

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

In the Matter of)
)
Developing a Unified Intercarrier) **CC Docket No. 01-92**
Compensation Regime)
)
Sprint Petition for Declaratory Ruling)
Regarding the Rating and Routine)
of Traffic by ILECs)

To: The Commission

REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group (“RTG”), by its attorneys, hereby replies to comments submitted in response to the Federal Communications Commission (“FCC” or “Commission”) July 18, 2002 *Public Notice*¹ requesting comments on a Petition for Declaratory Ruling (“Petition”) filed by Sprint Corporation (“Sprint”) regarding the rating and routing of numbering resources. As the diverse comments make abundantly clear, the Sprint-BellSouth dispute that is the subject of the Petition has far reaching implications not only about numbering, but also about the interconnection and compensation obligations of incumbent local exchange carriers (“LECs”) and Commercial Mobile Radio Services (“CMRS”) providers,² and the transiting obligations of incumbent LECs subject to Section 251(c) of the Communications Act of 1934, as amended (the “Act”).³ Specifically, the issues underlying the Petition fundamentally impact compensation and interconnection between a CMRS provider and the rural telephone company (“rural LEC”)⁴ in whose exchange the CMRS carrier intends to activate local

¹ *Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92, Public Notice, DA 02-1740, (July 18, 2002) (“*Public Notice*”).

² See, e.g., CTIA Comments Appx. 2.

³ See generally AT&T Comments.

⁴ Rural telephone company is defined by Section 3(37) of the Act.

numbering resources. RTG supports Sprint's position with respect to numbering provided that the Commission also addresses the intercarrier compensation and interconnection issues that arise from Sprint's position. RTG agrees that these issues deserve immediate Commission attention and clarification.⁵ RTG also concurs that the FCC has plenary authority to regulate LEC-CMRS interconnection, including indirect interconnection.⁶

RTG is uniquely positioned to address rural LEC-CMRS interconnection because RTG is comprised of rural telecommunications carriers, most of whom offer both wireless and local exchange services.⁷ Accordingly, RTG is cognizant of both sides of the issue.

As an initial matter RTG agrees with Dobson Communications Corp. ("Dobson") that the NXX codes at issue are not "virtual."⁸ As Dobson explains, "CMRS carriers rate numbers in local areas where they have facilities to provide CMRS service, so their customers can have local calling in the areas where they live, work and use their phones."⁹ Because the telephone number rating system is based on the landline network, CMRS carriers are not able to obtain NXXs that are rated to CMRS carriers' local service areas, *i.e.*, MTAs.¹⁰ Therefore, CMRS carriers must rate NXX codes somewhere. As noted in the comments, a Mobile Switching Center ("MSC") is capable of supporting service across a wide geographic area and there is no basis to require a CMRS carrier to locate an MSC in every rate center where it desires to establish local calling.

⁵ See Comments of Dobson Communications Corp. p. 2.

⁶ See Reply to Opposition filed by Nextel Communications, Inc. p 1.

⁷ RTG is an organized group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services ("PCS"), to their subscribers. RTG's members are all affiliated with rural telephone companies or are small businesses serving secondary, tertiary, and rural markets.

⁸ See Dobson Comments p 12; *accord*, CTIA Comments Appx. p. 3.

⁹ Dobson Comments p. 19.

¹⁰ As the instant controversy illustrates, the current numbering and toll rating system is, at best, awkward when applied to calls to CMRS subscribers who by definition are not located in a fixed geographic area. Accordingly, the Commission should reexamine the rating system to reflect the reality of CMRS networks.

Instead, under current practice, in order for calls from the landline network to a CMRS subscriber to be local, a CMRS carrier must obtain an NXX rated to an incumbent LEC's rate center.¹¹

As the comments make clear, however, merely rating an NXX code to a rural LEC's calling area does not currently resolve the broader interconnection and compensation issues. Accordingly in addressing Sprint's Petition, the Commission should also address the following issues raised in the comments:

What are the interconnection obligations of CMRS carriers and rural LECs to interconnect directly or indirectly?

