

July 9, 2004

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

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

Dear Ms. Dortch:

This is to inform you that, on July 8, 2004, Charon Phillips of Verizon Wireless and the undersigned, on behalf of Verizon Wireless, met with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, and Donald Jackson, an intern in Chairman Powell's office, to discuss inter-carrier compensation issues in the above-referenced docket that affect Commercial Mobile Radio Service ("CMRS") carriers.

Verizon Wireless urged prompt action on Sprint's pending petition against BellSouth related to the rating and routing of traffic between CMRS carriers and rural local exchange carriers ("LECs"). Verizon Wireless provided the attendees with copies of the attached *Order Approving Unanimous Stipulation and Agreement* from the Missouri Public Service Commission, which demonstrates that the uncertainty surrounding the CMRS-LEC rating and routing issues is being used by LECs in state proceedings to deny consumers the benefits of intermodal local number portability ("LNP").

Verizon Wireless also addressed T-Mobile's petition regarding the propriety of CMRS termination tariffs. We discussed the cases described in the attached outline, which demonstrate that tariffs for the transport and termination of local traffic are impermissible under the Act. In addition, Verizon Wireless stated that it has concerns about whether CMRS carriers could be assured of being able to exchange traffic with rural LECs at "interim rates" upon presentation of a request for negotiation, pursuant to section 51.715 of the Commission's rules. First, there is a question whether a CMRS termination tariff would qualify as an "existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC." 47 C.F.R. § 51.715(a)(1). In addition, there is a question whether the rule



**Legal Authorities Relevant to  
T-Mobile Petition on CMRS Termination Tariffs  
Verizon Wireless, July 2004**

**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 MCI Metro 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. MCI Metro*, 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.")

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 29th day of June, 2004.

In the Matter of the Petition of Kingdom Telephone Company for Suspension and Modification of the FCC's Requirement to Implement Number Portability )  
) **Case No. TO-2004-0487**  
)

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT**

On March 24, 2004, Kingdom Telephone Company filed a petition asking the Commission to suspend and modify the Federal Communications Commission's local number portability requirements that were to go into effect on May 24, 2004. On May 12, the Commission ordered that the enforcement of the FCC's requirements be suspended until August 7, to allow the Commission time to consider the petition.

On June 10, 2004, the Staff of the Commission, the Office of the Public Counsel, and the Petitioner filed a unanimous stipulation and agreement regarding the Petition for Suspension and Modification of Local Number Portability Obligations. The stipulation and agreement asks the Commission to modify the wireline to wireless local number portability requirements established by the FCC to avoid an undue economic burden on the Petitioner.

The stipulation and agreement, and the petition, concern a November 10, 2003 order issued by the FCC that required small rural local exchange carriers, such as the Petitioner, to implement local number portability between themselves and wireless telecommunications carriers. Local number portability would allow a customer of the Petitioner to change their local service from the Petitioner to a wireless carrier by porting their wireline number to the wireless carrier, thus keeping the use of their old phone number.

The FCC required that local exchange carriers, such as the Petitioner, port numbers to requesting wireless carriers where the wireless carrier's coverage area overlaps the

geographic location of the rate center to which the number is assigned. This requirement applies even though the wireless carrier's point of presence is in another rate center and has no physical interconnection with the wireline carrier. The problem facing the Petitioner, and other local exchange carriers, is how to make, and how to pay for, that interconnection with the wireless carrier's point of presence.

The Petitioner's switch is capable of providing local number portability. And, the required interconnection between the wireline and wireless carriers can be made by establishing appropriate facilities, or by making arrangements with third-party carriers to transport the ported number and the associated call to the wireless carrier's point of presence. The question is, who should have to pay to establish those facilities or to make those arrangements?

The FCC did not resolve that "rating and routing" issue in its local number portability order. However, 47 U.S.C. §251(f)(2), a provision of the Telecommunications Act of 1996, provides that a state commission may suspend or modify number portability requirements for rural carriers, if suspension or modification is necessary to avoid imposing: a significant adverse economic impact on users of telecommunications services generally; a requirement that is unduly economically burdensome; or a requirement that is technically infeasible.

The unanimous stipulation and agreement represents that delivering calls outside of Petitioner's local exchange boundaries could impose a substantial economic burden upon Petitioner. If Petitioner is required to provide service outside of its certificated local service area, then additional legal and regulatory issues will arise related to modifying existing certificates and tariffs, and obtaining – through negotiation, and, if necessary, arbitration – facilities or arrangements with third-party carriers to port numbers and transport associated calls to remote locations outside of Petitioner's local exchange service area. The parties agree that a modification is required to avoid an undue economic burden on the Petitioner.

