

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition of)
)
NEUTRAL TANDEM, INC.) WC Docket No. 06-159
)
For an Order Establishing Direct Physical)
Connections and Through Routes with)
Verizon Wireless, Inc.)

To: The Commission

COMMENTS OF RURAL CELLULAR ASSOCIATION

Rural Cellular Association (“RCA”)¹, by its attorneys, respectfully submits its comments on the petition of Neutral Tandem, Inc. (“Neutral Tandem”) for an order establishing direct physical connections and through routes with Verizon Wireless, Inc. (“Verizon Wireless”) pursuant to §§ 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended (“Act”).² RCA is submitting its comments in response to the Commission’s public notice of August 9, 2006 inviting interested parties to file comments on the Petition.³

INTRODUCTION

RCA supports efforts to provide competitive intercarrier transit and tandem-switched access services. However, RCA is troubled by the implications of granting Neutral Tandem the

¹ RCA is an association representing the interests of more than 90 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA’s wireless carriers operate in rural markets and in a few small metropolitan areas. No member has as many as 1 million customers, and the vast majority of RCA’s members serve fewer than 500,000 customers. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

² See Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless Pursuant to §§ 201(a) and 332(c)(1)(B) of the Communications Act of 1934, WC Docket No. 06-159 (Aug. 2, 2006) (“Petition”).

³ See *Pleading Cycle Established for Comments on Petition for Interconnection of Neutral Tandem, Inc. Pursuant to 47 U.S.C. §§ 201(a) and 332(c)(1)(B)*, DA 06-1603, 2006 WL 2310792 (Aug. 9, 2006).

specific relief it seeks. If it exercises its authority under § 201(a) of the Act to order Verizon Wireless to “establish physical connections” with other telecommunications carriers,⁴ the Commission could seriously imperil the recognized right of commercial mobile radio service (“CMRS”) providers to choose to interconnect indirectly under § 251(a)(1) of the Act. Moreover, if it imposes a duty upon Verizon Wireless to allow a requesting telecommunications carrier to interconnect directly with its network, the Commission will continue a practice begun with the *T-Mobile Declaratory Ruling*⁵ of imposing interconnection obligations on CMRS carriers that Congress intended only for incumbent local exchange carriers (“ILECs”). For many of the same reasons that it is asking the Commission to revisit its *T-Mobile Declaratory Ruling*,⁶ RCA urges the Commission to deny the Petition as inconsistent with §§ 251(a)(1), 251(c)(2) and 332(c)(1)(B).

DISCUSSION

I. Neutral Tandem Is Not a CMRS Provider and Cannot Request Interconnection Pursuant to § 332(c)(1)(B) of the Act

Neutral Tandem claims to be “the industry’s only independent tandem services provider, offering neutral intercarrier transit and tandem-switched access services between competitive carriers.” Petition, at 2. It appears that Neutral Tandem may qualify as a “telecommunications carrier” under the Act. *See* 47 U.S.C. § 153(44). Neutral Tandem does not appear to be a local exchange carrier (“LEC”), *see id.* § 153(26); it is clearly not an ILEC, *see id.* § 251(h)(1); and it is obviously not a CMRS provider. *See id.* § 332(d)(1). Therefore, Neutral Tandem’s request for

⁴ 47 U.S.C. § 201(a).

⁵ *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855 (2005).

⁶ *See* Petition for Clarification or, in the Alternative, Reconsideration, CC Docket No. 01-92 (Apr. 29, 2005); Reply to Oppositions to Petition for Clarification or Reconsideration and Comments of Verizon Wireless, CC Docket No. 01-92 (July 13, 2005).

interconnection “pursuant” to § 332(c)(1)(B) of the Act cannot be granted. *See* Petition, at 1.

Section 332(c)(1)(B) provides that, upon a “reasonable request” of a CMRS provider, the Commission “shall order a common carrier to establish physical connections” with the CMRS provider pursuant to the provisions of § 201. 47 U.S.C. § 332(c)(1)(B). *See also* 47 C.F.R. § 20.11(a). By its express terms, § 332(c)(1)(B) does not empower the Commission to grant a request of an intercarrier transit and tandem-switched access services provider to establish a physical connection with a CMRS provider. Because a remedy under § 332(c)(1)(B) is not available to it, Neutral Tandem must look only to § 201(a) for the relief it seeks.

