

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)	
)	
Interior Telephone Company, Inc.)	
)	
Petition for Declaratory Ruling on the)	WC Docket No. 07-102
Scope of the Duty of a Rural Local)	
Exchange Carrier to Provide Interim)	
Interconnection)	
_____)	

REPLY COMMENTS OF CTIA - THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ hereby opposes the Petition for Declaratory Ruling submitted by Interior Telephone Company, Inc. (“ITC”).² The rule “clarification” sought by ITC would thwart competition by modifying Section 51.715 to disregard the Commission’s stated intent regarding incumbent local exchange carrier (“ILEC”) interconnection obligations. Sprint Nextel Corporation (“Sprint”)³ and General Communication, Inc. (“GCI”),⁴ in opposing the Petition, correctly note that the Commission adopted Section 51.715 to ensure that competitive carriers are not delayed from market entry during initial interconnection negotiations with ILECs. The Commission should confirm the Sprint and GCI

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² Petition for Declaratory Ruling of Interior Telephone Company, Inc. WC Docket No. 07-102 (filed May 3, 2007) (the “Petition”); FCC Public Notice, *Comment Sought on Petition for Declaratory Ruling Pleading Cycle Established*, DA 07-2067 (May 16, 2007). All comments and oppositions submitted in this proceeding on May 31, 2007, will hereinafter be short cited.

³ Sprint Comments.

⁴ General Communication, Inc. (“GCI”) Opposition.

position regarding the proper application of Section 51.715 and promptly deny ITC's requested relief.

I. THE RELIEF REQUESTED BY ITC IS INCONSISTENT WITH THE 1996 ACT, AND THE PLAIN LANGUAGE OF THE *INTERCONNECTION ORDER* AND SECTION 51.715

Neither Section 51.715, the *Interconnection Order*,⁵ nor the Telecommunications Act of 1996⁶ restricts interim interconnection arrangements to the narrow set of circumstances advocated by ITC. In its Petition, ITC seeks a declaratory ruling whether “Section 51.715 of the Commission’s rules requires the ILEC to offer immediate interconnection to exchange local traffic in the period before a final interconnection agreement is reached through the negotiation and arbitration process pursuant to Section 252 of the [1996] Act, when agreement has not been reached by the parties on non-pricing terms.”⁷ ITC asserts the answer to this question is no.

The Commission should deny ITC’s Petition and affirm that Section 51.715 means what it says, not what ITC – for anti-competitive reasons – would like it to say. Contrary to ITC’s assertions, nothing in Section 51.715 limits its application to circumstances where pricing is the only issue subject to negotiation. Nor do the *Interconnection Order* and the 1996 Act preclude, directly or indirectly, an interim arrangement in those cases where non-pricing terms and conditions of interconnection remain subject to negotiation. Furthermore, ITC and its supporters’ complaint that interim interconnection arrangements are unduly burdensome for small ILECs is unpersuasive and at odds with the language and the stated purpose of the rule.

The Petition would eviscerate Section 51.715 by eliminating virtually every scenario envisioned

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (the “*Interconnection Order*”).

⁶ 47 U.S.C. Section 151 *et seq.* (the “1996 Act”).

⁷ Petition at 1-2.

under the rule that would allow a competitive carrier to rely upon an interim interconnection arrangement to enter the market.

A. The Competitive Focus of The Interconnection Order Does Not Support The ITC Request.

The *Interconnection Order* emphasizes that the Commission's purpose in adopting Section 51.715 was to promote new entry, not to create an interim intercarrier compensation mechanism.⁸ The *Interconnection Order* expressed concern that new entrants with already constructed facilities would be forced to delay commencement of service until the conclusion of the arbitration and state approval process.⁹ The Commission's overarching concern, stated repeatedly when it promulgated Section 51.715, was to eliminate the delays faced by competitive carriers seeking to provide local exchange service during their negotiations for interconnection agreements with ILECs pursuant to Section 252 of the 1996 Act. The *Interconnection Order* does not limit Section 51.715 to those competitive carriers who were unable to reach agreement on pricing. The Order intended that the rule encompass all competitive carriers which were negotiating initial interconnection agreements with an ILEC and had outstanding pricing and/or other terms and conditions to be resolved.¹⁰

With this clear guidance from the *Interconnection Order*, Sprint and GCI correctly conclude that the Petition must be intended to delay competitive market entry for as long as possible.¹¹ Sprint asks "[w]hy would the Commission establish interim rates for the exchange of traffic (and a process for true-up) if the ILEC had no obligation to permit the exchange of traffic

⁸ GCI Opposition at iii.

