Before the
Federal Communications Commission
Washington, DC 20554

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

To: The Commission

REPLY OF CINGULAR WIRELESS LLC TO PETITIONS FOR RECONSIDERATION

Cingular Wireless LLC ("Cingular") presents the following reply regarding the petitions for reconsideration[1] of the Commission's *Wireless Termination Tariff Order*[2] and the oppositions to those petitions. Cingular is the nation's largest provider of Commercial Mobile Radio Service ("CMRS"). Cingular is interconnected with rural incumbent local exchange carriers ("LECs") throughout the country, many of whom had filed wireless termination tariffs prior to the release of the *Wireless Termination Tariff Order*. Thus, Cingular has a strong interest in the outcome of this proceeding.

As described herein, the Commission should provide the clarification sought by the Rural Cellular Association ("RCA") that new section 20.11 of the Rules was not intended to undermine

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[1] *See Petitions for Reconsideration of Action in Rulemaking Proceeding,* CC Docket No. 01-92, Public Notice, Report No. 2713 (rel. May 25, 2005).

[2] *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) *("Wireless Termination Tariff Order").*

CMRS carriers' statutory right to interconnect "directly or indirectly" with requesting incumbent LECs. Similarly, the Commission should deny the Missouri Small Telephone Company Group's (MoSTCG) unprecedented request to impose section 252(i) "opt-in" obligations on CMRS carriers. Finally, The Commission also should clarify, as requested by T-Mobile and several commenters, that valid interim pricing rules apply to traffic exchanged between LECs and CMRS carriers during the pendency of negotiations under the new rule.

I. THE COMMISSION SHOULD CLARIFY THAT NEW SECTION 20.11 OF THE RULES DOES NOT REQUIRE DIRECT INTERCONNECTION

As the RCA Petition demonstrates, there can be no doubt that the Commission did not intend the *Wireless Termination Tariff Order* to impose a *direct interconnection obligation* on CMRS carriers.[3] Nevertheless, the Commission's use of the term "interconnection" in new rule section 20.11(f) may create the possibility of ambiguity, given the Commission's prior use of the term.[4] Accordingly, Cingular agrees that the Commission could simplify carrier negotiations and reduce litigation risks by clarifying that, while CMRS carriers must negotiate interconnection and compensation terms, they are not required to establish direct interconnection with requesting LECs for CMRS-originated traffic.

The reasoning and discussion in the *Wireless Termination Tariff Order* leaves no doubt that the Commission intended to address the obligation for negotiating interconnection and compensation arrangements rather than requiring direct physical interconnection. The new rule

[3] Petition for Clarification or, in the Alternative, Reconsideration of the Rural Cellular Association, CC Docket No. 01-92 (filed April 29, 2005) at 3-6 ("RCA Petition"). Other commenters expressed concern that the new rule may support an inference of a requirement that CMRS carriers to interconnect directly with ILECs for CMRS-originated traffic. T-Mobile comments at 5; Verizon Wireless comments at 8-10. *See also* SBC comments at 5 n.13.

[4] RCA Petition at 4.

was adopted in conjunction with the Commission's decision to prohibit, on a prospective basis, wireless termination tariffs.[5] In light of this prohibition, the Commission noted that "LECs may have had difficulty obtaining compensation from CMRS providers because LECs may not require CMRS providers to negotiate interconnection agreements or submit to arbitration under section 252 of the Act," "CMRS providers may lack incentives to engage in negotiations to establish reciprocal compensation arrangements," and because of the Commission's prior holding that "section 251(b)(5) requires LECs to enter into reciprocal compensation arrangements with all CMRS providers but that it does not explicitly impose reciprocal obligations on CMRS providers." [6]

As these passages demonstrate, the Commission's sole focus was on ensuring that the elimination of the tariffing option did not leave incumbent LECs without a vehicle to establish interconnection and compensation terms with CMRS carriers. Thus, there is simply no basis to believe that the Commission intended to establish a requirement that incumbent LECs can require CMRS carriers to directly interconnect for the exchange of CMRS-originated traffic. As the RCA Petition discusses, Congress specifically imposed direct interconnection obligations only on incumbent LECs,[7] while CMRS carriers may interconnect with other carriers either directly or indirectly.[8] Although the Commission has broad jurisdiction over LEC-CMRS interconnection pursuant to sections 332(c)(1)(B) and 201, at minimum the Commission would

[5] Cingular expresses no view in this Reply on the correctness of the Commission's conclusion that wireless termination tariffs were permissible under prior law.

[6] *Wireless Termination Tariff Order* at ¶ 15 (emphasis added).

[7] 47 U.S.C. § 251(c)(2).

[8] 47 U.S.C. § 251(a).

have been obligated to explain and justify a decision to rely on other statutory authority to obviate the structure laid out in section 251.[9] The *Wireless Termination Tariff Order* contains no such explanation or justification. This omission further supports our conclusion that the Commission did not intend to place a new requirement for direct interconnection on CMRS carriers.

A direct interconnection obligation also is unnecessary to achieve the Commission's goals in the *Wireless Termination Tariff Order*. As noted above, the *Wireless Termination Tariff Order* concluded that incumbent LECs no longer should be permitted to establish rates for terminating CMRS traffic through tariffs, and sought to ensure that wireless carriers do not avoid compensating incumbent LECs for terminating traffic that is otherwise compensable. It is not necessary to establish a direct physical interconnection relationship to ensure compensation. Cingular pays reciprocal compensation to numerous incumbent LECs throughout the country with which Cingular exchanges traffic indirectly.

