

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

In the Matter of)	
)	
Petition of T-Mobile USA, Inc, ET AL. For Declaratory Ruling)	DA 02- 2436
)	
Petition of US LEC Corp For Declaratory Ruling)	DA-02-2436
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

COMMENTS OF VERIZON WIRELESS

VERIZON WIRELESS

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SUMMARY OF THE COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these comments in support of the following two Petitions for Declaratory Relief: 1) Petition for Declaratory Ruling of T-Mobile, USA which was filed on September 6, 2002; and 2) Petition for Declaratory Ruling of US LEC which was filed on September 18, 2002. Although the Federal Communications Commission (“FCC” or “Commission”) has incorporated these petitions into its pending rulemaking on intercarrier compensation, the issues presented are clear and may be decided based on the existing rules.

With respect to the relief requested by the parties filing the T- Mobile, USA Petition, the FCC should immediately affirm that local exchange carriers cannot avoid their statutory obligations to pay reciprocal compensation and negotiate interconnection agreements with CMRS under Section 251, 252 of the Communications Act of 1934, as amended, by filing wireless termination tariffs with the applicable state commissions. The Commission should also grant the relief requested in the US LEC petition, because it is consistent with the Commission’s existing rules and standard industry practices governing meet-point billing arrangements.

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COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits comments in support of two Petitions¹ for Declaratory Relief. Although the Federal Communications Commission (“FCC” or “Commission”) has incorporated these petitions into its pending rulemaking on intercarrier compensation, the relief they request is so clearly justified under the existing law that the FCC should act on them immediately. To defer them for consideration in the rulemaking will only perpetuate the current situation where certain LECs and IXC are and subverting the Telecommunications Act of 1996’s (“1996 Act”) interconnection regime.

Verizon Wireless thus urges the Commission to confirm that existing law requires local exchange carriers (“LECs”) to negotiate interconnection agreements with CMRS

¹ On September 30, 2002, the Federal Communications Commission issued Public Notice, DA-02-2436, establishing a single pleading cycle in CC Docket No. 01-92 for interested parties to file comments on a *Petition for Declaratory Ruling of T-Mobile USA, et al.* (filed September 6, 2002) (“*T-Mobile Petition*”) and a *Petition for Declaratory Ruling of US LEC* (filed on September 18, 2002 (“*US LEC Petition*”).

providers that include reciprocal compensation for local traffic, and does not permit LECs to avoid negotiation by establishing unilateral tariffs for this purpose. The Commission should also confirm that LECs have the right to collect charges from interexchange carriers (“IXCs”) for exchange access that the LECs jointly provide with CMRS carriers. And it should act on these petitions forthwith.

I. THE COMMISSION SHOULD GRANT THE T-MOBILE PETITION

As set forth in the T-Mobile Petition, the FCC should declare immediately that LECs may not file wireless termination tariffs to replace their obligation to negotiate interconnection agreements with CMRS carriers pursuant to Sections 251 and 252 of the Communications Act, as amended (“Act”), and the Commission’s rules. Wireless termination tariffs are not reciprocal and often contain rates that are not based on cost, providing LECs that rely on these tariffs no incentive to negotiate interconnection agreements with CMRS providers because of their favorable terms. Absent a Commission ruling, CMRS providers will be forced to pay non-reciprocal termination charges unless they can successfully litigate or arbitrate this issue in the several states where LECs have adopted this approach. The Commission should therefore grant T-Mobile’s request for relief.

A. Wireless Termination Tariffs Are Unlawful

Congress enacted a comprehensive statutory regime in 1996 to dictate how telecommunications carriers including LECs and CMRS providers should interconnect. Among other things, Section 251(b)(5) of the Act imposes a duty on all LECs to establish reciprocal compensation arrangements for local traffic.² Incumbent LECs have several

² 47 U.S.C. § 251(b)(5).

additional obligations, including the duty to negotiate in good faith the terms of agreements that provide for reciprocal compensation and the requirement that rates for interconnection be based on cost.³ Section 252 provides carriers only two options for arriving at these mandated agreements, either through voluntary negotiations or as a result of compulsory arbitration.⁴ The Act never references tariffs or suggests that tariffs could be a lawful alternative to this process.

The Commission's rules are equally as clear. While promulgating the rules implementing the interconnection requirements of the Telecommunications Act of 1996, the FCC applied the Act to CMRS-LEC interconnection.⁵ As set forth in Section 20.11(b) of the Commission's rules, "Local exchange carriers and commercial mobile radio service providers shall comply with the principles of mutual compensation." Rule 20.11 also requires compliance with the interconnection requirements of the Part 51 of the Commission's rules, which includes the duty for incumbent LECs to negotiate interconnection agreements.⁶

As T-Mobile points out in its Petition, the Commission has rejected the use of tariffs to supplant the negotiation and arbitration process provided in Sections 251 and

³ 47 U.S.C. §§ 251(c), 252(d).

