

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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 a 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
)	
Universal Service Reform -- Mobility Fund)	WT Docket No. 10-208

T-MOBILE USA, INC.
OPPOSITION TO PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.429(f) of the Commission’s rules,¹ T-Mobile USA, Inc. (“T-Mobile”) opposes certain petitions for reconsideration (“PFRs”) of the Intercarrier Compensation (“ICC”) and Universal Service Fund (“USF”) Reform Order (“Transformation Order”).² If granted, they would undermine long-standing policies, be technically difficult if not impossible to implement, and would upset the carefully calibrated balance of interests that the Commission achieved in the order after exhaustive examination and consideration.

¹ 47 C.F.R. § 1.429(f). Notice of the petitions for reconsideration was published at 77 Fed. Reg. 3635 (Jan. 25, 2012).

² *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161 (Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011).

I. INTRODUCTION AND SUMMARY

The National Exchange Carrier Association (“NECA”) and other incumbent local exchange carrier (“LEC”) representatives jointly filed a PFR seeking to upend long-standing rules and some of the new reforms promulgated in the Transformation Order (“NECA PFR”).³ NECA attempts to launch yet one more assault on the “intraMTA rule” and continues to demand that the scope of the call signaling rules be expanded to allow carriers to assess ICC charges on all traffic, including Commercial Mobile Radio Service (“CMRS”)-LEC traffic, based entirely on the caller’s and called party’s telephone numbers. NECA also requests this expansion of the call signaling rules to apply to voice-over-Internet Protocol (“VoIP”) calls and seeks to weaken the new ICC rules governing interconnected VoIP calls in other ways as well. Because the NECA PFR would upset the careful balance of CMRS and LEC interests created by the Commission by requiring CMRS carriers to pay more in access charges than ordered, the NECA PFR should be denied.

NECA and other LECs also request dozens of modifications to the Transformation Order that would vastly expand Connect America Fund (“CAF”) support and CAF ICC recovery funding received by incumbent LECs. In light of the substantial CAF budget and skyrocketing contribution factor, all such requests should be denied to the extent that they would increase the total established annual CAF support budget.

II. THE COMMISSION SHOULD DENY NECA’S ATTEMPT TO UNDERMINE THE INTRAMTA RULE AND DISTORT THE CALL SIGNALING RULES

NECA’s request to undermine the intraMTA rule by creating a traffic-routing exception to the rule should be denied. In addition, its requests that the Commission’s call signaling rules–

³ NECA PFR at 33-39. All of the petitions for reconsideration or clarification of the Transformation Order will be cited in this abbreviated manner.

which were revised in the Transformation Order⁴—be reinterpreted or revised in various ways to allow terminating carriers to impose higher charges also should be denied.

A. The Commission Should Reject NECA’s Request To Undermine The IntraMTA Rule

Because wireless service areas are federally mandated and do not match state-prescribed LATAs, the Commission adopted the intraMTA rule to establish wireless local service areas for ICC purposes. The intraMTA rule is meant to ensure that wireless customers are not subjected to toll charges for intermodal calls made within their wireless carrier’s local service area. As the Commission correctly points out, the intraMTA rule fully applies irrespective of whether an intraMTA call is routed through another carrier or carriers.⁵ Thus, NECA’s request that a terminating LEC be permitted to impose access charges on an intraMTA CMRS call routed through an interexchange carrier is nothing more than an attempt to expand the base of traffic on which LECs can collect access charges and, as such, should be denied.

Contrary to NECA’s argument that a terminating LEC often has no way of determining whether a call is CMRS-originated, provision of Calling Party Number (“CPN”) or SS7 Charge Number (“CN”) information, as required by the Transformation Order, provides “information helpful in identifying carriers sending terminating traffic.”⁶ Thus, with CPN or CN data, as well as industry billing information typically provided by tandem service providers, terminating carriers should have sufficient data to determine the identity of the originating carrier, even for calls routed through multiple carriers.⁷

⁴ Transformation Order at ¶¶ 710-35.

⁵ *See id.* at ¶ 1007 n.2132.

⁶ *Id.* at ¶ 725.

