

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter Of)	
)	
Petition for Declaratory Ruling: Lawfulness of)	CC Docket No. 01-92
Incumbent Local Exchange Carrier Wireless)	
Termination Tariffs)	
)	
Interconnection Between Local Exchange)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio)	
Service Providers)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act of)	
1996)	

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (“JSI”) comes before the Federal Communications Commission (“FCC” or “Commission”) to file comments in response to a request for comments by the Commission on two petitions identified as the T-Mobile Petition and the US LEC Petition.¹ JSI will limit its comments to those issues raised in the T-Mobile Petition.²

JSI is a consulting firm specializing in regulatory and financial services to more than two hundred rate-of-return incumbent local exchange carriers (“ILECs”) throughout the United

¹¹ Federal Communications Commission, Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic, DA 02-2436, September 30, 2002.

² T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners, Petition for Declaratory Ruling, CC Docket Nos. 01-92, 95-185, 96-98, September 6, 2002.

States. JSI also provides consulting services for competitive local exchange carriers that provide competitive local exchange services across the nation. Since the Commission seeks comments on items directly affecting its clients, JSI is an interested party in this proceeding.

As discussed in the Public Notice, the Commission has received a petition from a group of CMRS providers led by T-Mobile (“CMRS Petitioners”). The CMRS Petitioners request that the Commission determine whether wireless termination tariffs filed by ILECs are proper in light of the Telecommunications Act of 1996. Specifically, the CMRS Petitioners seek a declaratory ruling from the Commission that it “reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of telecommunications under the Communications Act [of 1934, as amended].” JSI submits that many statements in the T-Mobile Petition are either inaccurate, misleading or reference pre-Telecommunications Act of 1996 orders that are not applicable in the present circumstance. Consequently, the Commission should reject the CMRS Petitioners’ request for declaratory ruling and reaffirm existing law in implementing rules that the Commission has promulgated for the establishment of compensation arrangements for the transport and termination of telecommunications after the passage of the Telecommunications Act of 1996.

The CMRS Petitioners’ request contains two fundamental errors that JSI will address. First, these carriers confuse and misstate the rules for establishing compensation arrangements. Second, these carriers smear the bright-line established by the Commission regarding reciprocal compensation and access compensation.

I. CMRS Petitioners misstate applicable rules regarding interconnection duties.

A. CMRS providers have the obligation to initiate negotiation with ILECs upon establishing a transit arrangements.

It appears that the CMRS Petitioners fail to recognize their duty to establish compensation arrangements for indirect traffic. The CMRS Petitioners state repeatedly that bill-and-keep for indirect traffic is typical and customary. JSI respectfully disagrees.

When CMRS providers establish a physical interconnection with a RBOC tandem for transit service, these CMRS providers have the duty to establish compensation arrangements for traffic delivered to the RBOC tandem and destined to any ILEC subtending the tandem. It appears that most CMRS providers realize that they would be obligated to pay rural ILECs for traffic subject to reciprocal compensation and indirectly received traffic from a transit carrier. Furthermore, these CMRS providers generally do not notify the terminating rural ILEC that traffic is being sent indirectly through a transit carrier.³ Instead, these CMRS providers assume unilaterally that a bill-and-keep mechanism shall apply for indirect termination – a self-serving assumption that is inconsistent with Commission rules. JSI asserts that these CMRS providers fail in their duty to initiate a process whereby compensation arrangements can be addressed, ultimately, if necessary, in arbitration before a state commission.

³ In many instances, the rural ILEC may not be aware of CMRS traffic delivered on common trunk groups between the rural ILEC and the RBOC. Hence, there would be no opportunity for the rural ILEC to initiate a request for appropriate compensation without the CMRS provider announcing that it is using RBOC transit service to deliver traffic indirectly to the rural ILEC. When a transit arrangement is established between the CMRS provider and the RBOC, without notification to the rural ILEC, the CMRS provider appropriately compensates the RBOC for transit service but avoids termination compensation payable to the rural ILEC.

CMRS providers are either ignoring or neglecting their duties to establish compensation for traffic they indirectly terminate on ILECs. A review of the Communications Act indicates that the responsibilities of CMRS providers and ILECs are not symmetric with regards to the negotiation and arbitration process. The Communications Act establishes in Section 252 the procedures for Negotiation, Arbitration, and Approval of Agreements. (47 U.S.C. § 252) Subpart (a)(1) of this section establishes that voluntary negotiations can be achieved only after an ILEC receives a request for interconnection, services, or network elements pursuant to Section 251. Under this subpart, an ILEC cannot initiate voluntary negotiations with a CMRS provider because CMRS providers are not ILECs. A similar requirement is specified in the process establishing compensation arrangements via compulsory arbitration. The process of compulsory arbitration is outlined in subpart (b) of Section 252. Subpart (b)(1) establishes that arbitration is only available when an “ILEC receives a request for negotiation.” If the CMRS provider never requests negotiation, the ILEC will never be able to invoke the Section 252 negotiation/arbitration timeline that would establish compensation under Commission pricing rules. CMRS providers assume that compensation should be bill-and-keep and thereby avoid proper establishment of reciprocal compensation for indirect traffic with ILECs.⁴

