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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**COMMENTS OF THE FRONTIER AND CITIZENS
INCUMBENT LOCAL EXCHANGE CARRIERS**

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INTRODUCTION AND SUMMARY

On September 26, 2002, several “CMRS Petitioners” filed a petition with the Commission asking the Commission to enter a declaratory ruling that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of telecommunications traffic under the Communications Act. In effect, the Petitioners are asking the Commission to declare that an incumbent local exchange carrier (“ILEC”) engages in an unlawful practice when it files and seeks compensation through wireless termination tariffs. The CMRS Petitioners further ask the Commission to enter an order directing ILECs to withdraw any wireless

¹ The CMRS Petitioners include: T-Mobile USA, Inc (formerly known as VoiceStream Wireless Corporation); Western Wireless Corporation; Nextel Communications and Nextel Partners.

termination tariffs in existence today or, alternatively, to declare such tariffs unlawful, void and of no effect.

The Frontier and Citizens incumbent local exchange carriers under the common ownership of Citizens Communications Company (hereafter, the “Frontier Companies”) file these comments in response to the Commission’s September 30, 2002 Notice soliciting comments on petitions for declaratory ruling regarding intercarrier compensation for wireless traffic. The Frontier Companies are opposed to the relief requested by the CMRS Petitioners and recommend that the Commission refrain from issuing a ruling that would prohibit state tariffs addressing compensation for terminating CMRS traffic in all circumstances. Contrary to the CMRS Petitioners’ assertion, the wireless traffic terminated by independent Local Exchange Carriers (LECs) outside the scope of an existing interconnection agreement is significant. In some instances a wireless termination tariff may be the only way to obtain compensation for terminating wireless traffic. The Commission should clarify and expand CMRS Carriers’ obligations to negotiate and enter into interconnection compensation agreements with independent LECs.

I. CMRS CARRIERS “INDIRECTLY” TERMINATE SIGNIFICANT VOLUMES OF CMRS TRAFFIC TO INDEPENDENT LECs WITHOUT ESTABLISHING AN INTERCONNECTION COMPENSATION ARRANGEMENT.

As explained by the CMRS Petitioners, many CMRS carriers interconnect with the public switched telephone network (“PSTN”) using Type **2A** interconnection – an arrangement whereby the CMRS’s mobile switching center (“MSC”) is connected

directly *via* a trunk group to a tandem switch.² With Type 2A interconnection the wireless carrier can exchange traffic with the tandem operator's (often the RBOC) customers served by end offices subtending the tandem. In addition, Type 2A interconnection enables a CMRS carrier to piggy-back on the existing relationship and trunk facilities the tandem operator has established with the independent local exchange carriers that subtend the tandem. The tandem switch owner switches and transports traffic originating on the CMRS provider's network to the independent LEC over the existing trunk arrangements between the tandem operator and the subtending independent LECs.

CMRS carriers generally establish the Type 2A interconnection arrangement and/or interconnection agreement with the tandem operator (often the RBOC) without directly contacting or attempting to establish an interconnection or compensation arrangement with the independent LECs subtending the tandem. The CMRS carrier may send its traffic destined to a small independent LEC to the tandem owner, which then switches the traffic to the large trunk group connecting the tandem switch with the destination small ILEC, a trunk group that the small ILEC uses to send and receive most of its inter-network PSTN traffic. Consequently, independent LECs often interconnect indirectly with CMRS providers via a Type 2A connection without any opportunity to influence and possibly without even being aware of the interconnection or compensation arrangement between the CMRS Provider and the tandem operator.³ The CMRS

² CMRS providers generally do not pursue Type 2B interconnection, where the CMRS provider's MSC is directly connected via one-way or two-way **trunks** to an ILEC's specific end office switch.

³ This **is** the flip side to the CMRS Petitioners' argument that wireless termination tariffs are unlawful because a CMRS carrier may not even be aware that the ILEC **has** filed a wireless termination tariff with a state commission until the ILEC begins attempting to impose the tariffs *terms on* a CMRS provider. See Petition at p. 6.

providers then assume or demand that the independent LEC terminate mobile-to-land traffic transiting through the tandem and over existing trunk arrangements. Again no interconnection contract or arrangement is established with the independent LEC and the independent LEC is effectively asked to terminate the CMRS provider's traffic on a bill-and-keep basis. In addition, in some instances the independent LEC may be required to pay the tandem operator to receive records identifying the CMRS traffic the tandem operator is transiting to the independent LEC.

