

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

In the Matter of	)	
	)	
Developing a Unified	)	
Intercarrier Compensation	)	
Regime	)	
	)	
Petition of US LEC Corp.	)	CC Docket No. 01-92
For Declaratory Ruling	)	
Regarding LEC Access Charges	)	
For CMRS Traffic	)	
_____	)	

**REPLY COMMENTS OF US LEC CORP.**

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## SUMMARY

In its Petition for Declaratory Ruling, US LEC asked the Commission to reaffirm that local exchange carriers are entitled to recover access charges for interexchange traffic that passes from commercial mobile radio service (“CMRS”) providers to interexchange carriers (“IXCs”) (or vice versa) via the network of the LEC. The comments elicited in response to US LEC’s Petition provided virtually unanimous support for two propositions: first, that LECs are entitled to the receipt of access charges for traffic that originates or terminates on a CMRS network, and second, that if the CLEC replaces the ILEC as the link between the MTSO and the IXC the CLEC is entitled to access charges in the same way the ILEC is. There was a sole dissenting set of comments filed on these two propositions – those filed by ITC^Deltacom – the very carrier that is searching for some way to evade payment to US LEC for over \$1.2 million worth of lawfully provided access service (and this number is continually increasing). The lone voice of ITC is not sufficient to deny the Petition of US LEC, particularly when US LEC’s position is supported by both the record in this proceeding and Commission precedent.

There is only one issue in controversy and that is whether a CLEC is entitled to access charges when it jointly provides access service for the CMRS call with multiple carriers. The right of multiple carriers to receive access charges in a joint access context is as well-established as the right to access charges itself. Some IXCs seek to read in a limitation to this right based on the purported functionality a carrier brings to the routing of the call. These IXCs can cite to no precedent supporting their new limitation, and, in fact, there is no precedent under the Commission’s compensation rules to support this limitation. If the IXCs seek to have the Commission adopt such a limitation, then they should formally ask the Commission to adopt a new rule. If an IXC has an issue as to how a LEC is charging for jointly provided access service

then it can initiate a Section 208 proceeding in which the Commission can examine the particular circumstances of the case or the Commission could examine joint access rates in the Intercarrier Compensation proceeding. In short, the Commission's existing compensation rules more than adequately address the joint provisioning of access service, and there is no basis to deny CLECs access charges when it jointly provides access service with other carriers. The rate issue is clearly a ruse to muddy what is a clear cut issue.

Moreover, the premise of the IXCs' argument is fundamentally flawed as a CLEC provides functionality to the routing of a toll call in the same manner as other LECs provide functionality in a joint access scenario. Arguably, given the value the 1996 Act and this Commission have placed on the development of competitive services, CLECs provide a very significant functionality by providing competitive options for carriers and end users alike. As CLECs make more competitive inroads in markets, the situation where multiple LECs provide access service will become even more common. The days of the ILEC being the sole access provider are in the past. There is no basis to deny a LEC, be it CLEC or ILEC, access charges in a joint access situation.

The Commission should promptly rule on US LEC's Petition and reaffirm that local exchange carriers are entitled to access charges for interexchange traffic that passes from a CMRS provider to an IXC via a LEC network.

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**REPLY COMMENTS OF US LEC CORP.**

US LEC Corp. (“US LEC”) submits these reply comments concerning its Petition for Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic. For the reasons stated in these reply comments and its Petition, the Commission should issue a ruling declaring that LECs, either CLEC or ILEC, are entitled to receive access charges for interexchange traffic that passes from CMRS providers to IXCs via the LEC’s network.

**I. THE RECORD UNEQUIVOCALLY SUPPORTS US LEC’S INITIAL PROPOSITION THAT LECS ARE ENTITLED TO ACCESS CHARGES FOR WIRELESS TRAFFIC**

**A. There Is No Dispute that the Access Charge Regime Applies to Such Calls and That LECs are Entitled to Compensation for Such Calls**

In its Petition for Declaratory Ruling, US LEC sought a declaratory ruling “reaffirming that local exchange carriers (“LECs”), whether incumbent local exchange carriers (“ILECs) or competitive local exchange carriers (“CLECs), are entitled to recover access charges for interexchange traffic that passes from commercial mobile radio service (“CMRS”) providers to

interexchange carriers (“IXCs”) (or vice versa) via the network of the LEC.”<sup>1</sup> The comments elicited in response to US LEC’s Petition have demonstrated virtually unequivocal support for this proposition.<sup>2</sup> SBC states the Commission should “affirm that, under existing compensation rules, LECs are entitled to recover access charges from interexchange carriers (“IXCs”) for

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<sup>1</sup> CC Docket No. 01-92, Petition for Declaratory Ruling of US LEC Corp. at 1 (Sept. 18, 2002).

