

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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| In the Matter of   | ) |                     |
|  | ) |                     |
| Developing a Unified Intercarrier<br>Compensation Regime                 | ) | CC Docket No. 01-92 |
|  | ) |                     |
| Petition for Declaratory Ruling of<br>T-Mobile USA, Inc., <i>et. al.</i> | ) |                     |

**REPLY COMMENTS OF THE  
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

The National Exchange Carrier Association, Inc. (NECA) submits this reply to comments submitted in response to the Commission's *Public Notice* in the above captioned proceeding.<sup>1</sup> NECA concurs with commenters that recommend that the Commission deny the *Petition for Declaratory Ruling*<sup>2</sup> filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications, Inc., and Nextel Partners, Inc. (CMRS Petitioners).

Commenters correctly observe that rural incumbent local exchange carriers (ILECs) are entitled to compensation from carriers that terminate traffic on their

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<sup>1</sup> Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, CC Docket No. 01-92, *Public Notice*, DA 02-2436 (rel. Sept. 30, 2002) (*Public Notice*).

<sup>2</sup> Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Petition for Declaratory Ruling of T-Mobile USA, Inc., et. al.* (filed Sept. 6, 2002) (*T-Mobile Petition*).

networks.<sup>3</sup> In seeking to have the Commission declare that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements, the *T-Mobile Petition* seeks tacit Commission approval for a unilateral bill-and-keep (B&K) intercarrier compensation mechanism for wireless indirect interconnection with rural incumbent local exchange carrier (ILEC) networks.<sup>4</sup> This mechanism allows the CMRS Petitioners free use of rural carriers' facilities and services.<sup>5</sup> NECA agrees with commenters that the Commission should not allow carriers to continue to circumvent intercarrier compensation mechanisms in this manner. Instead, the Commission should confirm that carriers can not avoid compensating rural ILECs for traffic terminated on their networks.<sup>6</sup>

The CMRS Petitioners' attempt to position B&K as the default compensation mechanism for indirect interconnection has no basis in fact. As numerous commenters point out, nowhere in the Act or the Commission's rules are carriers given the right to unilaterally impose B&K arrangements on other carriers.<sup>7</sup> B&K is appropriate only in limited circumstances, either when carriers have reached mutual agreement or when

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<sup>3</sup> See Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) at 6, ICORE, Inc. (ICORE) at 5, Missouri Small Telephone Company Group (MoSTCG) at 26.

<sup>4</sup> See Alliance of Incumbent Rural Independent Telephone Companies (Alliance) at 6, 22, MoSTCG at 7.

<sup>5</sup> See MoSTCG at 10-11 describing the uncompensated use of its network facilities by CMRS providers as amounting to "theft-of-service."

<sup>6</sup> See MoSTCG at 17, OPASTCO at 2.

<sup>7</sup> See National Telecommunications Cooperative Association (NTCA) comments at 5, OPASTCO comments at 7, John Staurulakis, Inc. (JSI) at 5, MoSTCG at 11.

ordered by state commission after a finding that traffic flow between carriers is “roughly balanced.”<sup>8</sup>

T-Mobile attempts to justify its position by claiming that the amount of traffic involved is not enough to make it worthwhile to negotiate other compensation arrangements. As rural ILEC commenters point out, however, the terminating traffic in question may be small to the wireless provider but is a significant and growing portion of traffic terminated by rural ILECs.<sup>9</sup> Revenues from providing traffic termination services are critical to rural ILECs.<sup>10</sup> MoSTCG notes that “until the wireless carriers begin to pay their fair share of the costs of connection . . . the small companies’ end user customers and other carriers that play by the rules . . . will end up subsidizing the wireless carriers’ use of the small companies’ facilities and services.”<sup>11</sup>

The *T-Mobile Petition* also fails to acknowledge that, due to the increasing popularity of wireless nationwide long distance plans, a portion of the traffic routed to rural ILECs may originate outside of the wireless carriers’ major trading area (MTA) and thus warrant imposition of tariffed access charges instead of reciprocal compensation.<sup>12</sup> Clearly there is no reason to allow the carriers to circumvent access. However, MoSTCG has described the difficulty in identifying this traffic due to the lack of jurisdictional

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<sup>8</sup> See OPASTCO comments at 8, ICORE at 5-6, MoSTCG at 3.

<sup>9</sup> See NTCA at 8, Frontier and Citizens at 4, OPASTCO at 5, ICORE at 6, Michigan Rural Incumbent Local Exchange Carriers (Michigan ILECs) at 2, MoSTCG at 26.

<sup>10</sup> See NECA comments (filed Aug. 21, 2002) at 7 describing how rural carriers receive far more traffic than they originate.

<sup>11</sup> MoSTCG at 27.

<sup>12</sup> See MoSTCG at 13-14, 25.

information supplied by the wireless carriers.<sup>13</sup> Therefore, in addition to affirming that rural ILECs are entitled to appropriate compensation for terminating traffic on their networks, the Commission should require wireless carriers to supply the necessary information to identify the originating provider and the jurisdictional nature of the call to ensure accurate billing.

## CONCLUSION

The Commission should reject CMRS Petitioners' attempts to justify unilateral imposition of a bill and keep intercarrier compensation mechanism for indirect interconnection with rural ILEC networks. The Commission should affirm that rural ILECs are entitled to appropriate compensation for the termination of traffic on their networks and require wireless providers to supply the necessary information, including jurisdictional information, to ensure proper billing.

Respectfully submitted,

NATIONAL EXCHANGE  
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November 1, 2002

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<sup>13</sup> *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Comments was served on this 1<sup>st</sup> day of November 2002 by electronic delivery and by first-class mail to the persons listed below.

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