II. Established Commission Policy May Preclude Grant of the Petition

Section 201(a) authorizes the Commission to order a carrier “to establish physical connections with other carriers” and “to establish through routes and charges applicable thereto.” 47 U.S.C. § 201(a). However, the Commission can order a carrier to physically interconnect with another carrier and prescribe the charges for such interconnection in cases where, “after opportunity for hearing,” it “finds such action necessary or desirable in the public interest.” *Id.* Thus, it cannot compel a CMRS provider to establish a physical connection with another carrier “without first having followed the procedures specified in ... § 201(a).” *AT&T Corp. v. FCC*, 292 F.3d 808, 812 (D.C. Cir. 2002).

By its explicit terms, § 201(a) does not require the establishment of a direct connection between carriers. And the Commission has recognized specifically that § 201(a) does not mandate direct interconnection between nonLEC and CMRS networks. *See Interconnection and Resale Obligations Pertaining to CMRS*, 15 FCC Rcd 13523, 13527 (2000), *reconsideration denied*, 16 FCC Rcd 10009 (2001) (“*CMRS Interconnection Order*”). *See also Cellnet Communications, Inc. v. New Par, Inc. d/b/a Cellular One*, 15 FCC Rcd 13814, 13817 (WTB

2000).⁷

In its *CMRS Interconnection Order*, the Commission also determined that the public interest does not require a rule mandating that facilities-based CMRS carriers interconnect with reseller switches that have been placed between the CMRS carrier's MTSO and the facilities of a LEC or an interexchange carrier ("IXC"). See 16 FCC Rcd at 10011. The Commission recognized that: (1) it had never imposed a specific form of interconnection on facilities-based CMRS carriers; (2) the imposition of a new interconnection obligation on such carriers was not required to overcome competitive barriers; (3) the benefits of such a rule would not "outweigh the costs of intruding into the detailed technical operations" of CMRS carriers; and (4) the rule would "inevitably" lead to the unbundling of CMRS networks, which the Telecommunications Act of 1996 ("1996 Act") did not require. See *CMRS Interconnection Order*, 15 FCC Rcd at 13531-32. The Commission decided that its public interest finding in the *CMRS Interconnection Order* would apply to all requests for direct interconnection that would establish reseller switches between the CMRS carrier's MTSO and the landline telephone network. See *id.*, 16 FCC Rcd at 10012.

The *CMRS Interconnection Order* may bar the grant of the Petition. Neutral Tandem apparently resells ILEC transit services. See Petition, at 5 n.5. It also may place its switching equipment between Verizon Wireless' MTSO and the landline telephone network. See *infra*

⁷ In the *CMRS Interconnection Order* and in *Cellnet*, the issue was whether facilities-based CMRS providers were required to permit resellers of CMRS (cellular) services to interconnect their switches between the CMRS mobile telephone switching office ("MTSO") and the facilities of LECs. See *CMRS Interconnection Order*, 16 FCC Rcd at 10009; *Cellnet*, 15 FCC Rcd at 13815. Inasmuch as a cellular reseller is a "person providing commercial mobile service," § 332(c)(1)(B) was implicated in the *CMRS Interconnection Order* and in *Cellnet*. See 47 U.S.C. § 332(c)(1)(B). Thus, the Commission held that §§ 201(a) and 332(c)(1)(B) do not require direct interconnection between reseller switches and CMRS networks. See *CMRS Interconnection Order*, 15 FCC Rcd at 13527. The Wireless Telecommunication Bureau applied that holding in *Cellnet*. See 15 FCC Rcd at 13817.

Attachment 1.⁸ At the very least, Neutral Tandem has not distinguished its proposal from those the Commission rejected in the *CMRS Interconnection Order*. Unless Neutral Tandem does so, the Commission should adhere to its *CMRS Interconnection Order* and deny the Petition.