<sup>2</sup> See, e.g., CC Docket No. 01-92, Comments of the Montana Local Exchange Carriers on Petitions for Declaratory Ruling at 2 (Oct. 18, 2002) (“The Commission’s rules mandate that interexchange carriers that utilize the networks of local exchange carriers to complete calls pay access charges for such service.”); CC Docket No. 01-92, Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies at 8 (Oct. 18, 2002) (“There should not be a different set of rules that apply when the originating or terminating carrier happens to be a CMRS provider.”); CC Docket No. 01-92, Comments of Fred Williamson and Associates, Inc. at 2 (Oct. 18, 2002) (“If an IXC uses LEC facilities to originate traffic to or terminates from a wireless subscriber (or a wireline subscriber), the IXC owes applicable access charge compensation to the LEC.”); CC Docket No. 01-92, Comments of the Rural Iowa Independent Telephone Association In Support of the Petition of US LEC Corp. and In Opposition to the Petition of T-Mobile USA, Inc. at 2 (Oct. 18, 2002) (“There should be no dispute that a LEC is entitled to access charges when the calls originate or terminate on a wireless network.”); CC Docket No. 01-92, Comments of the Rural Telecommunications Group at 1-2 (Oct. 18, 2002) (“RTG agrees with US LEC Corp. 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 compensated for taking a CMRS-originated interMTA call and handing it off to the toll network via an IXC. 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.”); CC Docket No. 01-92, Comments of the National Telecommunications Cooperative Association at 10 (Oct. 18, 2002) (“CLECs are also local telephone companies and therefore are entitled to the same recovery of access charges as ILECs for connecting the CMRS provider and the IXC so that interexchange calls can be completed on a CLEC’s network.”); CC Docket No. 01-92, Comments of the ICORE Companies at 3 (Oct. 18, 2002) (“US LEC asks simply that the Commission continue to sanction its long standing access charge regime, whereby IXCs pay LECs for the origination and termination of traffic by the IXC on the LEC network. It requests nothing new, nothing controversial, nothing out of the ordinary. US LEC asks only for a reaffirmation of the Commission’s own rules.”); CC Docket No. 01-92, Comments of the Minnesota Independent Coalition at 2 (Oct. 18, 2002) (“The respective obligations of an originating or terminating LEC and the IXC should not change merely because the network at the other end of the long distance call is a CMRS network rather than a LEC network. While there are issues pending regarding the obligations of a IXC to pay access charges to CMRS providers under such circumstances, there is no indication that the respective obligations of the IXCs and the LECs are changed by the presence of a CMRS provider at the other end of the call.); CC Docket No. 01-92, Comments of the Alliance of Independent Rural Independent Telephone Companies at 3 (Oct. 18, 2002) (“Under all applicable law and regulation, the nature of the interexchange service provided by the IXC is not altered simply because a CMRS user was on either the originating or terminating point of the interexchange communication. It is disingenuous for any IXC to feign confusion regarding the law and the Commission’s rules in an attempt to avoid its access payment obligations.”); CC Docket No. 01-92, Comments of Verizon Wireless at 14 (Oct. 18, 2002) (“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.”); CC Docket No. 01-92, Comments of Qwest Communications International at 12 (Oct. 18, 2002) (“Where a LEC and a CMRS provider jointly provide access services to an IXC (access to the customer of the CMRS provider), the LEC’s access service is tariffed and paid for by the IXC.”)

traffic that originates or terminates on wireless networks.”<sup>3</sup> SBC noted that this Commission in 1996 stated its intent, acting pursuant to Section 251(g), to “preserve the current access regime.”<sup>4</sup> The Commission explicitly noted in regard to the current regime “most traffic between LEC and CMRS providers is not subject to interstate access *unless it is carried by an IXC.*”<sup>5</sup> SBC observed that the Commission also added that in “situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge.”<sup>6</sup> SBC concluded, as US LEC has, that:

The Commission was thus clear that it intended to preserve its current regime of assessing originating and termination access charges upon IXCs for interexchange calls – including calls that originate or terminate on wireless carriers’ networks. Just as with any other interexchange call, therefore, LECs should be able to charge IXCs access for calls that originate or terminate on wireless carriers’ networks. SBC requests that the Commission affirm that IXCs must pay LECs access charges for such calls.<sup>7</sup>

In fact the three major interexchange carriers do not dispute US LEC on this issue.<sup>8</sup> Sprint, for instance, “agrees as a general matter, however, that providers of access service should be compensated for the use of their networks, regardless of whether they are ILECs, CLECs or wireless carriers.”<sup>9</sup> Sprint goes on to add “[t]he fact that CMRS carriers may not recover access charges by filing their own tariffs does not, however, preclude CLECs from being compensated

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<sup>3</sup> SBC Comments at 6.

<sup>4</sup> SBC Comments at 6.

<sup>5</sup> SBC Comments at 6, *citing, Local Competition Order* at ¶ 1043.

<sup>6</sup> SBC Comments at 6, *citing, Local Competition Order* at ¶ 1043, n. 2485.

<sup>7</sup> SBC Comments at 7.

<sup>8</sup> AT&T Comments at 3 (LEC provides tandem switching and tandem transport functions and collects its charges from the IXCs in accordance with its tariffs.); WorldCom Comments at 1 (“Under the long-standing access charge regime, incumbent LECs assess tandem-switching charges on IXCs for interexchange calls that originate or terminate on CMRS networks and transit the incumbent LECs’ networks.”).

<sup>9</sup> Sprint Comments at 2.

for the provision of their portion of access services, nor does it preclude wireless carriers from participating in standard industry billing arrangements.”<sup>10</sup>

The only comments that dispute the fact that LECs are generally entitled to access charges for wireless traffic are those filed by ITC^Deltacom (“ITC”), the carrier that is seeking to deny US LEC its rightful compensation for access service. As of August 31, 2002, ITC owes US LEC approximately \$1.2 million for access charges and is clearly looking for a way to evade payment of lawful charges. Rather than pay first and then raise its challenge to US LEC’s practices as it is required to do,<sup>11</sup> ITC has virtually stopped payment of its access bills for over a year and now seeks some premise to justify its non-payment. Its premise, however, is baseless. ITC appears to be confusing the Commission’s limit on ILEC assessment of the carrier common line charge for CMRS traffic for a general limit on access charges for CMRS traffic in general. As the record makes clear, however, the Commission has imposed no such limitation on the ability of LECs to assess access charges for CMRS traffic. As the record elicited in response to US LEC’s Petition also makes clear, LECs are entitled to recover access charges for the functions performed in such circumstances.