The parties agree that the Commission should enter an order granting Petitioner's requested modification of the FCC's local number portability requirements until such time as the FCC addresses the call rating and routing issues presented by the FCC's November 10,

2003 local number portability order. Specifically, the parties agree that the Commission should grant modification such that if wireline-to-wireless local number portability is requested, Petitioner would notify the wireless carrier that Petitioner is fully local number portability capable but that it is not the responsibility of the Petitioner to establish facilities or arrangements, or both, with third-party carriers to transport calls on a local basis to a point outside of its local service area. This would also apply to a situation where a wireless carrier that has established facilities or arrangements, or both, with third-party carriers to transport calls to a point outside of the Petitioner's local serving area is requested to port numbers to another wireless carrier that has not established such facilities or arrangements.

The parties also agree that neither Petitioner, nor its wireline customers, will be responsible for any transport or long distance charges associated with porting numbers and any associated calls outside Petitioner's local service area. The parties further agree that the Commission should authorize the Petitioner to establish an intercept message for seven-digit dialed calls to ported numbers where the facilities or the appropriate third-party arrangements have not been established. The intercept message will inform subscribers that the call cannot be completed as dialed, and, if possible, provide information about how to complete the call. The parties agreed at the on-the-record presentation that the Commission could go beyond authorizing Petitioner to establish an intercept message, and require Petitioner to establish the message. The Commission will do so.

Staff filed suggestions in support of the stipulation and agreement on June 14. Public Counsel also filed a pleading supporting the stipulation and agreement on June 14. However, Public Counsel argues that, while it supports the stipulation and agreement, it would prefer that the Commission simply suspend the entire local number portability requirement for rural local exchange carriers until the FCC further addresses the rating and routing issues that it avoided in its implementing order. Public Counsel contends that, if the Commission is not willing to take that step, then the stipulation and agreement is the best available alternative.

Wanting more information about the stipulation and agreement, the Commission, on June 17, held an on-the-record presentation, at which it questioned Staff, Public Counsel, and

the Petitioner about the stipulation and agreement.

The Commission is mindful of Public Counsel's argument for a suspension of the entire requirement for rural local exchange carriers to provide local number portability to wireless carriers. However, the Commission believes that local number portability may be a valuable step toward bringing the benefits of competition to Missouri's rural exchanges. Therefore, the Commission is unwilling to completely suspend the porting requirement in the absence of compelling evidence to justify such an action.

After reviewing the unanimous stipulation and agreement, Staff and Public Counsel's suggestions in support, and after hearing the arguments and explanations of the parties at the on-the-record presentation, the Commission finds that the stipulation and agreement filed on June 10 should be approved.

**IT IS THEREFORE ORDERED:**

1. That the Unanimous Stipulation and Agreement filed on June 10, 2004, is approved, and the signatory parties are ordered to comply with its terms.
2. That the Federal Communications Commission's local number portability requirements for small rural local exchange carriers are modified to provide that if wireline-to-wireless local number portability is requested, the Petitioner shall notify the wireless carrier that Petitioner is fully local number portability capable but that it is not the responsibility of the Petitioner to establish facilities or arrangements, or both, with third-party carriers to transport calls on a local basis to a point outside of its local service area. This also applies to a situation where a wireless carrier that has established facilities or arrangements, or both, with third-party carriers to transport calls to a point outside of the Petitioner's local service area is requested to port numbers to another wireless carrier that has not established such facilities or arrangements.
3. That neither Petitioner, nor its wireline customers, will be responsible for any transport or long distance charges associated with porting numbers and any associated calls outside Petitioner's local service area.
4. That Petitioner shall establish an intercept message for seven-digit dialed calls to ported numbers where the required facilities or appropriate third-party arrangements have

not been established. The intercept message will inform subscribers that the call cannot be completed as dialed and, if possible, provide information about how to complete the call.

5. That the modifications made in this order will remain in effect only until the Federal Communications Commission further addresses the rating and routing issues associated with porting numbers.

6. That Petitioner shall notify the Commission ten days from the date the Federal Communications Commission issues any further decisions addressing the rating and routing issues associated with porting numbers.

7. That the Commission's suspension of the Federal Communications Commission's local number portability requirements until August 7, 2004, is lifted concurrent with the effective date of this order.

8. That this order shall become effective on July 9, 2004.

**BY THE COMMISSION**

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

( S E A L )

Gaw, Ch., Murray, Clayton, Davis and Appling, CC., concur

Woodruff, Senior Regulatory Law Judge