

**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)	
)	

REPLY OF CTIA – THE WIRELESS ASSOCIATION™

CTIA – The Wireless Association™ (“CTIA”), pursuant to Section 1.429(g) of the Commission’s rules,¹ submits this reply regarding the various petitions for reconsideration of the Declaratory Ruling and Report and Order in the above-captioned proceeding (“*Order*”).²

I. CTIA SUPPORTS RCA’S PETITION TO CLARIFY THAT SECTION 20.11(f) APPLIES ONLY TO RECIPROCAL COMPENSATION ARRANGEMENTS

The majority of commenters, including T-Mobile, Nextel Partners, Verizon Wireless, and Leap Wireless, support RCA’s request that the Commission clarify that Section 20.11(f) of its rules applies only to reciprocal compensation arrangements and does not impose direct

¹ 47 C.F.R. § 1.429(g).

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.

interconnection obligations upon CMRS providers.³ Only two incumbent LECs, Qwest and SBC, oppose RCA’s petition, but they offer no justification for imposing interconnection obligations that are not necessary to facilitate the Commission’s goal of allowing CMRS providers and incumbent LECs to establish reciprocal compensation rates through contractual arrangements.⁴

In adopting the *Order*, the Commission intended to address the precise issue that T-Mobile and others raised regarding the appropriate mechanism for establishing reciprocal compensation for CMRS-LEC traffic.⁵ Accordingly, the Commission adopted Section 20.11(e) to prohibit LECs from “impos[ing] *compensation obligations* for traffic not subject to access charges upon [CMRS] providers pursuant to tariffs.”⁶ Imposing specific types of interconnection obligations upon CMRS providers is simply unnecessary to advance the Commission’s objective of “ensur[ing] that LECs have the ability to compel negotiations and arbitrations” for establishing reciprocal compensation arrangements.⁷

Moreover, imposing direct interconnection obligations on CMRS providers would conflict with the clear language of sections 251(a) and 251(c)(2) of the Communications Act, which allow telecommunications carriers to interconnect directly or indirectly and grant a right to CMRS providers to interconnect at any technically feasible point on an incumbent LEC’s

³ See T-Mobile Opposition at 5-7; Nextel Partners Comments at 4-6; Verizon Wireless Comments at 8-11; Leap Wireless Comments at 3-4.

⁴ See Qwest Opposition at 3-4; SBC Opposition at 2-3.

⁵ See *Order*, ¶ 9 (finding it “necessary to clarify the type of arrangements necessary to trigger payment obligations”).

⁶ *Id.*, App. A (emphasis added).

⁷ *Id.* ¶ 16.

network.⁸ The Commission, therefore, could not have meant to limit the statutory interconnection rights of CMRS providers by imposing upon CMRS providers an obligation to directly interconnect with local exchange carriers when adopting Section 20.11(f). Consequently, the Commission should clarify that its decision and accompanying rule apply only to reciprocal compensation arrangements and do not prescribe specific forms of interconnection. In the alternative, to eliminate any ambiguity and better achieve its policy objectives, the Commission could revise Section 20.11(f) by replacing references to “interconnection” with the term “reciprocal compensation.”

II. CTIA SUPPORTS THE METROPCS PETITION TO CLARIFY THAT COMPETITIVE LECs COULD NOT LAWFULLY FILE WIRELESS TERMINATION TARIFFS

As MetroPCS Communications, Inc. (“MetroPCS”) noted, the *Order* found that incumbent LECs were not prohibited under the Commission’s prior rules from filing wireless termination tariffs, but did not expressly address the lawfulness of competitive LEC wireless termination tariffs for past periods.⁹ CTIA agrees that the Commission’s rationale for allowing incumbent LEC tariffs covering past periods does not apply to competitive LEC tariffs.¹⁰ Unlike incumbent LECs, competitive LECs have general parity with CMRS providers in terms of interconnection rights and obligations, and therefore should not be given the unfair advantage of unilaterally imposing tariffed termination rates upon CMRS providers. Accordingly, the

⁸ See 47 U.S.C. §§ 251(a), (c)(2)(B). The U.S. Court of the Appeals for the 10th Circuit recently rejected claims that 251(c) of the Act requires CMRS providers to establish direct, physical interconnection within an incumbent LECs’ network for the exchange of local traffic. See *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256, 1268 (10th Cir. 2005).

⁹ See MetroPCS Petition at 5-6.

¹⁰ See *WTT Order*, ¶ 11.

Commission should clarify that competitive LECs are prohibited from filing wireless termination tariffs for past periods.

