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

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WT Docket No. 01-316
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Sprint PCS and AT&T Petitions)
For Declaratory Ruling)
Regarding CMRS Access Charge Issues)

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ by counsel, hereby responds to the Commission's invitation to comment on issues identified in petitions for declaratory ruling filed by Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint PCS") and AT&T Corp. ("AT&T") regarding whether Commercial Mobile Radio Service ("CMRS") providers may charge interexchange carriers ("IXCs") access fees for the use of CMRS networks and, if so, what rate may be reasonably charged for such services.² RCA submits that CMRS carriers are entitled to recover the costs associated with terminating the calls for which IXCs receive compensation from their subscribers.

I. Background

In 1998, Sprint PCS, a CMRS provider, began sending invoices to IXCs, including AT&T, for the costs Sprint PCS incurs in terminating the calls AT&T directs to its network.

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

² *Sprint PCS and AT&T File Petitions for Declaratory Ruling on CMRS Access Charge Issues: Public Notice*, WT Docket No. 01-316, DA 01-2618 (rel. Nov. 8, 2001).

After repeated efforts to obtain payment from AT&T, in August 2000, Sprint PCS filed suit in a Missouri state court. Subsequently, the suit was removed to the U.S. District Court for the Western District of Missouri. The federal court has referred to the Commission, under the doctrine of primary jurisdiction, issues concerning whether Sprint PCS may charge AT&T access fees for use of the Sprint PCS network and, if so, what rate may be reasonably charged for such services. The Commission seeks comment on these issues. Additionally, Sprint PCS and AT&T both filed declaratory ruling petitions with the Commission raising issues pertaining to the lawsuit. The FCC requests comment on the issues as well.

II. CMRS Providers Are Entitled To Recover Costs From the IXCs Benefiting From the Termination Service Provided

The Commission has long recognized that costs are incurred by the end user's service provider to provide interstate access services and these costs should be recovered from IXCs.³ Accordingly, the Commission established the access charge regime in which IXCs compensate local telephone companies ("LECs") when they use the transport, switching and local loop of the LEC to originate and terminate interstate long distance calls.⁴ CMRS carriers provide exactly the same service as LECs; they are likewise entitled to recovery of their costs.

In its CMRS Equal Access rulemaking proceeding, the Commission has already confirmed that, just as LECs are allowed to recover certain costs from IXCs pertaining to the provision of equal access, wireless carriers are also "entitled to just and reasonable compensation

³ See, e.g., *In the Matter of Access Charge Reform: First Report and Order*, 12 FCC Rcd 15982, 15992 (1997).

⁴ *Id.* at 15993.

for their provision of access.”⁵ The Commission has also confirmed that CMRS providers are entitled to receive access fees from IXC’s when a LEC and the CMRS provider jointly provide access service. In its Interconnection rulemaking proceeding, it tentatively concluded that “CMRS providers should be entitled to recover access charges from IXC’s, as the LECs do when interstate traffic passes from CMRS customers to IXC’s (or vice versa) via LEC networks.”⁶ The Commission reasoned that to deny CMRS providers recovery of access charges from IXC’s would be “unreasonably discriminatory” and would “interfere with our statutory objective and ongoing commitment to foster the development of new wireless services such as CMRS.”⁷

Given this precedent, and the absence of federal law or policy that bars CMRS providers from recovering call termination costs from IXC’s, the Commission must declare that CMRS providers are entitled to charge IXC’s for the provision of access.

III. CMRS Providers Should Receive Compensation for Their Provision of Access

Refusal of IXC’s to pay access fees charged by CMRS carriers is unreasonably discriminatory, establishing a *de facto* and unwarranted distinction based upon the technology used to deliver an IXC call to an end user. The terminating services received by the IXC are identical, whether delivered by a wireline or wireless carrier. Under Section 202(a) of the

⁵ See *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services: Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408, 5447 (1994) citing *Interconnection Order*, 2 FCC Rcd 2910, 2915 (1987).

⁶ *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers: Notice of Proposed Rulemaking*, 11 FCC Rcd 5020, 5075 (1996).

⁷ *Id.*

Communications Act of 1934, as amended (the “Act”),⁸ this distinction is unlawful. Blanket refusal to compensate CMRS providers for the costs of terminating IXC calls is in violation of Section 201(b) of the Act. In *MGC Communications v. AT&T*, the Commission determined that AT&T’s refusal to pay a CLEC for originating interstate access amounted to impermissible self-help and a violation of Section 201(b) of the Act.⁹ IXCs are not permitted to choose which terminating carrier is entitled to payment. This principle is further evidenced by the *CLEC Access Reform Order*, in which the Commission concluded that Section 201(a) of the Act prohibits an IXC from refusing to serve customers of CLECs, which are charging presumptively lawful rates.¹⁰

The only distinction between IXCs refusing to pay CLECs for access and IXCs refusing to pay CMRS carriers for access is that CMRS carriers are not allowed to file tariffs and therefore are not able to rely on published rates that have been presumed reasonable. Tariffing is not, however, necessary to ensure reasonable access charges; rather, the reasonableness of access charges can be challenged by complaint under Section 208.¹¹ Accordingly, fairness demands that the Commission take action to reiterate and enforce CMRS carriers’ rights to receive “just and reasonable compensation for their provision of access.”¹²

⁸ 47 U.S.C. § 202(a).

⁹ 14 FCC Rcd 11647 (CCB,1999); aff’d 15 FCC Rcd 308 (1999).

¹⁰ *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, FCC 01-146 (rel. Apr. 27, 2001).

¹¹ *See In the Matter of Hyperion Telecommunications, Inc.: Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 8596, 8608 (1997).

¹² *See cases cited supra note 5.*

IV. Conclusion

CMRS carriers provide access services to IXC's in the same way that LECs provide those services, and, accordingly, are entitled to receive compensation for these services. The refusal of IXC's to pay call termination costs constitutes an unjust and unreasonable practice in violation of Section 201(a) and an unreasonably discriminatory practice in violation of Section 201(b). Accordingly, fairness demands that the Commission take action to reiterate and enforce CMRS rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" was served on this 30th day of November 2001, via hand delivery or by first class, U.S. mail, postage prepaid to the following parties:



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