When may rural LEC's route traffic to IXCs rather than to CMRS carriers over direct or indirect connections?

Who is responsible for the cost of facilities, transport and switching for the delivery of rural LEC-originated traffic outside of the rural LEC's service area?

What are the transit obligations of incumbent LECs that are subject to Section 251(c)?

In addressing these and other issues raised in the comments, RTG requests that the Commission consider the following points. The Act establishes and prefers a system of negotiated interconnection arrangements pursuant to which the parties establish their respective rights and responsibilities. Congress recognized that one size did not fit all, and that interconnecting carriers could best arrange for interconnection between their networks through negotiation and if necessary, arbitration. It is especially critical for carriers to enter into a

¹¹ A single Rural Service Area ("RSA") may contain 50-100 distinct LEC local calling areas. Most of these areas are not subject to thousands block number pooling. Accordingly, this practice ties up hundreds of thousands of numbers in rural areas for the purpose of obtaining LEC-originated local calling. In this time of scarce numbering resources and the implementation of thousands block number pooling, it is not efficient to require a CMRS carrier to open an NPA-NXX code in each local service area where the CMRS carrier requires local calling. Accordingly, the Commission must work toward a long-term solution to this problem.

Section 251(b)-based contract, or its equivalent, for the reciprocal exchange of local traffic.¹²

While this is clearly the most desirable outcome, without some guidelines, neither party has incentive to move off of its preferred position; especially when, in the context of an arbitration before a state commission, the LEC is able to argue that it is merely seeking to remain consistent with its state-regulated “local calling area” and meeting the state obligation of handing non-local (from a rate standpoint) calls off to the subscriber’s IXC.

The Commission should clarify that both parties have a duty to establish reciprocal compensation arrangements for the exchange of local traffic, even where they interconnect indirectly. In addition, while incumbent LECs must honor CMRS carrier rating and routing designations and may not block or misdirect traffic pending the outcome of these negotiations, the Commission may require that the arrangements between the parties provide for a true-up mechanism for traffic exchanged prior to an agreement being finalized.

Moreover, the Commission should reaffirm that, notwithstanding the specific obligation of Section 251(c), both parties have an obligation to negotiate in good faith. Good faith negotiations require that each carrier behave economically reasonably and that neither carrier force the other to incur unnecessary cost or inefficiency. RTG believes that efficient configuration of the public switched telephone network (“PSTN”), coupled with provisions that ensure the payment of reciprocal compensation for intra-MTA calls and conserve scarce number resources, drives increased use that will benefit all carriers and the public.

By way of example of the above principles, it is axiomatic that a CMRS carrier may obtain a locally rated NXX and interconnect directly with a rural telephone company for the exchange of local traffic. As numerous commenters explain, however, generally there is not sufficient traffic between a CMRS carrier and rural LEC to cost justify building direct facilities.

¹² See, e.g., Comments of John Staurulakis, Inc. (“JSI”) p. 7.

Because the rural LEC must share in the cost of the facility in direct proportion to the percentage of traffic that it originates,¹³ indirect interconnection may be the only economically reasonable method of interconnection for both the rural LEC and the CMRS carrier. Where a third-party provides tandem transiting on reasonable terms, the CMRS carrier and rural LEC should be able to agree to the terms of an indirect interconnection, *i.e.*, should be able to resolve the rate, traffic identification and transit obligation issues.

The National Telecommunications Cooperative Association (“NTCA”) raises what it calls the “unidentified tandem traffic problem” whereby the transit provider delivers CMRS-originated traffic over facilities to the rural LEC mixed with toll and non-CMRS traffic and the rural LEC has no way to identify which traffic is CMRS-originated intraMTA traffic subject to reciprocal compensation.¹⁴ The transit provider may also deliver mixed traffic to the CMRS carrier with no way for the CMRS carrier to identify which traffic is subject to terminating compensation.¹⁵ As discussed below, the Commission could facilitate the resolution of this issue by requiring the tandem provider to identify the traffic or provide call records to the originating and terminating carriers. In the absence of such identification or call records, however, the parties could negotiate a simple solution to this problem, for example by agreeing to exchange their own call origination records or utilize proxies based on sample traffic data.¹⁶

Because indirect interconnection may be an efficient network configuration—
eliminating the need for unnecessary facilities and therefore saving both the rural LEC and

¹³ Although historically CMRS carriers originated significantly more traffic than LECs did, traffic balances have been shifting significantly toward the 60/40 range. The elimination of toll charges to LEC end users will also drive additional LEC-originated traffic.

