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

In the Matter of	)	
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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Summary

MetroPCS Communications, Inc. ("MetroPCS") is commenting on the *Notice of Proposed Rulemaking* ("*NPRM*") released October 2, 2007 in this proceeding. While MetroPCS is affected by traffic stimulation activities in the access market and supports the relief requested by AT&T and Qwest and others, MetroPCS, as a wireless carrier, wants to ensure that the traffic pumping that is distorting the local terminating compensation market under the Commission's "calling party's network pays" intercarrier compensation regime is addressed as well.

Traffic pumping is affecting the local terminating compensation market and is becoming a troubling source of regulatory arbitrage. For example, CLECs enjoy a termination monopoly with respect to calls directed to their customers, and, for the most part, the terminating compensation rates that they charge for local service are largely unregulated at the state level. This provides an incentive for them to adopt high terminating compensation rates reflecting their recovery of monopoly rents and then to pursue one-way business plans designed to generate a large volume of inbound traffic (e.g., free chat-lines, conference calling services, audio dating services, etc.). MetroPCS is now involved in a complaint proceeding involving one such carrier and MetroPCS views this proceeding as the tip of the iceberg that foreshadows much greater problems to come if the Commission does not act.

MetroPCS does not believe that the self certification solution advanced for the access market will work for the terminating compensation issue, since terminating reciprocal compensation charges are not set by tariff. Instead, MetroPCS recommends that the Commission address this growing problem by adopting a self-effectuating solution based upon the approach

that was taken in the *ISP Remand Proceeding*.[1] Local exchange carriers ("LECs") generating grossly imbalanced inbound traffic by a rebuttable factor of 3 to 1 or more should be subject to a default terminating compensation rate cap set at $0.0007/minute of use ("MOU") and move to bill-and-keep over time. The Commission also should place a freeze as of the date that the *NPRM* was released on the amount of imbalanced traffic for which a LEC will be compensated. These approaches will remove the financial incentive for carriers to pursue one-way only business plans designed to generate excessive amounts of compensable traffic at high compensation rates while at the same time allow for an orderly transition to a bill and keep regime.

[1] *See Implementation of the Local Competition Provisions in the Telecommunications Act, Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (the "*ISP Remand Proceeding*").

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MetroPCS Communications, Inc. ("MetroPCS"),[2] by its attorneys, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking*, FCC 07-176, released October 2, 2007 (the "*NPRM*")[3] in the above-captioned proceeding. The following is respectfully shown:

I. PRELIMINARY STATEMENT

The Commission, in its *NPRM*, seeks comment on two aspects of the intercarrier compensation market. First, it asks "whether the current rules governing the tariffing of traffic-sensitive access services by local exchange carriers (LECs) are ensuring that rates remain just and reasonable."[4] This portion of the *NPRM* focuses on "allegations that substantial growth in terminating access traffic may be causing carriers' rates to become unjust and unreasonable

[2] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[3] *See In the Matter of Establishing Just and Reasonable Rates for Local Exchanges Carriers*, Notice of Proposed Rule Making, FCC 07-176 (rel. October 2, 2007) ("*NPRM*"), 72 Fed. Reg. 64179 (November 15, 2007).

[4] *See id.* at para. 1.

because the increased demand is increasing carriers' rates of return to levels significantly higher than the maximum allowed rate."[5] Second, the Commission invites parties to "address whether carriers are adopting traffic stimulation strategies with respect to forms of intercarrier compensation other than interstate access charges" -- e.g. the local terminating compensation segment -- as well as to "address what remedies may be available to the Commission to address such activities."[6] In launching this second inquiry, the Commission indicated that it is "interested in understanding the full breadth of possible traffic stimulation activities."[7]

MetroPCS is affected by traffic stimulation practices in the access market, and supports the positions of AT&T, Qwest and others who have been active in encouraging the Commission to address this problem. However, the solutions proposed for the access market do not address the significant and growing problem of traffic stimulation, or traffic pumping, in the context of the Commission's local reciprocal compensation regime. So, MetroPCS is focusing these comments primarily on this second issue.

