

**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 OF CTIA – THE WIRELESS ASSOCIATION™ TO MISSOURI SMALL TELEPHONE COMPANY GROUP PETITION FOR RECONSIDERATION

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Date: June 30, 2005

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CTIA – The Wireless Association™ (“CTIA”), pursuant to Section 1.429(f) of the Commission’s rules,¹ opposes the petition for reconsideration of the prospective relief granted in the Commission’s Declaratory Ruling and Report and Order in the above-captioned proceeding (“*Order*”)² filed by the Missouri Small Telephone Company Group (“Mo LECs”).³ The Commission should deny the Mo LECs’ overreaching efforts to create an opt-in arrangement for

¹ 47 C.F.R. § 1.429(f).

² *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*”). CTIA is an international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers commercial mobile radio service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

³ Missouri Small Telephone Company Group Petition for Reconsideration, *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 (Mar. 25, 2005) (“Mo LEC PFR”)

reciprocal compensation or traffic termination agreements entered into between CMRS providers and local exchange carriers (“LECs”).

I. INTRODUCTION AND SUMMARY

To compete with LECs in the provision of local exchange services, wireless carriers must secure reasonable rates and terms from incumbent LECs (“ILECs”) for the delivery and termination of their customers’ wireless calls. CTIA commends the Commission for amending Section 20.11 of its rules to prohibit LECs from unilaterally imposing compensation obligations for the termination of non-access CMRS traffic through the filing of tariffs.⁴ CTIA also supports the Commission’s decision in the *Order*, acting pursuant to its authority over LEC-CMRS arrangements under Sections 201 and 332 of the Communications Act of 1934, as amended,⁵ to authorize ILECs to request that CMRS providers enter into reciprocal compensation arrangements and invoke the Section 252 procedures in support of such requests.⁶

CTIA opposes the Mo LECs’ attempt to create, under Section 252(i) of the Act, an “opt-in” provision for small ILECs that would allow them to take advantage of reciprocal compensation or traffic termination agreements entered into between wireless carriers and ILECs under the procedures established in the *Order*. The Mo LECs assert that CMRS providers may opt into CMRS-LEC agreements and argue that the same rights should be equally available to ILECs in order to facilitate the transition from tariffs to contractual arrangements.⁷

⁴ 47 C.F.R. § 20.11.

⁵ 47 U.S.C. §§ 201, 332.

⁶ See *Order*, 20 FCC Rcd at 4863-65.

⁷ Mo LEC PFR at 2-3.

Because Section 252(i) requires only LECs -- a category that does not include CMRS providers -- to “make available any interconnection, service, or network element provided under an [approved] agreement,” however, those procedures are not available to ILECs seeking reciprocal compensation terms from CMRS providers.⁸ Moreover, the use of these procedures would not further the Commission’s goal of facilitating the transition to negotiated arrangements for all LEC-wireless traffic exchange. Specifically, ILECs could use the opt-in procedures to force inefficient direct interconnections on unwilling CMRS providers, undermining the wireless carriers’ Section 251(a) right to choose indirect interconnection. The Commission clearly did not (and could not) intend its decision to undermine CMRS providers’ statutory right to technically feasible and economically efficient direct or indirect interconnection with ILECs.

The Mo LECs also argue that the opt-in right they seek would address the alleged uncertainty that exists regarding the interim pricing rules that should apply during the pendency of the negotiations between CMRS providers and LECs under the procedures established in the *Order*.⁹ Any uncertainty, however, could be resolved by granting the clarification sought by T-Mobile USA, Inc. (“T-Mobile”) in its Petition for Clarification or, in the Alternative, Reconsideration of the *Order* (“T-Mobile Petition”).¹⁰

⁸ 47 U.S.C. § 252(i).

⁹ *Id.* at 4-5.

¹⁰ T-Mobile USA, Inc. Petition for Clarification or, in the Alternative, Reconsideration, *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 (Apr. 29, 2005) (“T-Mobile Petition”).

II. THE RELIEF GRANTED BY THE *ORDER* DOES NOT IMPORT ALL OF THE RIGHTS AND OBLIGATIONS OF SECTION 252 INTO CMRS-LEC AGREEMENTS.

A. Section 252(i) Imposes Obligations Only On LECs.

Section 252(i) imposes its obligations only on “local exchange carrier[s].”¹¹ Only LECs are required to “make available any interconnection, service, or network element provided under an agreement.”¹² Nonetheless, the Mo LECs seek equivalent rights for their members to obtain reciprocal compensation and other terms from *wireless* carriers and wireless services under this provision. In the *Local Competition Order*, the Commission held that, because CMRS providers are not classified as LECs, they are not subject to any of the requirements that Sections 251 and 252 impose only on LECs or ILECs.¹³ Accordingly, Section 252(i) does not provide any basis to require wireless carriers to make available to any requesting carrier services on the same terms as those provided in an agreement with an ILEC.

¹¹ Section 252(i) provides that

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 252(i) (emphasis added).

