Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	**CC Dkt. 01-92**
	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. AND AMERICAN CELLULAR CORPORATION IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULEMAKING ("NPRM")

I. INTRODUCTION

Dobson Cellular Systems and American Cellular Corporation (collectively "Dobson") are independent commercial mobile radio service ("CMRS") providers in fourteen states[1]. They serve primarily rural and suburban markets. They have also entered into multiple interconnection agreements with interconnecting carriers, and where no agreements have been entered, Dobson exchanges traffic with other carriers on a bill and keep basis.

Dobson agrees that this Commission must clarify and simplify existing rules surrounding interconnection. Many critical issues are still unaddressed, though nearly ten years have passed since passage of the Telecommunications Act of 1996 ("Act"). The resulting uncertainty regarding issues such as access charges, routing and rating, and points of interconnection has led to numerous costly disputes, and to ineffective negotiations. Even where the rules seem clear, the resistance of some ILECs has effectively blocked enforcement of the rules and has prevented the wireless industry from competing on an equal footing with established landline carriers.

Since speedy action is essential, Dobson is also concerned that the Commission not go beyond the framework established by the Act. Some of the alternatives described in the NPRM may require legislative changes. In the real world it does Dobson little good if the

[1] Alaska, Arizona, Kentucky, Maryland, Michigan, Minnesota, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Texas, West Virginia and Wisconsin.

Commission goes too far, and desperately needed relief is further delayed as the result of court challenges.

Dobson accordingly endorses the proposal made by the Cellular Telecommunications & Internet Association ("CTIA") to establish default rules that would be applied wherever exchanging carriers have not entered into a state approved interconnect agreement under Sections 251-52 of the Act. Dobson also offers certain additional specific suggestions, which are discussed herein. Since the CTIA proposal allows parties to negotiate their own, different arrangements (consistent with the Act), it may be adopted by the Commission with less risk of reversal in the courts. This is critical, since the CTIA proposal addresses real-life, continuing issues that demand immediate solutions, and not another round of litigation.

II. <u>SPECIFIC ISSUES</u>

Among the issues of greatest concern for Dobson are:

1. <u>The Current Lack of a Clear Default Rule</u>:

Within each MTA, Dobson may exchange traffic directly or indirectly with multiple incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs"). Nationwide, there may be hundreds of such ILECs and CLECs exchanging intra-MTA telecommunications traffic with Dobson. Only a minority of these has sought formal interconnection arrangements with Dobson. In some cases this may be because there is not enough traffic to warrant the expense of formal negotiations and/or arbitration. Or the parties may have concluded that traffic is closely balanced and that traffic should be exchanged on a *de facto* "bill and keep" basis.

Recently, however, many ILECs have taken the position that they have a right to skip the negotiation process, and to tariff non-reciprocal termination compensation rates at their state commissions, and/or to unilaterally bill CMRS providers for terminating CMRS-originated calls even though no agreement has been sought or signed, and even where no state-approved termination tariffs are in place. As a result of this ILEC shift in attitude, Dobson receives many bills every month (some for as little as one or two dollars) from carriers with which it has no contractual relationship. The bills are non-reciprocal, and apply rates that are not based on forward looking cost studies. Yet the ILECs insist on payment, and in some cases threaten to block traffic unless they receive it.

This Commission has recently dealt with the issue of state wireless termination tariffs, correctly deciding that such tariffs undermine the negotiation process. In doing this the Commission has made it clear that either party may set the negotiation process in motion, and that during the process, terminating carriers may be compensated under existing rules.[2] Finally, the Commission (and Congress) has recognized that "bill and keep" is a valid method of intercarrier compensation, especially where traffic is closely balanced, or is *de minimis*.[3] It is now time for the Commission to take the final step, and to declare that where neither carrier has invoked the negotiation process, and there is no post-Act agreement in place, the reciprocal compensation requirements of the Act will be deemed satisfied by "bill and keep".[4]

2. <u>Current Disputes Over Points of Interconnection ("POIs"):</u>

The Act provides that each carrier must permit other carriers to interconnect "at any technically feasible point" on the first carrier's network.[5] Such connection may be "direct or indirect".[6] Cases interpreting the Act indicate that a carrier need not interconnect at more than

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[2] *In the Matter of Developing a Unified Intercarrier Compensation Regime (T-Mobile et al. Petition for Declaratory Ruling), CC docket No. 01-92,* Declaratory Ruling and Report and Order (rel. February 24, 2005)("T-Mobile Order").

