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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

Verizon Wireless (VAW) LLC, et al., Plaintiff, vs. Bob Sahr, et al., Defendants and Intervenors.	Civil Number 04-3014 **AFFIDAVIT OF PHILIP R. SCHENKENBERG**

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

1. My name is Philip R. Schenkenberg. I am a shareholder at the law firm of Briggs and Morgan, P.A.. I am an attorney for Verizon Wireless in the above matter. I make this affidavit in support of Verizon Wireless' Motion for Summary Judgment.

2. Attached as Exhibit PS-1 are cited portions of the following order of the Federal Communications Commission ("FCC"): *In re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 86 F.C.C.2d 469 (1981).

3. Attached as Exhibit PS-2 are cited portions of the following FCC order: *In re An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, 89 F.C.C.2d 58 (1982).

4. Attached as Exhibit PS-3 are cited portions of the following FCC order: *In the Matter of Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, CC Docket No. 96-98, 11 F.C.C.R. 15499, FCC 96-325, First Report and Order (1996) ("*First Report & Order*").

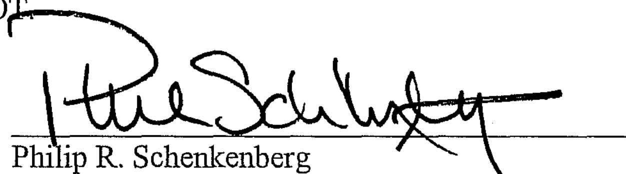
5. Attached as Exhibit PS-4 is a copy of the following FCC order: *In the Matter of Developing a United Intercarrier Compensation Regime*, CC Docket 01-92, FCC 05-42, Declaratory Ruling and Report and Order (2005) ("*T-Mobile Order*").

6. Attached as Exhibit PS-5 are relevant portions of the following order of the Pennsylvania Public Utilities Commission: *Petition of Cellco Partnership d/b/a Verizon Wireless*, Pennsylvania Public Util. Comm'n Docket No. P-00021995 et al., Opinion and Order (Jan. 13, 2005).

7. Attached as Exhibit PS-6 are relevant portions of the following order of the Oklahoma Corporation Commission: *In the Matter of Southwestern Bell Wireless L.L.C.*, Oklahoma Corp. Comm'n Cause No. PUD 200200149 et al., Interlocutory Order (Aug. 1, 2002).

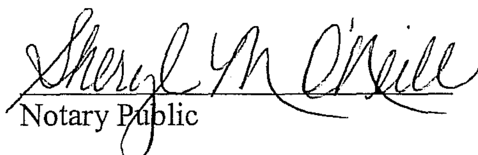
8. Attached as Exhibit PS-7 are portions of Intervenors' discovery responses that are cited in Verizon Wireless' Statement of Facts.

FURTHER AFFIANT SAYETH NOT.



Philip R. Schenkenberg

Subscribed and sworn to before me
this 11th day of November, 2005.



Notary Public

1836915v1

AFFIDAVIT OF SERVICE BY MAIL

STATE OF MINNESOTA)
) ss. Court File No. 04-3014
COUNTY OF HENNEPIN)

Sheryl M. O'Neill, being first duly sworn, deposes and states that on the 15th day of November, 2005, she served the attached AFFIDAVIT OF PHILIP R. SCHENKENBERG upon:

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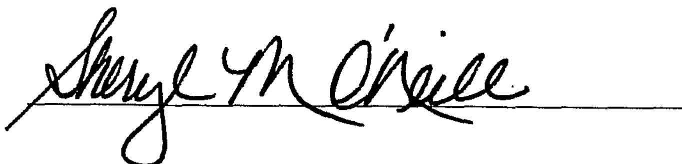
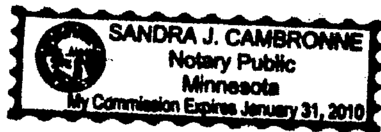
(which is the last known address of said attorney) by depositing a true and correct copy thereof in the United States mail, postage prepaid.



Subscribed and sworn to before me
this 15th day of November, 2005.

Notary Public



*1 Cellular Communications System

Mobile Radio Service, Cellular

Rules, Amendment of

Parts 2 and 22 of rules amended to provide licensing and operation of cellular communications systems. Commission believes it has established a framework to meet the public's needs for mobile communications for the foreseeable future with minimum regulation. CC 79-318

FCC 81-161

In the Matter of
An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems

CC Docket No. 79-318

REPORT AND ORDER

(PROCEEDING TERMINATED)

(Adopted: April 9, 1981; Released: May 4, 1981)
BY THE COMMISSION: CHAIRMAN FERRIS NOT PARTICIPATING; COMMISSIONER FOGARTY CONCURRING IN PART AND ISSUING A STATEMENT IN WHICH COMMISSIONER QUELLO JOINS; COMMISSIONER JONES DISSENTING IN PART AND ISSUING A STATEMENT

I. Introduction

1. On January 18, 1980, the Commission released its Notice of Inquiry and Notice of Proposed Rulemaking (Notice) in CC Docket No. 79-318, Cellular Communications Systems, 78 FCC 2d 984, 45 Fed. Reg. 2859 (1980). The Notice was framed broadly and solicited comments from all parties on central policy questions that needed to be resolved before cellular service could be instituted on a broad scale. [FN1] We have considered the views of 48 formal participants as well as thousands of informal commenters in the present proceeding. Before instituting this rulemaking, the Commission allowed for the construction of developmental systems to test cellular technology, and we have examined the results of these tests. The Commission has reviewed the proposed technical standards developed by the Electronic Industries Association (EIA). We find that we now have a sufficient record to amend our Rules to provide for the authorization of cellular communication systems on a commercial basis.

II. Background

2. The Commission is required by Section 303 of the Communications Act, as amended, 47 U.S.C. § 303, to, among other things, 'classify radio stations,' prescribe the nature of the service to be rendered by each class of licensed stations, and to 'assign bands of frequencies to the various classes of stations.' In keeping with this statutory obligation, the Commission, prior to 1949, made

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EXHIBIT PS-1

coordinate the use of channels with adjacent or nearby cellular systems.

78. There will be other areas in which applicants can be compared in ways that are relevant to the public interests goals of the cellular service, but they will generally be less significant than these two criteria. The adequacy of base station and switching facilities and related maintenance proposals may be an issue in comparative proceedings in some cases, but we do not expect this to be a significant issue in general. Personnel and practices will be significant to the extent that they affect an applicant's ability to implement its proposal. The rates, charges, classifications, and regulations of applicants will also be considered a basis for comparison as well as the public need indicated by subscriber surveys. In view of the competitive nature of the mobile equipment market, and the fact that this area is to be deregulated, however, we will not compare cellular proposals on the basis of subscriber equipment or its maintenance.

2. Federal-State Jurisdiction

79. Throughout the cellular proceeding an essential objective has been for cellular service to be designed to achieve nationwide compatibility. In this regard, we expressly stated that a cellular subscriber traveling outside of his or her local service area should be able to communicate over a cellular system in another city. Nationwide compatibility is also likely to increase the number of manufacturers providing the cellular equipment. This price and product competition should benefit the consumer through lower equipment costs and greater equipment selection. Because state and local regulation might conflict with and thereby frustrate our federal policy of introducing cellular service in a competitive environment without significant delay, the Notice asked whether there may be a need to assert federal primacy over the regulation of cellular services.

***24** 80. Federal courts even before passage of the Communications Act in 1934 had held that the Federal government already fully and exclusively occupied the filed of radio licensing and regulation. [FN72] However, Congress, in the Communications Act of 1934, as amended, explicitly granted to this Commission sole authority to license radio facilities. Specifically, Section 301 of the Act provides that '[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license on that behalf granted under the provisions of the Act.' 47 U.S.C. § 301. In enacting such legislation Congress has determined that overall management of the radio spectrum and the licensing of radio facilities are areas within the exclusive jurisdiction of the Federal government. NARUC v. FCC, 525 F. 2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976).

81. The Communications Act also provides, in Title II, a framework for the economic regulation of common carriers. Sections 2(b) and 221(b) reserve to the states jurisdiction with respect to charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate or local exchange communications service by wire or radio 47 U.S.C. Section 152(b) and 221(b). [FN73] However, both of these sections are expressly subject to our authority under Section 301, which gives this Commission sole jurisdiction over radio licensing. In Docket No. 18262, in comparing the scope of Sections 2(b) and 221(b) with that of Section 301, we concluded that the 'licensing' or 'franchising' functions are not among those reserved to the states even with respect to common carriers subject to Sections 2(b) and 221(b). 51 FCC 2d 945, 974. By virtue of the Communications Act the FCC may fully exercise its authority to license or certify how many and which carriers will operate cellular systems. [FN74]

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82. In accordance with our authority discussed above, we are asserting federal primacy over the areas of technical standards and competitive market structure for cellular service. Our licensing scheme requires assurance that the 40 MHz of radio spectrum allocated for cellular service is used effectively and efficiently. The technical standards set forth in this Report and Order are the minimum standards necessary to achieve the desired goals and any state licensing requirements adding to or conflicting with them could frustrate federal policy. Similarly, any state franchising regulations requiring demonstration of a general public need for cellular service could adversely affect our frequency allocation scheme or delay the rapid implementation of cellular service, both of which are central elements of the federal design for cellular operations.

83. At this time, however, we are not exercising all of the authority we have to assert federal primacy. The states can continue their complementary role regarding certification of carriers to provide mobile or cellular service. A dynamic state certification program should provide considerable assistance in achieving the objectives of this cellular proceeding. Specifically, such state action could help assure that the most qualified applicants become cellular licensees if it is made expeditiously so that it can be reflected in the FCC's radio licensing proceeding. However, applicants will not be required to secure prior state certification before filing an application for a construction permit with the FCC. See Regulatory Policies and Procedures (Docket 20870), 69 FCC 2d 398 (1978), recon. denied, 80 FCC 2d 294. It is conceivable that a state could delay implementation of cellular service or frustrate the competitive market. structure established in this proceeding by refusing to find more than one cellular applicant in any geographic area qualified to provide service. We do not expect this to be the case. However, in individual cases, the Commission has demonstrated that it can act expeditiously to avoid frustration of federal policy. See e.g., Heritage Village Church, FCC 81-184, 46 Fed. Reg. 19319 (March 30, 1981).

***25** 3. Technical Standards

84. In our Notice we identified three purposes to be served by technical standards for cellular systems: (1) definition of cellular mobile radio for purposes of qualifying for cellular mobile radio operating licenses; (2) assurance of compatible operation of equipment on both local and national levels; and (3) maintenance of signal quality and other quality aspects of system performance. We intended to adopt only the minimum standards necessary to accomplish these purposes. We listed a number of cellular system design concepts based on those underlying the developmental program established in Docket No. 18262 and we requested comment on whether changes to these design concepts were necessary. [FN75] While we recognized that 40 kHz bandwidth would be consistent with our present requirement, we concluded that cellular operations would be accommodated within 30 kHz channel spacing by careful geographic distribution of channel assignments, the result of which would be greater spectrum efficiency. 78 FCC 2d at 1004.

85. The commenters generally support our position in the Notice that we adopt the minimum technical standards necessary to accomplish our goals for cellular service. However, they express varying views regarding basic technical standards for cellular systems. For example, ARTS, Motorola, the Electronic Industries Association, Ubon, NECA, [FN76] and E.F. Johnson are proponents of systems that utilize 30 kHz channels, while Millicom, Peters, [FN77] and SIRSA prefer 25 kHz channel spacing. Similarly, different signaling formats are preferred by various commenters.

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***1** Cellular Communications Systems

Domestic Public Land Mobile Radio Service

Mobile Radio Service, Cellular

Rules, Amendment of

Petitions for Reconsideration of Commission's Order providing rules for licensing and operation of cellular communications systems, granted in part. Part 22 of rules amended accordingly.

