

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

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MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its reply to the comments filed in response to the *Further Inquiry* (“*Further Inquiry*”) released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceedings.² In reply, the following is respectfully shown:

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 (rel. Aug. 3, 2011) (“*Further Inquiry*”).

I. INTRODUCTION AND SUMMARY

The general consensus among the comments filed in response to the *Further Inquiry* was that the ABC Plan provided a good foundation upon which to build a unified intercarrier compensation regime and to reform universal service, but that certain modifications were still needed in order for the plan to serve the public interest. MetroPCS agrees with numerous commenters that certain aspects of the plan need to be modified before it should be implemented. The specific proposals set forth by MetroPCS will enhance the plan by eliminating arbitrage and fraud from the intercarrier compensation and universal service systems and allow for telecommunications carriers to compete on a more level playing field.

In summary, MetroPCS urges the Commission to (1) act quickly and decisively to eliminate traffic pumping by adopting a 3:1 ratio and a \$0.0007 per minute of use (“MOU”) rate, (2) retain the intraMTA rule for wireless origination and termination, (3) include transit traffic within the ambit of the intercarrier compensation regime and find that such traffic is covered by Section 251(c)(2) of the Act, (4) find that all carriers have an obligation to provide IP-to-IP interconnection for traffic that originates and terminates as switched voice traffic, including CMRS traffic, and (5) eliminate waste, fraud and abuse in the Commission’s Lifeline Program by eliminating the program for wireless services. This docket presents the Commission with a prime opportunity to address a number of diseconomic, anticompetitive practices at one time. It appears that the stars are aligned at this time for the Commission to address the critical issues associated with intercarrier compensation and universal service and MetroPCS urges the Commission to not waste this opportunity to reform intercarrier compensation and universal service by acting promptly to resolve these long-standing issues.

II. TRAFFIC PUMPING IS A GROWING THREAT AND MUST BE ADDRESSED BY THE FCC IMMEDIATELY

MetroPCS supports those commenters that point out the level of harm that traffic pumping can and does inflict on the communications marketplace. Consequentially, MetroPCS strongly urges the FCC to deal with traffic pumping immediately. Traffic pumping is a growing problem for all participants in both the local exchange and interexchange markets. As traffic stimulators start moving from traditional wireline interexchange services to wireless services, the problem is becoming exacerbated, and threatens the viability of business models used by carriers, such as MetroPCS, who offer affordable service on an unlimited paid-in-advance, tax-inclusive, flat-rate basis. This business model is threatened because flat-rate carriers cannot pass excessive termination charges on to their customers as easily as usage-based carriers – who are positioned to meter and bill for services provided. Indeed, traffic pumpers prey on flat-rate carriers and their customers, taking advantage of the customers whose usage of these “free” services increases the overall cost for all customers.

The fact is that traffic pumping has escalated from an industry concern to a significant fraud. What started as a cottage industry of encouraging customers of carriers to call for access-supported services has become something much more sinister, with carriers going to surprising lengths to generate traffic. In the last several years, MetroPCS has seen a dramatic rise in traffic pumping. Initially, traffic pumping was through the use of services, such as chat lines and free conference services, that used access and regional compensation to pay for services delivered to a carrier’s customer. Now, it appears that traffic pumpers have moved to a new stage where they are stimulating usage of their services by surreptitiously purchasing services from carriers and

using their services to stimulate access and regional compensation.³ To hide their activities, they appear to be manipulating Signaling System 7 (SS-7) data, among other things, to mesh their activities. These actions are similar to the autodialing services used a decade ago in the context of 800 services, when 800 services were compensated by the local carrier for all calls placed to 800 numbers. Given the growing sophistication of traffic pumpers, the Commission must take immediate and bold action to stop this counterproductive and destructive activity.

The issue of traffic pumping must be addressed immediately.⁴ T-Mobile notes that in 2010, traffic pumping cost the wireless industry more than \$150 million, and that cost is expected to rise again this year.⁵ The Commission also recognizes the problem noting that arbitrage schemes, such as traffic pumping, “cause[] carriers to devote substantial resources to resolving billing disputes that could be used to invest or innovate.”⁶ CTIA has previously stated “that these traffic pumping schemes have resulted in a large number of proceedings before state commissions, state and federal courts, and before the FCC, including a recent flood of CLEC traffic pumping tariff filings.”⁷ CTIA further notes that “these proceedings impose an additional burden on wireless carriers, drain governmental resources, and create uncertainty regarding

³ For example, a traffic pumper can buy monthly services from a wireless carrier for \$40 - \$60 and generate several times that amount of access revenue a month.