[3] Act, Section 252 (d)(2)(B)(i); First Report and Order, paragraphs 1096 *et seq*., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* ("Local competition Order"), 11 F.C.C.R. 15499 (1996).

[4] The *T-Mobile Order* dealt with the question of when (if ever) reciprocal compensation obligations arise in the absence of an "agreement or other arrangement between the originating and terminating carriers". *Id*. at paragraph 4. The *Order* found that under then existing rules, an ILEC was permitted to bill for termination compensation either where there was an agreement under Sections 251-52 of the Act, or where there were applicable state termination tariffs. The *Order* then modified those rules (paragraph 9) to prohibit termination compensation charges pursuant to state tariffs adopted after the date of the Order, and further made it clear that an ILEC has the right to initiate negotiations under Sections 251-52. *Id*. at paragraph 9. Based on note 57 in the T Mobile Order, Dobson believes that the necessary implication of the *T Mobile Order* is that the Section 251-52 procedure is the only means whereby an ILEC may validly bill for termination compensation, and that the "bill and keep" regime urged by CTIA is already the *de facto* default where no agreement exists, and no negotiations have been sought. Put simply, the CTIA request for "bill and keep" as a default arguably goes no further than the Commission has already gone in the *T-Mobile Order.*

That said, Dobson continues to receive more than 100 termination compensation bills each month from ILECs having no agreement with Dobson, and that have requested none. The issue requires further clarification.

[5] Act, Section 251(c)(2)(B)

[6] Telecommunications Act of 1996 ("Act"), Section 251(a)(1).

one POI per LATA.[7] Where two-way facilities link networks, applicable rules require cost apportionment based on the percentage of traffic originated by each carrier.[8]

Unhappily, these rules are often honored in the breach. ILECs large and small generally require interconnection at multiple points in each LATA. These may include tandem offices (where there is more than one in the LATA), as well as end offices (so-called mandatory 2-B connections). Some ILECs go further, and refuse to honor CMRS number blocks unless a physical connection is established at CMRS expense to the end office to which the number block is rated. When it comes to the delivery of land to mobile traffic, the ILEC attitude is just the opposite: many ILECs argue that they should bear only the cost of carrying their calls to the edge of the originating local calling area, or at most to the edge of the ILEC's service area. The net result is unbalanced and contrary to the spirit and letter of the regulations: CMRS providers are obliged to deliver their own calls deep inside the ILECs' networks, while the ILECs wash their hands of any equivalent responsibility as to their own calls.

Insofar as they are required to interconnect at multiple points on an ILEC network, CMRS providers are forced unnecessarily to duplicate those networks.[9] This is costly, and robs the wireless carriers of the efficiencies of their technology. For example, shared transport is usually more efficient and economical than dedicated transport. Absent high volumes of calls, it makes most sense for a carrier to deliver its traffic to a single point designated by the terminating carrier, and for the terminating carrier to carry such traffic over existing shared facilities. This advantage is lost when the terminating carrier insists on dedicated trunk groups to multiple spots on its network.

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7 *Application by SBC Communications, [etc],* Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, paragraph 78 (note and text)(2000).

8 47 C.F.R. Sections 51.703(b) and 51.709(b).

9 A typical routing pattern imposed by smaller ILECs includes a two-way DS-1 from the ILEC end office to which the Dobson number block is rated to the nearest cell site within the local calling area. While the costs of the DS-1 may be apportioned between Dobson and the ILEC, Dobson must bear all backhaul costs from the cell site to the Dobson switch (contrary to 47 C.F.R. Sections 51.703 (b) and 51.709(b)).

An alternative, and feasible pattern is an indirect route through a third party tandem. Yet, as noted, many smaller ILECs refuse to exchange transited traffic on a "local call" basis.