--Cellular Communications Systems

CC Docket No. 79-318

FCC 82-99

In the Matter of
An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems

CC Docket No. 79-318

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

(Proceeding Terminated)

Adopted: February 25, 1982; Released: March 3, 1982
BY THE COMMISSION: COMMISSIONERS FOWLER, CHAIRMAN; AND JONES DISSENTING AND ISSUING STATEMENTS; COMMISSIONERS QUELLO, WASHBURN, FOGARTY AND DAWSON ISSUING SEPARATE STATEMENTS; COMMISSIONER RIVERA CONCURRING AND ISSUING A STATEMENT

I. Preliminary Statement

1. We have before us numerous petitions for reconsideration or clarification [FN1] of our Report and Order [FN2] (Order) in the captioned proceeding. Individually the petitions focus on selected aspects of the Order; collectively they challenge virtually all of its major policy determinations. We have carefully reexamined our decision in light of the arguments presented in the petitions and have affirmed our previous decision in most major respects. However, after careful reflection, we have eliminated the separate subsidiary requirement for wireline carriers, except for the American Telephone and Telegraph Company (AT&T), and have further streamlined the comparative hearing process. The issues raised in the petitions are discussed below, generally in the order that they were presented in our previous decision. Although all arguments raised are not specifically discussed in this document, all arguments have been considered in reaching our decision.

II. Discussion

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EXHIBIT PS-2

certification would eliminate the need for any comparative hearing at the federal level.

79. Those parties that urge a total preemption of state certification, on the other hand, argue that statecertification of cellular applicants would create a chilling effect on potential entrants by erecting a barrier to entry and would delay the offering of cellular service by non-wireline carriers due to the time involved in obtaining state certification. In addition, they argue that state certification would not significantly assist the federal selection process because, except where states franchise on an exclusive basis, comparative hearings at the federal level would still be needed. Moreover, it is argued that a state certification requirement is undesirable because it would result in an automatic limitation on entry in those states with exclusive franchising arrangements.

80. The concerns raised on reconsideration warrant that we state with greater specificity the extent to which we are preempting state regulation of cellular systems. We address below three separate aspects of the preemption issue: technical standards, market structure, and state certification.

81. We affirm our preemption over the technical standards for cellular systems. We continue to regard this as being essential to the 'assurance of compatible operation of equipment on both local and national levels.' Order at 505. We have carefully developed the technical requirements essential for efficient spectrum re-use and nationwide compatibility, while providing sufficient flexibility to accommodate new technological innovations. It is imperative that no additional requirements be imposed by the states which could conflict with our standards and frustrate the federal scheme for the provision of nationwide cellular service.

82. We are also preempting the states with respect to the market structure we have established for cellular services. Based on voluminous pleadings, we have made a finding that there is an immediate need for cellular service, that cellular systems require 20 MHz to ensure efficient frequency reuse, and that the public will best be served by providing for up to two cellular systems per market. This is a new service which we desire to make available in all localities, irrespective of what other mobile services are currently offered or able to be offered, in order to achieve nationwide compatibility. More specifically, we have already determined 'need' on a nationwide basis and have preempted the states from denying state certification based on the number of existing carriers in the market or the capacity of existing carriers to handle the demand for mobile services. We are making available a substantial amount of scarce frequency for cellular service, and intend that this frequency be used effectively and efficiently. Any state franchising regulations requiring demonstration of general public need could adversely affect our frequency allocation scheme by allowing a frequency block to go unused or unduly delaying the implementation of cellular service. Order at 505.

***26** 83. Finally, where states wish to examine the qualifications of individual applicants to serve as common carriers, we see no overriding public interest in requiring this certification process to occur prior to an applicant filing with us. Because state certification proceedings can extend well beyond the time in which an applicant must file with us, the practical result of a prior state certification requirement would be to exclude arbitrarily many potential applicants, notwithstanding that they would have qualified for state certification had they had sufficient time. While we recognize that this approach would avoid or limit the filing of mutually exclusive applications in many instances, we are unwilling to exclude newcomers for this reason alone. This is particularly so given our revised procedures for processing mutually exclusive applications which we view as

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adequately meeting our concerns of implementing cellular service on a timely basis.

84. As we stated in our previous Order, at 503-505, Title III of the Communications Act of 1934, as amended, provides us with adequate authority to assert federal primacy to the extent set forth above. In addition, the federal plan for provision of cellular service set forth in our Order, principally the goal of introducing nationwide compatible cellular service without undue delay, and the fact that cellular systems are to be interconnected with the public landline telephone network and capable of providing interstate as well as intrastate communications, provides a further basis for this Commission asserting federal primacy over licensing of cellular facilities. [FN63] Our assertion of federal primacy focuses on entry qualifications and in accordance with Sections 2(b) and 221(b) of the Act, reserves to the states jurisdiction with respect to charges, classifications, practices, services, facilities or regulations for service by licensed carriers. [FN64]

3. Services

85. In discussing the types of services which could be provided over cellular systems, the Order holds that there will be no prohibition on the provision of dispatch service by cellular carriers. [FN65] Our position is consistent with Docket No. 18262 where we concluded that if cellular could, through natural economies, provide lower-priced dispatch services the public should not be denied such a benefit. Second Report and Order, supra, at 761. In addition, we noted that although it is speculative whether cellular systems would be cost competitive with private systems, especially for large users, it is likely that for some users a cellular system might provide dispatch services at comparable quality and price, and that a cellular system would be able to provide dispatch users with the benefit of interconnected service over the public telephone network.

86. Motorola, in its comments in this proceeding and in its petition for reconsideration, is the chief advocate of a prohibition on the offering of dispatch service over cellular systems. Motorola argues that a combined mobile telephone/dispatch service system is less efficient than separate systems. Motorola also contends that the Commission's Order permitting dispatch service failed adequately to consider the anticompetitive impact of allowing AT&T to offer dispatch service and ignored the fact that AT&T is prohibited offering such service by the terms of the 1956 Western Electric Consent Decree. In opposition, AT&T states that the consent decree does not foreclose the offering of dispatch service as part of AT&T's cellular service. It contends that Motorola's arguments reflect its interest in retaining its historically dominant position in the private dispatch market and that Motorola is wrong in its assertion that separate dispatch systems would be more efficient than combined ones.

***27** 87. We are not foreclosing the provision of dispatch service over cellular systems. No information has been provided to cause us to change either the conclusion or the rationale set forth in our Order with respect to this issue. As we concluded in the Order, if cellular systems can provide lower priced dispatch services, we see no reason to deny the public that benefit. In addition, despite Motorola's claims to the contrary, we remain unconvinced that a combined dispatch/mobile telephone system is necessarily less efficient than separate systems. Further, as we understand it, general dispatch operations on a cellular system are no less efficient in frequency utilization than other cellular calls. Even assuming a minor difference in efficiency exists, it has not been demonstrated that any such difference warrants us banning dispatch offerings over cellular systems and denying the public access to the advantages of combined dispatch/mobile

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FCC 96-325

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
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

Adopted: August 1, 1996 Released: August 8, 1996

By the Commission: Chairman Hundt and Commissioners Quello, Ness, and Chong issuing separate statements.

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EXHIBIT PS-3

c. Discussion

(1) Distinction between "Transport and Termination" and Access

1033. We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. 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.

1034. We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. 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.[2474] 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. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which establishes the pricing standards for section 251(b)(5). Section 251(d)(2)(A)(i) provides for "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."[2475] 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.

[2474] In addition, both the caller and the party receiving the call pay a flat-rated interstate access charge -- the end-user common line charge -- to the respective incumbent LEC to whose network each of these parties is connected.

[2475] 47 U.S.C. § 252(d)(2)(A)(i).

1035. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different. This approach is consistent with a recently negotiated interconnection agreement between Ameritech and ICG that restricted reciprocal compensation arrangements to the local traffic area as defined by the state commission.[2476] Continental Cablevision, in an *ex parte* letter, states that many incumbent LECs offer optional expanded local area calling plans, in which customers may pay an additional flat rate charge for calls within a wider area than that deemed as local, but that terminating intrastate access charges typically apply to calls that originate from competing carriers in the same wider area.[2477] Continental Cablevision argues that local transport and termination rates should apply to these calls. We lack sufficient record information to address the issue of expanded local area calling plans; we expect that this issue will be considered, in the first instance, by state commissions. In addition, we expect the states to decide whether section 251(b)(5) reciprocal compensation provisions apply to the exchange of traffic between incumbent LECs that serve adjacent service areas.

1036. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5).[2478] Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA).[2479] Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly,

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[2476] *See* letter from Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky LLP to John Nakahata, Senior Legal Advisor to the Chairman, FCC, July 11, 1996.

[2477] Letter from Brenda L. Fox, Vice President, Federal Relations, Continental Cablevision, to Robert Pepper, Chief, Office of Plans and Policy, FCC, July 22, 1996, attached to Letter from Donna N. Lampert, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to William F. Caton, Acting Secretary, FCC, July 22, 1996.

[2478] *See also infra*, Section XI.A.c.3.

[2479] *See* Rand McNally, Inc., *1992 Commercial Atlas & Marketing Guide* 38-39 (1992).

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.

1037. We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange service areas, including neighboring incumbent LECs that fit within this description. Contrary to the arguments of NYNEX and Pacific Telesis, neither the plain language of the Act nor its legislative history limits this subsection to the transport and termination of telecommunications traffic between new entrants and incumbent LECs. In addition, applying section 251(b)(5) obligations to neighboring incumbent LECs in the same local exchange area is consistent with our decision that all interconnection agreements, including agreements between neighboring LECs, must be submitted to state commissions for approval pursuant to section 252(e).[2480]

1038. Under section 252, neighboring states may establish different rate levels for transport and termination of traffic.[2481] In cases in which territory in multiple states is included in a single local service area, and a local call from one carrier to another crosses state lines, we conclude that the applicable rate for any particular call should be that established by the state in which the call terminates. This provides an administratively convenient rule, and termination of the call typically occurs in the same state where the terminating carrier's end office switch is located and where the cost of terminating the call is incurred.

(2) Distinction between "Transport" and "Termination"

1039. We conclude that transport and termination should be treated as two distinct functions. We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier). Many alternative arrangements exist for the provision of transport between the two networks. These arrangements include: dedicated circuits provided either by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis. Charges for transport subject to section 251(b)(5) should reflect the forward-looking cost of the particular provisioning method.

1040. We define "termination," for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery

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[2480] *See supra*, Section III.D.

[2481] We discuss the methodology states should follow in establishing transport and termination rates *infra*, Section IX.A.3.c.(3).

of that traffic from that switch to the called party's premises. In contrast to transport, for which some alternatives exist, alternatives for termination are not likely to exist in the near term. A carrier or provider typically has no other mechanism for delivering traffic to a called party served by another carrier except by having that called party's carrier terminate the call. In addition, forward-looking costs are calculated differently for the transport of traffic and the termination of traffic, as discussed above in the unbundled elements section.[2482] As such, we conclude that we need to treat transport and termination as separate functions -- each with its own cost. With respect to GST's contention that separate charges for transport and termination of traffic will allow incumbent LECs to "game" the system through network design decisions, we conclude in the interconnection section above that interconnecting carriers may interconnect at any technically feasible point.[2483] We find that this sufficiently limits LECs' ability to disadvantage interconnecting parties through their network design decisions.

(3) CMRS-Related Issues

1041. Section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Although section 252(b)(5) does not explicitly state to whom the LEC's obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers. CMRS providers are telecommunications carriers and, thus, LECs' reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers.

1042. We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

1043. 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.[2484] We reiterate that traffic between an incumbent LEC and a CMRS

[2482] *See infra*, Section XI.A.3.c.(3).

[2483] *See supra*, Section VII.B.2.

[2484] *See* 47 C.F.R. §§ 22.911, 24.202;*see also* PCIA comments in CC Docket No. 95-185 at 21-22; Letter from Leonard J. Kennedy, on behalf of Comcast Cellular Communications, to William Caton, Acting Secretary, FCC, July 25, 1996.