¹² *Id.*

¹³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15995-96, 15997 (1996) (“*Local Competition Order*”), *recon.*, 11 FCC Rcd 13042 (1996) (subsequent history omitted).

B. No Statutory Basis Exists For Applying Section 252 Obligations To ILEC Initiated Reciprocal Compensation Negotiations And The Resulting Agreements.

The Commission’s application of the Section 252 *procedures* to the reciprocal compensation negotiations initiated by the ILEC requests authorized by the *Order* did not automatically import all of the market-opening obligations of Section 252 into those negotiations or the resulting agreements. As the Commission observed in the *Order*, LECs may not require CMRS providers to negotiate reciprocal compensation arrangements or submit to arbitration under Section 252 of the Act.¹⁴ Only ILECs are subject to the Section 251(c) requirement to negotiate interconnection agreements pursuant to Section 252.¹⁵ “[T]he procedures set forth in § 252 of the Act ... apply by their terms exclusively to incumbent LECs.”¹⁶ The procedures established in the *Order* requiring CMRS providers to enter into negotiations and arbitration with ILECs thus were not, and could not have been, promulgated under the authority of Sections 251 and 252.

Accordingly, in order to provide a statutory basis for ILECs to request CMRS providers to enter into reciprocal compensation arrangements, the Commission acted “pursuant to our plenary authority under sections 201 and 332 of the Act” to amend Section 20.11 of its rules to permit ILECs to request interconnection from CMRS providers.¹⁷ Section 201(a) of the Act, which is incorporated by Section 332(c)(1)(B), imposes the duty on all carriers to interconnect

¹⁴ *Order*, 20 FCC Rcd at 4864.

¹⁵ *Local Competition Order*, 11 FCC Rcd at 15996.

¹⁶ *Central Texas Telephone Cooperative, Inc. v. FCC*, 402 F.3d 205, 215 (D.C. Cir. 2005).

¹⁷ *Order*, 20 FCC Rcd at 4863-65.

with other carriers and to furnish service “upon reasonable request.”¹⁸ Section 20.11 originally was promulgated to implement the amendment to Section 332(c) of the Act in the Omnibus Budget Reconciliation Act of 1993 giving the Commission the authority to establish the terms of LEC-wireless interconnected traffic.¹⁹

Thus, the references to Section 252 in the *Order* and in the amended Section 20.11 were simply a shorthand way of generally describing the procedures that the Commission intended to make available to the requesting ILECs in negotiating reciprocal compensation agreements. Because the Commission acted under Sections 201 and 332, rather than Sections 251 and 252, in amending Section 20.11 in the *Order*, the amended Section 20.11 should not be read to import all of the Section 252 interconnection rights and obligations that govern interconnected wireline traffic. The purpose of the procedures that the amended Section 20.11 made available to ILECs was expressly limited to enabling ILECs to “obtain[] compensation from CMRS providers” and “to establish reciprocal compensation arrangements.”²⁰ Accordingly, there is no statutory or regulatory basis for application of the opt-in rights of Section 252(i) to agreements reached under the procedures established in the *Order*.

C. Application Of Section 252(i) To The CMRS-LEC Arrangements Negotiated Under the Procedures Authorized In The *Order* Would Frustrate The Commission’s Competitive Goals.

Extending the opt-in obligations of Section 252(i) to CMRS providers entering into agreements pursuant to the procedures in the *Order* will severely undermine the Commission’s

¹⁸ 47 U.S.C. § 201(a).

¹⁹ *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1413, 1498 (1994).

²⁰ *Order*, 20 FCC Rcd at 4864.

goal of transitioning to negotiated contractual arrangements. In the *Order*, the Commission found that “negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act” than unilateral tariffs and accordingly amended Section 20.11 of its rules to prohibit LECs from imposing compensation obligations pursuant to tariff.²¹ In furtherance of the same policies, the Commission established the negotiation procedures in the *Order* to ensure that LECs “have the ability to compel negotiations and arbitrations, as CMRS providers may do today.”²²

Granting Section 252(i) opt-in rights to ILECs against CMRS providers would undermine this relief and the Commission’s competitive goals by enabling the ILECs to circumvent the negotiation process and impose inefficient reciprocal compensation and interconnection rates and terms on CMRS providers. As the Mo LECs point out, the Commission’s “all-or-nothing” rule requires that all of the terms of an approved agreement be made available to requesting carriers.²³ If a CMRS provider has negotiated a reciprocal compensation agreement with an ILEC that also specifies direct interconnection terms, another ILEC, not directly interconnected with the CMRS provider, could use the opt-in procedures to demand the same direct interconnection and reciprocal compensation terms with the CMRS provider as enjoyed by the first ILEC. Although the direct ILEC interconnection that was negotiated may be efficient and economical for the CMRS provider, a similar interconnection demanded by another ILEC in dissimilar circumstances may be inefficient and costly for the CMRS provider.

²¹ *Order*, 20 FCC Rcd at 4863.

²² *Id.* at 4864.

²³ Mo LEC PFR at 3-4 n.5.