¹⁴ *See* NTCA Comments at p. 4.

¹⁵ *See*, Comments of ALLTEL note 9. ALLTEL notes that BellSouth will not provide meet point billing records for the termination of traffic from other non-BellSouth carriers for calls made to ALLTEL mobile subscribers on numbers rated outside BellSouth’s territory.

¹⁶ As indicated above, based on RTG’s experience, traffic balances between CMRS carriers and incumbent LECs have been moving roughly toward equal. Where this is the case, bill and keep may be the appropriate reciprocal compensation method.

CMRS carrier from unnecessary expense—the Commission should ensure that the terms of the tandem transit service are reasonable. Accordingly, as discussed below, the Commission should clarify the obligations of incumbent LECs subject to Section 251(c) to provide transit service upon reasonable terms.¹⁷ In addition, much of the efficiency of indirect interconnection appears to come from the transit provider delivering mixed traffic over common trunks to carriers subtending the tandem. Some commenters suggest that subtending rural LECs may not necessarily enjoy this same efficiency and that either the transiting carrier or applicable state law may require rural LECs to build or provision new facilities for delivery of local traffic to the tandem separate from facilities carrying switched access traffic.¹⁸ If the Commission wants to foster the use of indirect interconnection as an efficient expansion of the PSTN then the Commission must address these issues.

The Commission should also provide guidance as to what kind of traffic constitutes local traffic for which reciprocal compensation arrangements must be negotiated. Citing the *Local Competition Order's* preservation of the access regime,¹⁹ many rural LECs have taken the position that calls to numbers rated outside of a rural LEC's service area must be routed to an IXC even if the rural LEC and CMRS carrier are interconnected.²⁰ Where the rural LEC routes the call to the IXC, the rural LEC is not obligated to pay the CMRS carrier for terminating the call, nor is the IXC obligated to pay the CMRS carrier.²¹ Under this line of reasoning, the Act

¹⁷ See generally AT&T Comments.

¹⁸ See, e.g., Comments of the Oklahoma Rural Telephone Companies p. 3.

¹⁹ See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 1043 (1996) (“*Local Competition Order*”) (subsequent history omitted).

²⁰ See, e.g., JSI Comments p. 14.

²¹ Rural LECs and CMRS carriers might easily resolve these compensation issues if CMRS carriers were able to collect terminating access from IXCs. The Commission's recent CMRS access decision effectively forecloses this solution. See *In re Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling in WT Docket No. 01-316, FCC 02-203 (July 3, 2002).

essentially froze the relationships of LECs, CMRS carriers, and IXCs as of the date of the Act.²² If this were the correct analysis, however, the Commission's *Interconnection Order* would have simply adopted LEC local calling areas for purposes of determining reciprocal compensation obligations; a position the Commission expressly rejected.²³ In deciding to designate the MTA as the area wherein the CMRS carrier is entitled to reciprocal compensation, the Commission considered and rejected the use of the LEC local calling area as the basis for making that determination. Under the extreme LEC position, however, there is virtually no situation wherein any LEC-originated call that terminates outside of the rural LEC landline local calling area (but within the MTA) subjects the rural LEC to an obligation to pay the CMRS carrier reciprocal compensation because rural LECs hand all such calls to IXCs.