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.[2485] 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.[2486]

1044. CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination rate or access charge.[2487] We recognize that, using current technology, it may be difficult for CMRS providers to determine, in real time, which cell site a mobile customer is connected to, let alone the customer's specific geographic location.[2488] This could complicate the computation of traffic flows and the applicability of transport and termination rates, given that in certain cases, the geographic locations of the calling party and the called party determine whether a particular call should be compensated under transport and termination rates established by one state or another, or under interstate or intrastate access charges. We conclude, however, that it is not necessary for incumbent LECs and CMRS providers to be able to ascertain

[2485] "[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is "roaming" in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge .... Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier[, access] charges is defined by § 69.5(b) of our rules." *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 RR 2d 1275, 1284-85 n.3 (1986). *See also Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) (concluding that there should be no distinction between incumbent LECs' interconnection arrangements with cellular carriers and those with other CMRS providers).

[2486] *See also, supra,* XI.A.2.c.(1).

[2487] In the *LEC-CMRS Interconnection NPRM*, we observed that a significant amount of LEC-CMRS traffic crosses state lines, because CMRS service areas often cross state lines and CMRS customers are mobile. *LEC CMRS Interconnection NPRM* at para. 112.

[2488] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, FCC 96-264 at paras. 8-9 (adopted June 12, 1996, released July 26, 1996).

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. For administrative convenience, the location of the initial cell site when a call begins shall be used as the determinant of the geographic location of the mobile customer. As an alternative, LECs and CMRS providers can use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party.

1045. As discussed above, pursuant to section 251(b)(5) of the Act, all local exchange carriers, including small incumbent LECs and small entities offering competitive local exchange services, have a duty to establish reciprocal compensation arrangements for the transport and termination of local exchange service. CMRS providers, including small entities, and LECs, including small incumbent LECs and small entity competitive LECs, will receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers. We believe that these arrangements should benefit all carriers, including small incumbent LECs and small entities, because it will facilitate competitive entry into new markets while ensuring reasonable compensation for the additional costs incurred in terminating traffic that originates on other carriers' networks. We also recognize that, to implement transport and termination pursuant to section 251(b)(5), carriers, including small incumbent LECs and small entities, may be required to measure the exchange of traffic, but we believe that the cost of such measurement to these carriers is likely to be substantially outweighed by the benefits of these arrangements.[2489]

3. Pricing Methodology

a. Background

1046. In the NPRM, we sought comment on how to interpret section 252(d)(2) of the Act. Specifically, we asked if we should establish a generic pricing methodology or impose a ceiling to guide the states in setting the charge for the transport and termination of traffic. We also asked whether such a generic pricing methodology or ceiling should be established using the same principles we adopt for interconnection and unbundled elements.[2490] Additionally, we sought comment on the use of an interim and transitional pricing mechanism that would address concerns about unequal bargaining power in negotiations.[2491]

[2489] *See* Regulatory Flexibility Act, 5 U.S.C. §§ 601 et seq.

[2490] NPRM at para. 234.

[2491] NPRM at para. 244.

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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	)	
	)	

DECLARATORY RULING AND REPORT AND ORDER

Adopted: February 17, 2005 **Released:** February 24, 2005

By the Commission:

I. INTRODUCTION

1. On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling asking the Commission to reaffirm "that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for the transport and termination of traffic."[1] The petitioners maintain that these tariffs are unlawful because they: (1) bypass the negotiation and arbitration procedures established in sections 251 and 252 of the Act;[2] (2) do not provide for reciprocal compensation to commercial mobile radio service (CMRS) providers;[3] and (3) contain rates that do not comport with the Total Element Long-Run Incremental Cost (TELRIC) pricing methodology as required by the Commission's rules.[4] The Commission incorporated the T-Mobile Petition into this proceeding and sought comment on the issues

[1] *See T-Mobile USA, Inc. et al. Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs*, CC Docket Nos. 01-92, 95-185, 96-98, Petition of T-Mobile, *et al.* at 1 (filed Sept. 6, 2002) (T-Mobile Petition). Specifically, petitioners request that the Commission declare that the incumbent LEC wireless termination tariffs, as well as the refusal to negotiate interconnection agreements, conflict with sections 251 and 252 of the Act and the Commission's rules, and clarify that an incumbent local exchange carrier (LEC) engages in bad faith by unilaterally filing wireless termination tariffs without first negotiating in good faith with CMRS providers. *Id.* at 14.

[2] 47 U.S.C. §§ 251, 252.

[3] 47 C.F.R. §§ 51.701-17.

[4] *See* T-Mobile Petition at 5-6, 9-10. *See also* 47 C.F.R. § 51.705.

EXHIBIT PS-4

raised therein.[5] For the reasons discussed below, we deny the T-Mobile Petition, but amend the Commission's rules on a prospective basis to prohibit the use of tariffs to impose intercarrier compensation obligations with respect to non-access CMRS traffic.[6]

II. BACKGROUND

2. Prior to the 1996 Act, the Commission established rules governing LEC interconnection with CMRS providers.[7] Pursuant to its authority under section 201(a) of the Act, the Commission adopted rules requiring mutual compensation for the exchange of traffic between LECs and CMRS providers.[8] In particular, the rules required the originating carrier, whether LEC or CMRS provider, to pay reasonable compensation to the terminating carrier in connection with traffic that terminates on the latter's network facilities.[9] In a subsequent Notice of Proposed Rulemaking, the Commission explored whether it should retain the current system of negotiated agreements or adopt tariffing requirements.[10] The Commission issued another Notice of Proposed Rulemaking in 1996 to examine further its policies related to interconnection between CMRS providers and LECs, including compensation arrangements.[11] To date, the Commission has not issued a decision directly addressing these issues.

3. In the *Local Competition First Report and Order*, the Commission determined that section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the exchange of intraMTA traffic between LECs and CMRS providers.[12] The Commission stated that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA)[13] is subject to

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[5]*See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002). Comments were filed on October 18, 2002 and replies were filed on November 1, 2002. Comments and replies filed in response to this petition will be identified as "T-Mobile Comments" and "T-Mobile Reply," and are listed in Appendix C.

[6]In this item, the term "non-access traffic" refers to traffic not subject to the interstate or intrastate access charge regimes, including traffic subject to section 251(b)(5) of the Act and ISP-bound traffic.

[7]*See generally Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*) (subsequent history omitted).

[8]*See* 47 C.F.R. § 20.11.

[9]*CMRS Second Report and Order*, 9 FCC Rcd at 1498, para. 232 (adopting 47 C.F.R. § 20.11).

[10]*See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, RM-8012, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5455-57, paras. 113-20 (1994) (*CMRS 1994 Notice*).

[11]*See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket Nos. 95-185, 94-54, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5058-64, paras. 82-95 (1996) (*CMRS 1996 Notice*).

[12]*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 16016, para. 1041 (adopting section 51.703(a) of the Commission's rules) (*Local Competition First Report and Order*) (subsequent history omitted).

[13]The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.[14] The Commission reasoned that, because wireless license territories are federally authorized and vary in size, the largest FCC-authorized wireless license territory, *i.e.*, the MTA, would be the most appropriate local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5).[15] Thus, section 51.701(b)(2) of the Commission's rules defines telecommunications traffic exchanged between a LEC and a CMRS provider that is subject to reciprocal compensation as traffic "that, at the beginning of the call, originates and terminates within the same Major Trading Area."[16]

4. Although section 251(b)(5) and the Commission's reciprocal compensation rules reference an "arrangement" between LECs and other telecommunications carriers, including CMRS providers, they do not explicitly address the type of arrangement necessary to trigger the payment of reciprocal compensation or the applicable compensation regime, if any, when carriers exchange traffic without making prior arrangements with each other.[17] As a result, carrier disputes exist as to whether and how reciprocal compensation payment obligations arise in the absence of an agreement or other arrangement between the originating and terminating carriers.[18]

5. In 2001, the Commission adopted the *Intercarrier Compensation NPRM* in this proceeding, which initiated a comprehensive review of interconnection compensation issues, including interconnection compensation arrangements between LECs and CMRS providers.[19] As the Commission recognized in the *Intercarrier Compensation NPRM*, CMRS providers typically interconnect indirectly with smaller LECs via a Bell Operating Company (BOC) tandem.[20] In this scenario, a CMRS provider delivers the call to a BOC tandem, which in turn delivers the call to the terminating LEC. The indirect nature of the interconnection enables the CMRS provider and LEC to exchange traffic even if there is no interconnection agreement or other compensation arrangement between the parties.[21] In the *Intercarrier Compensation NPRM*, the Commission asked commenters to address the appropriate regulatory framework governing interconnection, including compensation arrangements, between LECs and CMRS providers.[22] Specifically, the Commission requested comment on how interconnection between LECs and

[14] *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036.

[15] *Id.*

[16] 47 C.F.R. § 51.701(b)(2).

[17] 47 U.S.C. § 251(b)(5); 47 C.F.R. § 51.703(a).

[18] *See, e.g.,* T-Mobile Petition at 1 (asking the Commission to find that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements for transport and termination under the Act).

[19] *See generally Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9637-44, paras. 78-96 (2001) (*Intercarrier Compensation NPRM*). Pleadings filed in response to the *Intercarrier Compensation NPRM* are referred to simply as "Comments" and "Reply" respectively, and are listed in Appendix B.

[20] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9643, para. 91 n.148. *See also* Nextel Comments at 10-11; Triton PCS Comments at 13; MSTG Reply at 2. *See also* T-Mobile Petition at 2.

[21] *See* Alliance of Incumbent Rural Independent Telephone and Independent Alliance Reply at 6-7; MITG Reply at 6; MSTG Reply at 7.

[22] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9642, paras. 89-90.

CMRS providers would "work" within the existing regulatory frameworks under sections 251 and 252 and section 332 of the Act.[23]

6. The practice of exchanging traffic in the absence of an interconnection agreement or other compensation arrangement has led to numerous disputes between LECs and CMRS providers as to the applicable intercarrier compensation regime. For instance, many CMRS providers argue that intraMTA traffic routed from a CMRS provider through a BOC tandem to another LEC is subject to the reciprocal compensation regime because it originates and terminates in the same MTA.[24] Some LECs, however, contend that this traffic is more properly subject to access charges because it originates outside the local calling area of the LEC, is being carried by a toll provider, *i.e.*, the BOC, and is routed to the LEC via access facilities.[25] When a LEC seeks payment of access charges from a BOC in these circumstances, the BOC often refuses to pay such charges on the basis that (1) it is merely transiting traffic subject to reciprocal compensation, and (2) the originating carrier is responsible for the reciprocal compensation due.[26]

7. As a result of these disputes, the LECs have sought assistance from state commissions, requesting that they be compensated for terminating this traffic. Some LECs have asked state commissions to require the BOCs to continue paying for termination.[27] For instance, in Tennessee, a number of small LECs filed a petition asking the Tennessee Regulatory Authority to direct BellSouth to

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[23] *Id.* at 9642, para. 89. The Commission discussed the merits and drawbacks of the negotiation process contained in sections 251 and 252 in the context of interconnection with CMRS providers. *Id.* at 9642, para. 89. The Commission also sought comment on how the various interconnection provisions of the Act should be applied to CMRS providers. *See id.* at 9641, para. 86.

[24] *See, e.g.*, ALLTEL Reply at 10; AT&T Wireless Reply at 27; CTIA Reply at 11; Nextel Reply at 2, 8; VoiceStream Reply at 33. Some CMRS providers view the status quo as an implicit bill-and-keep arrangement, because they are also uncompensated for incumbent LEC traffic that they terminate. *See, e.g.,* T-Mobile Petition at 3 & n. 8. Typically, small incumbent LECs route their traffic to CMRS providers via an interexchange carrier (IXC), and assert that the traffic is therefore inter-exchange toll traffic for which the terminating carrier receives access charges from the IXC, rather than reciprocal compensation. The Commission has established, however, that an IXC has no obligation to pay a CMRS provider access charges unless it has a contractual obligation to do so. *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192, 13196, para. 8 (2002), *petitions for review dismissed, AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003). As a consequence, most traffic sent to CMRS providers from small incumbent LECs is terminated without compensation.

[25] *See, e.g.*, MECA Comments at 37.