The Frontier Companies take issue with the CMRS Petitioners' suggestion that the volume of indirect traffic terminated to independent LECs over these Type 2A arrangements is de minimus.⁴ The volume of wireless traffic the Frontier Companies is terminating from wireless carriers is significant and growing. By way of example, in August, 2002, one Frontier ILEC entity, Citizens Telecommunications Company of Minnesota, Inc.,⁵ terminated over 3,000,000 minutes of use of CMRS mobile-to-land traffic from four (4) CMRS providers that did not have interconnection or compensation arrangements in place with the Company. This results in lost revenue of thousands of dollars per month associated with terminating CMRS traffic without an interconnection compensation agreement with this limited number of CMRS providers. The Frontier Companies have had similar experiences in other markets. Clearly, the volume of CMRS

⁴ CMRS Petitioners relied in part on two examples of bills received in Minnesota (a bill dated May 24, 2002 for \$42.77 for 740 minutes of traffic and a bill dated July 1, 2002 for \$78.21 for 1,236 minutes of traffic) as a basis for suggesting that the cost of negotiating an interconnection contract, preparing monthly statements, and auditing amounts billed cannot be economically justified. See Petition at p. 4, footnote 10.

⁵ Citizens Telecommunications Company of Minnesota serves approximately 150,000 access lines in Minnesota. The Company does not operate a tandem and has not established any direct Type 2B connections in its end offices. The wireless traffic it terminates is transited through tandems operated by third parties, primarily Qwest, the Minnesota RBOC.

traffic being terminated through indirect Type 2A arrangements and without an interconnection agreement should be addressed.

II. INDEPENDENT LECs HAVE DIFFICULTY SECURING INTERCONNECTION AGREEMENTS WITH SOME CMRS PROVIDERS.

As the Commission has recognized, more calls are made from wireless phones to wireline phones than vice-versa.⁶ Because the volume of land to mobile traffic is usually less than the volume of mobile to land traffic, CMRS providers are generally net payers of reciprocal compensation. It is therefore in the CMRS provider's financial interest to not negotiate an interconnection and compensation arrangement with the independent LECs and to attempt to maintain the *status quo* of not paying reciprocal compensation as long as possible. Certain CMRS providers recognize this point and refuse to negotiate interconnection and compensation agreements with independent LECs.

In their petition, the CMRS Petitioners assert that they are willing to negotiate an interconnection agreement with small independent LECs, upon request, even though the dollars involved often do not justify the time and expense associated with negotiating an interconnection contract, preparing monthly statements, and auditing amounts billed? Although the Frontier Companies have found some CMRS providers (including some of the Petitioners) willing to step forward and negotiate an interconnection compensation agreement, in many instances, the Frontier Companies have not even been able to get the

⁶ Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (April 27, 2001) at footnote 176.

⁷ Petition at p. 4

CMRS provider to acknowledge the need to establish such an agreement. Frontier Company representatives have sent letters and made phone calls requesting several CMRS providers to negotiate traffic exchange or interconnection compensation agreements. Frontier Company representatives have also, in some instances, sent bills to CMRS providers identifying the MOUs for wireless traffic the Company has terminated for the CMRS provider. In many instances these letters, phone calls and bills identifying terminating CMRS traffic are ignored.

The Frontier Companies are willing to negotiate reciprocal interconnection and compensation agreements with CMRS providers. As part of these negotiations, the Frontier Companies seek to establish two-way compensation arrangements (*i.e.*, receive terminating compensation from CMRS carriers and the Frontier Companies pay CMRS carriers terminating compensation for land-to-mobile calls). The Frontier Companies also offer TELRIC based rates for exchanging traffic in interconnection agreement negotiations with CMRS providers.

The Frontier Companies agree with the CMRS Petitioners that the Communications Act and the Commission's interconnection policies and rules clearly envision a process whereby two carriers attempt to negotiate an interconnection agreement for the exchange of telecommunications traffic. However, if independent LECs can not get CMRS providers to come to the table to negotiate, it can not establish an interconnection agreement with two-way compensation arrangements using TELRIC rates.

III. TARIFFS FOR TERMINATING CMRS TRAFFIC MAY BE THE ONLY OPTION AVAILABLE FOR INDEPENDENT LECs TO ADDRESS COMPENSATION FOR INDIRECT CMRS TRAFFIC.

CMRS Petitioners assert that a fundamental problem with state wireless termination tariffs is that if CMRS traffic termination tariffs are allowed to take and remain in effect, independent LECs then have no incentive to negotiate fair and lawful prices, terms and conditions in an interconnection agreement.* As noted above, once the CMRS provider's traffic is sent via the tandem operator to the independent LEC over existing trunking arrangements previously established between the independent LEC and the tandem operator, the CMRS Provider has no incentive to engage in interconnection negotiations. They would prefer that the traffic be treated as bill and keep.