⁴ 47 U.S.C. §§ 252(a)-(b).

⁵ *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("Local Competition Order") at ¶ 1024: "We also believe that sections 251 and 252 will foster regulatory parity in that these provisions establish a uniform regulatory scheme governing interconnection between incumbent LECs and all requesting carriers, including CMRS providers."

⁶ *See* 47 C.F.R §20.11 (c); *see also* 47 C.F.R. §§ 51.301, 51,703.

252. The Commission has expressly declared that “[u]sing the tariff process to circumvent the section 251 and 252 process cannot be allowed.”⁷ While Federal courts have agreed that tariffs which are consistent with the principles of Sections 251 and 252 of the Act may be used to *supplement* negotiated agreements, tariffs are not a lawful means to replace the negotiation and arbitration process.⁸ The common theme of these cases is that carriers cannot use tariffs “to frustrate the federal scheme favoring negotiated contracts.”⁹ Citing Sections 251 and 252 of the Act, a federal district court in Iowa explained: “The Act established interconnection agreements, requiring incumbent local exchange carriers (ILECs) to agree, upon request, to provide interconnection to a competing carrier pursuant to the interconnection agreement approved by a state public utilities commission rather than pursuant to a tariff.”¹⁰

Despite the clarity of federal law, certain LECs have attempted to evade their obligations. At least one state commission has sided with these LECs. For instance, even after acknowledging that “reciprocal compensation arrangements are a mandatory feature

⁷ See *Bell Atlantic v. Global NAPs*, 15 FCC Rcd 12946, 12959 ¶ 23 (1999), *aff’d on recon.*, 15 FCC Rcd 5997 (2000), *aff’d*, 247 F.3d 252 (D.C. Cir. 2001).

⁸ See *Michigan Bell Telephone Company d/b/a Ameritech Michigan v. MCI Metro Access Transmission Services*, 128 F. Supp. 2d 1043 (E.D. Mich 2001) (“Michigan Bell v. MCI”); *Verizon North v. Strand*, File No. 5:98-CV-38 (W.D. Mich 2000); *US West Communications, Inc. v. Hix*, Docket 97-D-152 (D. Colo. 2000).

⁹ See *Michigan Bell v. MCI Metro*, 2001 U.S. Dist. Lexis 4364, at **40.

¹⁰ See *Iowa Network Services, Inc., v. Qwest Corporation*, Docket No. 4:02-cv-40156 (Central Dist. Iowa 2002) at p. 7. The court went on to note that “The FCC specifically found that traffic between an LEC and a CMRS provider that at the beginning of the call originates and terminates within the same MTA is local traffic, not subject to access charges.” All of the traffic at dispute in that case was intraMTA traffic transiting Qwest’s network and terminating with small independent LECs.

of agreements between the CMRS carriers and the small LECs,¹¹ the Missouri PSC approved unilateral access-like rates anyway.¹² The Missouri PSC did so by concluding that Section 251(b)(5) of the Act does not apply to the *tariffs* of LECs or ILECs.¹³ Where these tariffs are effective, LECs are charging CMRS providers tariffed rates for the termination of traffic without paying anything to the CMRS provider for the termination of their traffic.

The FCC should clarify that under its rules today, LECs are prohibited from avoiding the negotiation requirements of the Act by filing tariffs to govern the rates and terms of LEC-CMRS interconnection. Such a ruling is necessary to ensure that LECs enter into reciprocal compensation arrangements with CMRS carriers which are consistent with the Act and with the regulatory parity the FCC sought to accomplish when it implemented the Act.¹⁴

¹¹ See *Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service*, Missouri Public Service Commission, Case No. TT-2001-139 (Feb. 8, 2001). The Wireless Carriers and Southwestern Bell Telephone Company ("SWBT") have appealed the legality and validity of the wireless termination service tariffs approved by the Commission in Case No. TT-2001-139 et al. in the Western District Court of Appeals of the State of Missouri (Docket No. WD60928).

¹² Other states have taken a different approach. Iowa, for instance, rejected the use of wireless termination tariffs. See *Exchange of Transit Traffic*, Iowa Utilities Board, Order Affirming Proposed Decision and Order, Docket Nos. SPU-00-7, TF-00-275, DRU-00-2 (March 18, 2002) ("*IUB Order*").