[26] *See* Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed May 16, 2003) (attaching Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 01-92 at 1-2 (filed May 15, 2003) (stating that LECs are obligated to accept calls from carriers who have chosen to interconnect indirectly through a third party transiting company and must recognize that the compensation due them for local calls from other carriers is the responsibility of the originating carrier) (BellSouth May 16 *Ex Parte* Letter).

[27] *See* Letter from Elaine Critides, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed Apr. 16, 2003) (attaching various state filings and cases addressing this issue) (Verizon Wireless April 16 *Ex Parte* Letter).

maintain all existing settlement arrangements and mechanisms currently in effect.[28] More recently, a LEC in Iowa threatened to block wireless originated traffic routed through a Qwest tandem unless Qwest agreed to pay the LEC tariffed access charges.[29] The state commission in Iowa granted injunctive relief preventing the LEC from blocking the traffic at issue.[30] Although settlements have been reached in some cases,[31] many of these disputes remain unresolved. As a result of these disputes, many LECs have filed wireless termination tariffs with state commissions in an attempt to be compensated for traffic that originates with CMRS providers.[32] Typically, these tariffs apply only in the situation where there is no interconnection agreement or reciprocal compensation arrangement between the parties.[33]

8. On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners jointly filed a petition for declaratory ruling, which the Commission incorporated into this proceeding.[34] The petitioners and other CMRS providers claim that, by filing these tariffs, the incumbent LECs are acting in bad faith by attempting to preempt the negotiation process contemplated by the Act and the Commission's rules.[35] The incumbent LECs respond that, in the absence

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[28] *See* Verizon Wireless April 16 *Ex Parte* Letter (attaching *General Docket Addressing Rural Universal Service*, Docket No. 00-00523, Petition for Emergency Relief and Request for Standstill Order By the Tennessee Rural Independent Coalition, at 1 (Tenn. Reg. Auth. Apr. 3, 2003)). Similar petitions were filed by LECs in Georgia, Mississippi, North Carolina, and Kentucky. *See* Verizon Wireless April 16 *Ex Parte* Letter, at Attach.

[29] *See Qwest Corp. v. East Buchanan Telephone Cooperative*, Docket No. FCU-04-42, Temporary Injunction, at 1-2, 4 (Iowa Dept. of Util. Bd. Aug. 13, 2004).

[30] *See Qwest Corp. v. East Buchanan Telephone Cooperative*, Docket Nos. FCU-04-42 and FCU-04-43, Order Granting Injunctive Relief, at 9 (Iowa Dept. of Util. Bd. Dec. 23, 2004)

[31] *See, e.g., Investigation of Duties and Obligations of Telecommunications Carriers with Respect to the Transport and Termination of CMRS Traffic*, Docket No. P-100, SUB 151, Order Granting Relief From Billing Obligations, at 1 (North Carolina Util. Comm. Dec. 12, 2003) (relieving BellSouth of its billing obligations due to settlements reached between the parties).

[32] *See, e.g.*, MITG Reply at 6; T-Mobile Petition at 4-5. Many state commissions allowed these tariffs to go into effect, while other state commissions initiated investigations into these tariffs seeking further justification of the rates and terms contained therein. *See* Letter from Laura S. Gallagher, Counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 2-3 (filed Dec. 10, 2003). *See also* Letter from Laura S. Gallagher, Counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed Aug. 14, 2003) (attaching an amended *ex parte* with conflicting state decisions considering the lawfulness of wireless termination tariffs filed by CenturyTel).

[33] *See, e.g.*, Letter from Bryan T. McCartney, Counsel for the Missouri Small Telephone Company Group, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 3-4 (filed Aug. 17, 2004) (explaining that the wireless termination tariffs at issue in Missouri apply only in the absence of an agreement and are expressly subordinate to approved agreements under the Act) (MSTG Aug. 17 *Ex Parte* Letter).

[34] T-Mobile Petition at 1.

[35] *See, e.g.*, T-Mobile Petition at 8-9; AT&T Wireless T-Mobile Comments at 4-6; CTIA T-Mobile Comments at 4-5; Cingular Wireless T-Mobile Comments at 3-4; Verizon Wireless T-Mobile Comments at 2-3. *But see* Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 5 (claiming that it is the CMRS providers that have elected to bypass the negotiation process by establishing indirect interconnection with incumbent LECs without any agreement to do so).

of an agreement or other arrangement, wireless termination tariffs are the only mechanism by which they can obtain compensation for terminating this traffic.[36] They claim that they are provided no meaningful opportunity to bargain and no technical ability to stop the flow of this incoming traffic.[37] Further, they emphasize that the establishment of these tariffs in no way precludes CMRS providers from exercising their right to pursue interconnection with them under the Act, and that such tariffs apply only in the absence of an agreement or other arrangement.[38]

III. DISCUSSION

9. In light of existing carrier disputes, we find it necessary to clarify the type of arrangements necessary to trigger payment obligations. Because the existing rules do not explicitly preclude tariffed compensation arrangements, we find that incumbent LECs were not prohibited from filing state termination tariffs and CMRS providers were obligated to accept the terms of applicable state tariffs. Going forward, however, we amend our rules to make clear our preference for contractual arrangements by prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff.[39] In addition, we amend our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.

10. Our finding that tariffed arrangements were permitted under the existing rules is based on the fact that neither the Commission's reciprocal compensation rules, nor the section 20.11 mutual compensation rules adopted prior to the 1996 Act, specify the types of arrangements that trigger a compensation obligation. Because the existing compensation rules are silent as to the type of arrangement necessary to trigger payment obligations, we find that it would not have been unlawful for incumbent LECs to assess transport and termination charges based upon a state tariff.[40] Prior to the 1996

[36]*See, e.g.*, Frontier and Citizens T-Mobile Comments at 7; ICORE T-Mobile Comments at 7; Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments at 3; Minnesota Independent Coalition T-Mobile Comments at 1-2; NTCA T-Mobile Comments at 2-3; Rural Iowa Independent Telephone Association T-Mobile Comments at 6. The incumbent LECs dispute the existence of a *de facto* bill-and-keep arrangement. *See, e.g.*, Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 10-12; Fred Williamson T-Mobile Comments at 2; Frontier and Citizens T-Mobile Comments at 5; Rural Iowa Independent Telephone Association T-Mobile Comments at 3.

[37]*See, e.g.*, Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 12; Frontier and Citizens T-Mobile Comments at 7.

[38]*See, e.g.*, Alliance of Incumbent Rural Independent Telephone Companies T-Mobile Comments at 5-6, 8-9; Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments 4; Minnesota Independent Coalition T-Mobile Comments at 2; MITG T-Mobile Comments at 7-10; MSTG T-Mobile Comments at 2-3, 6. The CMRS providers respond that, once such tariffs are in effect, the incumbent LEC has little incentive to cooperate in good faith negotiations. *See, e.g.*, Cingular Wireless T-Mobile Comments at 6. The incumbent LECs counter with the fact that many CMRS providers reached agreements with LECs after the wireless termination tariffs were filed and argue that these tariffs provide an appropriate incentive to pursue negotiations *See* MSTG Aug. 17 *Ex Parte* Letter at 4.

[39]This new rule applies only to non-access traffic as defined in note 6 above.

[40]Although a tariffed arrangement would not be unlawful *per se* under the current rules, we make no findings regarding specific obligations of any customer of any carrier to pay any tariffed charges. A complaint requesting that we make such findings would not state a cause of action for which the Commission can grant relief. *See Illinois*
(continued....)

Act, the Commission specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers[41] and it acknowledged that the intrastate portions of interconnection arrangements are sometimes filed in state tariffs.[42] Thus, it appears that the Commission was aware of these arrangements and explicitly declined to preempt them at that time.[43]

11. We reject arguments that our prior decisions require a different result. The petitioners state that, in 1987 and 1989, the Commission found that an incumbent LEC engages in bad faith when it files unilaterally a CMRS interconnection tariff, and they argue that the Commission should reaffirm that holding here.[44] We acknowledge that our early decisions addressing CMRS interconnection issues suggest that the Commission intended for these arrangements to be negotiated agreements between the parties and express an expectation that tariffs would be filed only after carriers have negotiated agreements.[45] These decisions, however, pre-date the reciprocal compensation rules adopted by the Commission pursuant to the 1996 Act. To the extent the Commission was concerned about the use of tariffs because there is unequal bargaining power between CMRS providers and LECs, the 1996 Act introduced a mechanism by which CMRS providers may compel LECs to enter into bilateral interconnection arrangements.[46] Thus, we do not find that these early decisions are dispositive as to what

(Continued from previous page)
Bell Tel. Co. v. AT&T, File Nos. E-89-41 through E-89-61, Order, 4 FCC Rcd 5268, 5270, para. 18 ("The complaints do not allege that AT&T, in its role as a carrier, acted or failed to act in contravention of the Communications Act . . . Rather, they allege conditionally that AT&T may have failed to pay the lawful charge for service. Such allegations do not state a cause of action under the complaint procedures and are properly dismissed."), *recon. denied*, 4 FCC Rcd 7759 at 7760, ¶ 4 (1989) ("BOCs may not bring a complaint against AT&T in its capacity as a customer.").

[41] In the *CMRS Second Report and Order*, the Commission preempted state and local regulations governing the kind of interconnection to which CMRS providers are entitled, but it specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers. *See CMRS Second Report and Order*, 9 FCC Rcd at 1498, para. 230-31. In the *CMRS 1996 Notice*, however, the Commission requested comment on the possibility of preemption of interconnection rates applied to LEC-CMRS traffic. *See CMRS 1996 Notice*, 11 FCC Rcd at 5072-73, paras. 111-12.

[42] *See CMRS 1994 Notice*, 9 FCC Rcd at 5451, 5453, paras. 104, 108.

[43] In 1996, however, the Commission did preempt state tariffs imposing charges on CMRS providers for LEC-originated traffic. *See Local Competition First Report and Order*, 11 FCC Rcd at 16016, para. 1042.

[44] T-Mobile Petition at 8.

[45] *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, Declaratory Ruling, 2 FCC Rcd 2910, 2916, para. 56 (1987) (stating that "we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection"); *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding)*, Report No. CL-379, Memorandum Opinion and Order on Reconsideration, 4 FCC Rcd 2369, 2370-71, paras. 13-14 (1989).

[46] *See generally* 47 U.S.C. §§ 251-252; 47 C.F.R. Part 51. *See also Local Competition First Report and Order*, 11 FCC Rcd at 15574-75, para. 149 (describing how section 252 of the Act provides the incentive to negotiate in good faith).

types of arrangements are necessary to trigger payment obligations under existing rules.[47]

12. Although section 20.11 and the Commission's reciprocal compensation rules establish default rights to intercarrier compensation, they do not preclude carriers from accepting alternative compensation arrangements. By routing traffic to LECs in the absence of a request to establish reciprocal or mutual compensation, CMRS providers accept the terms of otherwise applicable state tariffs. These tariffs do not prevent CMRS providers from requesting reciprocal or mutual compensation at the rates required by the Commission's rules.[48] Accordingly, wireless termination tariffs do not violate a CMRS provider's rights to reciprocal or mutual compensation under section 251(b)(5) and section 20.11 of the Commission's rules.[49]

13. The CMRS providers argue that imposing the terms of interconnection pursuant to a tariff regime is inconsistent with the negotiation processes contained sections 251and 252 of the Act, and cite the Commission's finding in *Global NAPs*.[50] In *Global NAPs*, the Commission found that "[u]sing the tariff process to circumvent the section 251 and 252 processes cannot be allowed."[51] The Commission's finding in *Global NAPs* was premised, however, on the fact that the tariff at issue could supersede the terms of a valid interconnection agreement.[52] Because the wireless termination tariffs at issue here apply only in the absence of an agreement,[53] they have not been used to circumvent the processes contained in

[47] *See* Michigan Rural Incumbent Local Exchange Carriers T-Mobile Comments at 5; Minnesota Independent Coalition T-Mobile Comments at 3.