RTG believes that when a CMRS carrier and a rural LEC are interconnected, the parties must exchange intraMTA traffic over the dedicated facilities even if the traffic is destined to go to an NXX that is not local to the LEC's end users. Under current rules, however, there is the awkward situation in which a call may be a toll call from the perspective of the LEC end user originating the call, but a "local" call for reciprocal compensation for which the terminating CMRS carrier is entitled to terminating compensation.²⁴ RTG requests that the Commission provide clear guidance on the issue of when a rural LEC must route a CMRS-bound call over

²² These LECs effectively suggest that delivering traffic directly to the CMRS carrier instead of to the IXC inappropriately removes the IXC from the call routing. RTG notes that if IXCs do not want to be removed from the delivery of LEC to CMRS traffic, then IXCs should pay CMRS carriers access, thereby eliminating the CMRS carrier's incentive and need to construct direct facilities in order to be compensated for terminating traffic.

²³ See *Local Competition Order* ¶ 1035 (making clear that state commissions lack jurisdiction to determine what should be "local calling" for reciprocal compensation for calls to and from CMRS carriers and effectively preempting any requirement that intraMTA calls be handed to an IXC).

²⁴ Where the CMRS carrier bears all costs of transporting and terminating a call outside the rural LEC's service area, the basis for rating the call as toll is questionable. To the extent that the rural LEC continues to rate such call as toll it provides incentive to its customers to originate such calls using their own wireless devices to avoid paying the toll charges.

direct or indirect facilities between the CMRS carrier and rural LEC and pay reciprocal compensation and when a rural LEC may or must route CMRS-bound traffic to an IXC and collect access.

In addition, based on language in the *Local Competition Order* that reciprocal compensation is intended for situations in which two carriers collaborate to complete a call and access is intended for situations in which three carriers complete a call,²⁵ certain large carriers have taken the position that intraMTA traffic which they originate or terminate that transits a third-party network is not Section 251(b) local traffic subject to reciprocal compensation even when the third-party is not an IXC. The large carriers adopting this position maintain that only traffic that is exchanged directly is subject to Section 251(b). The Commission should clarify that all intraMTA transit traffic to or from a CMRS carrier is subject to reciprocal compensation.²⁶

Finally, RTG agrees with AT&T that a key issue underlying the Sprint-BellSouth dispute is the obligation of incumbent LECs subject to Section 251(c) to provide transit service on reasonable rates and conditions.²⁷ If the Commission wants to facilitate the availability of indirect interconnection as an efficient method of LEC-CMRS interconnection, then the Commission must address the obligations of transit providers. Specifically, the Commission should require transit providers to provide the originating and terminating carriers with call records to allow the subtending carriers to determine their respective reciprocal compensation obligations. The Commission should address the rates that an incumbent LEC may charge for transiting traffic. The Commission should also clarify that a carrier that is transiting intraMTA

²⁵ See *Local Competition Order* ¶ 1034.

²⁶ Consistent with the industry standard, RTG excludes traffic carried by an IXC from transit traffic. As RTG requested above, the Commission should clarify when traffic may or must be routed to an IXC.

²⁷ RTG notes that rural LECs are not immediately subject to Section 251(c).

CMRS traffic may charge a transiting fee, but may not charge access no matter what other carrier is involved. In addition, the Commission may need to require modifications to tariffs, or where appropriate, preempt state laws that have the effect of restricting efficient LEC-CMRS interconnection.

CONCLUSION

In addition to addressing the numbering issues raised in the Petition, the Commission should also address the underlying interconnection and intercarrier compensation issues. Carriers should engage in good faith negotiations for the establishment of compensation arrangements for the exchange of traffic either directly, or indirectly, based upon the guidelines set forth above. Because indirect interconnection may be an efficient network configuration--eliminating the need for unnecessary facilities--the Commission should adopt policies that facilitate indirect interconnection without undermining the intercarrier compensation requirements.

Respectfully submitted,

_____/s/_____

RURAL TELECOMMUNICATIONS GROUP

Caressa D. Bennet, General Counsel
Gregory W. Whiteaker, Counsel
Kenneth C. Johnson, Regulatory Director
Bennet & Bennet, PLLC
1000 Vermont Avenue, N.W.
Washington, D.C. 20005
(202) 371-1500

August 19, 2002