Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs	)	CC Docket No. 01-92
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF THE RURAL CELLULAR ASSOCIATION AND THE RURAL TELECOMMUNICATIONS GROUP

The Rural Cellular Association ("RCA")[1] and the Rural Telecommunications Group ("RTG")[2] hereby respectfully submit their comments in the above-captioned proceeding in response to the Federal Communications Commission ("FCC" or "Commission") *Public Notice* released September 30, 2002.[3] Specifically, RCA and RTG support the *T-Mobile Petition*[4] and agree with the petitioners that wireless termination tariffs are unlawful and are not a proper

[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] RTG is a 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 regions of the country. RTG's members are all affiliated with rural telephone companies or are small businesses.
[3] *Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, DA 02-2436, (September 30, 2002) ("*Public Notice*").
[4] *In re Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Petition for Declaratory Ruling of T-Mobile USA, Inc., *et al*. (September 6, 2002) ("*T-Mobile Petition*").

mechanism for establishing reciprocal compensation arrangements. RCA's and RTG's members, who provide commercial mobile radio service ("CMRS") in rural areas served by numerous rural local exchange carriers ("LECs"), are concerned that unilateral wireless termination tariffs, if sustained by the Commission, will be abused by many small incumbent LECs as an end run around the Commission's interconnection rules and policies to collect access-based rates for the termination of local CMRS traffic.

RCA and RTG, many of whose members are affiliated with rural LECs, caution rural LECs using or seeking to establish wireless termination tariffs that such tariffs may have unintended reciprocal effects. Because each carrier is required to compensate the other carrier for termination of local traffic, wireless termination rates based on access could be construed as the default reciprocal compensation rates between CMRS carriers and rural LECs. These high rates will end up costing rural LECs precious revenue if wireless calling trends continue and wireline-to-wireless traffic ratios eventually reach the point where there are more wireline-to-wireless calls than *vice versa*. RCA and RTG respectfully submit that a bill-and-keep regime may be, in many cases and as discussed below, the least costly and most administratively simple compensation scheme for rural carriers, both wireless and wireline, in the long run. To the extent that rural wireless and wireline providers do not want to adopt a bill-and-keep compensation methodology, however, RCA and RTG encourage CMRS carriers and independent LECs to engage in good faith negotiations to establish reasonable compensation rates for the transport and termination of local traffic.

I. Unilateral Wireless Termination Tariffs Are Unlawful

Wireless termination tariffs are unlawful because they provide for unilateral, instead of reciprocal, compensation for the termination of local calls, and undermine the negotiation process for the establishment of reciprocal compensation arrangements. In addition, wireless termination tariffs that are based on access violate the FCC's pricing methodology.

The Communication Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), specifies the obligations of LECs to interconnect with CMRS carriers. Pursuant to Section 251(b)(5) of the Act, LECs are obligated to establish reciprocal compensation arrangements for the exchange of telecommunications traffic.[5] In implementing Section 251, the FCC clearly defined reciprocal compensation as an arrangement in which "each of the two carriers receives compensation from the other carrier for the transport and termination" of local traffic.[6] The FCC rules also defined local telecommunications traffic between LECs and CMRS carriers as traffic that "at the beginning of the call, originates and terminates within the same Major Trading Area . . . ."[7] In addition, in implementing the provisions of Section 332 of the Act, the FCC also required LECs and CMRS providers to comply with the principles of mutual compensation, which is synonymous with reciprocal compensation.[8]

The wireless termination tariffs at issue apply to local (*i.e.*, intraMTA) traffic, but only provide for compensation for the rural LEC for CMRS-originated traffic and not for compensation to the CMRS provider for rural LEC-originated traffic. These unilateral tariffs, by definition, are not reciprocal or mutual, and accordingly, violate Section 251(b)(5) of the Act and should be struck down.[9]

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[5] *See* 47 U.S.C. § 251(b)(5).
[6] *See* 47 C.F.R. § 51.701(e).
[7] 47 C.F.R. § 51.701(b)(2).
[8] *See* 47 U.S.C. § 20.11(b).
[9] The FCC has previously determined that it is unlawful for LECs to file unilateral tariffs until after the carriers have negotiated an interconnection agreement. *In re Second Radio Common Carrier Order*, 2 FCC Rcd 2910, 2916 ¶ 56 (1987).