[48] Section 20.11 of the Commission rules requires "reasonable compensation," 47 C.F.R. § 20.11, whereas reciprocal compensation rates are established by the state commissions based on forward-looking economic costs, 47 C.F.R. § 1.705.

[49] Because most wireless termination tariffs are effective only in the absence of a reciprocal compensation arrangement under section 251(b)(5), we need not decide whether such tariffs satisfy the statutory requirements of that section. *See* Letter from Cheryl A. Tritt, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. at 10-11 (filed July 9, 2004) (arguing that these tariffs do not satisfy a LEC's statutory duty to establish reciprocal compensation arrangements) (T-Mobile July 9 *Ex Parte* Letter).

[50] *See* Sprint T-Mobile Comments at 8-9; United States Cellular Corp. T-Mobile Comments at 3; Verizon Wireless T-Mobile Comments at 4.

[51] *See Bell Atlantic-Delaware, Inc., et al., v. Global NAPs, Inc.*, 15 FCC Rcd 12946, 12959, para 23 (1999) (*Global NAPs*), *recon. denied, Bell Atlantic-Delaware, Inc. v. Global NAPs, Inc.*, 15 FCC Rcd 5997 (2000); *Bell Atlantic-Delaware, Inc., v. Global NAPs, Inc.*, 15 FCC Rcd 20665 (2000) (*Global NAPs II*).

[52] The Commission found Global NAPs' tariff unlawful because, *inter alia*, it "purport[ed] to apply the [terms of the] tariff even when a valid interconnection agreement could be in place." *Id. See also Global NAPs II*, 15 FCC Rcd at 20671, para. 16 (stating that "[i]f a party to an interconnection proceeding could alter the outcome of the negotiation/mediation/arbitration processes set forth in sections 251 and 252 simply by filing a federal tariff, those processes could become significantly moot.").

[53] *See, e.g.*, Letter from Brian T. McCartney, Counsel for the Missouri Small Telephone Company Group, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 2-4 (filed Aug. 17, 2004) (stating that the wireless termination tariffs at issue in Missouri apply only in the absence of an agreement under the Act and are expressly subordinate to approved agreements under the Act).

sections 251 and 252 of the Act.[54] Moreover, the Commission has determined that interconnection rates imposed via tariff may be permissible so long as the tariff does not supersede or negate the federal provisions under sections 251 and 252.[55] For all these reasons, we cannot conclude that a tariff filed by an incumbent LEC imposing termination charges on wireless traffic would be unlawful under the existing rules and, thus, we deny the petition for declaratory ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners.[56]

14. Although we deny the CMRS providers' requested ruling under the current rules, we now take action in this proceeding to amend our rules going forward in order to make clear our preference for contractual arrangements for non-access CMRS traffic. As discussed above, precedent suggests that the Commission intended for compensation arrangements to be negotiated agreements and we find that negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act. Accordingly, we amend section 20.11 of the Commission's rules to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to tariff.[57] Therefore, such

[54]For similar reasons, the court decisions in *Wisconsin Bell v. Ave M. Bie* and *Verizon North v. John G. Strand* do not require that we reach a different conclusion under the existing rules. *Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin v. Ave M Bie, et al. and WorldCom, Inc.*, 340 F.3d 441 (7th Cir. 2003); *Verizon North, Inc. v. John G. Strand*, 309 F.3d 935 (6th Cir. 2002). In *Wisconsin Bell v. Ave M. Bie*, the court was concerned that mandatory state tariffs inappropriately created a parallel process to the section 251/252 negotiation process. *Wisconsin Bell v. Ave M. Bie*, 340 F.3d at 443-44. Similarly, in *Verizon North v. John G. Strand*, the court rejected a state tariff requirement that bypassed and ignored the process for interconnection set out in the Act. *Verizon North v. John G. Strand*, 309 F.3d at 941-44. In this case, however, the wireless termination tariffs are a default mechanism that apply only if no other process is invoked. Moreover, the court's decision *Verizon North Inc. v. John G. Strand* is likewise distinguishable. *See Verizon North Inc. v. John G. Strand* 367 F.3d 577 (6th Cir. 2004). That case involved a tariff filing by a *competitive* carrier that could have initiated the section 252 process, but instead filed a tariff imposing reciprocal compensation charges. *Id.* at 579-83. Although competitors may compel negotiations under section 252, until now incumbent LECs did not have this same ability, as discussed below. Thus, absent these wireless termination tariffs, these carriers may have no other means by which to obtain compensation for terminating this traffic. *See Alma Tel. Co., et al. v. Public Service Commission of the State of Missouri*, 2004 WL 2216600, at *5 (Mo. Ct. App. Oct. 5, 2004) (finding that a group of rural companies had no alternative but to pursue tariff options because CMRS providers could not be compelled to negotiate compensation rates under the federal Act).

[55]*See Public Utility Commission of Texas, et al. Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997) (finding that a Texas state law establishing a default wholesale rate was consistent with sections 251 and 252 even though the rate was available to carriers without negotiation or arbitration and did not comply with the wholesale rate standard established in section 251 and federal rules because the state law did not interfere with the rights of carriers to seek more favorable rates under the section 251/252 process).

[56]Because we deny the T-Mobile Petition, we need not address the Motions to Dismiss alleging procedural deficiencies. *See, e.g.*, Montana Local Exchange Carriers T-Mobile Comments 3; NTCA T-Mobile Comments at 2. *See also Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariff*, CC Docket No. 01-92, Montana Local Exchange Carriers Motion to Dismiss, at 2-3 (filed Oct. 18, 2002); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Missouri Independent Telephone Company Group Motion to Dismiss, at 2-3 (filed Aug. 3, 2004). Rather, state tariffs are affected only prospectively under the rule change adopted pursuant to our rulemaking authority.

[57]As discussed below, we also adopt new rules permitting incumbent LECs to invoke the section 252 process and establish interim compensation arrangements, which are triggered by a request for negotiation from either carrier. (continued....)

existing wireless termination tariffs shall no longer apply upon the effective date of these amendments to our rules. We take this action pursuant to our plenary authority under sections 201 and 332 of the Act, the latter of which states that "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service . . . ."[58]

15. We acknowledge that LECs may have had difficulty obtaining compensation from CMRS providers because LECs may not require CMRS providers to negotiate interconnection agreements or submit to arbitration under section 252 of the Act.[59] In the *Local Competition First Report and Order*, the Commission held that section 251(b)(5) requires LECs to enter into reciprocal compensation arrangements with all CMRS providers but that it does not explicitly impose reciprocal obligations on CMRS providers.[60] Thus, the Commission's rules impose certain obligations on LECs, but not on CMRS providers.[61] Moreover, some commenters observe that CMRS providers may lack

(Continued from previous page)
For this reason, we reject claims that, in the absence of wireless termination tariffs, LECs would be denied compensation for terminating this traffic. *See, e.g.*, Nebraska Rural Independent Companies T-Mobile Comments at 6; NTCA T-Mobile Comments at 7-8; Rural ILEC T-Mobile Comments at 7-8. Under the amended rules, however, in the absence of a request for an interconnection agreement, no compensation is owed for termination.

[58] 47 U.S.C. § 332(c)(1)(B). *See Local Competition First Report and Order*, 11 FCC Rcd at 16005, para. 1023 (affirming that "section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection"). In *Iowa Utils. Bd. v. FCC*, the United States Court of Appeals for the Eighth Circuit held that the Commission has authority to issue rules of special concern to CMRS providers. *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) (vacating the Commission's pricing rules for lack of jurisdiction except for "the rules of special concern to CMRS providers" based in part upon the authority granted to the Commission in 47 U.S.C. § 332(c)(1)(B)), *vacated and remanded in part on other grounds, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also Qwest v. FCC*, 252 F.3d 462, 465-66 (D.C. Cir. 2001) (describing the Eighth Circuit's analysis of section 332(c)(1)(B) in *Iowa Utils. Bd. v. FCC* and concluding that an attempt to relitigate the issue was barred by the doctrine of issue preclusion).

[59] *See* Ronan/Hot Springs Comments at 13; MSTG Reply at 6-7, 10, 12. *See also* TCA Reply at 4-5 (contending that CMRS providers do not want interconnection agreements with small LECs).

[60] *Local Competition First Report and Order*, 11 FCC Rcd at 15996-97, paras. 1005, 1008 (holding that CMRS providers will not be classified as LECs and are not subject to the obligations in section 251(b)(5)). *Compare id.* at 16018, para. 1045 (suggesting that CMRS providers will enter into reciprocal compensation arrangements).

[61] 47 C.F.R. § 51.703(a). There is some uncertainty as to the relationship between the arrangements contemplated in section 20.11 and the section 251/252 agreements contained in the Act. Therefore, the rights of LECs to compel negotiations with CMRS providers are not entirely clear. *Compare* Letter from Brian T. McCartney, counsel for the Missouri Small Telephone Company Group, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 13 (filed Aug. 17, 2004) (stating that the rights of rural incumbent LECs to compel negotiations are not clear) *with* T-Mobile July 9 *Ex Parte* Letter, Attach. at 7, 9, 13 (arguing that LECs can require CMRS providers to negotiate interconnection under sections 201 and 332 of the Act). Further, although CMRS providers may indeed have an existing legal obligation to compensate LECs for the termination of wireless traffic under section 20.11(b)(2) (*see* Letter from Michael F. Altschul, Senior Vice President and General Counsel, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 n.3, 4 (filed Nov. 30, 2004)), the rules fail to specify the mechanism by which LECs may obtain this compensation.

incentives to engage in negotiations to establish reciprocal compensation arrangements.[62]

16. In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend section 20.11 of our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.[63] A CMRS provider receiving such a request must negotiate in good faith and must, if requested, submit to arbitration by the state commission. In recognition that the establishment of interconnection arrangements may take more than 160 days,[64] we also establish interim compensation requirements under section 20.11 consistent with those already provided in section 51.715 of the Commission's rules.[65] Interim compensation requirements are necessary for all the reasons the Commission articulated in *Local Competition First Report and Order*.[66]

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

17. A Final Regulatory Flexibility Analysis has been prepared for this Declaratory Ruling and Report and Order and is included in Appendix D.

B. Paperwork Reduction Act Analysis

18. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107- 198, see 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-5, 7, 10, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-55, 157, 160, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502, and 503, and sections 1.1, 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, this Declaratory Ruling and Report and Order in CC Docket No. 01-92 IS

[62] *See, e.g.*, MSTG Reply at 12, 25; OPASTCO Reply at 4-5. *See also* Frontier and Citizens T-Mobile Comments at 5 (noting that, because CMRS providers are generally net payers of reciprocal compensation, it is in their financial interest to maintain the *status quo* of bill-and-keep).

[63] *See* Appendix A.

[64] *See* 47 U.S.C. § 252(b)(1).

[65] *See* 47 C.F.R. § 51.715 (establishing interim transport and termination pricing upon request for an interconnection arrangement).

[66] *Local Competition First Report and Order*, 11 FCC Rcd at 16029-30, para. 1065 (finding that interim compensation was necessary to promote competition in the local exchange).

ADOPTED, and that Part 20 of the Commission's Rules, 47 C.F.R. Part 20, IS AMENDED as set forth in Appendix A.

20. IT IS FURTHER ORDERED that the rule revisions adopted in this Declaratory Ruling and Report and Order SHALL BECOME EFFECTIVE thirty (30) days after publication in the Federal Register.

21. IT IS FURTHER ORDERED that the Petition for Declaratory Ruling filed by T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners is DENIED as set forth herein.

22. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Declaratory Ruling and Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

AMENDMENT TO THE CODE OF FEDERAL REGULATIONS

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 20 of Title 47 of the Code of Federal Regulation as follows:

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 4, 10, 251-254, 303, and 332 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 154, 160, 251-254, 303, and 332, unless otherwise noted.

2. Section 20.11 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(e) Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

(f) An incumbent local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 shall apply.

