Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	
	)	
Petition for Declaratory Ruling of T-Mobile USA, Inc. et al.	)	CC Docket No. 01-92
	)	
Petition of US LEC Corp. for Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic	)	
	)	
	)	

Comments of the ICORE Companies

The consulting firm of ICORE, Inc. (ICORE), on behalf of many rural incumbent local exchange carriers (ILECs),[1] offers these comments in the above-captioned

[1] ILECs participating in this filing include: Adams Telephone Cooperative, Golden, IL; Baraga Telephone Company, Baraga, MI; Barry County Telephone Company, Delton, MI; Bentleyville Communications Corporation, Bentleyville, PA; Benton Cooperative Telephone Company, Rice, MN; Breda Telephone Company, Breda, IA; Climax Telephone Company, Climax, MI; Community Service Telephone Company, Winthrop, ME; Doylestown Telephone Company, Doylestown, OH; Dunbarton Telephone Company, Dunbarton, NH; Ft. Jennings Telephone Company, Ft. Jennings, OH; Granby Telephone & Telegraph Company, Granby, MA; Harmony Telephone Company, Harmony, MN; Hayneville Telephone Company, Hayneville, AL; Heartland Telephone Company of Iowa dba Hickory Tech, Mankato, MN; Hot Springs Telephone Company, Kalispell, MT; Ironton Telephone Company, Coplay, PA; Leaf River Telephone Company, Leaf River, IL; Mankato Citizens Telephone Company dba Hickory Tech, Mankato, MN; McClure Telephone Company, McClure, OH; Mid Communications Inc. dba Hickory Tech, Mankato, MN; Midwest Telephone Company, Parkers Prairie, MN; North English Cooperative Telephone Company, North English, IA; Palmerton Telephone Company, Palmerton, PA; Prairie Grove Telephone Company, Prairie Grove, AR; Rochester Telephone Company, Inc., Rochester, IN; Ronan Telephone Company, Ronan, MT; Southern Montana Telephone Company, Wisdom, MT; Stayton Cooperative Telephone Company, Stayton, OR; Summit Telephone Company, Fairbanks, AK; Swayzee Telephone Company, Swayzee, IN; Sycamore Telephone Company, Sycamore, OH; Van Horne Telephone Company, Van Horne, IA; West Liberty Telephone Company dba Liberty Communications, West Liberty, IA; Wisconsin State Telecommunications Association – Small Company Committee, Madison, WI.

proceeding. ICORE provides a variety of consulting, regulatory and network-related services to a number of small, rural ILECs.

I. INTRODUCTION

The Commission, in Public Notice DA 02-2436, released September 30, 2002, requests comments on two separate petitions for declaratory ruling. The first petition, filed September 6, 2002 by T-Mobile USA, Inc; Western Wireless Corporation; Nextel Communications, Inc; and Nextel Partners, Inc., requests that the Commission "reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements" between local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers.[2]

The second petition was filed by US LEC Corp. on September 18, 2002, and asks the Commission to "issue a ruling reaffirming that LECs are entitled to recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers."[3]

The questions raised, and rulings sought, in each of these petitions are crucial to the continued financial viability of small, rural ILECs. The petitions have many underlying principles in common. The ILECs represented by ICORE offer these

[2]In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Petition for Declaratory Ruling of T-Mobile USA, Inc. et al. filed September 6, 2002. (T-Mobile Petition)

[3]Petition of US LEC Corp. for Declaratory Ruling Regarding LEC Access Charges for CMRS Traffic, filed September 18, 2002. (US LEC Petition)

comments in anticipation of fair and equitable treatment by the Commission on these issues.

II. THE US LEC PETITION

This petition is simple and straightforward. It asks only that the Commission reaffirm "that LECs are entitled to recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers."[4]

The Commission here need only consider two of its most fundamental and long standing principles involving LEC compensation:

1) LECs are entitled to recover their costs incurred in providing facilities or services to other carriers.
2) Those LEC costs incurred in the origination or termination of interexchange calls on behalf of IXCs will be compensated through access charges.

