

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

In the Matter of)	
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
T-Mobile <i>et al.</i> Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs)	

**OPPOSITION TO PETITION FOR RECONSIDERATION
OF THE
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
AND THE
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The National Telecommunications Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) (collectively “the Associations”)¹ hereby submit these opposing comments to the Petition For Clarification or, In The Alternative, Reconsideration filed on April 29, 2005 by T-Mobile USA, Inc.² The Petition seeks clarification or reconsideration of the FCC’s February 24, 2005 Declaratory Ruling and Report and Order in the above-captioned proceeding.³

¹ The Associations are national membership organizations that collectively represent the majority of rural incumbent local exchange carriers providing service in the United States.

² *T-Mobile USA, Inc. Petition for Clarification or, in the Alternative, Reconsideration*, CC Docket No. 01-92 (filed April 29, 2005) (Petition).

³ *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005) (Order).

The Associations urge the FCC to deny the Petition's request for clarification that Section 51.705 of the Commission's rules govern proceedings regarding incumbent local exchange carrier (ILEC) wireless termination tariffs for past periods. The "clarification" that the Petition seeks is nothing more than a transparent attempt to minimize the compensation owed to rural ILECs for past periods for the transport and termination of traffic. The FCC clearly and unambiguously stated in the Order that wireless carriers were obligated to accept the terms of applicable state tariffs in the absence of a request to establish reciprocal or mutual compensation. T-Mobile's Petition seeks to gut this determination by nullifying any tariffed rates that were not established using federal pricing rules that apply only to reciprocal compensation arrangements. T-Mobile's request is entirely without merit and should be rejected.

II. T-MOBILE'S REQUEST FOR "CLARIFICATION" THAT THE COMMISSION'S PRICING STANDARDS FOR RECIPROCAL COMPENSATION ARRANGEMENTS ALSO APPLIES TO STATE TERMINATION TARIFFS IS MERITLESS AND SHOULD BE DENIED

T-Mobile's Petition asks the Commission to "clarify that the substantive requirements for rates contained in wireless termination tariffs on file in past periods are no different from the substantive requirements that would apply to reciprocal compensation rates...."⁴ However, there is nothing to clarify. The Order clearly established that "incumbent LECs were not prohibited from filing state termination tariffs and [Commercial Mobile Radio Service] *CMRS providers were obligated to accept the terms of applicable state tariffs.*"⁵

⁴ Petition, at 9.

⁵ Order, 20 FCC Rcd 4860, ¶9 (emphasis added).

In the past, wireless providers have generally been unwilling to initiate negotiations with rural ILECs to establish interconnection arrangements for the transport and termination of traffic on one another's networks. It was CMRS providers' hope that by not establishing interconnection arrangements they could indefinitely use rural ILECs' facilities for free. Therefore, in the absence of such arrangements, rural ILECs were compelled to file state termination tariffs in order to be fairly compensated for the use of their facilities.

To eliminate the need for state termination tariffs going forward, the Order amended the Commission's rules to enable ILECs to request interconnection from a CMRS provider and compel negotiations for a compensation arrangement.⁶ Yet the Order leaves no doubt that the previously filed tariffs were a permissible mechanism by which ILECs could obtain lawful compensation for the use of their networks and that CMRS providers were obligated to accept their terms. Not content to abide by that ruling, T-Mobile is now requesting that the Commission "clarify" that the FCC's rules for establishing ILECs' reciprocal compensation rates should also apply to the wireless termination tariffs.

Specifically, T-Mobile argues that because 47 CFR §51.705 was in effect when the wireless termination tariffs were filed, its standards for establishing transport and termination rates should apply to ILECs' claims under the tariffs.⁷ However, this is irrelevant. Section 51.705 of the Commission's rules applies solely to ILECs' rates for transport and termination that are established under reciprocal compensation arrangements pursuant to Section 251(b)(5) of the Telecommunications Act of 1996. It is

⁶ *Id.*, 20 FCC Rcd 4864-4865, ¶16.

⁷ Petition, at 9.

precisely because wireless carriers were unwilling to request interconnection and enter into reciprocal compensation arrangements with rural ILECs that the ILECs were compelled to file state termination tariffs. The Commission correctly states that “[t]hese tariffs do not prevent CMRS providers from requesting reciprocal or mutual compensation at the rates required by the Commission’s rules.”⁸ In other words, the rules that apply to the rates established under reciprocal compensation arrangements do not apply to the rates filed in state termination tariffs.

T-Mobile further asserts that although the Commission determined that “unilateral ILEC wireless termination tariffs constituted a lawful mechanism to set rates for past periods,”⁹ this decision “cannot mean that any tariffed rate was necessarily lawful...”¹⁰ This assertion misreads the clear language of the Order. The Commission specifically stated that “[b]y routing traffic to LECs in the absence of a request to establish reciprocal or mutual compensation, CMRS providers accept the terms of otherwise applicable state tariffs.”¹¹

If the Commission believed Section 51.705 of the rules applied to the existing state termination tariffs, it would have explicitly said so in the Order. By requesting that the Commission apply Section 51.705 to the compensation owed for past periods in place of the filed tariffed rates, T-Mobile is not asking for clarification; it is effectively asking that the Commission overturn its Order which unambiguously validated those tariffs. T-Mobile provides no compelling argument to warrant such a wholesale reversal of the Commission’s reasoned decision.

⁸ Order, 20 FCC Rcd 4862, ¶12.

⁹ Petition, at 9.

¹⁰ *Id.*, at 10.

¹¹ Order, 20 FCC Rcd 4862, ¶12.

III. CONCLUSION

The Commission should deny T-Mobile's request for clarification that Section 51.705 of the rules govern ILEC state termination tariffs for past periods. As demonstrated above, there is absolutely nothing for the Commission to clarify. The FCC clearly stated in the Order that CMRS providers were obligated to accept the terms of applicable state tariffs in the absence of a request to establish reciprocal or mutual compensation. T-Mobile's request for "clarification" is merely a transparent attempt to minimize the compensation owed to rural ILECs for the use of their networks.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

By: /s/ L. Marie Guillory
L. Marie Guillory
Vice President, Legal and Industry

Daniel Mitchell
Senior Regulatory Counsel

4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000

**ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

Brian Ford
Policy Analyst

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

June 30, 2005

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the opposition to the petition for reconsideration by NTCA and OPASTCO was sent by first class United States mail, postage prepaid, on this, the 30th day of June, 2005, to those listed on the attached sheet.

By: /s/ Brian Ford
Brian Ford

SERVICE LIST
CC Docket No. 01-92

Daniel J. Menser
James W. Hedlund
Harold Salters
T-Mobile USA, Inc.
401 9th Street, NW, Suite 550
Washington, DC 20004

Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster, LLP
2000 Pennsylvania Ave., NW
Suite 5500
Washington, DC 20006

Chief, Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

VIA E-MAIL
Best Copy and Printing, Inc.
fcc@bcpiweb.com