III. CTIA SUPPORTS T-MOBILE’S PETITION TO CLARIFY THAT THE PROXY PRICING RULES ARE VALID WITH RESPECT TO CMRS-LEC TRAFFIC

As T-Mobile correctly noted in its petition, the Commission has authority under Sections 332(c)(1)(B) and 201(a) of the Communications Act of 1934, as amended (“Communications Act”), to establish interim pricing rules for traffic exchanged between CMRS providers and local exchange carriers (“LECs”).¹¹ T-Mobile also properly identified the need to resolve the ambiguity arising from the judicial invalidation of the proxy pricing rules of Section 51.707 of the Commission’s rules, which were incorporated by reference in the interim pricing rules adopted in the *Order*. In view of the broad consensus among the parties addressing the issue,¹² the Commission should take this opportunity, as T-Mobile requested, to clarify the statutory basis for its authority to adopt interim pricing rules for CMRS-LEC traffic and to affirm the validity of the interim pricing rules, including the proxy pricing rules of Section 51.707, as applied to CMRS-LEC traffic.

IV. CTIA OPPOSES CLAIMS THAT WIRELESS TERMINATION TARIFFS SHOULD NOT BE SUBJECT TO A REASONABLENESS STANDARD

Contrary to the contentions of CenturyTel, Inc. (“CenturyTel”), the National Telecommunications Cooperative Association (“NTCA”), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), the *Order* did not hold that wireless termination tariffs covering past periods “should be enforced

¹¹ See T-Mobile Petition at 4-8.

¹² See CenturyTel Opposition at 10; Verizon Wireless Comments at 6-8; Nextel Partners Comments and Opposition at 12; Leap Wireless Comments at 4.

according to their terms” and could not be challenged, regardless of the reasonableness or lawfulness of the rates set forth in those tariffs.¹³ The Commission merely found that tariffs were permissible vehicles for setting CMRS-LEC termination rates under the Commission’s prior rules, but it did not uphold the reasonableness or lawfulness of the tariffed rates.¹⁴ A tariff that is permitted to become effective nonetheless “can always be challenged as unreasonable and unlawful.”¹⁵ Thus, when the Commission stated in the *Order* that “CMRS providers were obligated to accept the terms of applicable state tariffs,”¹⁶ it merely was acknowledging the well-established principle that a customer purchasing services under tariff may be “bound to pay the legal rate; but if he could show that it was unreasonable he might recover reparation.”¹⁷ To avoid unnecessary litigation regarding the reasonableness or lawfulness of an incumbent LEC’s tariffed rates, the Commission should clarify the pricing standards applicable to those tariffed rates. In particular, the Commission should affirm that an incumbent LEC’s tariffed rates remain subject to Section 201(b) of the Communications Act, which requires “just and reasonable” rates, and Section 252(d)(2), which requires “a reasonable approximation of the additional costs of terminating” traffic.¹⁸

¹³ See CenturyTel Opposition at 10; NTCA/OPASTCO Opposition at 3-4.

¹⁴ See *WTT Order*, ¶¶ 9-10.

¹⁵ *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, 5 FCC Rcd 216, ¶ 48 (1990), *aff’d sub nom.*, *MCI Telecommunications Corp. v. FCC*, 59 F.3d 1407 (D.C. Cir. 1995).

¹⁶ *WTT Order*, ¶ 9.

¹⁷ *MCI*, ¶ 48 (quoting *Arizona Grocery v. Atchison, T. & S. F. R. Co.*, 284 U.S. 370, 384 (1932)).

¹⁸ 47 U.S.C. §§ 201(b), 252(d)(2).

V. THE COMMISSION SHOULD REJECT THE MISSOURI LEC REQUEST TO EXTEND OPT-IN RIGHTS TO INCUMBENT LECS

Consistent with the Commission's intent to prescribe a narrowly tailored solution to facilitate an appropriate mechanism for establishing reciprocal compensation for CMRS-LEC traffic, the Commission also should reject the Missouri Small Telephone Company Group's ("Mo LECs") overreaching efforts to impose additional obligations requiring CMRS providers to allow incumbent LECs to opt into existing reciprocal compensation agreements. The Mo LECs' proposal is not supported by any other party and, in fact, is strongly opposed by all of the commenters addressing the proposal, including CTIA, T-Mobile, Nextel Partners, Nextel Communications, ALLTEL, Sprint, and certain rural wireless carriers.¹⁹ The record demonstrates that extending opt-in rights to incumbent LECs is unwarranted and would frustrate the Commission's pro-competitive policies favoring negotiated contractual arrangements. As CTIA pointed out in its opposition, 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.