ITC also seems to suggest that US LEC needs to be the originating carrier for the call to receive access charges. As shall be demonstrated below in the section addressing joint provisioning of access service by LECs, there is no such requirement. In short, ITC offers no basis to deny LECs their rightful compensation for providing access service for wireless calls.

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<sup>10</sup> Sprint Comments at 2.

<sup>11</sup> See *MCI Telecommunications Corporation v. American Telephone and Telegraph Company and Pacific Telephone and Telegraph Company*, Memorandum Opinion and Order, FCC 76-685, 62 F.C.C.2d 703, ¶ 6 (1976).

B. There Is Also No Dispute that If a CLEC Provides the Functionality that an ILEC Provides on Such Calls, The CLEC Is Entitled to Compensation

There is also no controversy over a situation where the CLEC is the only LEC providing access service in regard to the wireless call. In this scenario, the CLEC will pick up the call from the MTSO and carry the call to the IXC's network. As AT&T describes it, "the CMRS carrier routes its traffic to a CLEC, which in turn routes the traffic directly to the IXC, performing any necessary 8YY database query."<sup>12</sup> AT&T concedes that "where the CLEC actually replaces the ILEC in performing an access function normally performed by the ILEC for traffic originating or terminating on the network of a CMRS carrier, the CLEC should be permitted to charge the IXC in the same manner as the ILEC for the particular access functions actually performed by the CLEC."<sup>13</sup> In fact, this is the way in which US LEC provides exchange access to AT&T and Sprint for calls originated on CMRS networks. This fact undermines the intimation of some commenters that US LEC is merely attempting to piggy-back on the access functionality provided by ILECs. If traffic amounts warrant, and the parties agree, US LEC will completely replace the ILEC in the access routing of the call.

C. The Only Issue In Controversy Is When Two LECs Jointly Provide Access Service

In fact, there is only one access scenario that has generated any controversy, and that is when a CLEC and ILEC jointly provide access service. The joint provision of access service by multiple LECs, however, is hardly extraordinary. In fact, such joint provisioning has existed for nearly as long as access charges, and the right of multiple LECs in a joint provisioning scenario to recover access charges has been equally well-established. The particular joint access

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<sup>12</sup> AT&T Comments at 10.

arrangement in dispute is when a CMRS call, rather than being routed directly to the ILEC tandem switch, is routed to a CLEC switch and then sent to the ILEC tandem switch.<sup>14</sup>

AT&T contends that “no intermediate switching by a LEC is necessary to route traffic from the CMRS carrier to an ILEC tandem, the majority of CLEC-CMRS arrangements at issue in this proceeding merely create additional charges for IXC’s by inserting an unnecessary middleman.”<sup>15</sup> AT&T states that “it is plain that neither IXC’s nor CMRS end users attain any benefits from these arrangements, and IXC’s should not have to pay for such charges.”<sup>16</sup> WorldCom contends that this is an unreasonable practice because it increases IXC costs without providing any benefits to IXC’s.<sup>17</sup> Qwest states that the Commission has not “established any rules or principles to govern a situation where a LEC interposes itself between an ILEC and a CMRS provider and claims, without anything more, to have the right to collect money from the IXC.”<sup>18</sup>

#### 1. The Joint Provision of Access Service Is Quite Common

The access scenario where a CLEC jointly provides access service with an ILEC is no different than other scenarios where two or more LECs jointly provide access service. Initially, the joint provisioning of access service was necessitated because small ILECs and IXC’s often did not have direct connections because the amount of traffic involved did not support the use of dedicated transmission facilities. As a result, the small ILEC would route its toll calls to a meet point with a larger ILEC’s transmission facilities where the calls are then transported to the

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<sup>13</sup> AT&T Comments at 12.

<sup>14</sup> See AT&T Comments at 9.

<sup>15</sup> AT&T Comments at 10.

<sup>16</sup> AT&T Comments at 10.

<sup>17</sup> WorldCom Comments at 4.

<sup>18</sup> Qwest Comments at 12.

larger ILEC's access tandem and ultimately to an IXC's point of presence.<sup>19</sup> The joint provision of access services remains the norm for the hundreds of independent telephone companies operating throughout the United States. The practice is so common that the industry developed extensive guidelines for the billing of joint access services.

The use of joint access service arrangements expanded with the emergence of competitive access providers. Competitive access providers were allowed to collocate in LEC end offices and either provide their own switched transport between those end offices and their tandems or they were allowed to purchase LEC transport to their tandems.<sup>20</sup>

2. Under Existing Compensation Rules, Multiple LECs Are Entitled to Compensation for Joint Provisioning of Access Service

To address these various situations where multiple carriers provide access service, the Commission has established a compensation mechanism. As the Commission has noted, the issue of joint provisioning of access service has been before it since 1983 when the first access tariff filings contained two optional provisions regarding the billing of access services provided by more than one carrier.<sup>21</sup> The Commission described the provisions:

Meet point billing is one of two optional provisions for the ordering, rating, and billing of access services provided jointly by more than one local exchange carrier (LEC) and was originally contained in the initial access tariffs filed by the LECs in 1983. The first option, referred to as single company billing, essentially requires IXCs to order service from the LEC in whose territory the end user serving office associated with the IXC's point of presence was located. That carrier would then determine the charges, arrange to provide the services and perform the billing from its own tariff for the complete service provided, and would settle accounts with the other LECs involved in providing that service. Meet point billing, by contrast, requires LECs jointly providing access service to

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<sup>19</sup> *Elkhart Telephone Company v. Southwestern Bell Telephone Company*, File No. E-93-95, Memorandum Opinion and Order, DA 95-2342, ¶ 2 (1995) ("Elkhart").