III. Grant of the Petition Would Be Inconsistent with the Statutory Scheme

The Commission recognizes that §§ 201, 251, 252 and 332 of the Act provide it with “broad authority” over LEC-CMRS interconnection. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16005 (1996) (“*Local Competition Order*”). If its Petition withstands the *CMRS Interconnection Order*, Neutral Tandem will require the Commission to address the breadth of its § 201(a) authority over nonLEC-CMRS interconnection. The Commission will find that its authority to order a CMRS carrier (Verizon Wireless) to interconnect directly with a nonLEC (Neutral Tandem) was circumscribed both by the Omnibus Budget Reconciliation Act of the 1993 (“Budget Act”) and the 1996 Act.

Section 6002(b) of the Budget Act “dramatically revise[d] the regulation of the wireless telecommunications industry,” of which CMRS is a part. *Connecticut Department of Public Utility Control v. FCC*, 78 F.3d 842, 845 (2nd Cir. 1996). Congress amended § 332 of the Act to bring “all mobile service providers under a comprehensive, consistent regulatory framework.” *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 F.C.C.R. 1411, 1417 (1994) (“*Second CMRS Order*”). One of the two principal objectives of Congress in amending § 332 was to “ensure that an appropriate level of regulation be established and administered for CMRS providers.” *Id.* at 1418. Thus, when it implemented the Budget Act, the Commission

⁸ See also Motion for Interim Order to Preserve the *Status Quo*, WC Docket No. 06-159, Declaration of Surendra Saboo, at 6 (Aug. 17, 2006).

adopted as a principal objective “the goal of ensuring that unwarranted regulatory burdens are not imposed upon any [CMRS providers].” *Second CMRS Order*, 9 FCC Rcd at 1418.

The Commission also recognized that the Budget Act amendment to § 332 “differentiates CMRS providers from other carriers.” *Local Competition Order*, 11 FCC Rcd at 16006. The statute directed the Commission to respond to and grant a “reasonable request” of a CMRS provider to “establish physical connections” with a common carrier in accordance with § 201(a). 47 U.S.C. § 332(c)(1)(B).⁹ Accordingly, the Commission adopted § 20.11(a) of its rules (“Rules”), which provides that a LEC “must provide the type of interconnection reasonably requested” by a CMRS provider within a reasonable time, “unless such interconnection is not technically feasible or economically reasonable.” 47 C.F.R. § 20.11(a). In addition, the Commission made the rule enforceable by a CMRS provider under § 208 of the Act. *See id.* Thus, under § 332(c)(1)(B) of the Act and § 20.11(a) of the Rules, CMRS providers are entitled: (1) to select among the technically feasible and economically reasonable ways to establish physical connections with LECs, and (2) to enforce their right to establish such connections without recourse to a § 201(a) hearing.

The goal of the 1996 Act was “to provide for a procompetitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.”¹⁰ As the Supreme Court has recognized, the 1996 Act did not put ILECs on an equal footing with other categories of telecommunications carriers. *See Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 533-34 (2002) (the 1996 Act “proceeds

⁹ “The Budget Act requires the Commission to respond to the request of any [CMRS provider], and if the request is reasonable, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of [§] 201.” *Second CMRS Order*, 9 FCC Rcd at 1493.

¹⁰ H.R. Conf. Rep. No. 104-458, at 113 (1996), *reprinted in* 1996 U.S.C.A.N. 10, 124.

on the understanding that incumbent monopolists and contending competitors are unequal”). To the contrary, Congress intended to reorganize the local retail telephone markets by making ILECs’ monopolies “vulnerable to interlopers” by giving “aspiring competitors every possible incentive to enter [those] markets, short of confiscating the incumbent’s property.” *Verizon*, 535 U.S. at 489. Therefore, Congress added § 251 to the Act which established a “three-tier system of obligations,” *Atlas Telephone Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256, 1262 (10th Cir. 2005), that plainly distinguishes ILECs from the other telecommunications carriers whose entry into the local market was facilitated by the 1996 Act. *See City of Dallas, Tex. v. FCC*, 165 F.3d 341, 354 (5th Cir. 1999).