⁹ *Interconnection Order*, 11 FCC Rcd at 16029.

¹⁰ *Id.*

¹¹ Sprint Comments at 1; GCI Opposition at 1.

in the first place?”¹² The Petition and the supporting comments fail to answer this fundamental question, but the plain language of Section 51.715 and the *Interconnection Order* does. As Sprint and GCI demonstrate, Section 51.715 requires the ILECs upon request to enter immediately into an interim arrangement for all elements necessary for the transport and termination of traffic.¹³ The restriction that the Petition seeks to impose simply does not exist in the language of the rule.

B. The ITC Request Is Inconsistent With the Plain Language Of The Rule

ITC asserts that Section 51.715 governs interim pricing only for transport and termination of local traffic and that it does not require interim interconnection when non-pricing terms and conditions of interconnection remain subject to negotiation. What ITC describes as mere “clarifications” would require, however, material revisions to the rule. Moreover, the revisions sought by the Petition would permit ILECs to refuse virtually any interim interconnection arrangement sought by a new entrant, as demonstrated by ITC’s conduct in its negotiations with GCI that underpin the Petition. This is not the result that the Commission intended when it adopted Section 51.715, and it should not reverse its long held position to “clarify” the rule.

1. Section 51.715 Requires An Interim Arrangement During The Negotiation Process.

A number of comments in support of the Petition complain that it is unduly burdensome to require small carriers to provide interim interconnection while, at the same time, negotiating a final interconnection agreement. The Alaska Telephone Association argues that “[a]ny interpretation of Section 51.715 that obligates incumbent local exchange carriers to provide interim interconnection before the interconnection process under Section 252 of the

¹² Sprint Comments at 2-3.

¹³ *Id.* at 3; GCI Opposition at 8-13.

Communications Act is complete would cause unnecessary uncertainty and possible undue financial hardship for small companies in the interconnection negotiation process.”¹⁴

The ILEC’s complaints notwithstanding, the plain language of the rule and its logic require them, upon request, to enter into interim arrangements during the negotiation process. Section 51.715, however, can be invoked by a competitive carrier *only* when it is in the process of negotiating an interconnection arrangement with the ILEC. Section 51.715(a)(1) states that “[t]his requirement *shall not apply* when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the incumbent LEC.” Section 51.715(a)(2) states that “a telecommunications carrier may take advantage of such an interim arrangement *only after* it has requested negotiation with the incumbent LEC pursuant to Section 51.301” (emphasis added). These rule limitations ensure that ILECs will not be burdened with unreasonable requests for interim arrangements.

Nor does the rule exempt small or rural ILECs. The Commission specifically considered but rejected such an exemption, noting that certain small carriers could seek relief pursuant to Section 251(f) of the 1996 Act.¹⁵

Accordingly, the Petition would bar application of the rule during the only time period that Section 51.715(a) permits competitive carriers to request interim interconnection – between the time when a new entrant has requested interconnection negotiations and upon completion of

¹⁴ Alaska Telephone Association (“ATA”) Comments at 1. Other proponents of the ITC Petition make similar arguments. Cordova Telephone Cooperative, Inc. (“Cordova”) Comments at 3 (“GCI’s interpretation of the scope of [Section 51.715] is tortured and, if accepted, would impose unreasonable and impractical burdens on a rural ILEC...”); Qwest Corporation (“Qwest”) Comments at 3 (“[T]his [providing interim interconnection] would potentially impose unnecessary cost onto the ILEC and prejudice the ILEC in any Section 252 arbitration”).