⁴ See e.g., CTIA Comments at 20 – 21; T-Mobile Comments at 26; Level 3 Comments at 15.

⁵ T-Mobile Comments at 26. Indeed, based on MetroPCS’ recent analysis, this number may vastly underestimate the problem.

⁶ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, at ¶ 37 (rel. Feb. 9, 2011) (“NPRM”).

⁷ Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135 (filed Nov. 24, 2010).

treatment of traffic termination.”⁸ Further, to the extent that wireless carriers ultimately have to pay for the access charges, it diverts needed funds away from broadband development.

MetroPCS recommends the Commission immediately adopt a 3:1 ratio and rate cap of \$0.0007/MOU as a necessary deterrent to traffic pumping. MetroPCS also agrees with CTIA that an additional measure would be to eliminate the access disparity between rural and metropolitan ILECs, since this is an industry-wide problem that produces incentives for traffic pumpers to work with rural carriers who may have fraudulent motives.⁹ Traffic pumping is a cancer on the telecommunications industry and the Commission must take immediate and dramatic action to eliminate this growing problem. Without Commission intervention, this cancer will continue to grow and will harm consumers by driving up the cost of service.

III. THE INTRAMTA RULE MUST BE PRESERVED BECAUSE ITS ELIMINATION WOULD SEVERELY DISADVANTAGE CMRS CARRIERS

MetroPCS agrees with the many commenters who support preserving the intraMTA rule.¹⁰ This rule has served the industry well and must remain in place until either wireless carriers are permitted to receive access payments on par with wireline carriers, or alternatively, until all traffic is exchanged on a bill-and-keep basis. Leaving the intraMTA rule in place is extremely important because it has incited wireless carriers to develop systems without regard to LATA boundaries, which has fostered wide-area service to customers and has allowed wireless to become the significant competitor to wireline that it is today. MetroPCS supports CTIA’s belief that the intraMTA rule advances the Commission’s reform goals as it “brings

⁸ *Id.*

⁹ See CTIA Comments at 21 (stating that “the remedies for traffic pumping must address all types of traffic (including intra-MTA wireless traffic subject to the reciprocal compensation regime) and must cover all potential traffic-pumpers and all providers.”).

¹⁰ See T-Mobile Comments at 12; CTIA Comments at 8; NCTA Comments at 7 n.10.

more traffic into the reciprocal compensation regime, which is subject to TELRIC pricing standards and, in many cases, the mirroring rule.”¹¹ CTIA further notes that eliminating the intraMTA rule “would increase inefficiency and opportunities for arbitrage” since “more traffic would be swept within the access charge regime, because MTAs are generally larger than ILEC local calling areas.”¹²

As much as it has aided the wireless industry in the past, the intraMTA rule remains even more important today, for several reasons. First, while CMRS carriers still do not receive terminating access revenue, the intraMTA rule has mitigated this disadvantage to some extent by relieving carriers of the obligation of paying generally higher access charges for intraMTA calls and by permitting the collection of reciprocal compensation for terminating such intraMTA calls. By eliminating this rule, CMRS carriers may suddenly find themselves subject to access payments on traffic in certain service areas without any corresponding ability to offset such charges with receipt of access payments, thus placing them at a competitive disadvantage. Second, an industry shift to paying access charges for intraMTA traffic would subject wireless carriers to considerable costs without any corresponding benefits.

As T-Mobile suggests, this rule should be expanded further to intraREAG traffic as a substitute for the competitive disadvantages suffered by CMRS carriers due to not receiving access.¹³ As T-Mobile correctly notes, “MTAs were the basis for the original rule because they were the largest CMRS license areas granted at the time.”¹⁴ However, recently “the Commission

¹¹ CTIA Comments at 8.

¹² *Id.*

¹³ *See* T-Mobile Comments at 12 (stating that since the “Commission uses REAGs as wireless license areas, it should broaden the scope of the intraMTA rule to an ‘intraREAG’ rule.”).

¹⁴ T-Mobile Comments at 12.

has offered wireless licenses covering REAGs, which are much larger than MTAs.”¹⁵ An expansion of this rule would appropriately reflect the evolution of the wireless industry with respect to wireless license areas.