¹³ *Id.* at 24.

¹⁴ See *Local Competition Order* at ¶ 1024.

B. The Commission Should Confirm That LECs Must Charge Cost-Based Rates For Interconnection

Congress determined that interconnection rates must be based on cost.¹⁵ Yet, the wireless termination tariffs that are the subject of the T-Mobile Petition often contain rates in excess of amounts that would be allowable under the Commission’s rules. Rather than basing rates on cost, many rural ILECs base their wireless termination tariff rates on their *access* rates, even though the tariff is designed to cover the termination of *local* intraMTA CMRS traffic. For example, in Missouri, some rural LECs have claimed that they can establish a “local” rate by combining certain components of their access rates, including \$0.02 per minute of use to recover non-traffic-sensitive loop costs.¹⁶ The Iowa Board has rejected “local” rates based on access rate elements, finding that they are in fact access rates.¹⁷ However, some LECS in other states continue to impose high access rates, driving up unlawfully wireless carriers’ costs.

Some of the LECs that have filed wireless termination tariffs also claim that they are exempt from the requirement contained in Section 251(c) of the Act to base rates on

¹⁵ 47 U.S.C. § 252(d)(1)(A)(i) states that rates for interconnection pursuant to Section 251(c)(2) of the Act should be: “based on the cost (determined without reference to a rate of return or other rate-based proceeding) of providing the interconnection ...”. Pursuant to Section 251(f) of the Act, where a local exchange provider is subject to a rural exemption from Section 251(c), the rates for interconnection service should at a minimum comply with FCC Rule § 20.11.

¹⁶ See, e.g., *Northeast Missouri Rural Telephone Company and Modern Telecommunications Company v. Southwestern Bell Telephone Company, Southwestern Bell Wireless (Cingular), VoiceStream Wireless (Western Wireless), Aerial Communications, Inc., CMT Partners (Verizon Wireless), Sprint Spectrum LP, United States Cellular Corp., and Ameritech Mobile Communications, Inc.*, Case No. TC-2002-57, et al.

¹⁷ *IUB Order* at 10.

cost because they meet the requirements of a rural exemption pursuant to Section 251(f). Even if Section 251(c) did not apply, however, Section 20.11 of the FCC's rules still requires LECs to pay mutual compensation to CMRS providers for traffic that originates on the LECs' networks. Rule 20.11 also requires termination rates to be commercially reasonable and reciprocal.¹⁸ Tariffed rates unilaterally charged by local exchange carriers without the benefit of good faith negotiations are not "reasonable" or reciprocal.

Although Verizon Wireless continues to believe that bill-and-keep for local traffic is the solution to many of the issues raised in the T-Mobile Petition, the Commission should not defer acting on the petition until it decides in the rulemaking whether bill-and-keep is appropriate. It must act now to address these issues. The law is clear and there is no basis to wait.

However, if the Commission defers the resolution of the issues raised in the T-Mobile Petition for consideration in CC Docket 01-92, the Commission should at a minimum immediately reaffirm the legal status of the default proxy rates for interconnection between CMRS carriers and LECs.¹⁹ The Eighth Circuit upheld certain rules with respect to LEC-CMRS interconnection while vacating certain other pricing rules that applied to LEC-to-LEC interconnection. Although it is apparent that the FCC considers these rules to be in effect,²⁰ the Commission should dispel any uncertainty and

¹⁸ See 47 C.F.R. § 20.11.

¹⁹ See 47 C.F.R. § 51.715.

²⁰ For example, in the FCC's *ISP Order* the Commission reaffirmed its jurisdiction over the regulation of LEC-CMRS interconnection under Sections 251, 252, and 332 of the Act. In doing so, the FCC reinstated its rule Section 51.715 with the minor change of references from "local telecommunications" to simply "telecommunications".

confirm that Section 51.715 applies today in the absence of an interconnection agreement or state-mandated interconnection rates. Clarification that the FCC’s default proxy rates apply to rural LECs interconnecting with CMRS providers will enhance the incentives that these LECs have to negotiate reasonable rates with CMRS carriers.

