

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF VERIZON WIRELESS**

**VERIZON WIRELESS**

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Dated: June 30, 2005

Its Attorneys

## SUMMARY

In response to several petitions for reconsideration filed with the Commission on the *Order* in this docket, Verizon Wireless urges the Commission to deny the Missouri Small Telephone Company Group's request to apply Section 252(i) to wireless carriers. The Commission should also clarify that the Commission's interim rates are valid and confirm that the *Order* does not impose a direct interconnection obligation on commercial mobile radio service ("CMRS") providers.

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**COMMENTS OF VERIZON WIRELESS**

Verizon Wireless submits these comments on the petitions for reconsideration<sup>1</sup> filed in response to the *Order* issued in the captioned docket.<sup>2</sup> Verizon Wireless urges the Commission to reject the Missouri Small Telephone Company Group’s request to apply Section 252(i) to wireless carriers, clarify that the Commission’s interim rates are valid, and confirm that the *Order* does not impose a direct interconnection obligation on commercial mobile radio service (“CMRS”) providers.

**I. THE COMMISSION SHOULD NOT APPLY SECTION 252(i) TO WIRELESS CARRIERS.**

The *Missouri Petition* asks the Commission to modify the *Order* to provide

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<sup>1</sup> Petitions filed in this docket include Missouri Small Telephone Company Group Petition for Reconsideration, CC Docket No. 01-92 (March 25, 2005) (“*Missouri Petition*”); Rural Cellular Association Petition for Clarification or, in the Alternative, Reconsideration, CC Docket No. 01-92 (April 29, 2005) (“*RCA Petition*”); MetroPCS Communications, Inc. Petition for Limited Clarification or for Partial Reconsideration, CC Docket No. 01-92 (April 29, 2005) (“*MetroPCS Petition*”); T-Mobile USA, Inc. Petition for Clarification or, in the Alternative, Reconsideration, CC Docket No. 01-92 (April 29, 2005) (“*T-Mobile Petition*”); and American Association of Paging Carriers Petition for Reconsideration, CC Docket No. 01-92 (April 29, 2005) (“*Paging Petition*”).

<sup>2</sup> Developing a Unified Intercarrier Compensation Regime; T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, *Declaratory Ruling and Report and Order*, 20 FCC Rcd 4855 (2005) (“*Order*”).

incumbent local exchange carriers (“ILECs”) with the right to opt into state commission approved agreements with wireless carriers in the states.<sup>3</sup> The Missouri Small Telephone Company Group states that most, if not all, wireless carriers have negotiated agreements with at least one of its member companies, and that a rule allowing rural ILECs to opt into wireless carrier agreements with other ILECs would facilitate the transition from tariffs to interconnection agreements and provide the rural ILECs with “equal rights” vis-à-vis commercial mobile radio service (“CMRS”) providers.<sup>4</sup>

First, the law offers no basis for granting the *Missouri Petition*. To the contrary, it counsels against granting it. The Communications Act requires only LECs to permit opt-in. The statute does not impose this obligation on CMRS carriers. Section 252(i) provides that a “*local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting carrier upon the same terms and conditions as those provided in the agreement.*”<sup>5</sup> When the Commission first implemented this provision, it determined that “incumbent LECs must permit third parties to obtain access under section 252(i) to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252.”<sup>6</sup> In the course of changing this “pick-and-choose” rule to an “all-or-nothing” rule

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<sup>3</sup> *Missouri Petition* at 2-3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> 47 U.S.C. § 252(i) (emphasis added).

