<sup>120</sup> and one of the many “incidental” services that RBOCs may provide is “signaling information used in connection with the provision of telephone exchange services or exchange access.”<sup>121</sup> An RBOC should not, therefore, be able to excuse itself from providing a reciprocal arrangement for the D links simply because the links cross a LATA boundary. Some RBOCs have begun removing STPs from their smaller LATAs and re-directing all SS7 messages to STPs in adjacent, larger LATAs. While it is understandable that RBOCs would undertake such consolidation, such action often adversely affects competitive carriers. With STP consolidation,

---

<sup>118</sup> VoiceStream is not opposed to ILECs charging fairly for data base queries (TCAP messages), although there is growing evidence that ILEC SS7 prices are not based on costs using forward-looking methodologies.

<sup>119</sup> See Verizon Wireless Comments at 35.

<sup>120</sup> See 47 U.S.C. § 271(a)(3).

CMRS carrier D-links to the old STPs in the small LATA become unnecessary, yet CMRS carriers often are required to continue to pay for these links because of long-term contracts.

### **III. CONCLUSION**

For the foregoing reasons, the Commission should adopt a federal regulatory regime for CMRS interconnection with other carriers, establish bill-and-keep for the exchange of CMRS-LEC traffic, and implement the seven other recommendations that VoiceStream discusses above.

Respectfully submitted

**VoiceStream Wireless Corporation**

By: /s/ Brian O'Connor  
Brian T. O'Connor, Vice President  
Legislative and Regulatory Affairs

Robert Calaff, Corporate Counsel  
Governmental and Regulatory Affairs

Dan Menser, Corporate Counsel  
Regulatory Affairs

401 9<sup>th</sup> Street, N.W., Suite 550  
Washington, D.C. 20004  
202-654-5900

November 5, 2001

---

<sup>121</sup> See *id.* at § 271(g)(5).