This proceeding presents the Commission with an opportunity to address in an effective manner across all intercarrier compensation schemes certain traffic pumping and regulatory arbitrage schemes that are now seriously disrupting the access and local terminating compensation intercarrier compensation market. Traffic pumping schemes represent a growing problem in both the local termination and the access segments of the intercarrier compensation market. As it did before when faced with a similar problem involving unidirectional traffic to Internet Service Providers ("ISPs"), the best approach will be for the Commission to address this

[5] *See id.* at para. 1.

[6] *See id.* at para. 38.

[7] *See id.* at para. 38.

problem by adopting self-effectuating solutions that minimize the need for continuing Commission involvement.

Specifically, the Commission should determine that, to the extent traffic is compensable under the Commission's local terminating compensation rules, local exchange carriers generating grossly imbalanced inbound traffic should be subject to a default rate cap. Such a cap would remove the financial incentives for local exchange carriers to engage in regulatory arbitrage and traffic pumping. This default rate cap should be based on the one implemented by the Commission in the *ISP Remand Proceeding*. There, the Commission created a presumption that local traffic that was out of balance by a factor of 3 to 1 or greater would be compensable at an interim rate of $0.0007/minute of use ("MOU"), and move to bill-and-keep over time.[8] The Commission further adopted an approach that the compensable traffic was capped at a level of traffic exchanged at a time prior to the adoption of the order in the *ISP Remand Proceeding*. The Commission instituted this approach to remove the financial incentive from one-way traffic business models which were being designed for the express purpose of generating high volumes of traffic that was compensable under the "calling party's network pays" ("CPNP") local terminating compensation scheme and to allow time for CLECs to wean themselves off the subsidies created by the current calling party pays intercarrier compensation scheme for such traffic. A similar approach here, like in the ISP situation, will correct the market distortions now being caused by one-way traffic pumping business models in the reciprocal compensation marketplace while at the same time preventing rate shock. By imposing this type of self-effectuating solution, the Commission would be able to deter such practices, while removing the need for it to become involved repeatedly in compensation disputes. Further, like the popular

[8] *See Implementation of the Local Competition Provisions in the Telecommunications Act, Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (the "*ISP Remand Proceeding*").

children's game of wack-a-mole, if the Commission only resolves part of the problem by just addressing the issue in access charges, it will reappear in the local termination context and the Commission will have to address it again.

II. TRAFFIC PUMPING IS A DISRUPTIVE FORM OF REGULATORY ARBITRAGE

Traffic pumping has become a cottage industry for incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") in both the local terminating compensation segment and the interexchange access segments of the intercarrier compensation markets. Numerous court complaints have been filed, and the Commission has initiated this proceeding in order to investigate such practices. The core problem is that business models, like the ISP model, that generate high volumes of one-way, incoming traffic allow carriers to engage in a form of regulatory arbitrage and collect excessive terminating compensation without having to suffer the consequences of terminating traffic on the originating carrier's system at the correspondingly high rate. As such, ILECs and CLECs that engage in this practice have no incentive to set the rates at reasonable levels and instead have every incentive (and ability) to set them as high as possible in order to extract the maximum monopoly rent possible.

For example, in the access market, LECs are setting high terminating access rates and then generating high volumes of terminating traffic by targeting chat-line service providers and free conference calling service providers.[9] This is a far reaching problem that is affecting many carriers, and has been the subject of a number of complaints filed in federal court concerning access charges.[10] Indeed, the Commission released this *NPRM* to "focus on allegations that

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[9] *See Establishing Just and Reasonable Rates for Local Exchange Carriers, (WC Docket No. 07-135),* Declaratory Ruling and Order, DA 07-2863 (Wireline Comp. Bur., rel. June 28, 2007).

[10] *See The Farmers' Telephone Company of Riceville, Iowa, Inc. and Superior Telephone Cooperative v. AT&T,* Inc., Docket No. 1:07cv00859, United States District Court for the Southern District of New York, filed February 5, 2007; *AT&T Corp. v. Superior Telephone*

(continued...)

substantial growth in terminating access traffic may be causing carriers' rates to become unjust and unreasonable ... ."[11] And, these traffic pumping activities are being engaged in by both ILECs and CLECs in the access market, as evidenced by the fact that both AT&T and Qwest have filed letters demonstrating the need for the Commission to make sure that abusive traffic pumping activities of CLECs, in addition to the ILECs, are investigated and addressed.