<sup>20</sup> *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Third Report and Order, ¶ 24 (1994).

<sup>21</sup> *In the Matter of Access Billing Requirements for Joint Service Provision*, CC Docket No. 87-579, Phase II, Order, DA 88-1544, ¶ 2 (1988) ("Access Billing Requirements Order").

divide ordering, rating, and billing services on a proportional basis, so that an IXC is billed under the LEC's respective tariffs.<sup>22</sup>

In 1987, the Commission implemented rules to govern the joint provisioning of access service, and prescribed forms for billing arrangements.<sup>23</sup> The requirements were designed to provide clear and verifiable bills when multiple carriers are billing for jointly provided access service.<sup>24</sup> IXCs dissatisfied with the clarity and verifiability of the bills would have recourse through the Commission's Section 208 process.<sup>25</sup>

The Commission recognized that different carriers would have different rate structures and this may create some confusion. In fact, some IXCs were already arguing that the differing rate structures were causing IXCs to pay more than 100% of the averaged costs for a jointly provided service. As the Commission noted:

This conclusion appears colorable because the LECs involved in a joint provision of service may average their costs differently and may have different rates structures. This does not necessarily mean that AT&T, or any other customer, is paying more than 100% of each LEC's averaged costs in a jointly provided service, although the different averaging and rate structures could produce an averaged rate for jointly provided service that is either above or below the rates established by the individual LECs involved to recover their own costs in non-MPB situations.<sup>26</sup>

The Commission declined to require all LECs to apply a uniform rate structure in a joint provision access scenario. The Commission held:

Therefore, the use of different rate structures by LECs jointly providing meet point billed access service is appropriate as long as each LEC properly develops its rates to meet a revenue requirement that includes only its own costs. The resulting rates should be neither overstated nor understated. Inherent in the averaging process is the fact that the customer will sometimes pay more, and sometimes less, than the individual costs associated with the LECs' individual rates. Because an averaging process is integral to the development of all access

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<sup>22</sup> *Elkhart*, ¶ 7.

<sup>23</sup> *Access Billing Requirements Order*, ¶ 5.

<sup>24</sup> *Access Billing Requirements Order*, ¶ 79.

<sup>25</sup> *Access Billing Requirements Order*, ¶ 79.

<sup>26</sup> *Access Billing Requirements Order*, ¶ 83

charges, there is no need for further disaggregation of LECs' charges or for an imposition of uniformity of LECs' rate structures in the case of MPB arrangements.<sup>27</sup>

Not only did the Commission not require all LECs to utilize a uniform rate structure, it noted that the specifics of a particular carrier's cost recovery mechanism would have to be examined on an individual basis to determine the propriety of its charges. The Commission posited that:

The averaging process and rate structure employed by an individual LEC participating in a jointly provided service must be evaluated individually, in either an annual access tariff filing, another access tariff filing, or a complaint proceeding. To force a LEC to adopt the averaging and rate structure of another LEC because those LECs provide a joint service would appear unreasonable, given that some LECs have a high percentage of jointly provided services, and others a miniscule amount.<sup>28</sup>

Thus, the Commission has not only allowed for the joint provisioning of access service by multiple LECs, but it has also allowed individual LECs to employ their own rate structures, and specified that any challenges to the rate structure employed by the LEC utilize the Section 208 process.

Sprint concurs that it is a common industry practice for "all participants in such jointly provided switched access arrangements . . . to be compensated for the services they provide."<sup>29</sup> Sprint also notes that the applicable guidelines are very clear that CMRS carriers are access providers and may participate in meet point billing arrangements with other access providers.<sup>30</sup> Sprint notes that its wireless carrier, Sprint PCS, has executed numerous interconnection contracts with LECs that address the subject of meet point billing for the joint provision of exchange access to IXCs. Sprint adds that state commissions have routinely approved CMRS-LEC interconnection contracts that include meet point billing arrangements for exchange access

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<sup>27</sup> *Access Billing Requirements Order*, ¶ 86.

<sup>28</sup> *Access Billing Requirements Order*, ¶ 84.

<sup>29</sup> Sprint Comments at 3.

<sup>30</sup> Sprint Comments at 4.

services.<sup>31</sup> Thus, Sprint concludes, “there is, in summary, as a general proposition, nothing unlawful in a LEC recovering access charges when providing jointly provided switched access or when the LEC and CMRS carrier use the single bill-single tariff option sanctioned by industry standards.”<sup>32</sup>

Verizon Wireless echoes Sprint’s findings. As Verizon Wireless notes, “the Commission has recognized on several occasions that carriers can and do share access charges.”<sup>33</sup> Verizon Wireless observes that prior to the 1996 Act, “sharing arrangements were common between co-carriers who provided access associated with interexchange calls generally” and that the co-carrier LECs could bill the IXC directly.<sup>34</sup> Verizon Wireless notes that even after the 1996 Act, the Commission has reaffirmed the joint provisioning of access services. For instance, the Commission in 1999 held that:

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.<sup>35</sup>

The Commission also extended its rules concerning the joint provision of access service to the issue of 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. As Verizon Wireless noted:

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 portability.’ In the Commission’s view, it was inappropriate for either carrier to retain all terminating access charges

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<sup>31</sup> Sprint Comments at 5.

