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July 7, 2004

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Notice of ex parte presentation - CC Docket No. 01-92*

Dear Ms. Dortch:

On July 6, 2004, Charon Phillips of Verizon Wireless and the undersigned, on behalf of Verizon Wireless, met with the following Commission staff: Tamara Preiss, Chief, Pricing Policy Division (“PPD”), Wireline Competition Bureau (“WCB”); Steven Morris, Deputy Chief, PPD, WCB; Victoria Schlessinger, PPD, WCB; Jeffrey Steinberg, Deputy Chief, Spectrum and Competition Policy Division (“SCPD”), Wireless Telecommunications Bureau (“WTB”); and Peter Trachtenberg, SCPD, WTB.

The topic of the meeting was intercarrier compensation issues in the above-referenced docket concerning traffic exchanged between Commercial Mobile Radio Service (“CMRS”) providers and incumbent local exchange carriers (“ILECs”), and particularly the currently pending petition of T-Mobile USA, Inc., regarding ILEC CMRS termination tariffs. We also touched upon the “mirroring rule” in the context of the various proceedings regarding rates for ISP-bound traffic. Verizon Wireless’s presentation in the meeting is summarized in the attached outline.



**Verizon Wireless**  
**LEC-CMRS Interconnection Issues**  
**July 6, 2004**

T-Mobile Petition - CMRS Termination Tariffs

- Factual Background:
  - In the last two to three years, many rural ILECs have implemented a strategy of filing state “wireless termination tariffs” that purport to establish a rate that the rural ILEC will charge CMRS carriers for CMRS traffic that terminates on the rural ILEC’s network.
  - The rates in these tariffs are generally at or near the rural ILEC’s access rates (usually in the 3¢ - 7¢ range).
  - In most cases, the traffic exchanged between the rural ILECs and the CMRS carriers originates and terminates in the same MTA.
  - In many of these cases, the rural ILECs and the CMRS carriers are routing traffic to each other differently:
    - Unless the CMRS carrier has gotten local numbers in the rural ILEC’s rate center, calls from the rural ILEC to the CMRS carrier will be toll calls for the rural ILEC customer and thus carried by an IXC.
    - Most CMRS carriers route intra-MTA traffic to rural ILECs through the regional tandem to which both carriers are connected.
  - As a result of these routing arrangements, the rural ILECs often claim that there is no exchange of traffic, since the CMRS carrier delivers traffic to the rural ILEC, but the rural ILEC only delivers traffic to IXCs (and not CMRS carriers).
  - In many cases, the volume of traffic between each rural ILEC and each CMRS carrier is very small, but the cumulative volume of traffic is large.
- Tariffs at access-like rates are illegal for intra-MTA traffic exchanged with a CMRS carrier.
  - In most cases, the traffic in question is local traffic under the FCC’s rules because it originates and terminates in the same MTA. 47 C.F.R. § 51.701(b)(2).
  - Local traffic is subject to reciprocal compensation obligations, at rates to be established in an interconnection agreement. 47 C.F.R. §§ 51.701(b), 51.703.
  - The Commission’s rules already cover the situation where ILECs and CMRS carriers are exchanging traffic without a contract. ILECs and CMRS carriers must compensate each other at “reasonable rates.” 47 C.F.R. § 20.11(b)(1). Access-based rates for local traffic are unreasonable. Also, once a CMRS carrier submits a request for interconnection, interim rates apply. 47 C.F.R. § 51.715.
- Inherent incentive problems prevent carriers from reaching a solution independently.
  - Rural ILECs: If bill-and-keep applies in the absence of an interconnection agreement (as the T-Mobile petition urges), then CMRS carriers have no incentive to negotiate

interconnection agreements. Verizon Wireless does not agree that bill-and-keep applies in this situation because the Commission's rules require LECs and CMRS providers to pay reciprocal compensation at reasonable rates even if they have not availed themselves of the Section 252 process.