However, traffic pumping abuses are not limited solely to the ILEC and CLEC access charges market, but also are occurring with respect to local termination charges.[12] The harm in this local termination context is the same as in the access charge context: potential windfall profits by carriers with terminating monopolies that violate the core principles that intercarrier compensation charges be fair, reasonable and cost-based. Terminating carriers, who enjoy a terminating monopoly, often are able to set local terminating compensation charges at high per MOU levels and have the incentive to extract exorbitant intercarrier compensation fees by taking deliberate steps to inflate the traffic volume artificially and thereby generate excessive local terminating compensation payments. The most common approach is to seek out customers with high volumes of incoming traffic that will generate large reciprocal compensation payments.

(...continued)

Cooperative, et. al, Docket No. 4:07-CV-00043, "Complaint," United States District Court for the Southern District of Iowa, Central Division, filed January 29, 2007; *AT&T Corp. v. Reasnor Telephone Company, et. al*, Docket No. 4:07-CV-00117, "Complaint," United States District Court for the Southern District of Iowa, Central Division, filed March 22, 2007; *Qwest Communications Corp. v. Superior Telephone Cooperative, et. al*, Docket No. FCU-07-2. "Complaint, Request for Declaratory Relief and Request for Emergency Injunctive Relief," State of Iowa Department of Commerce Utilities Board, filed February 20, 2007**;** *Qwest Communications Corp. v. Superior Telephone Company, et. al.*, Docket No. 4:07-CV-00078, "Complaint and Jury Demand," United States District Court for the Southern District of Iowa, Central Division, filed February 20, 2007; and *Sprint Communications Company L.P., v. Superior Telephone Cooperative, et. al*, Complaint, United States District Court for the Southern District of Iowa, Central Division, filed May 7, 2007.

[11] *NPRM* at para. 1.

[12] Letter from Carl W. Northrop, counsel to MetroPCS Communications, Inc., to Kevin J. Martin, Chairman, FCC, WC Docket No. 07-135 (dated Sept. 7, 2007).

These incentives have caused carriers to adopt one-way traffic business models purposefully designed to generate inbound-only traffic from commercial mobile radio service ("CMRS") carriers and other telecommunications carriers. If the Commission merely addresses the problem in the access context, the problems will increase in the local termination context as the carriers attempt to resurrect the payment stream through terminating compensation payments.

For instance, an ILEC or CLEC may make a deliberate business decision to focus a significant part of its business on servicing free "chat-lines." Chat-line service is a multiple voice bridging service in which two or more incoming callers are connected simultaneously, and in many cases randomly, with each other.[13] Chat-line service is distinguishable from traditional business dial-in conference calling in which a designated group of identifiable callers call a known dial-up conference number at a pre-arranged time for a specific business purpose and one of the callers has made arrangements for payment. In contrast, callers to a chat-line service are patched together on an anonymous basis with other random callers with which they may have no particular connection other than the fact that they happened to call the same chat-line number at the same time.[14] Many calls that are generated turn out to be "local" calls that are subject to local terminating compensation rates rather than interexchange calls that are subject to access rates. Notably, telephone numbers devoted to chat-line service receive large volumes of incoming calls but are not used to place outgoing calls. So, there is a significant traffic imbalance, particularly

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[13] *Total Telecom. Services, Inc. and Atlas Telephone Co., Inc.* v. *AT&T Corp.*, 16 FCC Rcd 5726 at para. 5 (Mar 13, 2001). In some cases, including certain chat-lines served by North County, no fee is charged by the chat-line service provider to the persons who dial in. This is similar to the free conference-calling schemes used by rural ILECs and CLECs to generate excessive access revenues.

[14] MetroPCS submits that this traffic does not even meet the definition of telecommunications under the Act, but rather should be considered information services traffic because telecommunications requires the communication to be between points of a users choosing - - not chosen by a third party.

when a carrier specializes in servicing chat-lines to the exclusion of other traditional telephone services where inbound and outbound calls are likely to be more balanced.

Significantly, in the case of CLECs, the rates imposed for local terminating compensation can be largely unregulated.[15] This along with the fact that such carriers do not generate originating traffic to the same carriers which would dampen the incentive to charge high rates creates a powerful financial incentive for CLECs to set terminating compensation rates at artificially high levels, and to pursue business plans purposefully designed to generate high volumes of incoming traffic. This results in the same market distortions identified by the Commission in this proceeding in the access market.