B. Wireless termination tariffs provide an incentive for CMRS providers to fulfill their duty.

⁴ The Commission recognizes this asymmetry in its rules. For example, 47 CFR § 51.703(a) states that “Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.” (Emphasis Supplied) The Commission has concluded that CMRS providers are not LECs. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, FCC 96-325, 11 FCC Rcd 15499 (1996). (Local Competition Order) at ¶ 1004. “We are not persuaded by those arguing that CMRS providers

As CMRS traffic subject to reciprocal compensation is disproportionately mobile-to-wireline, there is no incentive for CMRS providers to seek to establish compensation arrangements with ILECs who receive terminating traffic indirectly. Instead, the CMRS Petitioners assume that bill-and-keep is applicable and avoid payment of terminating compensation. JSI submits that this unilateral assumption made by the CMRS providers is not consistent with the Communications Act or the Commission's rules.

Bill-and-keep is an option for a state commission under 47 CFR §§ 51.705 and 51.713. The Commission rules do not provide, as stated by the CMRS Petitioners, that bill-and-keep is ordinary and customary for indirect traffic prior to review before a state commission. Rather, the Commission's rules enable state commissions to choose a bill-and-keep regime if the traffic is roughly balanced between the two carriers.

The facts before the Commission in this proceeding will demonstrate that prior to the implementation of wireless termination tariffs, CMRS providers delivered traffic indirectly to rural ILECS located in Missouri using an RBOC tandem. These CMRS providers did not request negotiation with ILECs to establish a reciprocal compensation mechanism. However, since the establishment of the wireless termination tariff, ILECs have established multiple interconnection agreements with CMRS providers. This experience suggests that prior to the filing of a wireless termination tariff, CMRS providers had no financial incentive to establish compensation agreements with ILECs – and ILECs could not request compulsory arbitration.⁵

should be treated as LECs, and decline at this time to treat CMRS providers as LECs.” Thus, there is no mechanism for the ILEC to request negotiation with CMRS providers that will lead to compulsory arbitration.

⁵ ILEC-CMRS traffic subject to reciprocal compensation is overwhelmingly mobile-to-wireline traffic and therefore CMRS providers would be net-payers to ILECs for termination service.

The wireless termination tariff serves as an effective incentive for CMRS providers to fulfill their duty and establish compensation arrangements with ILECs who receive CMRS traffic indirectly. Without these wireless termination tariffs, CMRS providers would likely have continued to assume incorrectly that bill-and-keep applies thereby avoiding the payment of reciprocal compensation to ILECs. Thus, the wireless termination tariffs serve as an effective backstop for CMRS-ILEC agreements.⁶

It is important to note that the wireless termination tariff objected to by the CMRS Petitioners is automatically superseded by a state commission approved interconnection agreement. Thus, once the CMRS provider meets its obligation by establishing a compensation agreement for indirect traffic, the wireless termination tariff is retired. The wireless termination tariff applies only when the CMRS provider is requiring termination of CMRS traffic that is subject to reciprocal compensation without establishing the compensation arrangement with the terminating ILEC. The wireless termination tariff provides a strong incentive to CMRS providers to request interconnection with rural ILECs and establish a compensation mechanism that is consistent with Commission rules.

C. CMRS Petitioners suggest incorrectly that wireless termination tariffs must be based on forward-looking economic cost.

The CMRS Petitioners request that the Commission declare wireless termination tariffs approved by state commissions as unlawful because, among other things, the rates established in

⁶ Rural ILECs have and will continue to terminate ever-increasing CMRS traffic to their end-user customers. Prior to the wireless termination tariff, the rural ILECs provided this termination service without compensation from the CMRS provider.

the tariff are not based on forward-looking economic cost. JSI believes that the CMRS Providers failed to correctly state the use of forward-looking economic cost in making this claim. The Commission has established forward-looking economic cost as the price/cost methodology for transport and termination if the state commission elects to use forward-looking economic cost pursuant to 47 CFR § 51.705. The CMRS Petitioners fail to recognize that this standard only applies when a state commission is involved in arbitration. (*See* 47 U.S.C. § 252(e)(2)(B)) In resolutions outside of arbitration, different cost standard may apply. (*e.g.*, *See* 47 USC § 252(a)(1)) Since the CMRS Petitioners avoid their duty to establish compensation for traffic indirectly delivered to ILECs and subject to reciprocal compensation, it is entirely appropriate to have an “incentive rate” to motivate CMRS providers to seek negotiation from the ILEC, regardless of size.⁷ JSI recommends that the Commission reject the CMRS Petitioner’s request and continue to permit state commissions to establish wireless termination tariffs so that CMRS providers will recognize a proper financial incentive to establish compensation arrangements subject to 47 U.S.C. §§ 251 and 252.