<sup>6</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 16139, para. 1314 (1996) (“*Local Competition Order*”), *modified on recon.*, 11 FCC Rcd 13042 (1996), *aff’d in part, vacated in part, Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) (“*Iowa*

that requires carriers to opt into whole agreements, the Commission confirmed that Section 252(i) only requires incumbent LECs to make their agreements available for adoption.<sup>7</sup>

In the *Local Competition Order*, the Commission concluded that Section 252(i) was designed to prevent discrimination,<sup>8</sup> and that section 252(i) only permits ILECs to differentiate between carriers based on the ILEC's cost of serving a carrier.<sup>9</sup> The Commission concluded that the Act's provisions, when read together, "require that publicly-filed agreements be made available to carriers who cause the incumbent LEC to incur no greater costs than the carrier who originally negotiated the agreement, so as to result in an interconnection agreement that is both cost-based and technically feasible."<sup>10</sup> The Commission did not revise the rationale for the opt-in requirement when it adopted the "all-or-nothing" rule.<sup>11</sup>

Second, there is no policy reason or factual basis offered by the Missouri carriers for the Commission to impose opt-in obligations on CMRS carriers pursuant to other authority, such as section 201 or 332.<sup>12</sup> The relief that the Missouri Small Telephone Company Group requests is contrary to the clear policy of the Act and the Commission's

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*Utilities Board I*"), *aff'd in part, rev'd in part, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("AT&T"), *decision on remand, Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000) ("*Iowa Utilities Board II*"), *aff'd in part, rev'd in part, Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002) ("*Verizon*").

<sup>7</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Second Report and Order*, 19 FCC Rcd 13494, 13511, ¶ 30, n.104 (2004) ("*Section 252(i) Order*").

<sup>8</sup> *Local Competition Order*, 11 FCC Rcd at 16139, ¶ 1315.

<sup>9</sup> *Id.*, 11 FCC Rcd at 16140, ¶ 1317.

<sup>10</sup> *Id.* Under this provision, ILECs may demonstrate to the state commissions that differential treatment is justified based on the cost of the LEC of providing the service to the carrier. *Id.*

<sup>11</sup> *Section 252(i) Order*, 19 FCC Rcd at 13511, ¶ 30 n.103.

<sup>12</sup> *See, e.g., Order*, 20 FCC Rcd at 4863, ¶ 14.

rules that permits wireless carriers to decide how to interconnect with ILECs. 47 U.S.C. § 251(c)(2) requires ILECs to offer interconnection at any technically feasible point, and, with respect to CMRS, the Commission's rules make clear that LECs must provide the type of interconnection reasonably requested by CMRS providers.<sup>13</sup> Imposing Section 252(i) on wireless carriers would eviscerate these rights because, for instance, an ILEC that desired direct interconnection with a CMRS provider, even if it was uneconomic for the CMRS carrier, could seek to opt into a contract that a CMRS provider had with another LEC with which the CMRS carrier had selected direct interconnection.<sup>14</sup> Although the *Missouri Petition* is written specifically with respect to rural ILECs, wireless carriers have interconnection agreements with all types of ILECs. If the Commission were to apply Section 252(i) to CMRS carriers, ILECs could be expected to pick the most beneficial agreements that the CMRS carriers had entered with other ILECs from all perspectives, including rates and terms of interconnection, without regard to their own statutory duties.

As apparent from the Commission's orders, Section 252(i) is intended to ensure that ILECs do not attempt to discriminate against requesting carriers that impose no greater costs on the ILEC than other requesting carriers. It would make no sense for the Commission to apply a similar rule to CMRS carriers. The Commission's rules provide for symmetrical transport and termination rates based on ILEC costs,<sup>15</sup> meaning that the rates contained in ILEC-CMRS interconnection agreements reflect the ILEC's costs, not

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<sup>13</sup> 47 C.F.R. § 20.11(a).

<sup>14</sup> Whereas certain ILECs have duties under Section 251(c) to connect directly, rural ILECs that are not subject to Section 251(c) via the exemption provided in Section 251(f)(1) do not have the same obligation. See 47 U.S.C. § 251(f)(1).

<sup>15</sup> 47 C.F.R. § 51.711(a)(1).

the CMRS carrier's cost of transport and termination on its network. Permitting ILECs to opt into the contracts that CMRS providers have entered with other ILECs would allow ILECs to choose to offer transport and termination based on the rates of another ILEC rather than their own. Permitting these ILECs to interconnect on such non-cost based rates would be contrary to the Act and the policy objectives underlying Section 252(i).<sup>16</sup>

Contrary to the claims of the Missouri Small Telephone Company Group, any uncertainty that exists with respect to the interim rates does not make it appropriate to grant rural ILECs the ability to opt into CMRS agreements.<sup>17</sup> As detailed below, the Commission's interim pricing rules are valid, and there is therefore no need to permit ILECs to opt into CMRS agreements on the theory that there is no rate that can be applied prior to the existence of an interconnection agreement.