Cingular believes there can be no doubt that the Commission intended to use the term "interconnection" in new section 20.11(f) in the generic sense – just as it is used, for example, in section 251(a), to refer either to a direct or an indirect relationship.[10] Because the *CMRS Termination Tariff Order* leaves no doubt that the Commission's focus actually was on the obligation to negotiate interconnection and compensation arrangements, the Commission would facilitate compliance with its mandate by clarifying their intent.

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[9] *See, e.g.,* Nextel Partners comments at 5.

[10] *See, e.g.,* SBC comments at 5 n.13; T-Mobile comments at 2.

II. THE COMMISSION SHOULD CLARIFY THAT THE ORDER DOES NOT PERMIT LECS TO OPT IN TO CMRS CARRIERS' INTERCONNECTION AGREEMENTS

Cingular strongly opposes the MoSTCG's suggestion that the Commission "make clear" that incumbent LECs may "opt in" to CMRS carriers' agreements with other incumbent LECs under section 252(i). Permitting incumbent LECs to opt in to CMRS carriers' agreements is beyond the scope of the rule changes adopted in the *Wireless Termination Tariff Order* and would hinder, rather than advance, the Commission's policy objectives in this proceeding.

As the MoSTCG Petition concedes, the *Wireless Termination Tariff Order* "did not specifically address the availability of the Act's 'opt-in' procedures."[11] The Commission did not intend to permit opt-in, and there are good reasons why it should not do so on reconsideration.[12] As several commenters have pointed out, "as applied to CMRS-LEC contracts, the same contract as applied to two different LECs often does not result in the same deal."[13] A CMRS carrier may agree to direct interconnection in an agreement with one incumbent LEC because traffic volumes justify it, only to have the agreement opted into by another incumbent LEC with traffic volumes that did not justify it. A CMRS carrier may agree to a relatively high terminating rate with a carrier with whom it exchanges very little traffic, because the cost of negotiating may exceed the cost of the premium over the life of the agreement. But if a higher-volume incumbent LEC opts

[11] MoSTCG Petition at 2.

[12] Also, applying section 252(i)'s opt-in right to CMRS carriers would be such a significant change to the conclusions reached in the *Wireless Termination Tariff Order* that it may be beyond the bounds of what can be accomplished on reconsideration. *See* Smith Bagley comments at 3-5; Nextel comments at 3-4.

[13] Sprint comments at 7. *See also* CTIA comments at 7; T-Mobile comments at 4; Nextel comments at 7.

into the agreement, the CMRS carrier would face a result it never would have countenanced in a negotiation.

This demonstrates the other important reason why granting an opt-in right actually would subvert the Commission's goal in this proceeding of favoring commercially negotiated agreements.[14] If a CMRS carrier had to allow opt-in, it would never sign an agreement with *any* carrier that it would not be willing to accept with *every* carrier. This would bring the negotiation process to a virtual stand-still.

Allowing incumbent LECs to opt in to CMRS carriers' agreements with other carriers would present significant logistical problems. As Sprint points out, CMRS carriers have a statutory right under section 252(i) to opt in to incumbent LEC agreements.[15] If a CMRS carrier and an incumbent LEC both chose to exercise their opt-in rights in the same negotiation, which party's selected agreement would prevail?

Finally, uncertainty regarding the validity of the interim pricing rules presents no reason to favor allowing opt-in.[16] For the reasons discussed below, he Commission's interim pricing rules are valid or readily could be reaffirmed.[17] Affirming the existing interim pricing rules, and the *Wireless Termination Tariff Order's* reliance on them, would do far less violence to the statute and the Commission's favored regulatory structure than allowing an opt-in right.

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[14] *Wireless Termination Tariff Order* at ¶ 14.

[15] Sprint comments at 7.

[16] *See, e.g.*, CTIA comments at 9; Nextel comments at 7-8; Verizon Wireless comments at 5. *Cf.* MoSTCG Petition at 4.

[17] *See infra* Section III.

III. VALID INTERIM PRICING RULES APPLY TO TRAFFIC EXCHANGED BETWEEN LECS AND CMRS CARRIERS

Although the various appeals and remands of the Commission's local competition rules have made the status of the interim pricing rules somewhat murky, Cingular agrees with commenters that the courts have made clear that the Commission possesses the authority to apply such rules with respect to interconnection between CMRS carriers and incumbent LECs.[18] Accordingly, the Commission should clarify that sections 51.707 and 51.715(d) are valid and in force, and apply during the pendency of negotiations or arbitrations between incumbent LECs and CMRS carriers pursuant to section 20.11(f).

CONCLUSION

For the reasons discussed above, Cingular urges the Commission to deny requests to require CMRS carriers to allow direct interconnection or opt-in to negotiated agreements. The Commission also should confirm the validity of its interim pricing rules with respect to CMRS carriers and incumbent LECs.

Respectfully submitted,

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[18] *See, e.g.,* Verizon Wireless comments at 6-8; Nextel Partners comments at 12.

CERTIFICATE OF SERVICE

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on July 11th 2005, the "Reply To Petitions For Reconsideration" was served on all parties listed below by U.S. mail, first class, postage prepaid.

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