

March 19, 2012

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation in *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Connect America Fund*, WC Docket No. 10-90; *High-Cost Universal Service Support*, WC Docket No. 05-337; *A National Broadband Plan for Our Future*, GN Docket No. 09-51.

Dear Ms. Dortch:

On March 15, 2012, the undersigned, on behalf of CTIA; member companies AT&T, represented by Brian Benison; Cricket Communications, represented by Russell Merbeth; Sprint, represented by Norina Moy (in person) and Peter Sywenki (by phone); T-Mobile, represented by Indra Chalk (in person) and Dan Williams (by phone); and Verizon Wireless, represented by Maggie McCready; and Russell Hanser of Wilkinson Barker Knauer, LLP, on behalf of CTIA, met with Rebekah Goodheart, Victoria Goldberg, Travis Litman and John Hunter of the Wireline Competition Bureau and Peter Trachtenberg of the Wireless Telecommunications Bureau. The purpose of the meeting was to discuss recent filings on behalf of rural incumbent local exchange carriers (“RLECs”) seeking to reverse the Commission’s long-standing policy that intraMTA traffic originated by or terminated to a commercial mobile radio service (“CMRS”) provider – however routed – is properly deemed “local” and subject to the reciprocal compensation framework, not the access charge regime.

As CTIA explained at the meeting, the intraMTA rule has been in effect for more than 15 years, and has always governed all intraMTA traffic. Last year’s *CAF Order*¹ properly rebuffed RLEC efforts to repeal this rule in the context of traffic delivered by interexchange carriers (“IXCs”). To the extent the RLECs’ arguments rely on any suggestion that the *CAF Order* created new law, they are simply incorrect.

Moreover, there is no merit to the RLECs’ claim that their purported inability to distinguish between intraMTA and interMTA traffic carried by IXCs warrants subjecting *all* IXC-delivered CMRS traffic to access charges. *First*, as CTIA explained, call detail information that must be transmitted with all calls under the

¹ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at ¶ 994 (rel. Nov. 18, 2011) (“*CAF Order*”).

Commission's new "phantom traffic" rules will provide a terminating RLEC with the identity of the other (non-IXC) provider involved in the call, permitting the RLEC to work with CMRS providers to identify which traffic was intraMTA and which interMTA. Second, as pointed out in both the 1996 *Local Competition Order*² and the *CAF Order*, even if the RLECs are unable to differentiate between intraMTA and interMTA traffic *in real time*, they are still able to comply with the Commission's long-standing rules by developing and applying jurisdictional factors to IXC-delivered CMRS traffic. In the Commission's words, RLECs and CMRS providers may "extrapolat[e] from traffic studies and samples."³ As CTIA explained, RLECs and CMRS providers have been using jurisdictional factors to compute compensation obligations for many years, and there is no reason they cannot continue to do so. Indeed, the shift away from tariffs and toward negotiated interconnection agreements signaled by the *CAF Order* will only *promote* the ability of providers to develop and utilize such factors.

CTIA further explained that a rule applying access charges to all IXC-delivered traffic, whether intraMTA or interMTA, would contravene the Commission's long-standing policy of jurisdictionalization based on a call's geographic end-points. Whether traffic is subject to reciprocal compensation, intrastate access, or interstate access depends solely on whether its geographic origination and termination points are (1) within the same local calling area or (for wireless calls) MTA, (2) in different local calling areas/MTAs but in the same state, or (3) in different states (and, also, in the case of CMRS traffic, different MTAs).⁴ Indeed, as the *CAF Order* makes clear, one of the RLEC parties seeking to impose access charges on intraMTA IXC-delivered traffic itself recently stressed the importance of maintaining this "end-to-end" analysis in applying the intraMTA rule where one or more third parties carries traffic between the originating and terminating carriers.⁵ Yet the RLECs' position here would upend this framework, basing compensation on whether or not a particular intraMTA call was routed through an IXC. This approach would depart from decades of Commission precedent, and create endless opportunities for gaming and abuse.