In summary, the first error in the CMRS Petitioner’s request is that it neglects to state the fact that a CMRS provider is the only party that can request negotiation that ultimately could lead to arbitration, which is the congressionally-sanctioned time-certain process for resolving interconnection disputes. Moreover, the petition highlights the errant CMRS provider

⁷ If we are to believe that CMRS traffic subject to reciprocal compensation and indirectly delivered to ILECs is *de minimis*, then the overall impact of the “incentive rate” is likewise *de minimis*. However, the T-Mobile Petition is *prima facie* evidence that leads JSI to the conclusion that the CMRS Petitioners are very concerned about indirect traffic because the volumes are significant. Either the traffic is *de minimis* and this is the reason why CMRS providers have not established compensation arrangements with rural ILECs; or the traffic is significant and CMRS providers have shirked their duty to properly compensate ILECs for termination of indirect CMRS traffic that is subject to reciprocal compensation through use of a transit service. The evidence and the petition in this proceeding suggest the latter is the more likely scenario.

assumption that bill-and-keep shall apply prior to any determination by a state commission. Lastly, the CMRS Petitioners argue for forward-looking economic cost outside the established parameters for this methodology. At bottom, the T-Mobile Petition is fundamentally flawed and JSI recommends that the Commission reject the request for Declaratory Ruling.

II. CMRS Providers ignore the Commission's determinations establishing scope of reciprocal compensation and access compensation.

A matter addressed in the T-Mobile Petition arises in many ILEC-CMRS disputes and warrants a declaration by the Commission. As mentioned above, JSI believes that CMRS providers currently smear the bright-line between traffic that is subject to reciprocal compensation and traffic that is subject to access compensation. JSI recommends that if the Commission responds to the T-Mobile Petition, that it reaffirm its prior determinations that traffic subject to reciprocal compensation and traffic subject to access compensation are mutually exclusive.

The CMRS Petitioners suggest that all intraMTA traffic, regardless of whether an IXC handles a call, is subject to reciprocal compensation. JSI respectfully disagrees with this interpretation of the applicable Commission declarations. In promulgating its implementation rules in the Local Competition Order, the Commission described in detail the application of reciprocal compensation vis-à-vis access compensation. This matter is of such significance that the industry would greatly benefit from a reaffirmation of the Commission's determination.

The Commission established a bright-line between reciprocal compensation and access compensation when it stated:

... We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.⁸

In preserving the legal distinctions between reciprocal compensation and access compensation, the Commission further examined this matter by stating:

... Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service. **By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call.** ... We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section 251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. **We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.**⁹ (Emphasis Supplied)

After the Commission established the bright-line between reciprocal compensation and access compensation, there should be no dispute regarding the mutually exclusive nature of traffic: either traffic is subject to reciprocal compensation or it is subject to access compensation.

⁸ Local Competition Order, ¶ 1033.

⁹ Id., ¶ 1034.

The CMRS Petitioners argue in footnotes 8 and 12 that reciprocal compensation should apply to intra-MTA traffic that is carried by an IXC. Their support for this claim appears based on the following statement by the Commission:

... Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.¹⁰ (Id. ¶ 1036)

The Commission also provided the context for the preceding paragraph when it reiterated its position. The Commission stated:

As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. **We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.**¹¹ (Emphasis Supplied)

Based on the Commission's clarification of its standard, the Commission exercised its discretion to preserve the access compensation regime by carving-out intra-MTA traffic carried by an IXC from the new reciprocal compensation obligations. While most traffic between RBOCs and

¹⁰ Local Competition Order, ¶ 1036.

¹¹ Id., ¶ 1043.

CMRS providers may not be subject to access compensation, much rural ILEC traffic delivered to CMRS providers was and is handled by IXCs and is therefore subject to access compensation. At bottom, the policy adopted by the Commission is that reciprocal compensation applies when local carriers collaborate on a call. When an IXC is involved in a call transmission, this call is exclusively subject to access compensation – including the instance where the call is an intra-MTA call between a rural ILEC and a CMRS provider.

This discussion is on-point for the matter before the Commission because when a CMRS provider uses indirect interconnection it does not normally establish a local NXX presence in the rural ILEC area. In this circumstance, a CMRS provider chooses not to establish a direct connection arrangement with the rural ILEC area. Thus, when a rural ILEC customer calls a CMRS customer who has a non-local phone number, Commission rules require that this call be routed to the originating customer's pre-subscribed IXC. The call is carried by an IXC and access compensation applies. If the CMRS provider chose to establish a local NXX presence and a transport arrangement for traffic, intra-MTA traffic would be subject to reciprocal compensation because the local carriers collaborate on a call in a Commission defined reciprocal compensation area.¹² JSI recommends that the Commission reaffirm the policy that if an IXC carries CMRS-LEC intra-MTA traffic that this traffic is preserved under Section 251(g) of the Act as traffic subject to access compensation.

Respectfully submitted,

¹² A related matter regarding long distance charges to end-user customers has been determined consistent with this position. See *Mountain Communications, Inc., Complainant v. Qwest Communications International, Inc., Defendant*, FCC 02-220, ORDER ON REVIEW, July 23, 2002.

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