Finally, although Verizon Wireless does not disagree with the Missouri Small Telephone Company Group that there are high costs for all carriers associated with negotiating with each rural ILEC,<sup>18</sup> the resolution to this problem lies not with applying Section 252(i) to CMRS providers, but in the willingness of all parties to use as a starting point for negotiations existing agreements that can be altered to fit the circumstances of the particular relationship between the carriers. In fact, members of the Missouri Small Telephone Company Group have themselves used this approach as they have sought to replace their wireless termination tariffs with interconnection agreements in Missouri. The *Missouri Petition* offers no specific facts that show Missouri ILECs are unable to negotiate agreements. Moreover, other remedies are available should negotiations fail.

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<sup>16</sup> See 47 U.S.C. § 252(d)(2)(i); 47 C.F.R. § 51.705; *Local Competition Order*, 11 FCC Rcd at 16140, ¶ 1317.

<sup>17</sup> *Missouri Petition* at 4.

<sup>18</sup> *Id.* at 3.

There is in short no record basis, or legal grounds, for granting the *Missouri Petition*.

## II. THE COMMISSION'S INTERIM PRICING RULES ARE VALID.

The *T-Mobile Petition* seeks clarification on the operation of the pricing rules that apply when negotiations are pending between ILECs and CMRS providers.<sup>19</sup> The Commission has ample authority to confirm that 47 C.F.R. §§ 51.707 and 51.715 remain in force and apply to LEC-CMRS interconnection.

As T-Mobile sets forth in detail, Sections 51.707 and 51.715 have been the subject of extensive court appeals. The Commission originally adopted these provisions in the *Local Competition Order*.<sup>20</sup> On October 15, 1996, the Eighth Circuit stayed the effectiveness of several FCC rules adopted in the *Local Competition Order* on the grounds that the FCC lacked jurisdiction to issue them.<sup>21</sup> The Eighth Circuit thereafter concluded, among other things, that the FCC exceeded its jurisdiction in promulgating various pricing rules.<sup>22</sup> The Eighth Circuit vacated some rules for all telecommunications providers seeking interconnection, and other rules only as they apply to CMRS providers. Specifically, the court vacated 51.715, but left intact 51.715(d) as it applies to CMRS:

Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by Commercial Mobile Radio Service (CMRS) providers, *see* 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the *rules of special concern* to the CMRS providers, i.e., 47 C.F.R. §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717, but only as these provisions apply to CMRS providers. Thus, rules 51.701,

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<sup>19</sup> *T-Mobile Petition* at 1.

<sup>20</sup> *See generally Local Competition Order*, 11 FCC Rcd at 15883-15917, ¶¶ 767-836.

<sup>21</sup> *Iowa Utilities Board I*, 120 F.3d at 791.

<sup>22</sup> *Id.* at 753.

51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717 remain in full force and effect with respect to the CMRS providers, and our order of vacation does not apply to them in the CMRS context.<sup>23</sup>

The Supreme Court in *AT&T* reversed and remanded *Iowa Utilities Board I*, holding that “the Commission has jurisdiction to design a pricing methodology.”<sup>24</sup> The Supreme Court reversed the Court of Appeals’ determinations “that the Commission had no jurisdiction to promulgate rules regarding state review of pre-existing interconnection agreements between incumbent LECs and other carriers, regarding rural exemptions, and regarding dialing parity.”<sup>25</sup> The Court reinstated all of the previously vacated regulations except for Section 51.319 and remanded to the Eighth Circuit for additional proceedings.<sup>26</sup>