Section 251(c)(1) of the Act requires incumbent LECs to "negotiate in good faith" for the establishment of interconnection.[10] Tariffs, by definition, are not negotiated and are non-negotiable. One-sided wireless termination tariffs circumvent and are antithetical to good faith negotiations and the entire interconnection negotiations process codified in Section 251 and 252 of the Act and implemented in the FCC's Rules.

RCA and RTG, having numerous members who are affiliated with rural telephone companies, are familiar with the "rural exemption" provisions of the Act[11] and have encountered small, rural LECs who have argued that they are exempt and/or suspended from Sections 251(b) and (c) of the Act and, therefore, do not have to negotiate in good faith or consider reciprocal compensation. Notwithstanding the specific "good faith" negotiation language of Section 251(c), RCA and RTG believe that the Commission should use this opportunity to clarify the general and equitable proposition that all carriers have an obligation to negotiate in good faith.[12]

More importantly, Section 332 of the Act provides an independent basis outside of the Section 251(b) and (c) obligations to require LECs to negotiate in good faith with CMRS carriers and to establish interconnection rates that are just and reasonable.[13] Section 332 was enacted in

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[10] *See* 47 U.S.C. § 251(c)(1).

[11] *See* 47 U.S.C. § 251(f) (creating an exemption from Section 251(c) obligations that is removable by the state and suspensions of Section 251(b) obligations that may be granted by the state).

[12] In a similar proceeding regarding an interconnection dispute over termination charges, the FCC stated that it expected parties not subject to the obligations of Section 251(c) to negotiate in "good faith." *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, FCC 02-203 (July 3, 2002) at ¶ 21. Further, RCA and RTG believe that the Section 251(b)(5) obligation to establish reciprocal compensation embodies an implicit duty to negotiate in good faith for the establishment of such arrangements.

[13] Appellate courts have recognized the FCC's authority under Section 332, independent of Sections 251 and 252 of the Act, to regulate LEC-CMRS interconnection. *See Qwest v. FCC*, 252 F.3d 462, 466 (D.C. Cir. 2001); *See Iowa Utilities Board v. FCC*, 120 F. 3d 753 n.21 (8th Cir. 1997).

1993 before the Telecommunications Act of 1996, and the Commission has determined that Section 332(c)(1)(B) "expressly grants the Commission the authority to order carriers to interconnect with CMRS providers."[14] Section 332(c)(1)(B) specifically states:

> *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 Act. Except to the extent the Commission is required to respond to such a request, this paragraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.*[15]

The FCC's rules implementing Section 332 require a LEC, regardless of whether it is rural, to provide reasonable interconnection to CMRS carriers.[16] This cannot be accomplished without good faith negotiations to establish mutual compensation as required by the FCC's rules implementing Section 332(c)(1)(B).[17] Mutual compensation, which is identical to reciprocal compensation,[18] requires both interconnecting parties to compensate one another for the termination of traffic. One-sided wireless termination tariffs do not provide for mutual compensation and are in direct contradiction to Section 332 and the FCC's Rules, as well as Sections 251 and 252 of the Act.