<sup>32</sup> Sprint Comments at 5.

<sup>33</sup> Verizon Wireless at 11.

<sup>34</sup> Verizon Wireless at 11-12.

<sup>35</sup> Verizon Wireless Comments at 12, *citing*, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, CC Docket No. 99-68, 14 FCC Rcd. 3689, ¶ 9 (1999).

in this circumstances. ‘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. The Commission did not mandate a particular mechanism for collection of access charges: ‘The overarching principle is that 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.’<sup>36</sup>

Verizon Wireless concluded that “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.”<sup>37</sup>

Thus, CLECs are entitled to jointly provision access service on wireless calls and are allowed to apply their own rate structure. Any challenges to the particular CLEC’s charges should be made in the context of a Section 208 proceeding. There is, however, no basis to preclude as a general proposition CLEC recovery for access charges on wireless calls when they jointly provide access service and, in fact, the IXCs do not contend there is such a basis. Qwest asks this Commission to set a rule that “in circumstances where a LEC claiming to be providing an access service does not have a business relationship with an IXC, it can collect for its share of ‘jointly provided access’ only in those cases where the Commission’s rules have made it clear that the LEC is actually entitled to provide the service and receive compensation therefore.”<sup>38</sup> As Sprint has noted, existing Commission rules do make clear that a LEC is entitled to provide the service and receive compensation for the service. US LEC is only asking for the Commission to affirm its existing rules. If Qwest seeks to implement a new rule it should

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<sup>36</sup> Verizon Wireless Comments at 13, *citing, Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd. 8352, ¶ 140 (1996)

<sup>37</sup> Verizon Wireless Comments at 14.

<sup>38</sup> Qwest Comments at 13.

formally request that the Commission consider such a rule. Likewise AT&T contends that IXCs should not have to pay for CLEC charges when the CLEC jointly provides access service with other carriers on wireless calls. If AT&T wants the Commission to adopt such a rule, it should formally request that a rulemaking be initiated to consider such a rule. Under existing rules, however, CLECs are entitled to compensation for jointly provided access services, and those opposed to providing such compensation have not provided a legal basis to deny such compensation.

A fundamental premise of the 1996 Act is to promote competition and as competition increases in the local exchange market, there will be an increasing number of situations where multiple LECs provide access service. In the past, the ILEC may have been the sole route for transmitting toll traffic to the IXC. Now there will be CLECs that will provide access service either in combination with the ILEC or, where there is sufficient traffic to warrant a dedicated connection, directly to the IXC. To provide compensation for only the ILEC in a joint access situation would run contrary not only to the Commission's rules, but the pro-competitive goals of the 1996 Act.

3. US LEC's Petition Does Not Seek A Ruling As To What Rate Can Be Charged But Only Seeks A Ruling As To Whether Access Charges Apply To The Calls

Much ado has been made about the particular rate US LEC charges for providing access service in a joint access situation. Contrary to the representations of some of the parties in this docket, US LEC did not specify the rate it was charging for such calls. The particulars of the rate US LEC was charging was not relevant, and still is not relevant, to its Petition because US LEC only sought a ruling as to its entitlement to receive compensation. US LEC did not seek a ruling as to the particular compensation that should be provided. US LEC understood that if

there were an issue concerning the propriety of the rate it was charging it would be ill-suited to a declaratory ruling petition, and would be more appropriately the subject of either an individualized proceeding where the Commission could examine the specific charges US LEC was applying and the particular services US LEC was rendering or a more general inquiry into access rates for jointly provided services.

Thus, all US LEC stated in its Petition was that its rates were within the “safe harbor established by the Commission.”<sup>39</sup> To say more in its Petition would have been superfluous and would detract from the subject of its Petition which was whether LECs are entitled to compensation for access services provided on wireless calls. In fact, the particular charges US LEC, or any LEC, assesses would depend on numerous factors including the routing of the call, the carriers involved, and the particular services rendered. Predictably some parties have tried to turn this into a rate proceeding to detract from the germane issue which is if LECs are entitled to access charges for interexchange traffic that passes from CMRS providers to IXC (and vice versa) via LEC networks.

In fact, if an IXC seeks to limit the access charges a LEC may assess for these calls it must demonstrate a basis for such limitation. The Commission should seek additional comment on the various joint access scenarios before implementing any limitation on the rate a LEC may charge for joint provisioning of access service for wireless traffic. There are a variety of ways in which CMRS traffic is transported to an IXC. The diagrams that WorldCom submitted may not accurately or fully reflect the various routing scenarios. For instance, when the Commission considered allowing CMRS providers to charge for access services in 1996, SBC noted that its CMRS affiliate, Southwestern Bell Mobile Systems (“SBMS”), “has taken advantage of the

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<sup>39</sup> US LEC Petition at 9.

multitude of interconnection alternatives, both in-region, where its affiliate provides landline services, and in regions where the LECs are unaffiliated.”<sup>40</sup> In the Dallas area, SBMS used a variety of interconnection alternatives such as connections to tandems of SWBT and GTE, connections to end offices of other LECs, and some direct connections with IXCs.<sup>41</sup> In Boston, SBMS operations interconnected in part by purchasing access through existing LEC tariffs, by directly connecting to competitive access providers or IXCs, or by tandem connections to other IXCs.<sup>42</sup> SBC noted that SBMS negotiates with numerous alternative providers of switched access services in addition to the ILEC.<sup>43</sup> It should be noted that this was in March 1996 before the amount of competitive alternatives significantly increased after the implementation of the 1996 Act. SBC’s comments suggest that the role of alternative carriers in the transport of switched access wireless traffic, far from being the exception, may increasingly become the norm, and that a CLEC may provide greater functionality than the ILEC in certain joint access scenarios.