The Commission construed § 251 to create “a three-tiered hierarchy of escalating obligations based on the type of carrier involved.” *E.g., Total Telecommunications Services, Inc. v. AT&T Corp.*, 16 FCC Rcd 5726, 5737 (2001), *petition for review denied*, *AT&T Corp. v. FCC*, 317 F.3d 227 (D.C. Cir. 2003). In the agency’s view, § 251(a) imposes “relatively limited obligations” on all telecommunications carriers; § 251(b) imposes “more extensive duties” on LECs; and § 251(c) imposes “most extensive duties” on ILECs. *Guam PUC*, 12 FCC Rcd 6925, 6937 (1997). *See Total Telecommunications*, 16 FCC Rcd at 5737.

One of the limited obligations placed on all telecommunications carriers by § 251(a) is the duty “to interconnect directly or indirectly.” 47 U.S.C. § 251(a)(1). *Telephone Number Portability*, 12 FCC Rcd 7236, 7305 & n.399 (1997). NonLEC telecommunications carriers, such as Neutral Tandem, bear that duty. Conversely, and consistent with their right to choose under § 332(c)(1)(B), CMRS carriers, such as Verizon Wireless, “can choose to interconnect indirectly” under § 251(a)(1). *Central Texas Telephone Cooperative, Inc. v. FCC*, 402 F.3d 205, 215 (D.C. Cir. 2005).

One of the most extensive duties imposed on ILECs by § 251(c) is to provide interconnection at “any technically feasible point” within their networks to any requesting telecommunications carrier. 47 U.S.C. § 251(c)(2). Under the plain language of § 251(c), the duty to provide direct, physical interconnection “only extends to ILECs.” *Atlas Telephone*, 400 F.3d at 1265.¹¹ CMRS providers, such as Verizon Wireless, are not ILECs, and they are not obliged to provide direct interconnection under § 251(c)(2). *See Local Competition Order*, 11 FCC Rcd at 15996. Providers of competitive access services, such as Neutral Tandem, are eligible to receive interconnection from ILECs pursuant to § 251(c)(2). *See id.* at 15599.

The 1996 Act did not repeal or amend § 332(c)(1)(B) and, in fact, Congress adopted a specific savings clause for the Commission’s interconnection authority under § 201. *See* 47 U.S.C. § 251(i); *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9641 (2001). Thus, the Commission must give effect to §§ 201(a) and 332(c)(1)(B), as well as § 251. *See FCC v. NextWave Personal Communications Inc.*, 537 U.S. 293, 304 (2003). To do so requires the Commission to exercise its interconnection authority under § 201(a) consistent with a statutory scheme which: (1) entitles CMRS carriers to choose indirect interconnection under §§ 251(a)(1) and 332(c)(1)(B); (2) imposes the obligation to provide direct interconnection only on ILECs under § 251(c)(2); and (3) requires competitive access services providers to interconnect

¹¹ *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 16 FCC Rcd 15435, 15450 (2001); *Computer III Further Remand Proceedings: BOC Provision of Enhanced Services*, 14 FCC Rcd 4289, 4315 (1999); *Telephone Number Portability*, 12 FCC Rcd at 7304; *Implementation of the Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, 12 FCC Rcd 5470, 5472 n.9 (1997); *Implementation of the Non-Accounting Safeguards of Sections 272 and 273 of the Communications Act of 1934*, 11 FCC Rcd 21905, 22055 (1996); *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services*, 11 FCC Rcd 18959, 18989 n.121 (1996); *Local Competition Order*, 11 FCC Rcd at 15994; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 14171, 14228 (1996).

directly or indirectly pursuant to § 251(a)(1) and allows them to obtain direct interconnection only from ILECs in accordance with § 251(c)(2).

To give effect to §§ 251(a)(1), 252(c)(2) and 332(c)(1)(B) in this case, the Commission should deny Neutral Tandem's request to interconnect directly with Verizon Wireless and hold that Neutral Tandem can compel direct interconnection only with ILECs and only in accordance with § 251(c)(2) and the compulsory arbitration provisions of § 252(b). Neutral Tandem must not be granted a form of interconnection under § 201(a) that it could not obtain pursuant to §§ 251(a)(1), 252(c)(2) and 332(c)(1)(B).