¹⁵ *Id.* at 16031.

those negotiations, effectively rendering Section 51.715 meaningless. This result is not, as ITC and its supporters claim, a mere “clarification” of the rule.

2. Section 51.715 Is Not Limited to Interim Pricing and Applies to All Terms and Conditions

Contrary to the underlying assumption of the Petition, Section 51.715 does not create a distinction between pricing and other non-pricing terms and conditions of interconnection in adopting interim arrangements. The rule instead provides that “the incumbent LEC shall provide transport and termination of telecommunications traffic immediately under an interim arrangement.”¹⁶ It does not limit the application of the rule to circumstances where only pricing remains unresolved. It applies to any unresolved issue related to transport and termination, including the non-pricing terms and conditions. As a practical matter, this reading makes both perfect sense and is consistent with precedent. When considering the relationship between telecommunications services and the charges for those services, the United States Supreme Court has stated that “[r]ates, however, do not exist in isolation. They have meaning only when one knows the services to which they are attached.”¹⁷

Yet, the Petition implausibly argues that pricing must be considered separately from non-price terms and conditions and that competitive carriers cannot take advantage of the interim interconnection arrangement permitted by Section 51.715 until all of the non-price terms and conditions have been finalized. The practical effect of the Petition, if granted, would allow ILECs to refuse any interim interconnection arrangement by allowing them to dispute an unlimited number of non-pricing based terms and conditions that must be resolved via the

¹⁶ 47 U.S.C. §51.715(a).

¹⁷ *American Telephone and Telegraph Company v. Central Office Telephone, Inc.*, 524 U.S. 214, 223 (1998).

Section 252 negotiation process. Allowing only one element of interconnection, pricing, to be settled on an interim basis while subjecting all other elements to a lengthy negotiation process is inconsistent with the plain language of the rule and the *Interconnection Order*. As Sprint and GCI point out, this result is at odds with the Commission's goal of eliminating delays that would be created for new entrants if they must wait until the completion of the negotiation and arbitration process before commencing to provide competitive services.

Moreover, the focus of the *Interconnection Order's* discussion of Section 51.715 on pricing issues does not bolster the Petition supporters' arguments. The Commission, at that time, reasonably anticipated that the absence of state approved pricing would be a significant impediment to the interconnection negotiation process.¹⁸ Nothing in the *Interconnection Order* or the 1996 Act, however, limits Section 51.715 to those situations where pricing remains the only unresolved term. The Petition supporters point to no authority that would suggest such a limitation. Cordova's bald claim that the rule "does not require an ILEC to provide interim interconnection when it is in the process of negotiating non-price interconnection terms"¹⁹ is unsupported. Qwest acknowledges that "Section 51.715 is silent on how to handle instances where no agreement exists between the ILEC and the competitive local exchange carrier regarding terms addressing the physical linking of networks..."²⁰ Qwest then concludes, again without citation, that this silence must mean that the rule is not intended to address disputed forms of interconnection, only pricing. None of the proponents' comments cite to anything in Section 51.715, the *Interconnection Order*, or the 1996 Act that would suggest the limitation

¹⁸ *Id.* at 16030-31.

¹⁹ Cordova Comments at 2-3.

²⁰ Qwest Comments at 2.

they now seek. In the absence of any support, the new limitation that the Petition seeks to impose should be rejected.

Approval of the “clarification” sought by ITC and its proponents would create a loophole in Section 51.715 that would render it unenforceable. If the Petition is granted, any ILEC could avoid entering into any interim arrangement simply by creating “disputed” non-price terms and conditions. This “clarification” is at odds with the Commission’s unambiguous purpose to eliminate any barriers that would delay a new entrant’s market entry.

CONCLUSION

For the reasons set forth above, ITC’s Petition should be rejected. The Commission should confirm that Section 51.715 allows for interim interconnection arrangements upon request by a competitive carrier and that the arrangements can encompass pricing and non price terms and conditions.

Respectfully submitted,

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