Thus, the Commission should seek comment on these various access scenarios before it considers imposing the limitation suggested by some of the IXCs on the rate a CLEC may charge. This inquiry would provide the Commission a basis to examine the particulars of the various joint access situations.

The Commission should not allow this rate issue to delay any ruling as to the propriety of LEC recovery of access charges for interexchange calls that pass from a CMRS provider to an IXC via a LEC network. It is clear that under existing rules LECs are allowed to assess access charges on such calls pursuant to their current access tariffs. The issue as to whether a limitation

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<sup>40</sup> CC Docket No. 95-85, Comments of SBC Communications, Inc. at 17 (March 4, 1996).

<sup>41</sup> *Id.* at 17-18.

<sup>42</sup> *Id.* at 18.

should be placed on the rate LECs are allowed to charge in a joint access situation is one that can be considered in the Intercarrier Compensation proceeding. It is no coincidence that the carriers that dwell on the issue of the particular rate charged are the ones seeking to deny the right of US LEC and other CLECs to recovery of access charges. The rate issue is a ruse to detract from the fundamental soundness of US LEC's core proposition that LECs are entitled to receive access charges for wireless calls even when they jointly provide access service.

4. CLECs Do Not Need to Establish Express or Implied Contracts With the IXC As The Arrangements Are Governed By Tariffs

Another issue raised by carriers seeking to deny LECs their appropriate compensation is the issue of "establishing business relationships" with IXCs. This is a popular issue for IXCs because of the Commission's ruling in a proceeding addressing access charges imposed by CMRS carriers "that Sprint PCS was not prohibited from charging AT&T access charges, but that AT&T was not required to pay such charges absent a contractual obligation to do so."<sup>44</sup> The Commission found that a contractual requirement is necessary because CMRS providers cannot file tariffs for their charges.<sup>45</sup> CLECs, however, have tariffed access charges and thus would not need to demonstrate the existence of a contractual obligation. In addition, the Commission has previously rejected an argument that a LEC in a joint access arrangement needs to have contractual privity with the IXC such that it could bill the IXC when the IXC was receiving services directly from the other LEC in the joint access arrangement. The Commission noted:

We find no merit in SWB's contention that meet point billing is inappropriate under the facts of this case because there is no privity of contract between it and the IXCs and that SWB will not, therefore, be able to bill IXCs directly for CCS/SS7 transport. The acceptance of a call by the IXC from SWB's network

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<sup>43</sup> *Id.* at 18-19.

<sup>44</sup> *In the Matter of 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). AT&T has appealed this ruling to the U.S. Court of Appeals for the D.C. Circuit.

<sup>45</sup> *Id.*, ¶ 9, n. 31.

signifies an implicit agreement to provide compensation for the call; moreover, the call clearly provides a benefit to the IXC in the business of selling long distance service.<sup>46</sup>

It is telling that the Commission specified that the relevant inquiry is whether the IXC received benefit from the call as opposed to a benefit from a particular LEC in the joint access arrangement. AT&T and WorldCom both contend that the IXC receives no benefit from the CLEC in the joint access arrangement. Even if this were true, and it will be shown below that this contention is not correct, the operative consideration is that the IXC receives a benefit from the completion of the call and receives revenue from the completion of the call. Without US LEC, the IXC would not receive the benefit of the call because, among other things, US LEC provides the connection between the MTSO and ILEC tandem which ultimately facilitates the call reaching the IXC point of presence.

D. The Factual Record Is Sufficient for the Commission to Rule on US LEC's Petition

Qwest contends that US LEC has not provided a sufficient factual record for a declaratory ruling because the factual premise of the US LEC Petition is "neither clearly developed nor undisputed."<sup>47</sup> ITC also argues that US LEC has not provided the Commission with an adequate factual background.<sup>48</sup> US LEC has provided a factual record sufficient for the issue it seeks resolved, *i.e.*, whether a LEC is entitled to receive access charges for traffic that originates or terminates on the network of a CMRS provider and passes from the CMRS provider to the IXC via LEC networks. US LEC and other carriers have provided a sufficient record such that the Commission can issue a declaratory ruling stating that LECs are entitled to receive access charges for wireless traffic both when they are the sole provider of the access service and

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<sup>46</sup> *Elkhart*, ¶ 30. Thus it is clear that US LEC does not have to demonstrate that "any IXC actually ordered service from it" as Qwest contends. Qwest Comments at 9.

when they jointly provide access service with other LECs. In fact, the record is clearly developed enough for the vast majority of commenters to agree that LECs are entitled to access charges for calls originating or terminating on a wireless network that pass from the CMRS provider to the IXC via the LEC's network.