CONCLUSION

Congress decided to impose comparatively onerous interconnection obligations specifically on ILECs in order to open the local exchange and exchange access markets to competitive entry. That policy decision is clearly reflected in the regulatory framework established by Congress in §§ 251 and 252 of the Act.

Congress bestowed comparatively favorable interconnection rights specifically on CMRS providers in order to increase competition and avoid unnecessary regulation. Those policy decisions are clearly reflected in §§ 251(a) and 332(c)(1)(B).

It would do violence to the intent of Congress, as expressed in §§ 251(a), 251(c)(2) and 332(c)(1)(B), for the Commission to subject a CMRS provider (Verizon Wireless) to the regulatory burden of a § 201(a) hearing in order to determine whether it should be ordered to provide direct interconnection to an intercarrier transit and tandem-switched access services provider (Neutral Tandem) that does not serve end users in the local telecommunications markets. The Commission may arguably impose ILEC-specific interconnection obligations on CMRS providers in order to afford ILECs the ability to fulfill their duty to establish reciprocal

compensation arrangements under § 251(b)(5). *See T-Mobile Declaratory*, 20 FCC Rcd at 4864-65. However, there is no justification for saddling CMRS providers with direct interconnection obligations at the request of nonLECs that are not entitled to reciprocal compensation.

For all the forgoing reasons, RCA respectfully suggests that the Commission reaffirm its decision that the best way for nonLECs, such as Neutral Tandem, to achieve direct interconnection with CMRS providers is through voluntary private negotiations. *See CMRS Interconnection Order*, 15 FCC Rcd at 13534.

Respectfully submitted,

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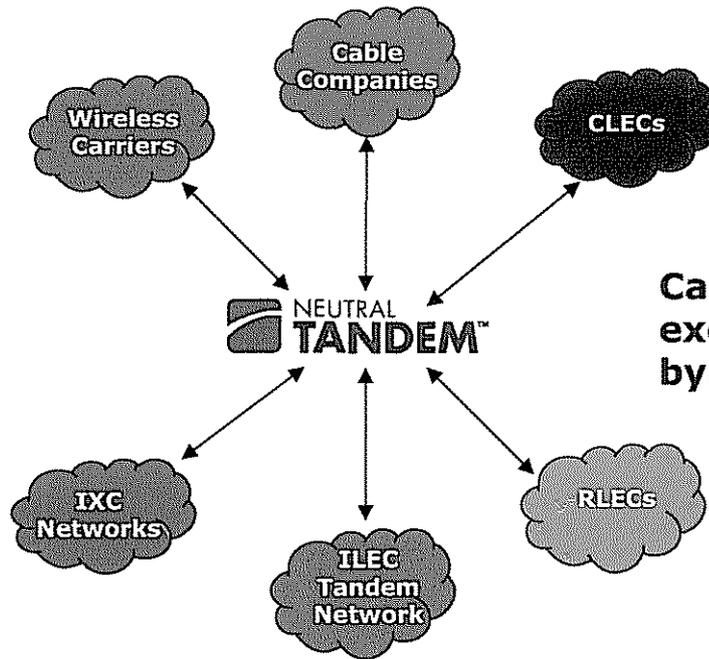
September 8, 2006



Make every minute count with Neutral Tandem.

Service Description

Competitive Exchange Network



Carriers utilize Neutral Tandem to exchange inter-carrier traffic and bypass ILEC Tandems.

- Efficient
- Cost Effective
- Simplified
- Diverse
- Non-Blocking

Neutral Tandem is the first company to offer a neutral (non-competing) "tandem network" solution to exchange inter-carrier traffic.

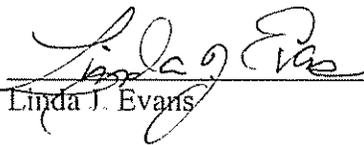
CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that I have, on this 8th day of September, 2006, caused to be e-mailed, a copy of the foregoing Comments of Rural Cellular Association to the following:

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