APPENDIX B

INTERCARRIER COMPENSATION NPRM
CC DOCKET NO. 01-92

COMMENTS

ACS of Anchorage, Inc.
Ad Hoc Telecommunications Users Committee (Ad Hoc)
Alaska Telephone Association
Allegiance Telecom, Inc.
Allied Personal Communications Industry
ALLTEL Communications Inc.
America Online, Inc. (AOL)
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cbeyond Communications
Cellular Telecommunications & Internet Association (CTIA)
CenturyTel, Inc.
Competitive Telecommunications Association (CompTel)
Florida Public Service Commission (Florida Commission)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc., and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Global Crossing Ltd.
Global NAPs Inc.
Guyana Telephone & Telegraph Ltd.
GVNW Consulting, Inc.
Home Telephone Company, Inc.
ICORE Inc.
Illinois Commerce Commission (Illinois Commission)
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Iowa Utilities Board (Iowa Commission)
ITC's, Inc.
KMC Telecom, Inc.
Level 3 Communications
Maryland Office of the People's Counsel (MD-OPC)
Michigan Exchange Carriers Association, Inc. (MECA)
Mid Missouri Cellular
Minnesota Independent Coalition
Missouri Public Service Commission (Missouri Commission)
Missouri Small Telephone Company Group (MSTG)
Mpower Communications Corp.
National Association of Regulatory Utility Commissioners (NARUC)

National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Telephone Cooperative Association (NTCA)
New York State Department of Public Service (New York Commission)
Nextel Communications, Inc.
North County Communications
National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
Office of the Public Utility Counsel of Texas (Texas Counsel)
Oklahoma Rural Telephone Coalition
Onvoy, Inc.
Parrish, Blessing & Associates
Personal Communications Industry Association (PCIA)
Public Service Commission of Wisconsin (Wisconsin Commission)
Public Utility Commission of Texas (Texas Commission)
Qwest Communications International Inc.
Regulatory Utility Commission of Alaska (Alaska Commission)
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Ronan Telephone Company and Hot Springs (Ronan/Hot Springs)
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Singapore Telecommunications Limited
Sprint Corp.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)
United Utilities, Inc.
Verizon
Verizon Wireless
VoiceStream Wireless Corp.
Western Alliance
WorldCom, Inc.
Z-Tel Communications, Inc.

REPLIES

ACS of Anchorage, Inc.
Ad Hoc Telecommunications Users Committee
Advanced Paging, Inc., A.V. Lauttamus Communications, Inc., and NEP, LLC
Allegiance Telecom, Inc.
Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance
Allied Personal Communications Industry Association of California
ALLTEL Communications, Inc.
Arch Wireless, Inc.
Association for Local Telecommunications Services (ALTS)
AT&T
AT&T Wireless Services, Inc.

BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cellular Telecommunications & Internet Association (CTIA)
Cincinnati Bell Telephone
Cook Telecom, Inc.
District of Columbia Office of the People's Counsel (DC People's Counsel)
e.spire Communications, Inc. and KMC Telecom, Inc. (e.spire and KMC)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc. and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Genuity Solutions, Inc.
Global NAPs, Inc.
GVNW Consulting, Inc.
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Leap Wireless International
Level 3 Communications, LLC
Maryland Office of People's Counsel (MD-OPC)
Midwest Wireless Communications LLC, Midwest Wireless Iowa LLC, and Midwest Wireless Wisconsin LLC (Midwest)
Missouri Independent Telephone Group (MITG)
Missouri Small Telephone Company Group (MSTG)
National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Rural Telephone Association and Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
National Telephone Cooperative Association (NTCA)
Network Services LLC
Nextel Communications, Inc.
North County Communications
Office of the Public Utility Counsel of Texas (Texas Counsel)
Personal Communications Industry Association (PCIA)
Qwest Communications International, Inc.
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Rural Cellular Association
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Small Business Administration, Office of Advocacy (SBA)
Small Company Group of New York
Sprint Corp.
SureWest Communications
Taylor Communications Group, Inc.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)

Verizon
Verizon Wireless
VoiceStream Wireless Corp.
WebLink Wireless, Inc.
WorldCom, Inc.

APPENDIX C

T-MOBILE USA, WESTERN WIRELESS, NEXTEL COMMUNICATIONS AND NEXTEL PARTNERS PETITION CC DOCKET NO. 01-92

COMMENTS

Alliance of Incumbent Rural Independent Telephone Companies
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cellular Telecommunication & Internet Association (CTIA)
Cingular Wireless LLC
Fred Williamson & Associates, Inc.
Frontier & Citizens Incumbent Local Exchange Carriers
ICORE, Inc.
John Staurulakis, Inc. (JSI)
Michigan Rural Incumbent Local Exchange Carriers
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Telecommunications Cooperative Association (NTCA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Qwest Communications International, Inc.
Rural Cellular Association and Rural Telecommunications Group
Rural Incumbent Local Exchange Carriers (Rural ILEC)
Rural Iowa Independent Telephone Association
SBC Communications, Inc.
South Dakota Telephone Assoc., et. al.
Sprint Corp.
Telecom Consulting Associates, Inc.
Triton PCS License Company, LLC
United States Cellular Corp.
United States Telecom Association (USTA)
Verizon Wireless
Warinner, Gesigner & Associates, LLC
Warinner, Gesigner & Associates on behalf of KLM Telephone Company, *et al.*

REPLIES

Alabama Rural Local Exchange Carriers
AT&T Corp.
AT&T Wireless Services, Inc.
Beacon Telecommunications Advisors, LLC
California RTCs
Cellular Telecommunication & Internet Association (CTIA)
Fred Williamson & Associates Inc.
GVNW Consulting, Inc.
Joint CMRS Petitioners
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Exchange Carrier Association, Inc. (NECA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Carriers (TDS Telecommunications Corp. *et al.*)
SBC Communications, Inc.
Supra Telecommunications & Information Systems, Inc.
Triton PCS License Company, LLC
Verizon Wireless

APPENDIX D

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[67] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Intercarrier Compensation NPRM* in CC Docket No. 01-92.[68] The Commission sought written public comment on the proposals in the *Intercarrier Compensation NPRM*, including comment on the issues raised in the IRFA.[69] Relevant comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[70] To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the order preceding the FRFA, the rules and statements set forth in those preceding sections are controlling.

A. Need for, and Objectives of, the Rules

2. In the *Intercarrier Compensation NPRM*, the Commission acknowledged a number of problems with the current intercarrier compensation regimes (access charges and reciprocal compensation) and discussed a number of areas where a new approach might be adopted.[71] Among other issues, the Commission asked commenters to address the appropriate regulatory framework governing interconnection, including compensation arrangements, between LECs and CMRS providers.[72] Subsequently, the Commission received a petition for declaratory ruling filed by CMRS providers (T-Mobile Petition) asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between incumbent LECs and CMRS providers.[73] The T-Mobile Petition was incorporated into the Commission's intercarrier compensation rulemaking proceeding, along with the comments, replies, and *ex partes* filed in response to the petition.[74]

3. In this Declaratory Ruling and Report and Order (Order), the Commission denies the T-Mobile Petition because neither the Act nor the existing rules preclude an incumbent LEC's use of tariffed compensation arrangements in the absence of an interconnection agreement or a competitive carrier's request to enter into one. On a prospective basis, however, the Commission amends its rules to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the

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[67] 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[68] *See Intercarrier Compensation NPRM*, 16 FCC Rcd. at 9657-73, paras. 131-81.

[69] *Id.* at 9657, para. 131.

[70] *See* 5 U.S.C. § 604.

[71] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9612, para. 2.

[72] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9642, paras. 89-90.

[73] T-Mobile Petition at 1.

[74] *See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002).

negotiation and arbitration procedures set forth in section 252 of the Act, and that during the period of negotiation and arbitration, the parties will be entitled to compensation in accordance with the interim rate provisions set forth in section 51.715 of the Commission's rules.[75] By clarifying these interconnection and compensation obligations, the Commission will resolve a significant carrier dispute pending in the marketplace that has provoked a substantial and increasing amount of litigation, and will facilitate the exchange of traffic between wireline LECs and CMRS providers and encourage the establishment of interconnection and compensation terms through the negotiation and arbitration processes contemplated by the 1996 Act.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In the IRFA, the Commission noted the numerous problems that had developed under the existing rules governing intercarrier compensation, and it sought comment on whether proposed new approaches would encourage efficient use of, and investment in the telecommunications network, and whether the transition would be administratively feasible.[76] In response to the *Intercarrier Compensation NPRM,* the Commission received 75 comments, 62 replies, and numerous *ex parte* submissions. In addition, a number of additional comments, replies, and *ex partes* were submitted in this proceeding in connection with the T-Mobile petition. Those comments expressly addressed to the IRFA raised concerns regarding the more comprehensive reform proposals discussed in the *Intercarrier Compensation NPRM* rather than the more narrow LEC-CMRS issues addressed in this Order.[77]

5. In connection with the issues we address here, several parties commenting on the T-Mobile Petition expressed concern that striking down tariffs would impose a burden on rural incumbent LECs. They argued that LECs lacked the ability under the law to obtain a compensation agreement with CMRS providers without the inducement to negotiate provided by tariffs, and further asserted that small carriers would be adversely impacted by any obligation to terminate CMRS traffic without compensation.[78] Conversely, some carriers expressed a concern that the negotiation and arbitration process was an inefficient method of establishing a compensation arrangement between two carriers where the traffic volume between them was small, and argued that non-negotiated arrangements were therefore a better method of imposing compensation obligations.[79] We address these issues in section E

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[75] *See supra* para. 16.

[76] *Intercarrier Compensation NPRM,* 16 FCC Rcd at 9658, paras 134-35.

[77] *See, e.g.*, SBA Reply at 12-14.

[78] *See, e.g.*, ICORE T-Mobile Comments at 7; Michigan ILECs T-Mobile Comments at 3; Montana LECs T-Mobile Comments at 3; NTCA T-Mobile Comments at 3; Rural ILECs T-Mobile Comments at 7-8; TCA T-Mobile Comments at 4.

[79] *See, e.g.*, AT&T Wireless T-Mobile Comments at 3; Triton PCS T-Mobile Comments at 6-7. While most carriers raising this concern have been CMRS providers, some small LECs have also asserted that negotiations are not an efficient method of establishing terms given the amount of traffic at issue. *See* Montana LECs T-Mobile Comments at 6; TCA T-Mobile Comments at 2. *But see, e.g.*, Rural ILECs T-Mobile Comments at 7 (asserting that volume of traffic is significant in proportion to the total traffic for small incumbent LECs); Frontier & Citizens T-Mobile Comments at 4 (amount of CMRS-to-rural incumbent LEC traffic is significant and growing).

of the FRFA.[80]

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein.[81] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[82] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[83] A "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).[84]

7. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to this *Order*. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.[85] The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,[86] Paging,[87] and Cellular and Other Wireless Telecommunications.[88] Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

8. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard

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[80] *See infra* paras. 20-21.

[81] 5 U.S.C. §§ 604(a)(3).

[82] 5 U.S.C. § 601(6).

[83] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[84] 15 U.S.C. § 632.

[85] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3, page 5-5 (May 2004) (*Trends in Telephone Service*). This source uses data that are current as of October 22, 2003.

[86] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

[87] *Id.* § 121.201, NAICS code 517211.

[88] *Id.* § 121.201, NAICS code 517212.

(e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[89] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[90] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[91] According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.[92] Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.[93] Thus, under this size standard, the majority of firms can be considered small.

10. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[94] According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers.[95] Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.[96] In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.[97] Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees.[98] In addition, 37 carriers reported that they were "Other Local Exchange Carriers."[99] Of the 37 "Other

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[89] 15 U.S.C. § 632.

[90] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[91] 13 C.F.R. § 121.201, NAICS code 517110.

[92] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517110.

[93] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[94] 13 C.F.R. § 121.201, NAICS code 517110.

[95] *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Table 5.3 (May 2004) (*Trends in Telephone Service*).

[96] *Trends in Telephone Service*, Table 5.3.

[97] *Trends in Telephone Service*, Table 5.3.

[98] *Trends in Telephone Service*, Table 5.3.

[99] *Trends in Telephone Service*, Table 5.3.