⁷ *Id.*

Moreover, as the Commission noted, it addressed the CMRS jurisdictional issue when it first promulgated the intraMTA rule in 1996.⁸ NECA has demonstrated no changed circumstances to justify reconsideration of the Commission’s approach at this late date. In fact, Sprint recently confirmed that carriers typically resolve jurisdictional issues affecting CMRS-LEC traffic using negotiated factors, and “[t]he factor approach has been widely used, for many years [since 1996], in many situations where an originating or terminating party cannot determine the jurisdiction of a call.”⁹ Available CPN/CN data thus allows LECs to identify the originating carriers, and traffic jurisdiction can be determined using agreed-upon factors. Furthermore, many LECs already have negotiated reciprocal compensation arrangements with CMRS carriers for intraMTA traffic regardless of how calls are routed. For these reasons, NECA’s request to weaken the intraMTA rule based on issues that have long been solved should be denied.¹⁰

⁸ *Id.* at ¶ 1007 n.2132. At that time, it stated that

[I]t is not necessary for incumbent LECs and CMRS providers to be able to ascertain geographic locations when determining the rating for any particular call at the moment the call is connected. We conclude that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 16017 ¶ 1044 (1996) (subsequent history omitted) (cited in Transformation Order at ¶ 1007 n.2132).

⁹ Letter from Norina T. Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (Dec. 23, 2011).

¹⁰ It is particularly improper for NECA to seek to expand the category of interMTA traffic after the Commission agreed to delay the default bill-and-keep (“B&K”) methodology governing intraMTA CMRS-LEC traffic (*see Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, FCC 11-189, at ¶ 8 (Dec. 23, 2011)), especially since this action followed ILEC requests for such a delay based on the same jurisdictional identification issues that NECA raises now. *See, e.g.*, Letter from Thomas Jones, Counsel for MIEAC, to Marlene H. Dortch,

B. The Call Signaling Rules Should Not Be Reinterpreted To Authorize The Use Of The Caller's And Calling Party's Telephone Numbers As The Sole Basis For Determining The Jurisdiction Of A Call

NECA requests that, absent mutual agreement or sufficient information regarding the origination point of a call, terminating carriers be permitted to use the originating and terminating telephone numbers to determine jurisdiction for ICC billing purposes. NECA improperly characterizes this proposed use of telephone numbers as “clarify[ing]” “industry practice”¹¹ and says industry “relies on the ‘telephone numbers rule’ to determine the jurisdiction of calls for billing purposes.”¹² But, in fact, there is no such industry practice, at least in the case of mobile wireless calls. The “telephone numbers rule” apparently is a term coined by NECA to refer to the “Calling Party Telephone Number rules” – *i.e.*, the call signaling rules.¹³ As NECA concedes, however, those rules, under the Commission’s reading, do not authorize carriers to use the caller’s and called party’s numbers “as the basis for jurisdictionalizing calls.”¹⁴ In fact, as noted above, the standard practice is to use negotiated factors.

Mobile devices, by their nature, are used outside the area identified by their assigned telephone numbers. For this reason, incumbent LECs and wireless carriers exchanging traffic negotiate factors to allocate wireless calls between the reciprocal compensation and access charge regimes based on their mutual agreement as to the actual breakdown between intraMTA

Secretary, FCC, WC Docket No. 10-90 (Dec. 20, 2011); Letter from Michael R. Romano, Sr. Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2-3 (Dec. 9, 2011).

¹¹ NECA PFR at 38.

¹² *Id.*

¹³ See 47 C.F.R. § 64.604(b)(5) (referring to “the Calling Party Telephone Number rules set forth at 47 CFR 1600 *et seq.*”).

¹⁴ Transformation Order at ¶ 711 n.1212.

and interMTA traffic.¹⁵ NECA's request would override long-standing industry practice by allowing LECs to impose terminating ICC charges solely on the basis of the caller's and called party's telephone numbers and, therefore, should be denied.

C. The Commission Also Should Reject NECA's Related Attempts To Misuse The Call Signaling Rules

The Commission has found that imposing financial responsibility on upstream carriers for traffic lacking adequate billing information would unfairly burden tandem and other intermediate providers.¹⁶ Nonetheless, NECA requests that the Commission reconsider its decision not to permit a terminating carrier to impose financial responsibility for traffic delivered without adequate billing information on the immediately preceding carrier in the call chain.¹⁷ In the alternative, NECA asks the Commission to require that, because of the difficulty of identifying the carrier that failed to provide the necessary call signaling information, providers pass along carrier identification information in call signaling data.¹⁸ NECA fails to provide a solution for the technical "complexities related to such a requirement" recognized by the Commission¹⁹ or any justification for requiring industry to develop a capability that will become

¹⁵ See "Phantom Traffic" Solutions at 12-14 (Oct. 31, 2006), attached to Letter from Donna Epps, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Nov. 1, 2006).. See also Comments of T-Mobile USA, Inc. at 13, *Connect America Fund*, WC Docket No. 10-90 (Apr. 1, 2011). In fact, the ILECs' own "Missoula Plan" conceded that the parties' telephone numbers "do not always reliably identify end users' actual locations," especially in the case of wireless calls. See The Missoula Plan for Intercarrier Compensation Reform § II.D at 25 (July 18, 2006), attached to Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, *et al.*, to the Hon. Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (July 24, 2006).