The factual record is insufficient for the issue that ITC, Qwest and some IXCs seek to have resolved, *i.e.*, what charges a LEC may impose in a joint access situation. The Commission has stated that such questions are better addressed in the context of a particularized Section 208 proceeding.<sup>49</sup>

References have been made to the dispute between US LEC and ITC^Deltacom.<sup>50</sup> US LEC is not asking the Commission to make a ruling on the particular circumstances of that dispute in this proceeding. In fact, US LEC did not reference the particulars of the dispute in its Petition. As Qwest and ITC noted, there are pending proceedings brought by ITC both before this Commission and in federal court addressing this particular dispute. Those carriers seeking to deny LECs their rightful compensation are attempting to transform this proceeding into a trial on US LEC's practices based on a one-sided, incomplete characterization of the dispute. The Commission should decline that overture and simply articulate the applicable interpretation of its existing rules. The application of these rules to the particular facts of the US LEC/ITC^Deltacom dispute can be addressed in proceedings initiated by ITC^Deltacom.

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<sup>47</sup> Qwest Comments at 9.

<sup>48</sup> ITC Comments at 2.

<sup>49</sup> *Access Billing Requirements Order*, ¶ 84.

<sup>50</sup> ITC Comments at 2-5; Qwest Comments at 9-11.

## II. CLECS DO PROVIDE FUNCTIONALITY IN A JOINT ACCESS SCENARIO

Some commenters suggest that a CLEC in a joint access arrangement does not provide any functionality to the IXC.<sup>51</sup> As noted above, however, the functionality that the CLEC provides is ensuring that the call originating on the CMRS network makes it to the IXC such that the IXC can transport the call to its customer and receive revenue for the call. It is hard to imagine a more important functionality. Moreover, functionality to the IXC is not the sole consideration in evaluating the role of a CLEC in the joint access arrangement. The competitive provisioning of access services provides many benefits.<sup>52</sup> The Commission noted:

As we stated in the Notice, broader access competition should exert downward pressure on tandem-switched transport rates, while fostering more efficient provisioning of these services by new competitors and LECs. Competition also should encourage innovation and investment in new technologies and could offer increased network reliability through route diversity and redundancy. IXCs would benefit from greater competition in the tandem-switched service market. Small IXCs would especially benefit because they tend to rely more heavily on tandem-switched transport than larger IXCs. In addition, by promoting competition in tandem-switched transport services and facilitating the use of direct-trunked transport by small IXCs, these measures should help ensure more rational cost-based pricing relationships between LEC direct-trunked and tandem-switching transport services, thereby lessening the need for regulatory controls and fostering more efficient use of these services. All of these benefits should contribute to economic growth--by enabling IXCs to use more efficient transport arrangements, by fostering better, more reliable, and more rationally priced access services, as well as by creating new market opportunities for interconnectors.<sup>53</sup>

In cases where there is sufficient traffic to warrant dedicated facilities to IXCs, CLECs are able to take on the full tandem switching and transport role that ILECs would normally provide. In other cases, for example where there is not sufficient traffic to warrant a dedicated connection,

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<sup>51</sup> Qwest Comments at 10.

<sup>52</sup> *In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II*, CC Docket No. 91-141, Third Report and Order, FCC 94-118, ¶ 25 (1994) (“*Expanded Interconnection Order*”).

<sup>53</sup> *Expanded Interconnection Order*, ¶ 25.

the CLEC will still take on part of the tandem transport role. Under either scenario, the CLEC is offering a competitive alternative to the ILEC's tandem functionality and such competition should not be discouraged. In fact, by promoting local exchange competition, the 1996 Act inherently facilitates greater access competition as CLECs will begin to replace ILECs in certain transport situations. The Commission has determined that competitive alternatives for tandem switching and transport provide "significant public benefits."<sup>54</sup> If the Commission denies the ability of competitive carriers to recover charges for this vital service, then the competitive options for this service will disappear, and with it the benefits that such competition may provide.

In addition, CLECs that are providing alternative tandem switching and tandem transporting functionality are not duplicating the functionality of the ILEC. For instance, ITC contends that the functions BellSouth performs in routing a call to ITC do not vary based on whether US LEC is involved in the routing process.<sup>55</sup> This is clearly not the case, however. WorldCom provides a diagram of a wireless call when a CLEC and an ILEC jointly provide service. In the diagram, the functions that the ILEC performs are reduced. Instead of providing service from the MTSO, the ILEC now receives the call at its tandem switch. In addition, if it is an 8YY call, the CLEC may provide database access functionality at its switch.<sup>56</sup> ITC cites to a Commission ruling stating that carriers can recover for switching and transport functions actually

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<sup>54</sup> *Expanded Interconnection Order*, ¶ 25.

<sup>55</sup> ITC states that BellSouth and other ILECs only impose a "modest tandem charge." BellSouth's tariff suggests that there are more charges involved. BellSouth's FCC Access Tariff specifies that "For BellSouth switched access service to a MTSO directly interconnected to a BellSouth access tandem office, the interexchange carrier will be billed for the Switched Local Channel and BellSouth SWA Dedicated Transport including access tandem switching charge and Interconnection charge." BellSouth Tariff F.C.C. No. 1 § 6.2.4.A.11.

<sup>56</sup> See AT&T Comments at 12 (Noting that CLEC may provide the toll-free database query instead of the ILEC).

performed.<sup>57</sup> It is evident from WorldCom's diagram that the CLEC in that scenario is providing both switching and transport functions and the CLEC is therefore entitled to recover charges for those functions.

