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July 28, 2010

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

Yesterday, Elaine Critides of Verizon Wireless and Chris Miller and Tamara Preiss of Verizon met with Marcus Maher, Donald Stockdale, Albert Lewis, John Hunter, Doug Slotten, Lynne Engledow, Jay Atkinson, and Randy Clarke, of the Wireline Competition Bureau, and Jane Jackson and Nese Guendelsberger, of the Wireless Telecommunications Bureau, to discuss the impact of the Commission's decision in *North County Communications*[1] on compensation arrangements between wireless providers and competitive local exchange carriers (CLECs) for intraMTA traffic. Consistent with Verizon's previous filings on this issue,[2] we emphasized that prompt, decisive action from the Commission is necessary to close the potentially large new arbitrage loophole for intraMTA CMRS-originated traffic terminated by CLECs. More specifically, we stressed the following points:

- The FCC's decision in *North County* has created a new traffic pumping target for CLECs. The FCC found that state commissions are the more appropriate forums for rate-setting for intercarrier compensation disputes between CMRS providers and CLECs for intraMTA traffic, without any guidance as to the process to be used to set the rate, a ratemaking methodology, or what rules should guide the state's assessment of the "reasonableness" of the rate. As a result, some CLECs have seized upon the decision as an opportunity to seek exorbitant termination rates for CMRS-originated intraMTA traffic.

- The FCC must act immediately to shut down this arbitrage opportunity. Past experience with arbitrage associated with ISP-bound traffic (which took more

[1] *North County Communications Corp., v. MetroPCS, LLC*, File No. EB-06-MD-007, Order on Review, 24 FCC Rcd 14036 (2009)("*North County*").

[2] *See, e.g.*, Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135 (filed June 28, 2010).

than 10 years to resolve)[3] and later with CLEC terminating access charges demonstrates that this latest matter can – without prompt Commission action – quickly spiral into a billion-dollar headache for the wireless industry and the FCC. The longer the FCC waits to address this issue, the worse it will become. Moreover, this matter presents the same problem as the ISP remand situation – arbitrage that results from a CLEC termination rate that is too high or undefined.

- The FCC has readily available solutions at hand. There is no doubt about the Commission's authority – indeed, its obligation – to act under sections 201, 251, and 332 of the Act, and it can adopt the same remedy that applies to ISP-bound traffic: a default termination of $.0007/minute for intraMTA CMRS–CLEC traffic. This default rate should apply in the absence of commercially-negotiated compensation agreements. This same rate already applies to the majority of intraMTA traffic exchanged between CMRS providers and incumbent LECs because of the "mirroring" rule adopted by the FCC in 2001 as part of the remedy for the ISP-bound traffic problem. In fact, the application of the $.0007 rate to wireless traffic is widely acknowledged, by the FCC and elsewhere, as contributing to the great success of the wireless industry over the past decade. The FCC should not put that achievement at risk.

- The FCC also should include intraMTA wireless traffic within the scope of any traffic pumping relief it might adopt. A declaratory ruling stating that CLEC traffic pumpers forfeit the right to assess intercarrier compensation charges would put an end to the worst abuses. Moreover, in addition to traditional "access" stimulation, the very same terminating minute stimulation practices employed by traffic pumpers (e.g., supposedly "free" chat lines, international calling scams, etc.) stimulate large amounts of mobile-originated minutes, which are terminated on an intraMTA basis.

We also provided staff with an update of state proceedings that have commenced in California, New York, Michigan, Oregon, and Arizona since the *North County* order, and we explained that the administrative burden of fighting with multiple CLECs over intraMTA termination rates in multiple states affects all wireless carriers, large and small.

Finally, we responded to a recent letter filed by Pac-West that accuses Verizon of providing "false information" to the Commission with respect to a complaint that Pac-West brought against four wireless carriers before the California commission.[4] Verizon stands by its earlier statements. First, the *Pac-West Letter* contends that, contrary to Verizon's assertion, Pac-West does not seek to assess tariffed, intrastate access charges on intraMTA wireless traffic.

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[3] In fact, there is still – to this day – the potential that CLECs will seek Supreme Court review of the D.C. Circuit's decision upholding the Commission's most recent *ISP Remand Order*. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic*, 24 FCC Rcd 6475 (2008) ("*ISP Remand Order*"), upheld by *Core Communications, Inc., et al. v. FCC*, 592 F.3d 139 (D.C. Circuit 2010).

[4] *See* Letter from Michael Hazzard, Arent Fox, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92 (filed July 19, 2010)("*Pac-West Letter*").

Instead, Pac-West claims that it seeks compensation at TELRIC rates established by the California commission.[5] In fact, however, Pac-West's state commission complaint attached pages from its California tariff that reflect rates for "local termination" and "switched access charges." Verizon has reviewed those tariffed rates and has been unable to match them to rates set by the California commission in a TELRIC proceeding. Second, Pac-West complains that Verizon Wireless does not "even pay" Pac-West the $.0007 rate that Verizon Wireless suggests is a reasonable CMRS-CLEC intraMTA termination rate.[6] Pac-West, however, is well aware that Verizon Wireless has in fact offered to pay this rate to Pac-West, but Pac-West declined the offer. In short, Verizon Wireless has always negotiated with Pac-West in good faith – notwithstanding Pac-West's spurious allegations in its most recent letter.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

Sincerely,

cc: Marcus Maher
Donald Stockdale
Albert Lewis
John Hunter
Doug Slotten
Lynne Engledow
Jay Atkinson
Randy Clarke
Jane Jackson
Nese Guendelsberger

[5] *Id.* at 2. Pac-West apparently contends that the rates are TELRIC-based transport and termination rates that the California commission set for AT&T.

[6] *Id.*