¹⁹ See CTIA Opposition at 4-8; T-Mobile Opposition at 2-4; Nextel Partners Comments at 6-11; Nextel Communications Opposition at 2-8; ALLTEL Opposition at 2-5; Sprint Opposition at 1-7; Opposition of Smith Bagley, Inc. *et al.*, at 3-12.

VI. CONCLUSION

As discussed above, CTIA urges the Commission to grant T-Mobile's, MetroPCS's, and RCA's petitions for clarification or reconsideration, and to deny the Mo LECs' request to extend opt-in rights to incumbent LECs. The Commission also should reject arguments made by CenturyTel and NTCA/OPASTCO that wireless termination tariffs covering past periods should not be subject to the Act's reasonableness standards.

Respectfully submitted,

/s/ Paul Garnett

Michael Altschul
Senior Vice President, General Counsel

Diane Cornell
Vice President, Regulatory Policy

Paul Garnett
Director, Regulatory Policy

CTIA – The Wireless Association™
1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

Dated: July 11, 2005

CERTIFICATE OF SERVICE

I, Marlea Leary, do hereby certify that on this 11th day of July 2005, I caused copies of the foregoing **REPLY** to be delivered to the following by First Class U.S. mail or electronic mail, as indicated:

Donald J. Manning
Todd B. Lantor
Nextel Partners, Inc.
4500 Carillon Point
Kirkland, WA 98033

Albert J. Catalano
Matthew J. Plache
Catalano & Plache, PLLC
1054 31st Street, NW, Suite 425
Washington, DC 20007

Counsel for Nextel Partners, Inc.

John F. Jones
CenturyTel, Inc.
100 Century Park Drive
Monroe, LA 71211

Karen Brinkmann
Stefanie Alfonso-Frank
Latham & Watkins, LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004-1304

Counsel for CenturyTel, Inc.

Harold Salters
Daniel J. Menser
Kathleen O. Ham
T-Mobile USA, Inc.
401 9th Street, N.W.
Suite 550
Washington, DC 20004

Cheryl A. Tritt
Frank W. Krogh
Phuong N. Pham
Morrison & Foerster, LLP
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006

Counsel to T-Mobile USA, Inc.

Glenn S. Rabin
Cesar Caballero
ALLTEL Corporation
601 Pennsylvania Avenue, NW
Suite 720
Washington, DC 20004

Luisa L. Lancetti
Charles W. McKee
Sprint Corporation
401 9th Street, NW
Suite 400
Washington, DC 20004

John T. Scott, III
Charon Phillips
Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005

Russell D. Lukas
David A. LaFuria
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard
Suite 1500
McLean, VA 22102

*Counsel for Smith Bagley, Inc.; Midwest
Wireless Communications; & Easterbrooke
Cellular, Rural Cellular Association*

Robert Irving
Leap Wireless International, Inc.
10307 Pacific Center Court
San Diego, CA 92121

Blair A. Rosenthal
Robert B. McKenna
Timothy M. Boucher
Qwest Corporation
607 14th Street, N.W.
Suite 950
Washington, DC 20005

Laura H. Phillips
Patrick R. McFadden
Drinker Biddle & Reath LLP
1500 K Street, NW
Suite 1100
Washington, DC 20005-1209

Kent Nakamura
Garnet M. Goins
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Counsel for Nextel Communications, Inc.

L. Marie Guillory
Daniel Mitchell
National Telecommunications Cooperative
Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Jim Lamoureux
Gary L. Phillips
Paul K. Mancini
SBC Communications, Inc.
1401 Eye Street, N.W., Suite 400
Washington, DC 20005

Stuart Polikoff
Stephen Pastorkovich
Brian Ford
Organization for the Promotion and
Advancement of Small Telecommunications
Companies
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

Kenneth E. Hardman
American Association of Paging Carriers
1015 18th Street, NW, Suite 800
Washington, DC 20036

Mark A. Stachiw
MetroPCS Communications, Inc.
8144 Walnut Hill Lane
Suite 800
Dallas, TX 75231

W.R. England, III
Brian T. McCartney
Brydon, Swearengen & England P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456

*Counsel for Missouri Small Telephone
Company Group*

Carl W. Northrop
David Siddall
W. Ray Rutngamiug
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW, Room CY-B402
Washington, DC 20554

Via Email: FCC@BCPIWEB.COM

Counsel for MetroPCS Communications, Inc.

/s/ Marlea Leary