This issue is not hypothetical. For example, MetroPCS is now involved in a complaint proceeding initiated by a CLEC, North County Communications Corp. ("North County"), relating to chat-lines and local terminating compensation.[16] It is not the intention of MetroPCS to litigate the merits of the North County/MetroPCS complaint case in this rulemaking proceeding. However, just as the ongoing litigation cases involving access charges have pointed out an industry-wide traffic pumping problem meriting attention in a rulemaking proceeding, the controversy between North County and MetroPCS raises local terminating compensation issues that deserve to be addressed on a broader scale. Indeed, the facts in the North County proceeding, which are largely uncontested, demonstrates the market distortions that occur in a

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[15] Indeed, many CLECs continue to tariff these charges. Although under the Commission's T-Mobile decision CLECs cannot unilaterally assess terminating compensation charges to CMRS carriers, CLECs may charge ILECs and CLECs these tariffed charges. *See 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).

[16] *North County Communications Corp., Complainant v. MetroPCS California, LLC, Defendant,* File No. EB-06-MD-007. ("North County Proceeding"). Out of an abundance of caution, MetroPCS is serving a copy of these comments on counsel to North County and the Commission in the complaint proceeding so that there can be no claim of surprise and no question can be raised under the *ex parte* rules with regard to this submission.

CPNP intercarrier compensation regime when a CLEC pursues a business plan that generates large volumes of inbound-only traffic with little or no outbound traffic. This is demonstrated by the following undisputed facts in the North County Proceeding:

- North County has stipulated that "[a] significant portion of the traffic flowing from MetroPCS' network to North County's network is terminated by North County to customers that combine multiple incoming calls that happen to arrive in a common time frame, but are otherwise unscheduled by the parties and may result in connecting callers who are unknown to one another." [17] This is because North County primarily provides service to chat-lines.

- North County has admitted that the traffic flow between North County and MetroPCS is "either 100% or nearly 100%" in-bound to North County,[18] meaning that it is terminating large volumes of traffic that are originated by MetroPCS subscribers, but is originating virtually no traffic directed to MetroPCS.

- The number of minutes originated by MetroPCS and terminated by North County has been increasing at an unusual rate.[19]

- For an extended period of time, North County eschewed entering into negotiations with MetroPCS to establish a mutually acceptable reciprocal compensation rate, preferring instead to seek to collect a unilaterally imposed rate of $0.004 per MOU and $0.007 per call set up.[20]

- In May 2006, North County unilaterally increased the rate it seeks to charge MetroPCS for the termination of local reciprocal compensation traffic to $0.0110 per MOU.[21]

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[17] North County Proceeding, "Response to Commission's February 2, 2007 Letter," filed by MetroPCS and North County, February 9, 2007.

[18] *See id*. at 12. This is a direct result of the fact that North County does not advertise and offer traditional landline telephone services to end user customers, but rather specifically caters to chat-line service providers.

[19] *See* North County Proceeding, "Third Declaration of Todd Lesser on Behalf of North County Communications Corp.," filed Sept. 25, 2007.

[20] *See* North County Proceeding, "Third Further Supplemental Joint Statement," at 3, filed by MetroPCS and North County, January 8, 2007.

[21] *See id.* at 2.

- Neither the original wireless local termination rate nor the increased local termination rate that North County seeks to collect from MetroPCS is based upon a cost study.[22] While North County has included these rates in various tariffs filed before the California Public Utility Commission, the North County rates have never been reviewed or approved in any state commission rate proceeding.

- North County's effort to collect unilaterally-imposed terminating compensation rates on carriers in California has generated litigation not only with MetroPCS, but with virtually every carrier in the state of California from which it receives local traffic.[23]

These facts reveal that there is a serious potential for dispute when LECs pursue business plans that are designed to generate high volumes of incoming traffic. Notably, this problem is not limited to chat-lines. Similar problems can arise with free conference calling services, audio dating services, and some calling card services, all of which can be configured in a way that generates largely unidirectional traffic from CMRS and other carriers to the CLECs. When these schemes are coupled with high terminating compensation rates, the result is a disruptive form of regulatory arbitrage that distorts the reciprocal compensation market.