IV. TRANSIT TRAFFIC AND TRANSPORT SERVICES SHOULD BE INCLUDED IN INTERCARRIER COMPENSATION REFORM

MetroPCS agrees with those commenters who argue that transit traffic must be deemed to be subject to Section 251(c)(2) and must be provided on a TELRIC cost basis.¹⁶ Transit must be deemed interconnection subject to Section 251(c)(2) because considerable amounts of traffic still are transported through indirect interconnection, and if transit traffic is not found to be subject to 251(c)(2) and the corresponding TELRIC cost model, the costs for transit will skyrocket. As Cox Communications correctly explains, “Section 251(c)(2) requires transit to be made available at cost-based rates as a form of interconnection. . . . [and] consequently, requiring transit to be made available at cost-based rates is necessary to ensure that competitive LECs can obtain interconnection with other carriers on reasonable terms and to prevent incumbent LECs from exploiting their market power.”¹⁷ This is not an unusual position. A recent Connecticut court case concluded that transit traffic is a form of interconnection and subject to Section 251(c)(2) of the Act, by finding that “interconnection under section 251(c) includes the duties to provide indirect interconnection and to provide transit service” because “[t]ransit service. . . is the carrying of traffic between two CLECs. It does not include the final connection with the end-

¹⁵ *Id.*

¹⁶ *See* Cox Comments at 14.

¹⁷ Cox Comments at 14 – 15.

user.”¹⁸ Further, as NCTA stresses, it must be clear that incumbent LECs will be required to provide transit and transport services at reasonable, cost-based rates.¹⁹ Without the back-stop of cost-based rates at TELRIC, MetroPCS and other competitive providers will be forced to pay unreasonably high charges for these services which in turn drives up costs for consumers.²⁰

In addition to transit traffic, transport services should also be included in intercarrier compensation reform. The ABC Plan includes tandem switching services in the transition to unified terminating rates and both COMPTTEL and NCTA note that these services are part of transport services, thus encompassing transport services in the transition. COMPTTEL concludes that since Section 251(b)(5) applies to both the transport and termination of traffic, then any intercarrier compensation reform must include transport elements.²¹ NCTA also supports including transport service in the intercarrier compensation transition since eliminating regulation of these services “would force competitive providers to pay unreasonably high charges for these services or make expensive changes in physical interconnection arrangements.”²²

¹⁸ *The Southern New England Telephone Company d/b/a Connecticut v. Perlermino et al.*, 3L09-CV-1787 (WWE) Memorandum of Decision, 8, 12 (D. Conn. May 2011); *See also* MetroPCS Comments at 21 – 22.

¹⁹ NCTA Comments at 20.

²⁰ Indeed, the ILECs have already tried to raise the rates for transit traffic arguing that since the Commission has not directly found that transit was a form of interconnection, such services were to be provided at “market” rates which are multiples of existing rates. These same ILECs have refused to include transit in interconnection agreements in an effort to avoid their obligations under Section 251(c). The Commission must make a clear determination that transit traffic is a form of interconnection and governed by Section 251(c).

²¹ COMPTTEL Comments at 14 – 20.

²² NCTA Comments at 20.

Sprint Nextel believes that “ILECs undoubtedly will take the position that if competitive carriers do not make additional transport payments or agree to other unfavorable terms and conditions, they will simply make the competitive carrier continue to deliver all of its traffic to all of the ILECs’ tandem and end office locations.”²³ MetroPCS agrees with Sprint Nextel and further supports its assertion that “[t]he Commission should not allow these POI locations to be locked in.”²⁴ Carriers such as MetroPCS should not be forced to pay more for transport due to the establishment of a uniform rate as such a result further harms competitive behavior.

V. CMRS IP TRAFFIC SHOULD BE SUBJECT TO SECTION 251 OF THE COMMUNICATIONS ACT

In addition, in the context of intercarrier compensation as a whole, the Commission should be mindful that all telecommunications traffic is included with the new regime. Thus, in accordance with MetroPCS’ recently filed comments in response to the Petition for Declaratory Ruling filed by TW Telecom Inc., the Commission should clarify that all traffic that originates and terminates as switched voice traffic, including Commercial Mobile Radio Service (“CMRS”) IP traffic, is governed by Section 251(c) of the Communications Act of 1934, as amended (the “Act”).²⁵ CMRS traffic that originates or terminates on the public switched telephone network (“PSTN”) has already been recognized by the Commission to be a telecommunications and telecommunications services.²⁶ Despite the fact that the traffic may be exchanged in a different

²³ Sprint Nextel Comments at 16.

²⁴ *Id.*

²⁵ Reply Comments of MetroPCS Communications, Inc., WC Docket No. 11-119 (filed Aug. 30, 2011) (“MetroPCS TW Reply Comments”).

