

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

In the Matter of)	
)	
Petitions of US LEC Corp. and T-Mobile USA)	CC Docket No. 01-92
Inc. <i>et al</i> , for Declaratory Ruling Regarding)	
Intercarrier Compensation for Wireless Traffic)	
)	

**REPLY COMMENTS OF
TRANSTEL COMMUNICATIONS, INC.**

Stanley K. Stoll
Blackburn & Stoll, LC
77 West 200 South, Suite 400
Salt Lake City, Utah 84101
(801) 521-7900

Counsel for Transtel Communications, Inc.

November 1, 2002

Pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and the Commission's Public Notice of September 30, 2002 (DA 02-2436), Transtel Communications, Inc., on behalf of itself and its wholly-owned subsidiaries, Tel-America of Salt Lake City, Inc., and Extelcom, Inc., dba Express Tel (collectively, "Transtel"), submits the following Reply Comments to the petition of US LEC Corp. ("US LEC") for a declaratory ruling that local exchange carriers ("LECs") are entitled to recover access charges at the full benchmark rate from interexchange carriers ("IXCs") on interexchange calls originating or terminating on the networks of commercial mobile radio service ("CMRS").

Reply Comments

Transtel joins in, and supports, those Comments filed by AT&T Corp. ("AT&T"), Worldcom, Inc. ("Worldcom"), and Qwest Communications International, Inc. ("Qwest") in which each describes, and condemns, the routing scheme by which US LEC and CMRS providers seek to unlawfully impose access charges on IXCs for 8YY toll calls originated by CMRS providers.

Qwest attaches to its Comments a copy of the Informal Complaint filed by ITC DeltaComm Communications, Inc. ("ITC") with the Commission against US LEC in which ITC alleges the same routing scheme that AT&T, Worldcom and Qwest describe in their respective Comments. Further, Qwest also attaches to its Comments a copy of the Complaint filed by ITC against US LEC in the United States District Court, Northern District of Georgia, Newnan Division (the "Lawsuit"), alleging that the same conduct on the part of US LEC as described by ITC in the Informal Complaint violates federal and state RICO laws as well as state deceptive practices acts and constitutes common law fraud.

While Transtel has no knowledge as to the truth of the allegations contained in the Informal Complaint or the Lawsuit, it notes that the factual allegations of ITC concerning the conduct of US LEC are strikingly similar to the conduct of a CLEC with whom Transtel has dealt. Transtel submits its experience for the Commission's consideration in this matter as it highlights the fraudulent and abusive scheme used by CLECs to unlawfully charge IXCs for calls originated by CMRS end users.

Background

In October 1999, Transtel received an invoice from U.S. TelePacific Corp., dba, TelePacific Communications ("TelePacific") for access charges. Upon inquiry, TelePacific informed Transtel that all of the usage for which the access charges were being billed was for 8YY services. Given the unusual nature, and amount, of the traffic for which Transtel was requested to pay access charges, Transtel withheld payment until it could verify that the charges that TelePacific sought were legitimate.

In order to verify such usage, and because TelePacific did not pass any ANI or CPN along with the calls,¹ Transtel requested from TelePacific the 8YY numbers that were generating the usage for which TelePacific was billing access charges. Upon analysis of the 8YY numbers provided by TelePacific, it was determined that the calls were not originated on TelePacific's NPA/NXX. In other words, TelePacific was not the originating carrier for the end-users making the calls. Accordingly, Transtel took the position that TelePacific was not providing access services.

¹ Section 64.1601(a) states, in pertinent part, that "common carriers . . . are required to transmit the calling party number (CPN) associated with an interstate call to interconnecting carriers." 47 C.F.R. § 64.1601(a). TelePacific is required to transmit CPN to Transtel, and its refusal to transmit such information violates the

In addition, there was a huge discrepancy between the number of calls for which TelePacific was billing and the number of calls which Transtel could verify through its switch. An analysis of the traffic revealed that of the calls reported, more than 80% contained the Operating Company Number (“OCN”) of CMRS providers. The OCN for the balance of the calls listed on the call detail was primarily TelePacific, some of which were non-working, invalid numbers. When Transtel representatives asked TelePacific for an explanation, they were told that those numbers were “dummy” numbers.

It was only after Transtel’s analysis of call detail that TelePacific admitted that all of the calls for which it billed access charges to Transtel were made by customers of CMRS carriers. TelePacific further admitted that it had entered into an arrangement with the CMRS carriers by which all 8YY calls made by CMRS end-users were segregated from the rest of the CMRS traffic and forwarded to TelePacific on dedicated facilities. TelePacific would then transmit the 8YY traffic to the LEC tandem for connection to the IXCs’ switches. TelePacific then billed the IXCs for the alleged access services and split those revenues with the CMRS carriers by payment of commissions.