Just as the Commission identified such arbitrage as against the public interest in the ISP context, the Commission needs to take action to preclude traffic pumping in all circumstances where it arises, not just when access charges are implicated. If the Commission does not address this local termination aspect of the problem, carriers engaged in traffic pumping in the access market will be incented to change their focus to use local termination charges as a vehicle for profiting from traffic pumping, and this Commission then will have to deal with the issue all

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[22] *See* North County Proceeding, "Declaration of Dena Bishop to the MetroPCS California, LLC's Amended Answer to North County's Second Amended Complaint, filed October 19, 2006 at para. 35.

[23] *See North County Communications Corp. v. A+ Wireless, Inc DBA Advantage Wireless – CA (OCN 822A) et. al*, Case No. 06-CV-1542, Third Amended Complaint for Declaratory Relief, Quantum Meruit, and Enforcement of Tariff, United States District Court for the Southern District of California, filed March 21, 2007. This case was recently dismissed for jurisdictional reasons, *see North County Communications Corp. v. California Catalog & Technology dba CCT Telecomm, et al,* Case No. 06-CV-1542, Order Granting Motions to Dismiss, November 26, 2007.

over again. This proceeding presents the Commission with the perfect opportunity to deal with the problem <u>before</u> it becomes a more serious crisis.

III. THE COMMISSION SHOULD ADOPT THE SAME SOLUTION IT USED IN THE *ISP REMAND PROCEEDING* TO DEAL WITH THE SIMILAR REGULATORY ARBITRAGE PROBLEM

Since local termination charges are not and should not be tariffed at the federal or state level for local termination compensation paid by CMRS carriers, the self-certification solution proposed by AT&T and others to solve the access charge traffic stimulation problem will not work for the local terminating compensation problem. Rather, the Commission should address traffic pumping schemes relating to local terminating compensation by having carriers automatically earn reduced compensation when the amount of traffic they originate is grossly out of balance with the amount of traffic they terminate. This approach removes the economic incentive for carriers to practice arbitrage through business plans purposefully designed to generate large volumes of incoming-only traffic. Best of all, the solution is self-effectuating which allows the Commission to devote its enforcement resources to other issues. One of the benefits of this solution is that it can be done without requiring any change to the proposed solution for access charges as the Commission has clearly delineated what traffic is subject to each regime.

In the *ISP Remand Proceeding*, the Commission was faced with a similar situation in which CLECs were engaged in regulatory arbitrage. CLECs were targeting ISPs as customers because they generated large volumes of one-way traffic on which the CLEC could collect substantial termination fees.[24] The Commission concluded that anomalous results were occurring in the Commission's normal reciprocal compensation scheme when CLEC's generated in-bound only traffic. As the Commission explained:

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[24] *See ISP Remand Proceeding* at paras 2-8.

> Traditionally, telephone carriers would interconnect with each other to deliver calls to each other's customers. It was generally assumed that traffic back and forth on these interconnect networks would be relatively balanced. Consequently, to compensate interconnecting carriers, mechanisms like reciprocal compensation were employed, whereby the carrier whose customer initiated the call would pay the other carrier the costs of using its network.[25]

The Commission found that the traditional reciprocal compensation system broke down when CLECs began generating “large volumes of traffic that is virtually all one-way.”[26] When traffic between carriers “flows exclusively in one direction” it creates ”an opportunity for regulatory arbitrage” which leads to "uneconomic results.”[27] Specifically, the terminating carrier has an incentive to “seek out customers … with high volumes of incoming traffic that will generate high reciprocal compensation payments.”[28] CLECs may offer these in-bound-only customers ”below cost retail rates subsidized by intercarrier compensation.”[29] This ”undermines the operation of competitive markets.”[30] Thus, the Commission recognized that “the existing intercarrier compensation mechanism for the delivery of this traffic, in which the originating carrier pays … has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets.”[31] When terminating carriers get paid for deliberately unbalanced traffic of this nature, the result is “market distortions” which “disconnect costs from end-user market decisions” and “distorts competition

[25] *Id.* at para. 20.

[26] *Id.* at para. 2

[27] *Id*. at paras. 20-21.

[28] *Id*. at para. 68.

[29] *Id.*

[30] *Id*. at para. 71.

