

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

In the Matter of)
Petition of US LEC Corp.) CC Docket No. 01-92
For Declaratory Ruling)
Regarding LEC Access Charges)
For CMRS Traffic)

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group (“RTG”)¹ hereby respectfully submits its comments in the above-captioned proceeding in response to the Federal Communications Commission (“FCC” or “Commission”) *Public Notice* released September 30, 2002 (DA 02-2436).² Specifically, RTG is filing comments regarding the *US LEC Petition*³ and to highlight the concerns of commercial mobile radio service (“CMRS”) providers who are stuck prominently at both ends of this local exchange carrier (“LEC”) and interexchange carrier (“IXC”) access-based dispute.

RTG agrees with US LEC Corp. (“US LEC”) that it should be compensated for CMRS-terminated interMTA calls that pass over the toll network through an IXC and that US LEC hands off to the CMRS end user. Likewise, RTG agrees with US LEC that it should be

¹ 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.

² *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*”).

³ *In re Petition of US LEC Corp. for Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic*, CC Docket No. 01-92, Petition for Declaratory Ruling (September 18, 2002) (“*US LEC Petition*”).

compensated for taking a CMRS-originated interMTA call and handing it off to the toll network via an IXC.⁴ Just because the originator or ultimate destination of a call is a CMRS customer does not excuse an IXC from paying US LEC for the service it provides.

The service US LEC and other LECs provide to IXCs when they help terminate calls to CMRS customers or originate toll calls from CMRS customers, however, is not purely access and further exposes the unresolved issue of CMRS access charges in the Commission's Rules. The service US LEC is providing when CMRS carriers "rely on the facilities of LECs to connect to the IXC"⁵ is jointly-provided access service to access the CMRS network. The LEC and the CMRS provider each provide a portion of the access. If any carrier in this scenario is deserving of the lion's share of access, it is the CMRS carrier who originates or terminates the traffic. Unfortunately, as US LEC correctly observes, pursuant to the Commission's rules, CMRS carriers cannot collect access charges pursuant to Part 69 Rules. However, LECs are entitled to recover access charges through Part 69.⁶ As clarified in the FCC's recent *CMRS Access Order*, CMRS carriers, while not forbidden from charging access, may do so only through contracts

⁴ RTG's support for US LEC's position is limited to CMRS traffic that originates and terminates in different MTAs, *i.e.* interMTA traffic. Where a wireless call originates and terminates in the same MTA, the Commission has determined that the call is local and should be subject to reciprocal compensation instead of access. If an intraMTA call is handled by an IXC, however, there is confusion as to what compensation scheme should apply. A wireless call that originates and terminates in the same MTA, is not technically an "interexchange call," and the application of access – rather than transiting, transport, and termination – is questionable. Currently, many independent LEC's intentionally route wireless intraMTA traffic to IXCs to avoid paying reciprocal compensation to the terminating wireless carrier even if the LEC and CMRS carrier are directly interconnected. The Commission should use this opportunity to clarify that some party should compensate the CMRS provider for terminating intraMTA traffic: either the originating LEC (if the Commission determines that all intraMTA wireless traffic is local) or the IXC (if the Commission determines that all intraMTA wireless traffic carried by an IXC is "interexchange").

⁵ *US LEC Petition* at 2.

⁶ *Id.* at 6. See *In re Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling at ¶ 1 (July 3, 2002), *petition for review filed*, No. 02-1221 (D.C. Cir. July 9, 2002) ("*CMRS Access Order*").

since they are prohibited from filing tariffs pursuant to the FCC's *CMRS Second Report and Order* forbearing them from doing so.⁷ Since small CMRS carriers, or large nationwide CMRS carriers for that matter, cannot entice an IXC to sign an access contract when they get the access service for free if they do not sign, the Commission's suggested use of contracts is a chimera.

US LEC's decision to charge access for CMRS-originated or CMRS-terminated interMTA calls is logical and equally applicable to CMRS providers. For years, the CMRS carrier has lost out on these legitimate access charges. The service US LEC and other LECs are providing to the IXCs when they handle interMTA CMRS-based calls is, from the point of view of the IXC, exactly the same as pure access. The bottom line is that interMTA calls are interexchange calls and the IXC should have to pay for the privilege of accessing the local network, regardless of whether it is landline-based or wireless-based. When delivery of the call is shared, the major portion of that legitimate access charge should go to the CMRS carrier whose customer either made the call giving the IXC toll revenue or answered the call giving the IXC toll revenue. The LEC is simply providing a transit/transport-type service. The *US LEC Petition* confirms what RTG had suspected – that many LECs have been “skimming” access charges when they handle CMRS traffic. In most cases, the CMRS carrier sees none of this access revenue and the LEC pockets the CMRS-based access.

While RTG essentially supports US LEC's request that the FCC affirm that LECs are entitled to recover from IXCs charges for interMTA “traffic they transport from a CMRS

⁷ *In re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Gen. Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480, ¶ 179 (1994) (“*CMRS Second Report and Order*”).

provider to the IXC;”⁸ RTG notes that the majority of that legitimate access-based charge should flow to the CMRS carrier. The Commission must develop a meaningful mechanism (as opposed to impotent contracts) that will allow CMRS carriers to collect access in the same legitimate and enforceable fashion that LECs collect access.

Respectfully submitted,

/s/

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⁸ *US LEC Petition* at 10 (where US LEC accurately identifies its service as “transport”).