The CTIA proposal grapples with all of this, without any of the exceptions and exceptions to exceptions that mark the original ICF version. Each carrier designates one or more "edges" in each LATA where it provides services. The originating carrier chooses one or more of these designated "edges" for delivery of its calls, but is not *required* to go to more than one such "edge" per LATA. This does not preclude multiple POIs, or a single POI for traffic in both directions, but these must be agreed to by both carriers. Each carrier bears all costs of transporting and terminating traffic within its own network.[10]

Such a rule, when viewed as a default applicable only where carriers have not agreed to something else, is consistent with the Act, is technically efficient, and, above all, is even-handed.

3. <u>Rating and Routing Issues; Dialing Parity</u>:

The ICF and CTIA "edge" proposals assume one physical interconnect point per terminating carrier in each LATA. The technical efficiencies are obvious: traffic may be delivered to the "edge" over a single high capacity facility, and may be transported beyond the "edge" on the terminating carrier's existing, shared facilities.

These efficiencies, however, require the Commission to reaffirm traditional concepts of rating and routing. For example, this Commission has acknowledged that the *rate center* assigned by a carrier to a number block may not necessarily correspond to the *routing point* assigned to the same block for LERG purposes.[11] This separation of rating and routing is not only necessary for the efficient transport of calls, it is essential if a CLEC or CMRS provider is effectively to compete with established ILECs. Over the decades these ILECs have established numerous rate centers that are used to define ILEC local calling areas.[12] To compete with the

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[10] This "edge" approach eliminates the need for apportioning facilities costs, and for continual debates about what percentage of calls on a given facility is originated by which carrier. Instead, each carrier bears 100% of all costs on its side of its own edge.

[11] The current, industry-wide practice for rating and routing telecommunications was described in the Commission's *Virginia Arbitration Order,* 17 F.C.C.R. 27039 (2002), which explains (at paragraph 301) that ILECs rate calls by reference to the rate centers assigned to the NPA/NXXs of the calling and called parties. See also NPRM at paragraph 141, and, for affirmation of the competitive need for local numbers, *First Numbering Resource Optimization Order, 15 F.C.C.R. 7574, 7577, note 174 (2000) and Numbering Resource Optimization Notice of Proposed Rulemaking, 14 F.C.C.R. 10322, 10371 (1999).*

[12] Although it is simplest to think of ILEC calls within a rate center as local and between rate centers as toll, in reality ILEC local calling areas are often defined by multiple rate centers, especially where expanded local calling areas have been established.

ILECs, CMRS providers and CLECs must be able to provide local numbers in any ILEC rate center where their customers demand them; otherwise calls to their customers from the ILEC network will not be rated as local.[13]

At the same time, technical efficiency requires CMRS providers and CLECs to take delivery of ILEC originated calls by means of a link to a central, technically feasible location on the ILEC network, such as the tandem office which subtends the various end offices to which the called numbers have been rated. For example, a Northern California cellular carrier needs for competitive reasons to assign number blocks to each end office rate point subtended by SBC's San Francisco tandem. At the same time, it is most efficient to pick up all calls to those blocks at the tandem itself.

Not only is this most efficient, this is the industry custom, as embodied in the CTIA proposal. Yet ILECs refuse to recognize it in some markets today. In one recent case, Dobson rated one of its codes to a Verizon end office that subtended a Verizon tandem to which Dobson was connected. An independent telco ("ICO") also maintained end offices which were part of the same extended local calling area, and which subtended the same Verizon tandem. The tandem was the logical point at which to deliver the ICO's calls to Dobson numbers. Yet neither the ICO nor Verizon would cooperate with such an arrangement, with the ICO insisting that a dedicated end office connection be established, *at Dobson's expense*, for the carriage of *telco-originated* calls. Until this happened, calls by telco customers to the Dobson code would be completed, but only on a ten digit, toll basis, even though calls by ICO customers to Verizon codes in the same rate center were completed on a seven digit, local call basis. Later, Verizon refused to transit the calls across its tandem, and they were blocked entirely.[14]

Dialing parity as well as general non-discrimination principles mandate that CMRS providers be given the same routing and rating rights as landline carriers. They should be permitted to rate numbers to any of the ILEC rate centers within their service areas. This is the

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[13] Note that unlike certain CLECs, CMRS providers do not argue for the right to establish "virtual rate centers" at locations which they do not serve. CMRS codes with few exceptions are rated so as to correspond to ILEC end offices within the CMRS service area, where the CMRS carrier has local customers and CMRS facilities.