Under the Commission's existing rules, independent LECs have limited opportunity to change the *status quo* after an indirect Type 2A connection is established with a tandem operator. Independent LECs cannot force CMRS providers to proceed with negotiations under Section 252 of the Act and to establish negotiated rates, terms, and conditions for interconnection. In addition, the independent LECs may be unable to control or block CMRS traffic transiting a third party tandem and existing PSTN trunking arrangements. In some circumstances the only way to establish a compensation arrangement and to incent a CMRS provider to negotiate an agreement, may be to implement a state CMRS traffic termination tariff

Without the opportunity to pursue state tariffs providing for compensation for terminating CMRS traffic, independent LECs will have few options but to terminate the

⁸ The CMRS Petitioners assert "An ILEC, with a lucrative wireless termination tariff in effect that contains one-sided prices, terms and conditions, has no incentive to negotiate a reasonable interconnection agreement with a CMRS provider." Petition at p. 7.

CMRS traffic to their customers without receiving any compensation. For this reason, the Commission should not declare CMRS tariffs allowing for the compensation for terminating CMRS traffic unlawful and inconsistent with the Commission's rules and the Act as a matter of law.

IV. THE COMMISSION SHOULD REVIEW AND REVISE ITS RULES TO REQUIRE CMRS PROVIDERS TO NEGOTIATE RECIPROCAL INTERCONNECTION AND COMPENSATION ARRANGEMENTS.

The Commission should issue a Notice of Proposed Rulemaking and review its existing rules that address the obligation of carriers to establish interconnection and compensation arrangements. As part of this NPRM, the Commission should consider revising its existing rules to make it clear that CMRS providers have an affirmative obligation to negotiate and enter into interconnection compensation agreements with independent LECs. First, the Commission should modify 47 C.F.R. § 51.703 to make it clear that CMRS providers have an obligation to establish reciprocal compensation arrangements with requesting LECs. The Frontier Companies propose that the Commission review and modify this rule as follows:

Sec. 51.703 Reciprocal Compensation obligation of LECs *and Telecommunications Carriers*.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

~~(b)~~ *Each telecommunications carrier shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting LEC.*

~~(b)~~ (c) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

The Frontier Companies also encourage the Commission to look at revising 47 C.F.R. § 51.715 to clarify CMRS carrier obligations and to require CMRS providers to establish interim interconnection and compensation arrangements immediately upon the request of an independent LEC that does not have existing agreement in place. The Frontier Companies recommend the following modifications to Rule 51.715:

Sec. 51.715 Interim transport and termination pricing

(a) Upon request from a telecommunications carrier *or an incumbent LEC* without an existing interconnection arrangement ~~with an incumbent LEC~~, the incumbent LEC *and telecommunications carrier* shall provide transport and termination of telecommunication traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunication traffic ~~by the incumbent LEC~~

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to Sec. 51.301.

(3) An incumbent LEC may take advantage of such an interim arrangement only after it has notified the telecommunications carrier that it seeks to establish an interconnection or compensation arrangement for the transport and termination of telecommunications traffic.

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC *a d telecommunications carrier* must, without unreasonable delay, establish an interim arrangement for transport and termination of telecommunication traffic at symmetrical rates.

Although some CMRS providers are currently willing to enter into interim compensation arrangements while more extensive agreements are being negotiated, Frontier's proposed change to 47 C.F.R. § 51.715 would make it clear that an independent LEC can demand an interim compensation arrangement once it has notified the CMRS carrier. With an interim arrangement in place, the independent LEC can receive recovery for terminating CMRS traffic while a more complete interconnection agreement is negotiated.

CONCLUSION

The Frontier Companies have had difficulties securing interconnection compensation agreements with several CMRS carriers despite repeated attempts. The Commission should not declare CMRS traffic termination tariffs unlawful as a matter of law. Absent a tariff allowing for the recovery of reciprocal compensation for terminating CMRS traffic, CMRS providers have no incentive to negotiate with small independent LECs. The Commission should review and revise its existing rules to clarify CMRS Carrier's obligations to negotiate interconnection agreements with independent LECs and to provide for interim agreements while complete interconnection agreements are being negotiated.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin Saville" followed by a circled "K" or similar mark.

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CERTIFICATE OF SERVICE

I, Saratu Samande, 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 Frontier and Citizens Incumbent Local Exchange Carriers" was served on this 18th day of October 2002, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:

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