Local Exchange Carriers," an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.[100] Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

11. *Incumbent Local Exchange Carriers (LECs).* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operations."[101] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[102] We therefore include small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[103] According to Commission data,[104] 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

13. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers."* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[105] According to Commission data,[106] 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.

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[100] *Trends in Telephone Service*, Table 5.3.

[101] 15 U.S.C. § 632.

[102] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBC regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[103] 13 C.F.R. § 121.201, NAICS code 517110.

[104] *Trends in Telephone Service* at Table 5.3.

[105] 13 C.F.R. § 121.201, NAICS code 517110.

[106] *Trends in Telephone Service* at Table 5.3.

Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.[107] In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees.[108] Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

14. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging"[109] and "Cellular and Other Wireless Telecommunications."[110] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[111] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[112] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[113] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[114] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

15. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.[115] Under that SBA small

[107] *Id.*

[108] *Id.*

[109] 13 C.F.R. § 121.201, NAICS code 517211.

[110] 13 C.F.R. § 121.201, NAICS code 517212.

[111] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[112] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[113] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[114] U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[115] 13 C.F.R. § 121.201, NAICS code 517212.

business size standard, a business is small if it has 1,500 or fewer employees.[116] According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of wireless telephony.[117] We have estimated that 245 of these are small under the SBA small business size standard.

16. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications."[118] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[119] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[120] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 447 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[121] We have estimated that 245 of these are small, under the SBA small business size standard.[122]

D. Description of Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities

17. In this Order, the Commission adopts new rules that prohibit incumbent LECs from imposing non-access compensation obligations pursuant to tariff, and permit LECs to compel interconnection and arbitration with CMRS providers.[123] Under the new rules, CMRS providers and LECs, including small entities, must engage in interconnection agreement negotiations and, if requested, arbitrations in order to impose compensation obligations for non-access traffic.[124] The record suggests

[116]13 C.F.R. § 121.201, NAICS code 517212.

[117]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[118]13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[119]U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[120]U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."

[121]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[122]FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, page 5-5 (May 2004). This source uses data that are current as of October 22, 2003.

[123]*See supra* paras. 14-16.

[124]*See supra* para. 14 (prohibiting the use of tariffs to impose non-access compensation obligations).

that many incumbent LECs and CMRS providers, including many small and rural carriers, already participate in interconnection negotiations and the state arbitration process under the current rules. For these carriers, our new rules will not result in any additional compliance requirements. For LECs that have imposed compensation obligations for non-access traffic pursuant to state tariffs, however, the amended rules require that these LECs, including small entities, participate in interconnection negotiations and, if requested, the state arbitration process in order to impose compensation obligations. Conversely, the new rules obligate CMRS providers, including small entities, to participate in a negotiation and arbitration process upon a request by incumbent LECs.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; 3) the use of performance rather than design standards; and 4) an exemption from coverage of the rule, or any part thereof, for small entities."[125]

19. The Commission denies a petition for declaratory ruling filed by CMRS providers asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers.[126] The Commission considered and rejected a finding that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between LECs and CMRS providers because the current rules do not explicitly preclude such arrangements and these tariffs ensure compensation where the rights of incumbent LECs to compel negotiations with CMRS providers are unclear.[127] On a prospective basis, however, the Commission amends its rule to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.[128]

20. As a general matter, our actions in this Order should benefit all interconnected LECs and CMRS providers, including small entities, by facilitating the exchange of traffic and providing greater regulatory certainty and reduced litigation costs. Further, we directly address the concern of small incumbent LECs that they would be unable to obtain a compensation arrangement without tariffs by providing them with a new right to initiate a section 252 process through which they can obtain a reciprocal compensation arrangement with any CMRS provider.

21. The Commission considered and rejected the possibility of permitting wireless

[125] 5 U.S.C. § 603(c)(1)-(c)(4).

[126] T-Mobile Petition at 1.

[127] *See supra* paras. 9-12.

[128] *See supra* paras. 14-16. *See also Intercarrier Compensation NPRM*, 16 FCC Rcd at 9641-42, paras. 86, 89-90 (requesting comment on how interconnection between LECs and CMRS providers would "work" within the existing regulatory frameworks under sections 251 and 252 and section 332 of the Act).

termination tariffs on a prospective basis.[129] Although establishing contractual arrangements may impose burdens on CMRS providers and LECs, including some small entities, that do not have these arrangements in place, we find that our approach in the Order best balances the needs of incumbent LECs to obtain terminating compensation for wireless traffic and the pro-competitive process and policies reflected in the 1996 Act.[130] We also note that, during this proceeding, both CMRS providers and rural incumbent LECs have repeatedly emphasized their willingness to engage in a negotiation and arbitration process to establish compensation terms. In the Further Notice of Proposed Rulemaking adopted by the Commission on February 10, 2005, we seek further comment on ways to reduce the burdens of such a process.[131]

F. Report to Congress

22. The Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Declaratory Ruling and Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Declaratory Ruling and Report and Order, including this FRFA - or summaries thereof - will be published in the Federal Register.

[129] *See supra* para. 14.

[130] In particular, because a LEC may trigger the interim compensation requirements in section 51.715 of the Commission's rules, 47 C.F.R. § 51.715, simply by requesting interconnection with a CMRS provider, the threshold burden to obtain compensation under the amended rule is minimal.

[131] *See FCC Moves to Replace Outmoded Rules Governing Intercarrier Compensation*, CC Docket No. 01-92, News (rel. Feb. 10, 2005).

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 13, 2005

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas, Recusing
Kim Pizzingrilli

Petition of Cellco Partnership d/b/a Verizon Wireless (Bentleyville Communications Corporation d/b/a The Bentleyville Telephone Company	P-00021995
Petition of Cellco Partnership d/b/a Verizon Wireless (Yukon-Waltz Telephone Company	P-00021996
Petition of Cellco Partnership d/b/a Verizon Wireless (Laurel Highland Telephone Company)	P-00021997
Petition of Cellco Partnership d/b/a Verizon Wireless (Palmerton Telephone Company)	P-00021998
Petition of Cellco Partnership d/b/a Verizon Wireless (Marianna & Scenery Hill Telephone Company)	P-00021999
Petition of Cellco Partnership d/b/a Verizon Wireless (Citizens Telephone Company of Kecksburg)	P-00022000
Petition of Cellco Partnership d/b/a Verizon Wireless (The North-Eastern Pennsylvania Telephone Company)	P-00022001

EXHIBIT PS-5

Petition of Cellco Partnership d/b/a Verizon Wireless (Hickory Telephone Company)	P-00022005
Petition of Cellco Partnership d/b/a Verizon Wireless (Ironton Telephone Company)	P-00022006
Petition of Cellco Partnership d/b/a Verizon Wireless (Lackawaxen Telephone Company)	P-00022007
Petition of Cellco Partnership d/b/a Verizon Wireless (Armstrong Telephone Company – Pennsylvania)	P-00022008
Petition of Cellco Partnership d/b/a Verizon Wireless (Frontier Communications of Pennsylvania, Inc.)	P-00022009
Petition of Cellco Partnership d/b/a Verizon Wireless (Frontier Communications of Lakewood, Inc.)	P-00022010
Petition of Cellco Partnership d/b/a Verizon Wireless (Frontier Communications of Oswayo River, Inc.)	P-00022011
Petition of Cellco Partnership d/b/a Verizon Wireless (North Pittsburgh Telephone Company)	P-00022012
Petition of Cellco Partnership d/b/a Verizon Wireless (South Canaan Telephone Company)	P-00022013
Petition of Cellco Partnership d/b/a Verizon Wireless (Pymatuning Independent Telephone Company)	P-00022014
Petition of Cellco Partnership d/b/a Verizon Wireless (Pennsylvania Telephone Company)	P-00022015

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I. MATTER BEFORE THE COMMISSION

Before the Commission for disposition are the Exceptions filed to the Initial Decision Upon Remand (I.D.) of presiding Administrative Law Judge (ALJ) Wayne L. Weismandel issued June 4, 2004. Exceptions were filed on June 24, 2004, by the respondent rural incumbent local exchange companies (collectively Rural ILECs). Replies to Exceptions were filed on July 6, 2004, by Nextel Communications, Inc. (Nextel), which was granted limited intervention, and Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless hereafter).

II. HISTORY OF THE PROCEEDING

A. Introduction

These proceedings involve legal questions raised by a series of letters which were directed to 21 Rural ILECs from Verizon Wireless. In letters dated June 21, 2002, July 19, 2002, November 21, 2002, and December 4, 2002, Verizon Wireless attempted to initiate negotiations "for a reciprocal compensation agreement" with the Rural ILECs.[1] Verizon Wireless submitted the letters pursuant to the voluntary negotiation procedures of the federal Telecommunications Act of 1996 (TA96), 47 U.S.C. §252 (a)(1), to establish an interconnection agreement with said carriers. *See also Implementation Orders.*[2] Verizon Wireless' letter-requests relative to negotiations for an interconnection agreement were contested by the Rural ILECs on both substantive and procedural grounds. In response to a Rural ILECs' Motion to Strike said letters as insufficient as to form and as to substance, presiding ALJ Weismandel agreed with their position. Consequently, the ALJ ruled that "[n]one of Cellco's [Verizon Wireless'] filed letters constitute a proper request for interconnection." *See* May 7, 2003, Initial Decision at the above-captioned dockets.

Verizon Wireless thereafter filed Exceptions to the May 7, 2003, Initial Decision. By our Order entered September 24, 2003, we reversed the ALJ's findings that the letters were insufficient as to form and directed a remand for the purpose of

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[1] The FCC describes a reciprocal compensation arrangement as ". . . one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier." 47 C.F.R. § 51.701(e).

[2] *See* In *Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799 (Order entered June 3, 1996); Order on Reconsideration (Order entered September 9, 1996) *Proposed Modifications to the Review of Interconnection Agreements* (Order entered May 3, 2004) (collectively *Implementation Orders* hereafter).

considering various legal issues raised by the letters. Our September 23, 2004 Order contained the following directives:

* * *

> 3. That the proceedings at the above-captioned docket numbers shall be reinstated and the matters assigned to the Office of Administrative Law Judge for such further proceedings consistent with the process detailed herein, culminating in the issuance of an Initial Decision Upon Remand.
>
> 4. That upon an Administrative Law Judge's determination of the legal questions involved, this Commission will decide any exceptions that may be filed and determine whether these matters shall proceed to evidentiary hearings regarding the rural exemption under the Telecommunications Act of 1996.
>
> 5. That the remand proceedings should address any necessary legal questions which shall include whether or not a bona fide request for interconnection has been submitted pursuant to TA-96 and how Eligible Telecommunications Carrier designation impacts a wireless carrier's request to terminate the rural exemption.

(Slip op. at 13).

Verizon Wireless subsequently filed twenty-one (21) separate Petitions seeking the arbitration of open and unresolved issues pursuant to the compulsory

arbitration provisions of TA96.[3] Three Rural ILECs have since reached an agreement with Verizon Wireless and Petitions relative to those companies have been withdrawn.[4]

B. Background

By way of further background, we set forth the following: Verizon Wireless is a Commercial Mobile Radio Service (CMRS) *i.e.*, wireless telecommunications carrier. It is affiliated with Verizon Pennsylvania Inc. (Verizon PA) by virtue of the fact that they share a common corporate relationship to Verizon Communications, Inc. The term "commercial mobile service" is defined by the Communications Act of 1934, *as amended* as "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 effectively available to a substantial portion of the public, as specified by the Commission." . . . 47 U.S.C. § 332(d)(1). "Mobile service" is defined at Section 3 of the 1934 Act, 47 U.S.C. § 153(27). The term "commercial mobile service" came to be known as the "commercial mobile radio service" or CMRS. 47 C.F.R. § 20.3. *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*; WT Docket No. 04-111; 19 FCC Rcd 5608, rel. September 28, 2004.

At the time that Verizon Wireless forwarded its letters for the purpose of initiating negotiations, the Rural ILECs were under a suspension of certain of their

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[3] *See* 47 U.S.C. §252(b)(1) - "During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues."