¹⁶ Transformation Order at ¶ 732.

¹⁷ NECA PFR at 38-39.

¹⁸ *Id.* at 39.

¹⁹ See Transformation Order at ¶ 727 & n.1259.

obsolete in a few years. Moreover, as discussed above, provision of CPN or CN information would provide “information helpful in identifying carriers sending terminating traffic,” and, combined with billing information typically provided to terminating carriers, should provide terminating carriers sufficient data to assess appropriate ICC charges.²⁰ The new call signaling rules already address this issue, and the Commission should therefore reject NECA’s request.

D. VoIP Traffic Should Not Be Subjected To NECA’s Telephone Number Jurisdictional Approach

NECA also seeks to have its telephone number jurisdictional approach applied to VoIP calls. It requests that state-defined local calling areas, in combination with the originating and terminating telephone numbers, be used to determine whether VoIP calls should be considered local or toll under the new rules applicable to traffic exchanged between VoIP providers and the public switched telephone network (“PSTN”). With the rapidly declining relevance of telephone numbers to the locations of the calling and called parties, the use of telephone numbers to determine jurisdiction is as nonsensical in the case of VoIP-PSTN calls as it is in the case of mobile wireless calls.²¹ Of particular significance to T-Mobile, NECA’s approach would make even less sense for traffic exchanged between a VoIP provider and a mobile wireless carrier. NECA provides no justification for ignoring the precedent precluding exclusive reliance on telephone numbers to determine VoIP call jurisdiction.²² As is the case with other types of traffic, the use of jurisdictional factors is a better approach.

²⁰ *Id.* at ¶ 725.

²¹ *See Vonage Holdings Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22408 ¶ 9 (2004) (telephone number used to identify Vonage user’s IP address “is not necessarily tied to the user’s physical location”, which can be “anywhere in the world”).

²² *See id.* NECA’s footnoted casual request that the Commission reverse itself and “confirm” that, prior to the Transformation Order, VoIP traffic had always been subject to the same ICC obligations as any other switched voice traffic also should be rejected. NECA PFR at 35 n.89.

III. REQUESTS TO RECONSIDER USF-RELATED RULES SHOULD BE DENIED TO THE EXTENT THAT THEY WOULD INCREASE THE TOTAL CAF BUDGET

NECA and several other LECs request reconsideration of a wide variety of rules affecting the CAF support or CAF recovery funding that incumbent LECs will receive or eligibility for such support under the USF-related rules promulgated by the Transformation Order.²³ Most do not indicate whether the relief they seek would increase the overall CAF budget of \$4.5 billion or merely reallocate the total fixed level of support among the potential recipients.

Because the Transformation Order will vastly expand USF support to price cap carriers and reduce support received by competitive eligible telecommunications carriers (“CETCs”), it would be anticompetitive and unreasonable to increase further the total support received by incumbent LECs. The variety of USF-related PFRs and the complexity of the rules at issue make it impossible for T-Mobile to predict whether the grant of any given PFR will, in fact, result in an increase in the total CAF budget. Accordingly, T-Mobile opposes the PFRs requesting relief that would result in an increase in the total annual level of CAF support or CAF recovery support received by all incumbent LECs in the aggregate.²⁴ An even more lopsided

Because VoIP-PSTN calls undergo a net protocol conversion, such traffic constitutes an information service (*see Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, 21956 ¶ 104 (1996) (subsequent history omitted)), precluding imposition of switched access charges, which apply only to the provision of “interstate . . . telecommunications service[.]” 47 C.F.R. § 69.5(b) (emphasis added).

²³ *See, e.g.*, NECA PFR at 2-29; Accipiter PFR; ITTA PFR; USTA PFR at 3-31; Windstream/Frontier PFR at 3-20.

²⁴ *See id.*

redistribution of USF support would upset the fine-tuned balance of interests struck in the Transformation Order, requiring yet another round of reform.²⁵

IV. CONCLUSION

NECA has offered no justification for reversing long-standing ICC-related rules and practices that the Transformation Order specifically left unchanged. Nor have the LECs presented adequate reasons to enlarge the total CAF budget beyond the substantially increased level of support for the ILECs approved in the Transformation Order. The NECA and LEC PFRs should be denied consistent with the above discussion.

Respectfully submitted,

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²⁵ T-Mobile's own petition for reconsideration would not increase the total annual level of legacy CETC support. *See* T-Mobile PFR at 7-10.