C. The Commission Should Confirm That Reciprocal Compensation Based On Cost-Based Rates Should Apply Regardless of Whether LECs and CMRS Providers Connect Directly or Indirectly

The T-Mobile Petition concerns situations where independent LECs seek to avoid their statutory obligations to negotiate interconnection and reciprocal compensation arrangements by unilaterally filing wireless termination tariffs at the applicable state commissions. Some of these LECs argue that access rates from their intrastate tariffs should apply when wireless carriers are indirectly connected through the facilities of another LEC. However, the *Local Competition Order*²¹ and the FCC’s rules²² make it clear that the reciprocal compensation obligations of the Act are applicable to LEC-CMRS traffic, regardless of whether the carriers are directly or indirectly interconnected

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 16 FCC Rcd 9151 ¶¶112 (“*ISP Order*”). In a recent decision by the DC Circuit Court, the court rejected the reasons provided by the FCC for ruling that Section 251(g) gave it the authority to set rates for ISP-bound traffic, but declined to vacate the rules noting that “Many of the petitioners favor bill- and- keep, and there is plainly a non-trivial likelihood that the Commission has authority to elect such a system (perhaps under §§ 251(b)(5) and 252(d)(B)(i)). See *WorldCom c. FCC*, 288 F.3d 429, 351 U.S. App. D.C. 176 (2002) at 433.

²¹ The FCC has unequivocally stated that, “LECs’ reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers.” *Local Competition Order* at ¶ 1041.

²² See 47 C.F.R. § 51.701(b)(2) (“Telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.”).

through another local exchange carrier.²³ The only relevant factor for determining whether Section 251(b)(5) applies to LEC-CMRS traffic depends on whether the traffic is originated and terminated within a single MTA.²⁴ Despite the clarity of the Commission's rules, many LECs have not negotiated in good faith and often ignore the repeated requests of CMRS carriers to enter reciprocal compensation agreements under Section 251(b)(5) of the Act and Section 20.11 of the Commission's rules.

Verizon Wireless faces similar problems with obtaining symmetrical reciprocal compensation from smaller independent LECs that terminate traffic indirectly routed through the ILEC's tandem.²⁵ In most of these cases, Verizon Wireless has direct interconnection with the tandeming LEC, which provides for indirect interconnection to all subtending CLECS, CMRS, and LECs. For mobile-to-land traffic, the CMRS provider pays the subtending LEC directly at the LEC's terminating rate, but in the land-to-mobile direction, the CMRS provider receives a lower, cost-based terminating rate,

²³ Most of the CMRS-LEC traffic that is carried over the trunks between a smaller LEC's end office and a larger LEC's tandem is intraMTA and therefore jurisdictionally local under Section 51.701(b) of the Commission's rules.

²⁴ In the *Local Competition Order*, at ¶ 1043, the FCC stated that "We reiterate that traffic between and incumbent LEC and CMRS network that originates and terminates within the same MTA (defined based on the parties location 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."

²⁵ These arrangements are most common in territory where SBC-Ameritech is the Primary Toll Provider. The termination rates applicable to Verizon Wireless pursuant to this agreement are based on the rural or small LECs end office rates. Ameritech pays the subtending carrier at its originating access rate and recovers a toll charge from the subtending LEC's customer. Therefore the rates are non-symmetrical, and the subtending carrier has little incentive to abandon the rate structure and negotiate interconnection arrangements directly with a CMRS carrier, pursuant to Sections 251 and 252 of the Act.

which is derived from the tandem provider's costs. The resulting rates are thus non-symmetrical, do not arise from negotiations, and do not comply with the pricing principles of Section 252(d). Clarification by the FCC that Sections 20.11, 51.701, and 51.703 clearly apply to LEC-CMRS traffic that is indirectly connected through a transiting carrier's tandem, and that such traffic is subject to the interconnection and reciprocal compensation obligations of Sections 251 and 252 of the Act, will immediately aid CMRS carriers in obtaining the benefits of the local interconnection requirements of the 1996 Act.

II. THE COMMISSION SHOULD GRANT THE US LEC PETITION

US LEC seeks confirmation that interexchange carriers (“IXCs”) must pay a LEC’s access charges when a LEC jointly provides access with a CMRS provider. The Commission has recognized on several occasions that carriers can and do share access charges in various contexts. First, prior to the 1996 Telecommunications Act, sharing arrangements were common between co-carriers who provided access associated with interexchange calls generally. Second, the Commission authorized the sharing of access payments in the context of interim number portability arrangements, where one local exchange carrier forwarded a call to another.

A. The Commission Has Long Recognized LEC to LEC Sharing of Access Revenues

Prior to the 1996 Act, the FCC concluded that “billing accuracy” and “customer convenience” were better served when IXCs received one bill for services jointly provided by two LECs.²⁶ In making its determination, the FCC recognized that all single billing arrangements for access services that are jointly provided by more than one LEC necessitate the arrangement of an access sharing agreement.²⁷ Where such arrangements could not be made between two LECs, the parties could still bill the interexchange carrier

²⁶ See *Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, Memorandum Opinion and Order, CC Dkt. No. 86-104, 2 FCC Rcd 4518 ¶ 22. (1987) (“*Waiver Order*”).