TelePacific Does Not Provide Access Services or Any Other Services Which Have Any Functionality or Value

The FCC has a long-standing policy which provides that CMRS/LEC interconnection arrangements should “minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer”² However, the overall distance and complexity of the calling path increases when adding an additional switch (TelePacific’s) between the Mobile Switching Centers and the LEC tandems. The national network is degraded, and consumers bear the burden of longer call set up times and the increased probability of dropped calls, in addition to the higher long distance rates that would result from enforcing arrangements that inflate access charges.³

TelePacific has implemented a scheme that neither adds value nor provides any service to long distance carriers like Transtel. TelePacific has merely inserted itself into the call path between the CMRS caller and the IXC without purpose or reason other than to generate revenues for itself and the CMRS providers with whom it contracts. TelePacific provides no access functions, and it is suspicious that only 8YY calls are sent by the CMRS carriers to TelePacific. The CMRS providers complete all other calls not involving an IXC directly through the LEC tandem. Nothing in any rule, regulation or order of the Commission requires an IXC to accept an unreasonable request for service, such as a request involving inefficient routing of calls

²*FCC Policy Statement on Interconnection of Cellular Systems*, 59 R.R.2d (Pike & Fischer) 1283, para. 2 (1986) (“Policy Statement”)

³ The Commission has previously found that consumers experience an “impairment of quality” in their telecommunications services if post-dial delay is introduced in call set up times. *See In the Matter of Telephone Number Portability*, 12 FCC Rcd 7236, 7249 (1997).

designed to increase costs through utilizing two LECs when one would do.

Furthermore, TelePacific does not provide the critical elements of access service including, without limitation, local switching. Local switching is an end office function. *See* CLEC Access Charge Order, para. 55. n. 126 (referring to “local end office switching” as one of the access charge rate elements).⁴ Once a call leaves the end office, subsequent switches in the originating call path provide tandem rather than local switching. *See* 47 C.F.R. § 69.111(a)(2). An “end office” is “the telephone company office *from which the end user receives exchange service*” and an “end user” is “any customer of an interstate or foreign telecommunications carrier *that is not a carrier ...*” 47 C.F.R. §§ 69.2(m) and (pp) (emphasis added). TelePacific does not provide exchange service to the CMRS carriers’ end users, the CMRS carriers do. Further, the CMRS carriers interconnect with TelePacific via a “type two” (trunk side) rather than a “type one” (line-side) connection. As a “type two” (trunk-side) connection, it is the CMRS carriers’ switch that provides the local switching; TelePacific provides no functionality here either.

Because CMRS carriers are not end users, TelePacific’s switch is not functioning as an end office with respect to wireless-originated traffic at issue. Rather than directing calls to or from hundreds or thousands of individual end user lines, TelePacific’s switch accomplishes the more limited tandem switching task of (a) receiving 8YY calls that have already been switched, segregated and aggregated onto “dedicated facilities” by the CMRS provider and (2) sending

⁴ *Access Charge Reform*, Seventh Report & Order, 16 FCC Rcd. 9923 (2001) (“CLEC Access Charge Order”)

them over similar aggregated facilities to a second tandem belonging to the LEC. As the LEC already performs the tandem switching, just as it does for non-8YY calls, TelePacific's equipment serves no useful purpose and is nothing more than a sham.

Obviously, the CMRS providers do not want to pay the additional charges which would be imposed by TelePacific for such purported access services which provide no functionality. To the contrary, TelePacific and the CMRS providers have purposely elected to foist their fraudulent scheme upon unsuspecting IXCs to exact access charges for services which have no value to the IXCs or the CMRS customers.

Moreover, TelePacific's own tariff, in accordance with the FCC definitions cited, precludes TelePacific from claiming local switching charges where the wireless carrier has already switched calls coming over individual end user lines (or radio circuits) onto the dedicated circuit to TelePacific. *See* TelePacific FCC Tariff No. 1 page 41 ("Switching Services provides for the use of end office switching functions *and the terminations in the end office of End User lines.*") (emphasis added).

TelePacific has attempted to justify its intrusion into the call path by claiming that it helps CMRS carriers to avoid connecting to the points of presence for the more than 700 IXCs in the country. This is patently false. With or without the insertion of TelePacific into the calling path, the LEC tandem switches direct wireless traffic to the proper IXC and there is no need for any CMRS carrier to connect to the points of presence of 700 IXCs.

TelePacific does not even provide other necessary network services associated with 8YY services such as the 8YY data base query. Those are services provided, and billed, by the LECs. If TelePacific does a data base query, it is solely for the purpose of determining which IXC it

should bill. Once the calls are transported to the LEC tandem, the LEC must perform its own data base query in order to determine to which IXC to route the call.