- CMRS Carriers: If rural ILECs can file tariffs at high rates that apply in the absence of an interconnection agreement, then the rural ILECs have no incentive to negotiate interconnection agreements.
- The volume of traffic between any given rural ILEC and any given CMRS carrier is generally very small, so it is sometimes not economical for the carriers to negotiate individual interconnection agreements.
- The Commission should adopt a solution.
  - Best solution:
    - Adopt a unified bill-and-keep system, to avoid questions about the appropriateness of rates.
  - Near-term solution:
    - Confirm that the federal courts' holdings are correct that tariffs are illegal for local traffic. (See below.)
    - Reiterate that intra-MTA traffic exchanged with CMRS carriers is local traffic, unless it is carried by an IXC.
    - Adopt a default benchmark rate for the exchange of local traffic between CMRS carriers and rural ILECs, in the absence of an interconnection agreement.
    - Clarify that a CMRS termination tariff is not an "existing interconnection arrangement that provides for the transport and termination of telecommunications traffic" for purposes of 47 C.F.R. § 51.715(a)(1).
    - Establish a rule that permits LECs to make requests for interconnection from CMRS carriers that trigger the statutory timeframes under Section 252.
- Federal courts have held that tariffs are illegal vehicle for establishing rates for interconnection and exchange of local traffic.
  - **The statute provides a comprehensive framework for establishing local interconnection relationships with ILECs**
    - Incumbent LECs must make available to competitors: (1) interconnection for the transmission of telecommunications traffic; (2) access to unbundled network elements; and (3) access to services for resale on a wholesale basis. 47 U.S.C. § 251(c)(1)-(3);
    - For purposes of interconnection under section 251, "telecommunications traffic" means local traffic. Traffic between a LEC and a CMRS carrier is "local" if it is intra-MTA. 47 C.F.R. §51.701(b).

- **Courts have consistently found that the section 251/252 negotiation and arbitration process is the *sole* mechanism for establishing local interconnection relationships with ILECs, and rejected the tariffing of interconnection or facilities that are subject to the section 251/252 process**

  - *Wisconsin Bell v. Bie*, 340 F.3d 441 (7<sup>th</sup> Cir. 2003): The Wisconsin PSC ordered Wisconsin Bell to file tariffs to establish interconnection rates in the wake of the 1996 Act. Wisconsin Bell appealed, claiming that the tariffing requirement interfered with the negotiation and arbitration procedure laid out in sections 251 and 252. The 7<sup>th</sup> Circuit (Posner, J.) found that the crucial question was “whether a state may create an alternative method by which a competitor can obtain interconnection rights.” 340 F.3d at 442. The court held that a tariff “*has* to interfere with the procedures established by the federal act” because an action to challenge the state tariff would proceed to state courts, while sections 251 and 252 provide exclusive appeals to the federal courts. 340 F.3d at 444-45 (emphasis in original).
  - *GTE North v. Strand*, 209 F.3d 909 (6<sup>th</sup> Cir. 2000), *aff’d on remand*, *Verizon North v. Strand*, 309 F.3d 935 (6<sup>th</sup> Cir. 2002): The Maryland PSC directed Verizon to file a tariff specifying rates for local interconnection and UNEs. Verizon sued in federal court, arguing that the tariffing requirement conflicted with, and was preempted by, sections 251 and 252. The 6<sup>th</sup> Circuit held, first, that the federal courts had authority to review the propriety of the tariff. “In upholding jurisdiction over GTE’s claims ... we emphasize that it is precisely because state utility commissions play such a critical role in administering the [Telecommunications Act’s] regulatory framework that they must operate strictly within the confines of the statute.” *GTE North*, 209 F.3d at 922-23. On remand and further appeal, the 6<sup>th</sup> Circuit addressed the substantive issue and affirmed the district court’s reversal of the tariffing requirement. “The MPSC order completely bypasses and ignores the detailed process for interconnection set out by Congress in the [Act], under which competing telecommunications providers can gain access to incumbents’ services and network elements by entering into private negotiation and arbitration aimed at creating interconnection agreements that are then subject to state commission approval, FCC oversight, and federal judicial review.” *Verizon North*, 309 F.3d at 941.
  - *Indiana Bell v. Indiana Util. Reg. Comm’n*, 359 F.3d 493 (7<sup>th</sup> Cir. 2004): In connection with its review of Indiana Bell’s section 271 application, the Indiana Utility Regulatory Commission (“URC”) entered an order adopting a performance assurance plan (“PAP”) that differed from the PAP proffered by Indiana Bell. The PAP ordered by the IURC would have established standards and metrics for issues covered under sections 251 and 252, including interconnection and unbundling. The IURC asserted that it possessed independent state law authority to enter the order. The 7<sup>th</sup> Circuit found its decision in *Wisconsin Bell*, *supra*, controlling. “What the IURC has done is to make an end-run around the Act. By issuing its freestanding order, the IURC set up baselines for interconnection