[14] Transit services are indispensable, especially where (as in the example described above) the independent telco has chosen to utilize the tandem services of a larger ILEC and has designated that tandem as a LERG routing point. In such situations, the third party tandem is an effective bottleneck. Dobson deplores the trend for larger ILECs to price tandem switching at "what the market will bear", rather than on the basis of forward looking costs.

only way that CMRS customers may be assured of numbers in their local communities of interest. Calls to those numbers should be treated at least as favorably by the ILECs as calls by ILEC customers to other codes with the same rate center, i.e. if a call to a landline number in the same rate center may be completed by dialing seven digits, and is billed to the caller as local, the same should be true of calls to the CMRS code.

These principles, easily deduced from 47 C.F.R. 51.205 et seq. have been repeatedly violated by many smaller ILECs. Some of these simply refuse to recognize CMRS numbers as "local" even though they have been rated to the ILEC's own end office. In other cases the ILEC will recognize calls as local where the calling and called numbers are identically rated, but will refuse to do the same for calls to CMRS numbers in other rate centers that have been given EAS treatment where the call is land-to-land. In both of these situations the calling party is required to dial ten digits, and the call results in toll or long distance charges.

4. The MTA Rule:

Currently, CMRS calls are treated under the reciprocal compensation regime if they originate and terminate inside the same Major Trading Area, or "MTA". If calls originate and terminate in different MTAs, they are subject to access charges, which under the current regime are far above forward-looking costs. The original intent, expressed by the *Local Competition Order,* was that the Commission would soon reform access charges to eliminate subsidy elements. Had this been done, the "MTA Rule" would be far less critical to wireless carriers.

But the expected reform did not happen, and too many ILECs have evaded the MTA Rule, as where land originated intra-MTA calls are deliberately routed to IXCs rather than directly to the terminating CMRS provider. This tactic has a double result: the originating ILEC avoids paying termination compensation to the terminating CMRS provider, and also collects substantial originating access charges from the IXC. The landline customer pays the price in long distance charges, and in having to dial extra digits to reach supposedly local CMRS numbers.[15]

[15] See T Mobile Order at note 24 and accompanying text.

Other ILECs claim that state and/or federal pre-subscription rules somehow prevail over the MTA Rule, and that they are not only exempt from 47 U.S.C. § 51.701(a) but that they are actually obligated to treat intra-MTA calls as toll calls, subject to access charges rather than termination compensation. But Paragraph 1043 of the *Local Competition Order* could not be more clear: calls that originate and terminate within the same MTA "is subject to transport and termination rates under section 251(b)(5) *rather than interstate or intrastate access charges"* [emphasis added]. If the obvious goal of Section 251(b)(5) and of the MTA Rule is to be achieved, prior pre-subscription rules must be deemed modified.

Some suggest that the MTA Rule be abolished entirely. This would perhaps make sense if the Commission moved to "bill and keep" for both inter-MTA and intra-MTA calls. It would also make sense if the Commission and the states reduced access charges to the ILECs' forward-looking costs. In either of these cases, all calls would be treated identically for compensation purposes, the arbitrage opportunity would be gone, and the Rule would be superfluous.

Others (primarily ILECs) anticipate that elevated access charges will remain in place for at least an interim period; they ask that the MTA Rule be replaced by one which would impose access charges on CMRS calls wherever they originate and terminate in different landline calling areas. The net effect of such a change would be to dramatically increase the termination compensation payable by CMRS providers to ILECs, even while the reciprocal compensation paid to the CMRS providers would decrease.[16]

In the event some version of differential compensation remains over the short or longer run, there will have to be some form of MTA Rule. In such a case, Dobson urges in the strongest possible terms that the current rule be retained, and that the Commission reiterate that intra-MTA calls are not subject to access charges whether they are delivered directly to the

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In states served by BellSouth, many smaller ILECs use Bellsouth tandem office services. CMRS providers, pursuant to LERG instructions, have transited intra-MTA calls through BellSouth to the ILEC end offices. The ILECs, however, have imposed terminating access charges on BellSouth, which has paid them, and which has then sought reimbursement from the wireless originating carriers. This has given rise to multiple disputes before regulatory commissions in the affected states.