[31] *Id.* at para. 2.

by subsidizing one type of service at the expense of others."[32] The problem is even worse here since the rates the CLECs are attempting to charge are not based on what the CMRS carrier is charging, but rather on an inflated rate sought by the CLEC which is designed to recover the monopoly rent associated with the CLEC's terminating monopoly.

In the *ISP Remand Proceeding*, the Commission addressed the problem by limiting the amount of terminating compensation a CLEC could receive when the traffic was grossly imbalanced, while also giving the carriers an escape mechanism through a rebuttable presumption which would allow those carriers not engaged in terminating compensation arbitrage models an ability to rebut the presumption. Specifically, a bill-and-keep regime was imposed with a transition rate for CLEC compensation capped at $0.0007 per minute of use.[33] In addition, the Commission also imposed a rebuttable traffic cap and limited growth to prevent an increase in the arbitrage. The effect of this remedy was to reduce or eliminate the incentive for carriers to pursue business plans purposely designed to artificially inflate – or pump up – the traffic they terminated. This approach was also self effectuating which removed the need for the Commission or state commissions to be involved in these disputes which at the time the *ISP Remand Proceeding* was undertaken were widespread.[34]

The similarities between the ISP situation and the current traffic pumping problems the Commission is facing are obvious. By providing service to free chat-lines, free conference calling services, and other services which generate high volumes of in-bound only traffic some LECs are "seek[ing] out customers . . . with high volumes of incoming traffic that will generate

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[32] *Id.* at para. 5.

[33] *Id.* at paras. 77-79. The Commission adopted a rebuttable presumption that traffic delivered to a carrier . . . that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic that is subject to the compensation mechanism as set forth in this Order.

[34] Self effecting solutions also minimize the need or desire for carriers to engage in self help, such as trying to reduce traffic to other carriers.

high reciprocal compensation payments."[35] The Commission-established transition rate from the *ISP Remand Proceeding* is the most that any LEC should receive for the termination of such widely imbalanced traffic. Drawing upon the precedent in the *ISP Remand Proceeding,* the Commission should establish a rate of $0.0007/MOU for traffic that exceeds a rebuttable 3:1 ratio[36] of terminating to originating traffic between carriers, and cap the amount of traffic deemed compensable that is over and above the 3 to 1 ratio at the level that existed as of the date of release of the *NPRM* with all traffic in excess of the 3:1 (including a reasonable growth percentage) at bill and keep.

The proposed MetroPCS solution also would allow the Commission to avoid getting bogged down in CLEC/CMRS rate cases. The Commission does not want to open the floodgates to adjudicate each and every CMRS/CLEC rate dispute. Rather, it should adopt the self-effecting default rate solution proposed by MetroPCS which will incent carriers to engage in bilateral negotiations, and disincent carriers to engage in traffic pumping and regulatory arbitrage. The Commission should not put itself in a position where it has to set individualized rates for each and every dispute that comes to its door. Indeed, the Commission repeatedly has applied a hands-off policy to CMRS services, believing that less regulation is better than more in order to promote increased competition. By applying an across the board default rate solution that creates disincentives to pump traffic and engage in regulatory arbitrage, rather than by establishing a case-by-case policy, the Commission will avoid becoming the arbiter of innumerable rate disputes between CMRS providers and CLECs.

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[35] *See ISP Remand Proceeding* at para. 2.

[36] The rebuttable presumption allows the carriers to have certainty regarding the expectations of the Commission regarding traffic flows while at the same allowing the parties an ability to show that the traffic imbalance is not a result of an arbitrage business model, but rather due to other circumstances such as normal calling patterns, contests, etc.

Lastly, the Commission cannot afford to address traffic pumping only in the access charge market. If it does, ILECs and CLECs who have been distorting the access charge regime through traffic stimulation activities will merely reconfigure their model so that it exploits the local reciprocal compensation marketplace. Based upon the successful approach taken in the *ISP Remand Proceeding*, the public interest would best be served by resolving the traffic pumping problem in both the access charge and terminating compensation regimes.

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt a default rate cap of $0.0007/MOU when there is a traffic imbalance of more than 3:1 between carriers in the reciprocal compensation marketplace and move to bill-and-keep over time. The Commission also should place a freeze as of the date that the *NPRM* was released on the amount of imbalanced traffic for which a LEC will be compensated.

Respectfully submitted,

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