US LEC asks simply that the Commission continue to sanction its long standing access charge regime, whereby IXCs pay LECs for the origination and termination of traffic by the IXC on the LEC network. It requests nothing new, nothing controversial, nothing out of the ordinary. US LEC asks only for a reaffirmation of the Commission's own rules.

For the Commission to do anything less would constitute a major change in its fundamental policies and rules. LECs must continue to be fairly compensated for the use of their facilities and services, and compensated specifically through access charges

[4]US LEC Petition, page ii.

whenever their networks are used for the origination and termination of interexchange calls.

To exempt that portion of IXC traffic which originates or terminates on LEC facilities, but also involves a CMRS customer, would fly in the face of the Commission's rules. The LEC has incurred exactly the same access costs as on interexchange calls where there is no CMRS involvement. The LEC is entitled to bill and collect from the IXC for its access costs, regardless of whether or not a CMRS carrier is involved.[5]

Were the Commission to reach such an arbitrary conclusion – – that IXCs do not have to pay access charges to LECs for the origination or termination of IXC interexchange traffic on the LECs' networks, because that traffic is passed from or to CMRS providers – – then the Commission would have to find the CMRS providers liable for those access charges. Clearly, the LECs' facilities have been used to originate or terminate interexchange calls, and the LECs are entitled to compensation for providing these access services.

If a particular IXC desires to change the Commission's access rules as they pertain to LECs and CMRS providers, it should so petition the Commission. If it wants the CMRS provider to pay all, or a portion, of the appropriate access charges to the LEC, it should petition the Commission.

[5] This is precisely the issue being litigated by nine small rural ILECs in Montana, who have been deprived of carrier access charges for traffic terminated to them by Qwest since 1998. Qwest claims that it is not liable to pay access charges for CMRS traffic it "transits" to the rural ILECs. A recently released appeal decision by the Ninth US Circuit Court of Appeals has remanded the case back to the US District Court, because the Court's original decision did not take the ILEC's state access tariffs into consideration in its decision, and the Appeals Court has ordered it to do so. This recent decision clearly supports the position of US LEC.

Absent such petitions, the initiation of a rulemaking proceeding, and a finding in favor of the IXCs' position, the Commission should compel IXCs to continue paying access charges to the LECs, in accordance with the Commission's existing rules.

III. THE T-MOBILE PETITION

Here, a group of CMRS providers request that the Commission "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 (the Act) and the Commission's LEC-CMRS interconnection policies."[6]

T-Mobile admits that many CMRS providers are currently interconnecting with small, rural ILECs on an indirect basis, often "without an interconnection contract and pursuant to bill and keep, at least for mobile-to-land traffic."[7]

There are at least two serious problems with this admission. First, there is nothing in the Act that allows interconnection without appropriate agreements and compensation. This goes back to the fundamental Commission principle stated above, that LECs are entitled to compensation for the use of their facilities and services by other carriers. Interconnection without such compensation is in clear violation of the Act.

Second, while the CMRS providers would have us believe that bill and keep is an appropriate compensation mechanism when there is no interconnection agreement, they are dead wrong. Bill and keep, under both the Act and the Commission's rules, is

[6] T-Mobile Petition, page ii.

[7] Id, page 3.

prescribed as a compensation mechanism only as the result of arbitration before a state commission, and then only in cases where the traffic is balanced.

Bill and keep cannot be a default compensation mechanism. It is not, in fact, a compensation method at all, but an administrative tool to be used when terminating traffic between carriers is roughly equal. When traffic is not balanced, and bill and keep is the default methodology, one party to the interconnection negotiations – – the party with the lower proportion of terminating traffic – – will have absolutely no incentive to reach any rational compensation agreement.

The "small volume of traffic" referenced by T-Mobile[8] has nothing to do with the issue. While the volume may be considered small by a regional or national CMRS provider, it might be quite significant to a small, rural ILEC serving a few hundred, or a few thousand, access lines. And if that ILEC is terminating two, or five, or ten times as much traffic as the CMRS provider, the ILEC is entitled to compensation, regardless of whether the CMRS provider views the traffic as insignificant.

While there are certainly time, money and other costs involved in negotiating interconnection agreements,[9] the Commission must not permit such factors to preclude the implementation of fair and equitable compensation mechanisms for terminating traffic.