In the CLEC Access Charge Order⁵, the FCC sought to protect end users' ability to place long distance calls by prohibiting IXCs from refusing to accept calls from an "*end user of a CLEC* charging rates within the safe harbor ..." CLEC Access Charges Order, para. 94 (emphasis added). With respect to wireless-originated calls, there is no "end user" of TelePacific attempting to place long distance calls and so the prohibition in paragraph 94 of the CLEC Access Charges Order is inapplicable. CMRS providers are carriers rather than end users. Policy Statement, para. 2.

Notwithstanding the foregoing, TelePacific continues to demand payments for its so-called "access" services at the rate of 7.5 cents per minute prior to February 2001, 5.09 cents from February 2001 to June 2001 and 4.22 cents per minute from June 1 2001, through June 30, 2001. From and after July 1, 2001, TelePacific's interstate access rates have been set at the benchmark rates mandated by the Commission. TelePacific also continues to invoice Transtel for intrastate rates at the pre-June 30, 2001, interstate levels described above.

TelePacific's Scheme Perpetrates a Fraud by CMRS Carriers

⁵ *Access Charge Reform*, Seventh Report & Order, 16 FCC Rcd. 9923 (2001) ("CLEC Access Charge Order")

It is axiomatic that an entity may not do indirectly that which it is prohibited from doing directly. However, the sharing of access fees by TelePacific with CMRS carriers does precisely that – it allows CMRS carriers to circumvent the prohibition against the unilateral imposition of access charges on IXCs. The Commission has heretofore declared that the practice of unilaterally imposing such charges is unlawful.⁶ TelePacific’s attempt to indirectly collect access charges on behalf of CMRS carriers under a secret fee splitting arrangement not only violates established Commission doctrine, but such actions are illegal, and demonstrate potential criminal intent to perpetuate a fraud by wire.

Section 1343 of Title 18 of the United States Code states, in pertinent part, that:

Whoever, having devised . . . any scheme or artifice to defraud, or for obtaining money . . . by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire . . . in interstate . . . commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under the title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343. As mentioned above, the Commission has determined that CMRS carriers are prohibited from imposing access charges on IXCs unless there is an established contract between the parties. In order to circumvent this prohibition, TelePacific has colluded with CMRS carriers to remove the ANI information from CMRS end users to prevent Transtel from identifying the origin of the call. TelePacific then provides false information to Transtel, or fails to provide CPN as required by the FCC, in order to mislead the company into paying access charges

⁶*In the Matter of the Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling (rel. July 3, 2002).

indirectly to the CMRS carriers when such payments would not normally occur.

TelePacific has concocted the very scheme which AT&T, Worldcom and Qwest describe in their respective Comments. TelePacific's collusive behavior with CMRS carriers perpetrates a fraud that is intended to obtain payments through false pretenses, *i.e.*, removing the ANI information from the CMRS call and/or replacing it with "dummy" numbers or other false numbering information so that the call appears to originate with TelePacific. It is a fraudulent scheme by which TelePacific seeks to impose access charges when, in fact, TelePacific provides no access services and by which TelePacific seeks to impose access charges for calls originated by customers of CMRS providers.

The FCC has previously determined that sham entities designed to impose increased access charges on IXCs are unlawful and violate Section 201 of the Communications Act of 1934, and that IXCs are not required to order access services from such enterprises.⁷ The exact same situation occurs here. TelePacific has established a sham operation with CMRS providers intended to generate unjustified and illegal access charges by fraudulent means. The FCC should send a strong and unequivocal message to CLECs and CMRS providers that fraudulent schemes, such as that perpetuated by TelePacific against Transtel, are unlawful and improper and deny US LEC's petition for declaratory ruling.

Conclusion

For the foregoing reasons, the Commission should deny US LEC's petition for declaratory ruling to the extent that a CLEC inserts itself into the call path between a CMRS

⁷ See *Total Telecommunications Services, Inc. v. AT&T Corporation*, 16 FCC Rcd 5726 (2001) (FCC determined that ILEC established a CLEC subsidiary as a sham entity for purposes of charging access rates higher than that permitted by the ILEC).

carrier and a LEC tandem switch in order to collect access charges from an IXC.. Further, the Commission should order a refund of all access charges previously collected by such CLECs as US LEC and TelePacific when such access charges result from the scheme described in Transtel's Reply Comments and the Comments of AT&T, Worldcom and Qwest.

Respectfully submitted,

/s/Stanley K. Stoll

Stanley K. Stoll
Blackburn & Stoll, LC
77 West 200 South, Suite 400
Salt Lake City, Utah 84101
(801) 521-7900
Counsel for Transtel Communications, Inc.