agreements. The order interferes with the procedures set out in the Act, which require that the agreements be negotiated between private parties, and only when that fails are they subject to mediation by state agencies.” 359 F.3d at 498.

- *MCI Telecommunications Comp. and MCImetro v. GTE Northwest, Inc.*, 41 F.Supp.2d 1157 (D. Or. 1999): In the wake of the passage of the 1996 Act, the Oregon PUC held a proceeding in which, *inter alia*, it ordered GTE to publish a tariff listing network elements that the PUC had decided must be unbundled and the prices the PUC had fixed for those services based on a TELRIC study. CLECs thus could order UNEs “off the rack” without entering into interconnection agreements. The District Court held: “[T]he state has done more than simply enforce additional state requirements. It has required GTE to sell unbundled elements or services for resale, to CLECs, via a procedure that bypasses the Act entirely and ignores the procedures and standards that Congress has established.... [T]he challenged tariff is preempted by the Act, to the extent that GTE is required to sell unbundled elements or finished services to a CLEC that has not first entered into an interconnection agreement with GTE pursuant to the Act.” 41 F.Supp.2d at 1178.
- *Accord, Michigan Bell Telephone Co. v. MCImetro*, 323 F.3d 348 (6<sup>th</sup> Cir. 2003): Ameritech and MCI had an interconnection agreement in Michigan that called for MCI to submit resale orders via electronic interface. In 1998, Ameritech notified its CLEC customers that it intended to upgrade its electronic ordering interface for Y2K compliance, and required CLECs to make conforming changes to their ordering interfaces. By this time, the use of UNEs had reduced MCI’s resale demand to three to five orders per day, so MCI informed Ameritech that it would simply submit resale orders via fax, pursuant to a Michigan tariff Ameritech had on file. Ameritech refused, arguing that the parties’ interconnection agreement formed the sole basis through which section 251 services could be ordered. The 6<sup>th</sup> Circuit distinguished its decision in *Verizon North, supra*, holding that in “Verizon North we found the Commission’s order improper because it ‘provide[d] an alternative route around the entire interconnection process (with its attendant negotiation/arbitration, state commission approval, FCC oversight, and federal court review procedures.’ Here both parties have engaged in the entire interconnection process, and the tariffs preexisted the interconnection agreement.... This case is not one where competing carriers were attempting to bypass the negotiation process that creates interconnection agreements.” 323 F.3d at 360 (internal citations omitted). (In the T-Mobile Petition, the CMRS Termination Tariffs would “bypass the negotiation process that creates interconnection agreements.”)

### ISP Remand Order

- Mirroring Rule: No matter how the Commission resolves issues surrounding rates for the termination of ISP-bound traffic, the Commission should retain the mirroring rule for the same reasons of fundamental fairness that originally supported its adoption.