²⁶ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 15989 ¶ 993 (1996) (“*LEC-CMRS Interconnection Order*”) (stating that CMRS “carriers meet the

protocol, such as “IP-in-the-middle” (e.g., at an interconnection point) rather than time division multiplexes (“TDM”), precedent has been established that the traffic still remains classified as a telecommunications service.²⁷ The *IP-in-the-Middle Order* found that telecommunications services where “IP-in-the-middle” is used remain telecommunications service when used between interconnected points. While the *IP-in-the-Middle Order* dealt with a single carrier, that analysis is no different when separate carriers make up the two ends of the interconnected call. Regardless of whether one or both carriers are involved in using IP to route customers’ calls, “[e]nd-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through [each carrier’s] traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by [each carrier].”²⁸ This type of IP interconnection has no impact on the Commission’s jurisdiction over the underlying traffic, and ultimately, the format in which the traffic is exchanged among interconnected carriers has no impact on what traffic (or on the character of that traffic) is exchanged. Accordingly, no meaningful changes to existing Commission policy or precedent are required, and the Commission can move forward with such a clarification confident in its legal authority to do so.

The addition, the Commission also has another sound basis for such a clarification. The definition of CMRS encompasses any “mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be

definition of ‘telecommunications carriers’ because they are providers of telecommunications services as defined in the 1996 Act. . . .”).

²⁷ *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) (“*IP-in-the-Middle Order*”); see MetroPCS TW Reply Comments at 7 – 10.

²⁸ *IP-in-the-Middle Order* at ¶ 12.

effectively available to a substantial portion of the public . . .”²⁹ In turn “interconnected service” is defined as that service that “is interconnected with the public switched telephone network . . .”³⁰ Accordingly, Section 332, (which defines CMRS) does not make a distinction between traffic which is interconnected using TDM or IP – the operative distinction is whether it is interconnected with the PSTN. Since having the traffic exchanged via IP interconnection would not change the character of the traffic (*e.g.*, it is still a “mobile service” and still an “interconnected service” because it would be interconnected with the PSTN), it would remain telecommunications traffic. CMRS providers have also been previously classified as telecommunications carriers by the FCC, which are subject to Section 251.³¹ The Act defines a ‘telecommunications carrier’ as “any provider of telecommunications services,” and it therefore follows that CMRS carriers provide telecommunications services.³² The FCC has gone one step further and clarified this determination by stating that CMRS carriers “are providers of telecommunications services as defined in the 1996 Act and are thus entitled to the benefits of section 251(c), which include the right to request interconnection and obtain access to unbundled elements at any technically feasible point in an incumbent. . . .”³³ Therefore, the Commission has multiple bases to clarify that, at least with respect to CMRS traffic destined for (or coming from) the PSTN, telecommunications carriers have an obligation to interconnect using IP under Section 251(c)(2).

²⁹ 47 U.S.C. §332(d)(1); *See also* 47 C.F.R. §20.3.

³⁰ 47 U.S.C. §332(d)(2).

³¹ *LEC-CMRS Interconnection Order* at ¶ 33.

³² 47 U.S.C. §153 (44).

³³ *LEC-CMRS Interconnection Order* at ¶ 993.

The above precedent dictates that the Commission should clarify that CMRS IP traffic should be subject to Section 251 of the Act. Section 251(c)(2) states that carriers are obligated to provide reasonable interconnection to the extent technically feasible.³⁴ MetroPCS recommends that the Commission promptly initiate an inquiry to determine the overall ability of carriers to accomplish IP-to-IP interconnection whether through existing facilities or active IP networks. It is highly likely that the responses to this inquiry will demonstrate that many of these carriers already use IP interconnection in their networks. IP networks are becoming increasingly popular to route traffic, as this enables carriers to capture the efficiency benefits, redundancy and resiliency associated with such networks, and to offer new and innovative services that were not possible with legacy networks. This is the future of telecommunications, and the FCC should use this reform as an opportunity to further enhance the nation's communications network and prepare it for upcoming technological advancements. Therefore, if the Commission finds that carriers are generally able to accomplish IP interconnections, then the Commission should make the determination that CMRS IP traffic is subject to Section 251(c)(2).³⁵ Since the Commission "believe[s], as a general policy matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used," it should follow this framework and easily make the determination that CMRS IP traffic is also subject to Section 251 of the Act.³⁶

³⁴ See 47 U.S.C. §251(c)(2).

³⁵ The Commission may make this clarification under the existing regulatory framework, at least for voice traffic that originates and terminates as telecommunications services. However, at this stage, the Commission need not address the issue of whether VoIP is a telecommunications service in the context of this proceeding.

³⁶ *LEC-CMRS Interconnection Order* at ¶ 993.