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16017-18 ¶ 1044 (1996) ("*Local Competition Order*").

³ *Local Competition Order* at ¶ 1044; see also *CAF Order* at ¶ 1007 n. 2132 (same).

⁴ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4835 ¶ 28 (2005); *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413 ¶¶ 17, 24.

⁵ See *CAF Order* ¶ 1006 ("[W]e agree with NECA that the 're-origination' of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS- originated call for purposes of reciprocal compensation").

CTIA also noted during the meeting that several federal courts of appeals have rejected the arguments raised by RLECs here – as the *CAF Order* recognizes.⁶ Faced with the very arguments advanced by RLECs here, the United States Court of Appeals for the 8th Circuit concluded that “calls from a land line to a cell phone placed and received within the same major trading area are local calls, subject to the reciprocal compensation arrangements ordained by ... 47 U.S.C. § 251(b)(5).”⁷ The 10th Circuit likewise held that “[n]othing in the text of [the reciprocal compensation rules] provides support for the ... contention that reciprocal compensation requirements do not apply when traffic is transported by an IXC network.”⁸ Indeed, the day of the meeting reported here, the 9th Circuit added its voice to this chorus, finding that the Public Utility Commission of Oregon and a reviewing federal district court had “erred in determining that the involvement of an IXC altered the parties’ obligation to pay reciprocal compensation for telecommunications traffic that originates and terminates within the same MTA.”⁹

Finally, CTIA observed that the RLECs’ request for reconsideration of the *CAF Order*’s language regarding IXC-delivered intraMTA is procedurally deficient. Under Commission rules, a petition for reconsideration of a rulemaking order “plainly do[es] not warrant consideration by the Commission” if it “[r]el[ies] on arguments that have been fully considered and rejected by the Commission within the same proceeding.”¹⁰ The *CAF Order* considered and rejected all of the arguments raised by parties seeking reconsideration of the intraMTA rule’s application to IXC-delivered calls. Specifically, it addressed the argument that “there is no realistic way” for a terminating LEC to determine whether IXC-delivered traffic is subject to the intraMTA rule (finding that parties may extrapolate from traffic studies and samples to estimate what portion of interexchange traffic is intraMTA)¹¹ and it addressed claims that CMRS providers “[have] made an affirmative choice to route the calls through an IXC”¹² (noting that “many incumbent LECs have already ... extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers” – *i.e.*, irrespective of how the call was routed or who determined its routing).¹³ Thus, these arguments are repetitious, and do not present lawful grounds for reconsideration.

⁶ See *CAF Order* at ¶ 1007 n.2132, citing *Alma Communications Co. v. Missouri Public Service Comm’n*, 490 F.3d 619, 623-34 (8th Cir. 2007); *Atlas Telephone Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256 (10th Cir. 2005).

⁷ *Alma Communications Co.*, 490 F.3d at 627.

⁸ *Atlas*, 400 F.3d at 1264.

⁹ *Western Radio Services Co. v. Qwest Corp.*, No. 10-35820, slip op. at 3120 (9th Cir. rel. Mar. 15, 2012), citing *Alma Communications Co.*, *Atlas*.

¹⁰ 47 C.F.R. § 1.429(l)(3).

¹¹ See *CAF Order* at ¶ 1007 n.2132; *Local Competition Order* at ¶ 1044.

¹² See Letter from Michael R. Romano, Sr. Vice President – Policy, National Telecommunications Cooperative Ass’n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed Dec. 9, 2011).

¹³ *CAF Order* at ¶ 1007 n.2132.

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For the reasons discussed above and during our March 15, 2012 meeting, CTIA respectfully urges the Commission to reaffirm its decision that the intraMTA rule applies to IXC-delivered CMRS traffic.

Sincerely,

/s/ Scott K. Bergmann
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cc (email): Sharon Gillett
Rebekah Goodheart
Victoria Goldberg
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