AT&T argues that in the CLEC-ILEC access scenario the CLEC serves as "an unnecessary middleman" and that neither IXCs nor CMRS end users attain any benefits from this arrangements.<sup>58</sup> The same could be said of initial joint access arrangements where the intermediate LEC would not be "needed" because the originating LEC and the IXC could establish direct connections. The intermediate LEC, however, provided, and still provides, a way for the originating LEC to lower its costs by lowering its facility costs because it does not have sufficient traffic to support a dedicated link with the IXC. Likewise, CMRS providers will look for ways to lower their transport costs. A CLEC may offer a more competitively priced service to transport the CMRS provider's traffic to the ILEC's tandem switch. Thus, the CMRS provider may enter into an arrangement with the CLEC to have both its local and toll traffic transported to the ILEC's tandem switch. This would lead to lower costs and it can pass on this cost reduction to its customers. Thus, far from being an "unnecessary middleman" the CLEC is clearly providing a tangible benefit.

### **III. THE COMMISSION SHOULD NOT DEFER RULING ON THE US LEC PETITION TO THE INTERCARRIER COMPENSATION PROCEEDING**

There has been a suggestion on the part of some commenters that the Commission should defer ruling on US LEC's Petition to its pending consideration of developing a unified intercarrier compensation regime. USTA asks the Commission to refrain from addressing the two petitions individually and instead give them consideration as part of the broader Intercarrier

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<sup>57</sup> ITC Comments at 9, fn. 20.

<sup>58</sup> AT&T Comments at 10.

Compensation proceeding.<sup>59</sup> ITC, of course, also suggests deferring the issue to the Intercarrier Compensation proceeding. It has every incentive to try and evade payment for lawful charges as long as possible. The substantial amount ITC owes and the delay that US LEC has had to endure to recover its charges counsel for a prompt ruling on US LEC's Petition. If the Commission follows USTA's and ITC's suggestion, it could create regulatory uncertainty as to these otherwise settled issues until the Commission issues a ruling in the Intercarrier Compensation proceeding. In addition, numerous commenters in the Intercarrier Compensation proceeding called for delay of this Commission's consideration of a unified regime for access charges contending that there are major issues the Commission must address, or reforms that need to take place, before a unified regime for access charges is implemented. SBC stated that residential local service rates must be overhauled to account for implicit subsidies, universal service support must be increased, federal and state end user recovery mechanisms must be implemented, and ILECs will need to be provided with more pricing flexibility.<sup>60</sup> Verizon argued that issues such as virtual NXX need to be addressed in what it terms the "near-term" before a unified intercarrier compensation scheme is contemplated.<sup>61</sup> Sprint said that implicit subsidies need to be removed from access rates, rate shock to end users need to be addressed, and jurisdictional obstacles overcome before bill-and-keep for access charges is implemented.<sup>62</sup> Rural and independent LECs sought to delay bill-and-keep for access charges until adverse impacts on rural carriers are assessed and addressed.<sup>63</sup> These positions demonstrate that resolution of these issues in regard to access charges could take years. Moreover, the access charge regimes developed by the

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<sup>59</sup> USTA Comments at 2.

<sup>60</sup> SBC Intercarrier Compensation Comments at 3-4.

<sup>61</sup> Verizon Intercarrier Compensation Comments at 3.

<sup>62</sup> Sprint Intercarrier Compensation Comments at 2.

<sup>63</sup> NTCA Intercarrier Compensation Comments at 1; CenturyTel Intercarrier Compensation Comments at 1; NECA Intercarrier Compensation Comments at ii-iii.

Commission in both the *CALLS Order* and the *CLEC Access Charge Order* will be in place until 2005 so the Commission should resolve issues pertaining to the rules that will apply during that time period.<sup>64</sup>

Given the attendant delay in implementing a unified compensation regime for access charges, the Commission should not defer the issues raised by US LEC's Petition. Carriers need regulatory certainty as to the propriety of assessing access charges for wireless traffic.

Moreover, there is no reason for the Commission to defer ruling on the petition because as US LEC and other commenters have demonstrated, the issue is straightforward and requires merely an affirmation of the Commission's existing rules.

ITC argues that because the Commission is addressing the issue of whether CMRS providers are entitled to impose access charges in the Intercarrier Compensation proceeding the Commission should address the issue of whether LECs may impose access charges for wireless traffic in that context as well.<sup>65</sup> It is understandable that the Commission may want to defer the issue of the right of CMRS providers to assess access charges on IXCs in the absence of a contract to its ultimate ruling on Intercarrier Compensation because there is no Commission rule or precedent allowing for such recovery at the moment, and thus a new rule would be required. The record in this proceeding has made clear, however, that LECs are currently entitled to access charges for wireless traffic so there is no need to defer ruling on US LEC's petition. Ruling on US LEC's Petition promptly will confirm the Commission's existing rules.

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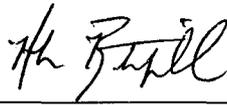
<sup>64</sup> *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, ¶ 97 (April 27, 2001); *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, FCC 01-146, ¶ 53 (April 27, 2001).

<sup>65</sup> ITC Comments at 5.

IV. **CONCLUSION**

For the foregoing reasons, US LEC respectfully requests that the Commission reaffirm that LECs are entitled to recover from IXCs access charges for interexchange traffic that passes from a CMRS provider to the IXC (and vice versa) via the LEC's network.

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November 1, 2002

## CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on November 1, 2002, I caused to be served upon the following individuals the Reply Comments of US LEC Corp. in CC Docket No. 01-92.



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