VI. THE COMMISSION SHOULD ELIMINATE THE WIRELESS SECTION OF THE LIFELINE PROGRAM DUE TO THE LEVEL OF WASTE, FRAUD AND ABUSE THAT IS PRESENT

There is a significant amount of waste, fraud and abuse that exists within the current Universal Service Fund (“USF”) program. The Commission recognized this in its recent *NPRM*, and sought ways to detect and deter such waste, fraud and abuse.³⁷ In order to detect waste, fraud and abuse, the Commission has implemented the use of audits, as well as other tools that are “consistent with the proposed principles of increased accountability and transparency.”³⁸ However, the FCC must continuously seek more objective and auditable standards to determine whether a provider truly qualifies for access to USF support or intercarrier compensation recovery.

A prime example of abuse, and the difficulty that exists in detecting such fraud, rests within the wireless lifeline services program. This program has proven difficult for the FCC to police, and detecting and deterring the fraud associated with it has proven difficult as well. At a minimum, the Commission needs to eliminate the waste, fraud and abuse that exists within the program, and, if necessary to eliminate such fraud, eliminate the program entirely for wireless services. For example, customers of wireless lifeline services may be signing up for multiple phones with the result that duplicate discounts are being applied to the same household, which violates both the rules and the spirit of the program. Since customers are only required to certify annually, consumers can receive subsidized or, in many cases, free services for a year before they may have to relinquish such services and carriers are receiving payments for services to which they are not entitled. This is a growing problem and undermines the efficacy of the

³⁷ *NPRM* at ¶ 474.

³⁸ *Id.* at ¶ 587.

program. This will be further exacerbated if the Commission allows more than one connection per household, as fraud would be even easier and, thus harder to detect. It is not clear that reform is possible without considerable effort. If the Commission is unable or unwilling to put forth such effort to eliminate such fraud, it must shut down the program. There are significant numbers of options for low-income individuals and the government does not need to subsidize another option. Further, MetroPCS believes that competition – not subsidies – are the right answer in providing all consumers affordable service and if the Commission wants all consumers to have services, it must make additional spectrum and other resources available to allow all carriers to meet consumers needs.

MetroPCS applauds the FCC's previous efforts to eliminate duplicate entries and other forms of fraud and abuse. Given the amount of fraud that may exist in the system, any solution may be subject to the proverbial game of "whack-a-mole." Since carriers are not incented to stop fraud and multiple carriers may extend service to the same customer, fraud is particularly difficult to detect and deter. However rather than spending Commission time and resources on pointless attempts to clean up this program, the Commission should consider eliminating the program for wireless entirely due to the prevalent role that fraud, waste and abuse play in the program. If the Commission is unwilling to go this far, it should seriously consider changing the program from a service provider paid model to one where any payment is made directly to the consumer. This would allow consumers to decide how and on what telecommunications service to spend the payment. This model would eliminate considerable involvement by the government in certifying carriers, would spur competition for such customers by all carriers (any of which could design numerous programs to market to such customers), and would allow the government

to root out fraud, waste and abuse much more easily since it would know who it is paying the subsidy to.

VII. CONCLUSION

It is clear that there is a significant and growing level of fraud and abuse that exists within both the intercarrier compensation and USF programs. The main goal of the Commission should be to promptly reduce the opportunities for regulatory arbitrage and therefore place competing service providers on a level playing field. Adopting MetroPCS' traffic proposal immediately would be a strong first step to reducing the growing traffic pumping problem. Moreover, the Commission must preserve the intraMTA rule for CMRS traffic, as its elimination would place CMRS carriers at a severe disadvantage to their competitors, as well as graft an anticompetitive framework on a functioning market. In addition, the Commission must deem transit services to be interconnection services covered by Section 251(c)(2) and find that transport services as covered by 251(b)(5) as well. Without such clarification, the rates for these services are sure to rise significantly, once again creating an anticompetitive environment. MetroPCS also calls on the Commission to use its authority and established framework to clarify that CMRS IP traffic is subject to Section 251(c)(2), as this will encourage more carriers to offer new and innovative services. Finally, MetroPCS urges the Commission to consider eliminating the wireless aspect of the Lifeline program under the USF due to the incredulous amounts of waste, fraud and abuse present, as well as the substantial resources that the FCC wastes in attempting to detect such fraud. In all, the Commission faces a prime opportunity to eliminate a number of diseconomic, anticompetitive practices in one fell swoop. The Commission must not fall victim to "paralysis by analysis" and not let the "perfect be the enemy of the good." Lastly, MetroPCS supports the Commission's overall efforts regarding intercarrier compensation and

universal service reform and urges it to act swiftly and decisively to resolve this long-pending proceeding.

Respectfully submitted,

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