Finally, the terminating tariffs at issue appear to be modeled on access or other cost elements that are not permissible under the FCC's rules rather than local interconnection principles.[19] In the *Local Competition Order*,[20] the FCC specifically determined "traffic

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[14] *In re Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9640 ¶ 84 (2001).
[15] 47 U.S.C. § 332(c)(1)(B).
[16] *See* 47 C.F.R. § 20.11.
[17] *See* 47 C.F.R. § 20.11(b) (requiring LECS and CMRS carriers to comply with mutual compensation principles when interconnecting).
[18] *See* 47 U.S.C. § 252(d)(2)(A)(i) (requiring the "mutual and reciprocal" recovery of transport and termination costs).
[19] The use of access-like rates for termination violates Section 252(d)(1) of the Act requiring "just and reasonable" rates based upon the incremental cost of providing the service. The

between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges."[21] Terminating tariffs appear to be an end run around the Commission's pricing rules and an effort to charge access rates for traffic that is not subject to such charges.

II. Bill-and-Keep Is the Ideal Solution for Low Volumes of LEC-CMRS Traffic

RCA and RTG agree with the contention in the *T-Mobile Petition* that most wireless carriers do not have sufficient traffic volumes with small LECs to justify direct, dedicated interconnection between the two networks.[22] Likewise, it is not economically rational for the small LEC to seek direct, dedicated interconnection facilities for low traffic volumes. Indirect interconnection generally makes the most economic sense for all parties. RCA and RTG suggest that a default bill-and-keep regime for indirect interconnection with low traffic volumes may be the least costly and most administratively simple compensation scheme in the long run.

Carriers may either negotiate a bill-and-keep regime amongst themselves or Commission Rules allow a state to mandate bill-and-keep when traffic is roughly balanced.[23] As mobile phone usage increases and "buckets" of minutes become cheaper, the ratio of land-to-mobile calls has increased leading to roughly balanced land/mobile traffic volumes in many areas of the country.

Commission has developed and the U.S. Supreme Court has approved TELRIC-based pricing standards developed pursuant to Section 252(d)(1). *See Verizon Communications v. FCC*, 122 S. Ct. 1646 (2002); *See, e.g.*, 47 C.F.R. §§ 51.505(b) and 51.705(a)(1).

[20] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*) (subsequent history omitted).

[21] *Id.* at ¶ 1043.

[22] *T-Mobile Petition* at 3.

[23] 47 C.F.R. § 51.713(b).

If this trend continues, land-to-mobile calls may overtake mobile-to-land calls in number. Except in limited circumstances, Commission rules require symmetrical rates for reciprocal compensation.[24] If small LECs insist upon high termination rates based on access, the FCC should require the LECs to pay their own high rates pursuant to the FCC's reciprocal compensation mechanism. The small LECs' short-term grab for additional access-like revenues will prove to be short-sighted. A more reasonable solution for these small LECs to adopt is a bill-and-keep mechanism where there is no charge for the termination of the other carrier's traffic.[25] Otherwise, small LECs may find themselves paying symmetrical rates, in accordance with the Commission's rules, to numerous CMRS carriers.[26]

If a small LEC is unhappy with a default arrangement where small traffic volumes are handled on a bill-and-keep basis and considered one of the costs of doing business, then they can avail themselves of the interconnection negotiations process provided by the Act. However, the Commission must ensure that LECs *cannot* avail themselves of the unlawful, unilateral wireless termination tariff process. One-sided wireless termination tariffs do not constitute good faith negotiations.

III. Conclusion

RCA and RTG support the *T-Mobile Petition* and respectfully ask that the Commission declare the use of wireless termination tariffs unlawful pursuant to Sections 251, 252, and 332 of the Act. In addition, RCA and RTG request that the Commission consider establishing a default bill-and-keep regime for small traffic volumes exchanged through indirect interconnection, and

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[24] *See* 47 C.F.R. § 51.711.
[25] *See* 47 C.F.R. § 51.713(a).
[26] In fact, LECs may find themselves paying asymmetrical rates if the CMRS carrier can prove that its termination costs are higher than the LEC as some CMRS carriers have maintained.

that the Commission require LECs to negotiate in good faith if they desire a different compensation scheme.

Respectfully submitted,

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