[16] This is the paradoxical result of the Commission's decision in Petitions *of Sprint PCS and A.T.&T Corporation for Declaratory Ruling Regarding Access CMRS Charges*, 17 FCC Rcd 13192, paragraph 8 (2002), which held that while ILECs may require IXCs to pay access charges to the ILECs which originate and terminate inter-MTA CMRS calls, CMRS providers may not impose access charges where they originate and terminate inter-MTA calls.

terminating CMRS provider, or indirectly by way of an IXC. Landline local calling areas are a creature of landline technology, landline service areas, and of usage sensitive landline pricing practices. CMRS service areas and networks bear no resemblance at all to landline systems. CMRS pricing is not distance sensitive, and is in no way linked to landline calling areas. CMRS interconnection architecture has been based on that rule, and hundreds if not thousands of negotiated and approved contracts incorporate that MTA rule. Any attempt to shrink the number of calls subject to the "forward looking" cost rules would force systems to be redesigned, and contracts to be re-negotiated. Most important is that the Commission would be moving backwards rather than forward and that more, not less, traffic would be become subject to the cross subsidies and abusive practices which gave rise to the Act in the first place.

5. Universal Service:

Dobson agrees with CTIA:. Universal service, a praiseworthy goal, has nothing to do with ensuring "revenue neutrality" for the ILECs. Instead, universal service is best achieved by stimulating competition on a level playing field between the ILECs and newcomers to the market, especially CMRS providers. The *status quo* fails in this regard, since it primarily taxes one set of competitors (CMRS providers) in order to subsidize another set of competitors (the ILECs). Although CMRS carriers may seek ETC status, the process is much more arduous than the designation process that the ILECs faced, and is becoming increasingly exclusionary.[17] Under these circumstances, CMRS carriers' ability to compete with subsidized ILEC rates is greatly diminished.

True reform of the universal service regime requires:

- A complete divorce between inter-carrier service pricing and universal service support: the subsidy element should be wrung out of access charges, transit charges, and all other services and facilities that are essential to competitive carriers such as CMRS providers.

- A separate universal service funding pool with the largest possible contributor base, including CMRS providers, CLECs, ILECs, IXCs, and VOIP-based carriers. Membership in the pool should be determined by the function performed by the carrier, and not by the technology utilized to perform the function. Thus, if VOIP-based carriers facilitate communications between their subscribers and the PSTN,

[17] *See, e.g., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005).

they should contribute to universal service funds, both state and federal, just as wireless carriers do.

– A technology neutral eligibility scheme. All contributing carriers should be eligible to receive universal service support provided they adhere to the same reasonable and technology-neutral standards as existing recipients.

– Contribution levels should be based on revenues from telecommunications services, and not on numbers in service. This is a necessary conclusion from the requirement of Section 254(d) that universal service contribution mechanisms be "equitable and non-discriminatory". Different telecommunications services require different quantities of numbers. For example a CLEC serving ISPs and/or telemarketing concerns may achieve very high per-number revenues, while carriers that primarily serve single-family homes will have low revenues per number. Where numbers or "connections"(rather than revenues) are taxed, ways will be found to use fewer numbers and to connect differently.

III. CONCLUSION

There is an inherent tension between the goals of the Act (open markets, cost-based pricing), and the protectionist regime favored by many ILECs. For nearly a decade, the ILECs have resisted access charge reforms, and have denied CMRS providers the essential tools they need to compete. These include (1) the right to locally-rated numbers, (2) the right to interconnect directly at a single point, or indirectly at the tandem level, and (3) the right to reciprocal compensation at rates based on forward-looking costs.

While the *Local Competition Order* got most of these things right, passive resistance by the ILECs, and delays by the Commission have conspired to prevent the fulfillment of the promises of 1996. The Commission and the industry now have a second chance. We should not miss it.

Respectfully submitted,

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