On remand, the Eighth Circuit in *Iowa Utilities Board II* reviewed the FCC’s forward-looking pricing methodology, proxy prices, and wholesale pricing provisions and held that the FCC does not have jurisdiction to set the actual prices for the state commissions to use because setting specific prices intrudes on the states’ right to set the actual rates pursuant to Section 252(c)(2) of the Act.<sup>27</sup> The Court specifically vacated Section 51.707, but did not specifically mention § 51.715.<sup>28</sup> Because the Supreme Court

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<sup>23</sup> *Id.* at 800 n.21 (emphasis added). On September 30, 1997, the Commission released a Public Notice summarizing and clarifying the effective Commission rules that apply to requests for interconnection by CMRS providers. Public Notice, *Summary of Currently Effective Commission Rules For Interconnection Requests by Providers of Commercial Mobile Radio Service*, FCC 97-344 (rel. Sept. 30, 1997). According to the Public Notice, the rules the Eighth Circuit upheld for CMRS providers were: §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717.

<sup>24</sup> *AT&T*, 525 U.S. at 385.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 857, 860.

<sup>27</sup> *Iowa Utilities Board II*, 219 F.3d at 744.

<sup>28</sup> *Id.* at 765.

in *AT&T* did not challenge the Eighth Circuit’s finding that the FCC has authority to issue rules of special concern for CMRS and reinstated Section 51.715 as it applies to all carriers, and because the remand decision in *Iowa Utilities Board II* did not again vacate Section 51.715, this rule remains valid.<sup>29</sup>

In *Verizon Communications v. FCC*,<sup>30</sup> the Supreme Court reversed *Iowa Utilities Board II* to the extent the Eighth Circuit had found that the FCC lacked the authority to impose pricing rules. The Court held that the FCC can require state commissions to set the rates charged by incumbents for leased elements on a forward-looking basis untied to the incumbents’ investment, paving the way for the Commission’s pricing methodology to be implemented in the states.<sup>31</sup> The validity of Section 51.707 is unclear, however, because the Supreme Court did not address it in *Verizon Communications v. FCC*. The Supreme Court reversed the Eighth Circuit holding that the FCC’s pricing rules were invalid, however, and it would appear that Section 51.707 has been reinstated. Because of the potential uncertainty, however, Verizon Wireless urges the Commission to clarify that the rule is valid with respect to LEC-CMRS interconnection.

### **III. THE COMMISSION SHOULD CLARIFY THAT NEW SECTION 20.11(f) DOES NOT REQUIRE CMRS CARRIERS TO INTERCONNECT DIRECTLY WITH ANY LEC.**

As stated in the *RCA Petition*, the Commission might have inadvertently suggested that ILECs may assert a right to request direct interconnection from CMRS

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<sup>29</sup> On April 17, 2001, the Commission adopted an *Order on Remand and Report and Order* reconsidering the proper treatment for purposes of inter-carrier compensation for of telecommunications traffic delivered to Internet service providers. Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order*, 16 FCC Rcd 9151 (2001). That order amended, among others, Sections 51.707 and 51.715 of the rules by striking “local” before “telecommunications traffic.” *Id.* at 9210. This suggests that the Commission believes that these rules are valid.

<sup>30</sup> *Verizon*, 535 U.S. at 467.

<sup>31</sup> *Id.* at 497.

providers by incorporating the term “interconnection” in new rule Section 20.11(f).<sup>32</sup>

Verizon Wireless opposes such an obligation for a number of reasons. There is no evidence the Commission intended this outcome, and the Commission should therefore clarify the new rule.

Congress did not impose a direct interconnection obligation on CMRS carriers. Section 251(a) of the Act permits all telecommunications carriers to comply with their interconnection obligations either directly or indirectly.<sup>33</sup> Pursuant to Section 251(c)(2) of the Act, *ILECs* have the duty to interconnect with a requesting carrier at “any technically feasible point” within their networks. This duty includes the provisioning of “routing” and “transmission” functions for exchange and exchange access services.<sup>34</sup> The FCC’s rules define interconnection at the ILEC’s tandem as technically feasible<sup>35</sup> and specifically confirm that LECs must provide the type of interconnection that a CMRS provider reasonably requests.<sup>36</sup> This includes Type 2A (tandem) interconnection versus Type 2B or Type 1 (end-office) interconnection.<sup>37</sup> The Commission’s rules define “interconnection” as the linking of two networks and state that this term does not include transport and termination of traffic.<sup>38</sup>

Congress and the Commission have not imposed a requirement on CMRS

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<sup>32</sup> *RCA Petition, passim.*

<sup>33</sup> 47 U.S.C. § 251(a).

