

CTIA – The Wireless Association™
Presentation to Wireless
Telecommunications Bureau
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Wireless Termination Tariffs
Sprint Routing & Rating Petition

OVERVIEW

- Two pending petitions before FCC seek clarification of interconnection rules of critical importance to wireless carriers.
 - T-Mobile-Nextel-Western Wireless petition seeks clarification that wireless termination tariffs unilaterally imposed by ILECs upon wireless carriers are unlawful.
 - Sprint petition seeks clarification that wireless carriers can designate separate rating and routing points for the exchange of local traffic under existing numbering and interconnection rules.

FEDERAL LAW PROHIBITS UNILATERAL INTERCONNECTION TARIFFS

- Tariffs bypass federally prescribed interconnection requirements under Secs. 251 and 252 of the Communications Act and provide for parallel state proceedings that are not subject to federal judicial review.
- For these reasons, every federal appellate court addressing the issue has preempted tariffs filed in the absence of an interconnection agreement.
- In *Wisconsin Bell v. Bie*, Seventh Circuit preempted state tariffing requirement because it interfered with federally prescribed interconnection procedures. 340 F.3d 441 (7th Cir. 2003).
 - Court found that tariff process (1) “short-circuits negotiations,” even if it does not prevent negotiations entirely; and (2) permits state court review of interconnection rates, contrary to Congressional intent.

FEDERAL LAW PROHIBITS UNILATERAL INTERCONNECTION TARIFFS (cont'd)

- In *Verizon North I*, Sixth Circuit preempted state tariffing requirement because it “provides an alternative route around the entire interconnection process.” 309 F.3d 935, 943 (6th Cir. 2002).
 - Court noted a carrier “aggrieved by a state commission tariff decision might not be able to seek federal review.”
- In *Verizon North II*, Sixth Circuit preempted state commission order allowing CLEC to *voluntarily* file interconnection tariff requiring ILEC to pay tariffed rates. 367 F.3d 577 (6th Cir. 2004).
 - Court found that state order permits state commission “to bypass the federal statutory process” and “eliminates all incentive to adhere to the federal statutory process.”
- Sec. 332(c)(1)(B) gives FCC, not states, authority over CMRS-LEC interconnection, and Sec. 2(b) precludes state regulation of entry of and rates charged by CMRS carriers. *See Iowa Utilities Bd.*, 120 F.3d 753, 800 n.21(8th Cir. 1997) (upholding FCC’s CMRS-LEC interconnection rules).

FCC PRECEDENT AND POLICY PROHIBIT UNILATERAL WIRELESS TERMINATION TARIFFS

- FCC consistently has refused to allow ILECs to impose unilateral tariffs in lieu of interconnection agreements.
 - In *Virginia Arbitration Order*, Wireline Bureau rejected ILEC proposal in an arbitration proceeding that “would allow for tariffed rates to replace automatically the [interconnection] rates arbitrated.” 17 FCC Rcd 27039, ¶ 600 (WCB 2002).
 - Bureau reasoned that tariffed rates would not be subject to federal court review and would thwart statutory right to interconnection rates that comply with Secs. 251 & 252.
- Prior to 1996 Telecom Act, FCC found that ILEC interconnection obligations under Secs. 201 and 332(c) preclude ILECs from adopting unilateral tariffs before negotiating interconnection agreements with wireless carriers.

Sprint Routing & Rating Petition: Response to JSI (John Staurulakis, Inc.)

JSI's POSITION IS INCONSISTENT WITH HISTORIC PRACTICE

- Since the inception of cellular industry 20+ years ago, CMRS has interconnected with PSTN using Type 2A interconnection:
 - With Type 2A, CMRS has direct connection to LATA tandem switches; and
 - CMRS immediately obtains indirect connection to all switches/networks subtending the tandem, include RLEC networks.
- Since the inception of cellular industry, CMRS has obtained telephone numbers in the locations where mobile customers primarily use their handset
 - Under FCC's numbering rules, CMRS can obtain numbers rated in any LEC rate center where they provide service
 - Thus, rating point is generally different than routing point
 - Industry guidelines recognize that rating and routing points can be different

CMRS has interconnected indirectly with RLECs for over 20 years

JSI's POSITION IS INCONSISTENT WITH THE ACT

- Section 251(a) explicitly provides that carriers like CMRS and RLECs can connect “directly or indirectly.”
- JSI's position – only direct interconnection is permitted – is inconsistent with Section 251(a).
- JSI's reliance on Section 251(c)(2)(B) is misplaced. That provision is irrelevant to RLEC-CMRS interconnection:
 - Section 251(c) imposes “additional obligations” on ILECs;
 - Section 251(c)(2)(B) enables interconnection “within” an ILEC's network; and
 - In any event, most RLECs are not subject to Section 251(c) because of the Section 251(f)(1) “rural exemption.”

JSI's POSITION IS INCONSISTENT WITH FCC RULES & ORDERS

- FCC has ruled that it is the competitive carrier (*i.e.*, CMRS), not the incumbent, that decides whether to interconnect directly or indirectly. *See, e.g., Virginia Arbitration Order*, 17 FCC Rcd 27039, 27085 (2002).
- FCC Rule 20.11(a) states that LECs “must provide the type of interconnection reasonably requested by a mobile service licensee” and further confirms that CMRS can interconnect indirectly.
- JSI's purported distinction between “type” and “method” of interconnection is unintelligible. If CMRS has a right to use Type 2A (access tandem) connection, it necessarily has the right to interconnect indirectly with subtending networks.

JSI's POSITION MAKES NO ECONOMIC SENSE

- The RLEC trade association, NTCA, has recognized that the “most feasible and cost-effective option for most rural ILECs is to use the RBOC’s tandem for transiting functions”:
 - “Since all carriers in a service area or market must at some point connect to the area tandem, there is efficiency in utilizing the tandems to route calls to other carriers instead of building a direct connection to each carrier.” NTCA White Paper at 41 (March 10, 2004)
- The incremental RLEC cost to transport a call to a CMRS is minuscule
 - RLECs already have large trunk groups connecting their networks to the LATA tandems; and
 - Most CMRS do not charge RLECs for the Type 2A (tandem to MSC) facility.

JSI's POSITION MAKES NO ECONOMIC SENSE

- Both CMRS and RLECs would face increased costs with a direct connection:
 - Traffic volumes are often not large enough to cost justify a direct connection.
 - With a direct connection, the POI would be at the RLEC's network, and RLEC would be obligated to compensate CMRS for this expensive transport for land-to-mobile (l-M) calls. *See* 47 C.F.R. 51.701(c).
- Changing the rules would require a huge waste of numbering resources—stranding numbers in rural LEC rate centers as multiple CMRS carriers are forced to obtain numbering resources (1000 blocks) in each rate center, even if they have only a hundred or fewer customers.

JSI's POSITION WOULD BE COMPETITIVELY INEQUITABLE

- Today's rules are competitively neutral, as the originating carrier pays the cost of transporting its calls to the terminating carrier's network in the LATA:
 - For M-L calls, CMRS pays transport costs from MSC to RLEC end office switch; and
 - For L-M calls, RLEC pays transport costs from end office to MSC.
- JSI argues for a competitively inequitable arrangement:
 - CMRS pays 100 percent of transports (both M-L and L-M), while
 - RLEC pays nothing for transport.

**RLEC-CMRS competition cannot flourish if transport
rules are not competitively neutral**