The inefficiencies that the requested opt-in procedure would generate would be compounded by the vast differences in circumstances among small rural ILECs and among CMRS providers. Typically, multiple CMRS carriers interconnect, directly or indirectly, with multiple ILECs. Each CMRS carrier interconnects in different ways with each ILEC, and each interconnection arrangement may be characterized by different traffic volumes, routing patterns and service area coverages. Overlaying an opt-in right for any ILEC on the existing web of CMRS-ILEC arrangements would place an unreasonable burden on CMRS providers and require them to extend terms to ILECs that may be entirely inappropriate in any given circumstance.

Forced direct interconnections would undermine CMRS providers' right under Section 251(a) to choose direct or indirect interconnection with each ILEC²⁴ and their right under Section 251(c)(2)(B) to interconnect at "any technically feasible point within the [ILEC's] network."²⁵ Moreover, the threat of forced inefficient direct interconnections will discourage CMRS providers from entering into any direct interconnection arrangements, even those that would provide advantages for them, frustrating the Commission's "preference for contractual arrangements."²⁶ Accordingly, not only is the relief sought by the Mo LECs not required by the language in the Act or the amended Section 20.11, but the inevitable result of such relief also would conflict with the competitive goals of the Act.

²⁴ See *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1268 (10th Cir. 2005).

²⁵ 47 U.S.C. § 251(c)(2)(B).

²⁶ *Order*, 20 FCC Rcd at 4863.

III. THE INTERIM PRICING RULES IMPOSED IN THE *ORDER* DO NOT REQUIRE A DIFFERENT RESULT.

Contrary to the Mo LECs' assertion, the potential ambiguity in the interim reciprocal compensation pricing rules imposed by the *Order* does not require the application of the opt-in procedures of Section 252(i). The Mo LECs point out that two of the three alternative pricing rules referenced in Section 51.715 of the Commission's rules -- the provision cited in the *Order* as the basis for the Commission's interim reciprocal compensation rules²⁷ -- are based on the proxy pricing rules in Section 51.707 struck down in *Iowa II*.²⁸

The clarification of the *Order* sought by T-Mobile, however, should remove any uncertainty or ambiguity in that regard. The T-Mobile Petition explains that, based on *Iowa I*,²⁹ the Commission could readily resolve any ambiguity stemming from the vacating of the proxy pricing rules in Section 51.707 by affirming its authority under Sections 332(c)(1)(B) and 201(a) of the Act to impose pricing rules on ILECs terminating CMRS traffic, including the requirements of Section 51.707. *Iowa I* fully supports the Commission's authority to apply the proxy pricing rules to interconnected wireless traffic under Sections 332(c)(1)(B) and 201(a), and *Iowa II* did not alter or undermine that authority.

Accordingly, the T-Mobile Petition requests that the Commission clarify that, in applying the interim pricing requirements of Section 51.715 under the *Order*, cross references to Section

²⁷ *See id.* at 4865.

²⁸ *Iowa Util. Bd. v. FCC*, 219 F.3d 744, 756-57 (8th Cir. 2000) ("*Iowa IP*"), *aff'd in part and rev'd in part on other grounds sub nom. Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002).

²⁹ *Iowa Util. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) ("*Iowa I*"), *vacated and remanded in part on other grounds sub nom. AT&T Corp. v. Iowa Utilities Board v. FCC*, 525 U.S. 366 (1999).

51.707 should be construed to incorporate all of the provisions of that regulation as originally promulgated, but only as to CMRS traffic covered by the interim pricing requirements of the *Order*.³⁰ Such a clarification should remove any uncertainty or ambiguity as to the applicable interim pricing rules established in the *Order*, mooted the Mo LECs' expressed concern.

IV. CONCLUSION

The Mo LECs request a modification of the prospective relief granted in the *Order* that cannot be provided under the statutory provision they cite, the statutory bases for the prospective relief in the *Order* or any other conceivable basis. By its terms, Section 252(i) imposes opt-in obligations only on LECs. Moreover, nothing in Section 201 or 332 of the Act or Section 20.11 of the Commission's rules requires or suggests that all of the rights and obligations of Section 252 should be applied to CMRS-LEC agreements negotiated under the procedures adopted in the *Order*. Finally, the relief requested by the Mo LECs would undermine the competitive policies embodied in the *Order* and the Commission's goal of replacing unilateral tariffs with negotiated agreements. Such relief would force inefficient interconnection arrangements on unwilling

³⁰ T-Mobile also recommends that the Commission incorporate by reference the basis for the proxy transport and termination rates established in the *Local Competition Order*, 11 FCC Rcd at 15891-92, 15905-08, 15909-11, 16026-28.

CMRS providers and discourage the negotiations that the Commission tried to foster in the *Order*. The petition should be denied.

Respectfully submitted,

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Dated: June 30, 2005

CERTIFICATE OF SERVICE

I, Shontee Bryant Rasool, do hereby certify that the foregoing Opposition of CTIA – The Wireless Association™ to Missouri Small Telephone Company Group Petition for Reconsideration was served on this 30th day of June, 2005, by U.S. mail, first-class postage prepaid, on

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