In fact, many CMRS providers, including the petitioners here, have resources that dwarf those of the small, rural ILECs with whom they indirectly interconnect. With bill and keep as their ultimate prize, CMRS providers can either refuse to initiate

[8] T-Mobile Petition, page 4.

[9] Id, page 4.

negotiations,[10] or stonewall, slow roll, and otherwise stymie the negotiation process to exhaust the meager resources of these small ILECs. The Commission cannot allow bill and keep – – essentially, not a compensation mechanism so much as a no compensation mechanism – – to be the CMRS providers' reward for bad faith negotiations or, in many cases, no negotiations at all.

The only real bargaining power that small, indirectly interconnecting ILECs have is to file terminating tariffs. Absent such filings, CMRS providers have no incentive to negotiate, or to negotiate in good faith, fair and equitable interconnection agreements. The automatic default to bill and keep virtually assures that CMRS providers will do nothing, or will manipulate the negotiation process, such that this no compensation scheme will be imposed on the ILECs.

Terminating tariffs are thus simply a vehicle to insure that ILECs are properly compensated for terminating CMRS traffic, rather than being forced to accept a totally noncompensatory bill and keep regime. Such tariffs are unnecessary – – except when prescribed by state commissions – – when CMRS providers and interconnecting ILECs negotiate in good faith, resulting in mutually acceptable interconnection agreements.

The Commission should be aware of what is happening in certain states on this issue, so that it may make an informed judgment. As it turns out, the T-Mobile Petition contains a number of half truths, misstatements and omissions which make a good story, but not necessarily an accurate one, with regard to state commission action.

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[10] An ILEC is not allowed to initiate Local Interconnection negotiations under the Act.

In Iowa, for instance, bill and keep has not been ordered as a permanent solution for indirect interconnection.[11] The ICORE companies understanding is that bill and keep is simply a temporary arrangement pending the conclusion of negotiations to develop the appropriate rates to apply to this traffic. In Montana, the Public Service Commission has ruled that small rural ILECs, subject to the § 251(f)(1)(A) Rural Exemption, are exempted from being forced into an arbitration proceeding to resolve local interconnection disputes because of that rural exemption; the Montana PSC has actually ordered a rural ILEC to file a tariff to govern reciprocal compensation with CMRS providers as a consequence of that decision.

In Missouri, the situation is also not exactly as presented by T-Mobile.[12] In the Show Me state, CMRS providers systematically refused to even show up for interconnection negotiations. As stated above, they had no incentive to do so. Only after the tariff was in place did the CMRS providers initiate negotiations with the indirectly interconnecting ILECs. Again, terminating tariffs proved to be the only way to bring the CMRS providers to the bargaining table.

Regardless of what has, or has not, transpired in the various states, however, the Commission must not allow the CMRS providers to have complete control of indirect interconnection compensation with the ILECs. With bill and keep as the default for non-negotiation or bad faith negotiation, CMRS providers have total control.

Likewise, if they are permitted to define for both sides – – for them as well as for the small, rural ILECs – – the significance or insignificance of traffic volumes, they control the process. The same is true if they are allowed to decide when negotiations are

[11] T-Mobile Petition, page 4.
[12] T-Mobile Petition, pages 5, 6.

too costly or time consuming or inconvenient, making – – in their eyes – – an interconnection agreement unnecessary.

In light of the CMRS providers' behavior to date, the Commission should not summarily deny the availability of terminating tariffs to the ILECs. In many cases, such tariffs are the only effective counter measures to the substantial clout of large regional or national CMRS providers.

States should continue to have the latitude to prescribe, or approve, terminating tariffs where interconnection agreements or contracts have not been established, because the rural ILEC is exempt from a duty to negotiate under § 251(f)(1)(A) of the Act, CMRS providers are the cause of a failed negotiation process, or in any other circumstances where bill and keep arrangements have been involuntarily and inequitably imposed on interconnecting ILECs. Without the protection afforded by terminating tariffs, small, rural ILECs will be at the mercy of CMRS providers and their favored bill and keep schemes.

Respectfully submitted,
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