

**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
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
_____)	

OPPOSITION OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ hereby respectfully opposes the Motion of Freeconferencecall.com (“Freeconferencecall”) to Consolidate Dockets CC Docket No. 01-92 and WC Docket No. 07-135 (the “Motion”). Consolidation of these dockets is unnecessary and inappropriate as the consolidation will delay relief in WC Docket No. 07-135. The Commission must move swiftly to stop the traffic pumping activities in the reciprocal compensation and access charge market. The following is respectfully shown:

Freeconferencecall argues in its Motion that consolidation of CC Docket No. 01-92 (the “Intercarrier Compensation Docket”)² and WC Docket No. 07-135 (the “Traffic Pumping

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries. All comments and reply comments cited in this Opposition were filed in the Traffic Pumping Docket.

² *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4855 (2005).

Docket”)³ “is appropriate to ensure the Commission does not adopt in one proceeding regulations that are a [sic] cross-purpose with the goals of a related, but separate, proceeding.”⁴ Freeconferencecall notes that the Intercarrier Compensation Docket was opened by the Commission “to harmonize prospectively the requirements for all carriers and to supersede the antiquated regime that was based on arbitrary regulatory classifications . . . and that [t]he establishment of separate dockets . . . detracts from the need for comprehensive reform.”⁵ Freeconferencecall concludes that the issues “identified in WC 07-135 are subsumed in CC 01-92,” and that consolidation of these dockets “would grant the Commission the benefit of making decisions based on a single complete record, rather than separate piecemeal records.”⁶

MetroPCS agrees with Freeconferencecall that the Commission should seek to resolve the issues presented in the Intercarrier Compensation Docket as expeditiously as possible. However, the Intercarrier Compensation Docket encompasses a vast number of complex issues, only a few of which are raised in the Traffic Pumping Docket. Meanwhile, the Intercarrier Compensation Docket has been active since 2001, with the Commission finding it necessary to refresh of the record in 2005⁷ and again as recently as March 2007.⁸ At this point, there has been no indication from the Commission that any comprehensive resolution of the many complex

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 Motion at 2.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

⁷ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685 (2005).

⁸ *Pleading Cycle Extended for Comment on Amendment to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*, Public Notice, DA 07-1337 released March 16, 2007.

issues raised in the Intercarrier Compensation Docket is imminent.⁹ In contrast, in the Traffic Pumping Docket, the petitioners request that the Commission deal with a few discrete, severable issues that would not interrupt the Commission's ultimate determination in the Intercarrier Compensation Docket.¹⁰ The Commission has recognized that it has a responsibility to act in advance of general intercarrier compensation reform when a discrete serious industry problem demands serious attention.¹¹

Traffic pumping activities present a serious industry problem that deserves immediate attention. MetroPCS is concerned that Freeconferencecall's attempt to consolidate these dockets is intended to delay changes to Commission rules that would stop traffic pumping activities or at a minimum tie resolution of the discrete issues raised in the Traffic Pumping Docket to unrelated issues raised in the Intercarrier Compensation Docket. Allowing traffic stimulation arbitrage to continue until comprehensive intercarrier compensation reform can be effected would "only permit illegitimate and unlawful scams to continue . . ." ¹² As Verizon correctly recognized, "it is understandable that parties benefiting from illegitimate traffic pumping schemes would want to delay changes to the rules that enable those schemes for as long as possible. . ." ¹³ Moreover, as Sprint has stated, "[t]he industry cannot afford to wait several years until comprehensive reforms

⁹ *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4855 (2005).

¹⁰ This is similar to the situation faced by the Commission with respect to termination charges for Internet Service Provider traffic and competitive local exchange access traffic. In both of those instances, the Commission adopted interim rules subject to changes that may occur in the Intercarrier Compensation Order. MetroPCS recommends that Commission do the same here.

¹¹ See AT&T Reply Comments at 15.

¹² Verizon Reply Comments at 6.

¹³ *Id.* at 6.

are adopted (much less implemented) to address the traffic pumping problem.”¹⁴ USTA has noted that deferring resolution of these issues “until after comprehensive reform of access is a thinly disguised attempt to preserve this arbitrage opportunity.”¹⁵

The evidence of record indicates that traffic pumping activities are rampant and increasing. AT&T correctly has stated that “there is no real dispute that traffic pumping volumes are both large and increasing. . . and that [t]he comments also show that there is a particularly urgent need to reform the rules to prevent traffic pumping by CLECs.”¹⁶ As noted previously,¹⁷ MetroPCS is affected by traffic pumping practices in the local terminating compensation market and is concerned that litigation will continue to be generated, much as has occurred in the access market, if the FCC fails to address the issue soon. MetroPCS agrees with AT&T that the “Commission can no longer reasonably rely on the existing rules and case-by-case tariff suspensions and complaint proceedings to address this problem.”¹⁸ The record in the Traffic Pumping Docket confirms that the harms from traffic pumping activities are substantial, and could grow out of control without swift Commission action.

The record also shows that, in absence of Commission resolution of the traffic pumping issues, the size of the problem will continue to increase. As AT&T and others have observed, traffic pumping is now shifting to the competitive local exchange carrier (“CLEC”) market as the Commission clamps down on incumbent local exchange carriers who engage in that arbitrage. This evolution is reminiscent of the problem the Commission faced in the past with Internet

¹⁴ Sprint Reply Comments at 7.

¹⁵ USTA Reply Comments at 2.

¹⁶ AT&T Reply Comments at 8, 10.

¹⁷ MetroPCS Comments at 2.

¹⁸ AT&T Reply Comments at 12.

Service Providers (“ISPs”). The problems of intercarrier compensation arbitrage involving ISPs started with just a few carriers who adopted one-way business plans to generate high terminating compensation. But, when others became convinced that the Commission would not act, increasing numbers of CLECs became emboldened to exploit the arbitrage opportunity. This same increasing spiral will occur with the latest rash of traffic stimulation activities if the FCC does not act quickly, which will make it more difficult for the Commission to resolve the problem. If the Commission delays actions, it also may become necessary to adopt complex and unpopular transition rules in order to keep customers from experiencing rate shock. The best way to avoid such a destructive spiral is for the Commission to act expeditiously, which would not likely occur by consolidating this docket with the Intercarrier Compensation Docket.

For the foregoing reasons, the Commission should deny the Freeconferencecall Motion.

Respectfully submitted,

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