<sup>34</sup> 47 U.S.C. § 251(c)(2)(A). CMRS carriers provide exchange and exchange access services. *See Local Competition Order*, 11 FCC Rcd at 15998-99, ¶¶ 1012-13.

<sup>35</sup> 47 C.F.R. § 51.305(a)(2)(iii).

<sup>36</sup> 47 C.F.R. § 20.11(a).

<sup>37</sup> *See, e.g., Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry*, 9 FCC Rcd 5408, 5451-52 (1994) (summarizing obligations of LECs to provide Type 1, Type 2A, and Type 2B interconnection).

<sup>38</sup> *See* 47 C.F.R. § 51.5.

providers to offer direct connection in the past, and the Commission did not need to create such a new requirement to accomplish its objective in the *Order* of equalizing the bargaining power between ILECs and CMRS providers. The Commission states in the *Order* that the reason it decided to impose the requirements of new Section 20.11(f) was to give ILECs the ability to compel negotiations and arbitrations.<sup>39</sup> Without support, RCA makes the statement that “Currently, CMRS providers can request interconnection and compel negotiations and arbitrations only to enforce an ILEC’s duty under § 251(c)(2) to provide interconnection ‘at any technically feasible point within [its] network.’”<sup>40</sup> This cannot be true. Section 252 on its face provides pricing standards for not only interconnection pursuant to Section 251(c)(2) but also transport and termination rates under Section 251(b)(5).<sup>41</sup> And the Commission and the courts have been clear that the arbitration remedy is available for parties seeking indirect interconnection under 47 U.S.C. § 251(a). Thus, a direct interconnection requirement is not in any way necessary to the Commission’s intended outcome of making the arbitration remedy under Section 252 available to ILECs. The Commission can make this clear by replacing the term “interconnection” with the phrase “reciprocal compensation arrangements” in Section 20.11(f).<sup>42</sup>

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<sup>39</sup> *Order*, 20 FCC Rcd at 4865, ¶ 16.

<sup>40</sup> *RCA Petition* at 5.

<sup>41</sup> Compare 47 U.S.C. § 252(d)(1) with 47 U.S.C. § 252(d)(2).

<sup>42</sup> RCA makes the argument that the Commission’s attempt to impose a duty to negotiate on CMRS providers requires it to invoke the Section 251(c)(1) duty to negotiate. *RCA Petition* at 9. But Congress has already imposed a duty to negotiate in good faith on requesting carriers with respect to Sections 251(c)(1)-(5) as well as Section 251(b)(5). See 47 U.S.C. § 251(c)(1)(the requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements). Carriers need not be subject to the standards contained in Section 251(c) to have a duty to negotiate in good faith.

CMRS providers often interconnect indirectly through large LECs. Indirect interconnection through the common trunks of larger LECs is a critical component of any LEC-CMRS interconnection because requiring CMRS carriers to install direct trunks to every small, rural LEC in each state would be costly, duplicative, and inefficient and serve only to increase the costs to rural customers for telecommunications service. Forced direct interconnection arrangements where the interoffice traffic exchange volumes are minimal is not a reasonable economic alternative to indirect interconnection arrangements through an ILEC tandem.

For all of these reasons, the Commission should modify Section 20.11(f), or otherwise clarify or reconsider the *Order* to make clear that ILECs cannot demand direct interconnection from CMRS providers.

#### CONCLUSION

For the foregoing reasons, the FCC should not apply Section 252(i) to CMRS providers and should clarify the *Order* in certain other limited respects as described herein.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on June 30th 2005, the "Opposition to Petitions for Reconsideration" was served on all parties listed below by U.S. mail, first class, postage prepaid.

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