²⁷ *Id* at ¶¶ 8, 34.

separately.²⁸ Thus, meet-point billing practices commonly employed the sharing of access revenues between LECs pursuant to a revenue sharing arrangement.

Nothing has changed since the passage of the 1996 Act. In a 1999 FCC order considering inter-carrier compensation for ISP-bound traffic, the Commission stated: “Generally speaking, when a call is completed by two (or more) interconnecting carriers, the carriers are compensated for carrying that traffic through either reciprocal compensation or access charges. When two carriers jointly provide interstate access (e.g., by delivering a call to an interexchange carrier (IXC)), the carriers will share access revenues received from the interstate service provider.”²⁹ The sharing of revenues for access services provided by two carriers is an established practice and should be maintained.

Other cases confirm IXCs’ duty to pay access charges in the situation presented by US LEC. When carriers were implementing interim local number portability after the 1996 Act, the Commission considered the appropriate treatment of terminating interstate access charges when an incumbent LEC forwarded a call to a competing provider pursuant to an interim number portability arrangement. The Commission concluded “that the meet-point billing arrangements between neighboring incumbent LECs provide[d] the appropriate model for the proper access billing arrangement for interim number

²⁸ *Id* at 23. The FCC discouraged the use of multiple billing arrangements. “We stress that the default plan should only be used as a last resort...”.

²⁹ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, CC Dkt. No. 99-68. 14 FCC Rcd 3689 ¶ 9 (1999).

portability.”³⁰ In the Commission’s view, it was inappropriate for either carrier to retain all terminating access charges in this circumstance. “Neither the forwarding carrier, nor the terminating carrier, provides all the facilities when a call is ported to the other carrier. Therefore, we direct forwarding carriers and terminating carriers to assess on IXCs charges for terminating access through meet-point billing arrangements.”³¹ The Commission did not mandate a particular mechanism for collection of access charges: “The overarching principle is that the carriers are to share in the access revenues received for a ported call. It is up to the carriers whether they each issue a bill for access . . . , or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved.”³²

B. The Commission Should Clarify That LECs Can Collect Access Payments For CMRS Calls

Based upon the regulatory parity principles set forth in the *Local Competition Order*, the FCC should clarify that LECs are entitled to collect access payments when

³⁰ See *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd 8352 *Order* ¶ 140 (1996).

³¹ *Id.*

³² The Commission further addressed cost-recovery issues associated with interim number portability in the *Fourth Portability Order*. The Commission reaffirmed its position that carriers should share the applicable access charges, and its indifference as to whether each carrier billed the relevant IXC or whether one billed the IXC and remitted a portion of the payment to the other. See *Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Dkt. No. 95-116, 16 Communications Reg. (P&F) 757 ¶ 73, 75 (1999) (“Fourth Portability Order”) (summarizing *First Portability Order* findings on these issues). However, the Commission further held that “[i]f carriers cannot agree on appropriate meet-point billing arrangements . . . this issue may be included in mediation or arbitration before a state commission, or be subject to other dispute resolution processes chosen by the carriers involved.” *Id.* ¶ 81.

they jointly provide access service with other carriers, including CMRS providers.³³ The FCC has long recognized that CMRS carriers, as well as LECs, provide exchange access services to their subscribers.³⁴ The Commission recently confirmed that CMRS providers are themselves entitled to charge for access.³⁵

There is no basis for the FCC to distinguish the rationale for LEC recovery of access charges when the LEC jointly provides the service with a CLEC versus when the LEC provides the service with a CMRS provider. The FCC should not allow IXCs to escape paying access charges because a call is ultimately terminating or originating with a CMRS carrier.

³³ *Id.* at ¶ 1024.

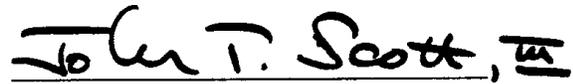
³⁴ *Id.* at ¶ 1012.

CONCLUSION

For the foregoing reasons, Verizon Wireless request that the FCC grant the relief requested in the instant petitions, and do so immediately, rather than defer action until it resolves the many issues raised by the intercarrier compensation rulemaking.

Respectfully submitted,

VERIZON WIRELESS

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style and is underlined with a single horizontal line.

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³⁵ *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges, Declaratory Ruling, WT Docket No. 01-316 (July 2, 2002).*

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of October copies of the foregoing “Comments of Verizon Wireless” in CC Docket 01-92 were sent by hand delivery to the following parties:

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