[4] These companies are Denver and Ephrata Telephone and Telegraph Company, Docket No. P-00022002; Buffalo Valley Telephone Company, Docket No. P-00022003; and Conestoga Telephone and Telegraph Company, Docket No. P-00022004.

obligations arising under TA96. *See Petition of Rural and Small Incumbent Local Exchange Carriers . . .* , Docket No. P-00971177 (Order entered July 10, 1997) (*Suspension Order*). This suspension was allowed to expire based on the Commission's denial of the Rural ILECs' request to further extend it. *See* Order dated January 15, 2003; Docket No. P-00971177 (*Suspension Termination Order)*. This expiration of the Rural ILECs' suspension occurred during the time period when discussions between Verizon Wireless and the Rural ILECs were taking place.

In conjunction with our disposition of issues raised in these remanded proceedings, we also address two separate proceedings which raise substantially similar issues to those involved herein.[5] The first proceeding concerns a Formal Complaint filed by ALLTEL Pennsylvania, Inc. (ALLTEL) against Verizon PA, to which Verizon Wireless was joined as an additional Party-Respondent. *See* Docket No. C-20039321; Initial Decision of ALJ Debra Paist issued April 13, 2004 (*ALLTEL/Verizon PA Complaint*). In the *ALLTEL/Verizon PA Complaint*, ALLTEL challenges Verizon PA's decision to cease paying compensation to ALLTEL for indirect wireless traffic (traffic routed through a Verizon PA tandem central office) according to rates and terms that were established through the IntraLATA Toll Originating Responsibility Plan (ITORP), *infra,* process. The *ALLTEL/Verizon PA Complaint* concerns disputed intercarrier compensation due between ALLTEL and Verizon Wireless for indirect traffic for the specific periods March 23, 2002 to March 17, 2003, and for the period from March 17, 2003, until reciprocal compensation rates are determined in a separate arbitration proceeding involving Verizon Wireless and ALLTEL.

The second proceeding that we consider is the above-referenced arbitration proceeding involving Verizon Wireless and ALLTEL. *See* Docket No. A-310489F7004;

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[5] We are acting concurrently on these proceedings but will issue separate Orders on our final dispositions of the outstanding issues in each proceeding.

Recommended Decision of ALJ Wayne L. Weismandel, issued March 24, 2004 (*ALLTEL/Verizon Wireless Arbitration*). In this proceeding, Verizon Wireless filed a petition with the Commission to arbitrate various open and unresolved issues with ALLTEL for the establishment of an interconnection agreement. A majority of the unresolved issues in the *ALLTEL/Verizon Wireless Arbitration* are related to the intercarrier compensation for indirect traffic that is exchanged between Verizon Wireless and ALLTEL, but is transited for termination on their respective networks using the tandem facilities of Verizon PA. The unresolved issues in the *ALLTEL/Verizon Wireless Arbitration* also implicate the ITORP process.

At the heart of the legal dispute in this matter and in the separate proceedings decided in conjunction with this case, is the applicability of the ITORP process to both the relief sought by Verizon Wireless and to the obligations of the Rural ILECs relative to indirect traffic. The Rural ILECs state that the primary objective of Verizon Wireless is to change the ITORP compensation procedures and not to establish new interconnections with them. *See* Rural ILECs Exc. at 17. The Rural ILECs argue:

> More specifically, Cellco [Verizon Wireless] is seeking to change the ITORP compensation to a reciprocal compensation arrangement between Cellco [Verizon Wireless] and the Rural ILECs with Verizon PA being removed from the billing process. And, Cellco [Verizon Wireless] is seeking to employ the §252 negotiation and arbitration procedure under TCA-96 to make this change in the ITORP process. This in a nutshell is what this whole proceeding is about.

(Rural ILECs Exc. at 5-6).

In an *ITORP Investigation Order*, the Commission described the ITORP process as follows:

> ITORP is an intrastate intraLATA toll settlement process between Pennsylvania local exchange companies ("LECs") that was started on January 1, 1986, whereby each LEC: (1) applies its toll tariff to their customers for origination of intraLATA toll calls in that LEC's territory and books the money collected from these calls as its intraLATA toll revenues (commonly referred to as "bill and keep"); and (2) applies its access charge tariffs to other LECs for terminating toll calls in their territory, as well as for directory assistance and any other **ancillary services** provided to the other LECs. Access charges owed between each LEC are then netted under ITORP on a monthly basis and each LEC will either pay out or receive payment as settlement for that month's terminating access. ITORP was approved to replace the transitional intrastate toll settlement process known as the Toll Compensation Plan which was approved to become effective January 1, 1984, until December 31, 1985, and which was developed to replace the similar pre-divestiture pooling arrangement among AT&T, Bell of Pennsylvania and the Pennsylvania independent telephone companies.

(Order entered December 21, 1994; 1994 Pa. PUC LEXIS 130) (Emphasis added)

Thus, ITORP is a pre-TA96 arrangement which established a settlement process between Verizon PA and Pennsylvania incumbent local exchange companies (including the Rural ILECs) for intrastate intraLATA toll. *See Generic Access Charge Investigation*, 69 PUR 4th 69 (1985). ITORP was established as an accommodation to Verizon PA and incumbent local exchange carriers, *i.e.*, Independents, in response to the AT&T divestiture and Modified Final Judgment (MFJ).[6] The MFJ has been abrogated by various provisions of TA96. *See, e.g.* 47 U.S.C. § 271. ITORP was amended, amendment effective January 1, 1991, to include an Exhibit G which included, under

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[6] *United States v. AT&T*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

"ancillary services," services provided to CMRS carriers by Verizon PA, formerly known as Bell Telephone Company of Pennsylvania.[7]

The "ancillary services," as discussed by the Parties in this proceeding, and which are highlighted in the quote from the Commission's *ITORP Investigation Order*, are services provided by Verizon PA to CMRS carriers and Independents which include, *inter alia*, third-party transit (switching the indirect traffic through Verizon PA's tandem facilities to the respective wireless or wireline networks for termination), and also billing. The provision of ancillary services is, again, an accommodation to the Rural ILECs and to CMRS carriers because it allows wireless carriers to terminate the customer's calls to the Rural ILECs without the need to incur the capital costs of establishing direct interconnection with each and every wireline carrier's network. *See* Rural ILEC Exc. at 5.

Substantially similar to the issues involved in the *ALLTEL/Verizon Wireless Arbitration*, the Rural ILECs view the ITORP arrangement as either in need of renegotiation or revision in connection with the arbitration request of Verizon Wireless. The Rural ILECs also take the position that Verizon PA is an indispensable party to this process. Verizon Wireless, however, views ITORP as immaterial to the issues raised in its arbitration request for the establishment of reciprocal compensation for the indirect traffic at issue. Further, to the extent ITORP is considered a material issue in these proceedings, Verizon Wireless views ITORP as preempted by operation of applicable Federal Communication Commission (FCC) rules and federal law. Consistent with the legal issues litigated in the *ALLTEL/Verizon Wireless Arbitration*, the Rural ILECs note that Verizon Wireless seeks to retain the ITORP network arrangements under which the wireless carriers are indirectly linked to the Verizon PA network, but impose cost

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[7] *See* Exhibit G (Provision of Cellular Billing) in Appendix 2 (Ancillary Services) to the Telecommunication Services and Facilities Agreement (TSFA) between Verizon PA and each Rural ILEC.

responsibility on the Rural ILECs for delivering indirect traffic routed through the ITORP trunk facilities. This cost responsibility is challenged by the Rural ILECs as an obligation which is not required of them by TA96 and an obligation which is objectionable because they have not previously had this type of cost responsibility imposed on them under the ITORP process by Verizon PA.[8]

Finally, we take official notice that on November 30, 2004, Governor Ed Rendell signed Act No.183 of 2004, P.L. ___, which amended Chapter 30 of Title 66 of the Pennsylvania Consolidated Statutes. *See* 66 Pa. C.S. § 331(g). Certain provisions of this new law pertain to the suspension of TA96 obligations for rural local exchange carriers under various circumstances enumerated therein. However, the exemption provisions of TA96 which are applicable to Rural ILECs in this proceeding are not directly impacted by the law. *See proposed* 66 Pa. C.S. § 3014(B)(7).

C. Procedural History

By Notice dated October 24, 2003, an initial Prehearing Conference was scheduled for January 14, 2004. By Order dated December 3, 2003, the parties were advised of the procedures to be used for the conduct of proceedings on remand, including the designation of the legal questions presented. (I.D. at 4).

On December 19, 2003, Nextel filed a Petition to Intervene. The Rural ILECs filed Answers in Opposition. The Nextel Petition was subsequently granted for the limited purpose of providing Nextel the opportunity to submit a Main and Reply Brief addressing legal issues identified as numbers 1, 3 and 5 in the ALJ's January 16, 2004, Briefing Order. (I.D. at 6 citing January 20, 2004 Order granting intervention).

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[8] As discussed in this Opinion and Order, quantification of "transit" cost responsibility is uncertain based on this record.

On January 12, 2004, Verizon Wireless filed a Motion for Consolidation wherein it requested the consolidation of all 21 cases. The Rural ILECs indicated lack of opposition to consolidation for this initial phase, *i.e.*, determination of the legal questions. The Rural ILECs preserved their opposition to consolidation for purposes of hearing and decision. Thereafter, limited consolidation for "the filing of the scheduled Main and Reply Briefs, and the filing of any Exceptions or Reply Exceptions to the Initial Decision on Remand to be produced after the Briefs are submitted" was granted. (I.D. at 5; Order Consolidating Proceedings dated January 16, 2004).

On January 13, 2004, Verizon Wireless filed an Interconnection and Exemption Termination Request. This request was directed to the existing exemption from the TA96 obligations held by the Rural ILECs. *See* 47 U.S.C. § 251(f)(1)(A)-(B).[9] The Rural ILECs responded with a Motion To Consolidate Or, In The Alternative, To Dismiss Strike or Stay the . . . Request. By letter dated February 3, 2004, the Parties stipulated that the Verizon Wireless requests for termination of the Rural ILECs' exemptions should be consolidated with the pending petitions at the above-captioned dockets. (I.D. at 6-7).

On February 26, 2004, Verizon Wireless filed a withdrawal of its request for interconnection with three of the Rural ILECs, Denver and Ephrata Telephone & Telegraph Company d/b/a D&E Telephone Company, Buffalo Valley Telephone

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[9] In the *Suspension Termination Order*, we concluded:

> By our action today, we merely allow the *possibility* for non-facilities based competition in rural areas. Rural ILECs, such as Petitioners, still maintain TA-96's protection via the rural exemption, which stands unless modified by this Commission's order. Any exemption will remain in effect unless challenged by a bona fide request for interconnection, and until a Commission determination on the evidence presented in support of continued exemption. (Slip op. at 2; emphasis original).

Company, and Conestoga Telephone & Telegraph Company. Proceedings against these companies were closed by Secretarial Letter dated April 1, 2004.

Main and Reply Briefs were filed by the Parties. On April 14, 2004, the Rural ILECs filed a Notice of Supplemental Authority and forwarded two decisions of the United States Court of Appeals for the Eighth Circuit: *Iowa Network Service, Inc. v. Qwest Corporation*, 2004 U.S. LEXIS 6653 and *Rural Iowa Independent Telephone Association v. Iowa Utilities Bd.*, 2004 U.S. App. LEXIS 6077. Additional supplemental authority was provided by the Rural ILECs on April 23, 2004, and the decision of the Circuit Court of Cole County, Missouri, *State of Missouri, ex re. Alma Telephone Company, et al. v. Public Service Commission of the State of Missouri*, Case No. 02CV324810 was provided.

As noted, the ALJ's Initial Decision on Remand was issued on June 4, 2004, to which Exceptions and Reply Exceptions have been filed. The matter is now appropriate for Commission disposition. The factual background, unless duly noted, is identical for all companies and all companies, with the exception of Citizens Telephone Company of Kecksburg (Citizens), are represented by the same counsel. Counsel for Citizens endorsed the Rural ILECs' Main and Reply Briefs in this matter.[10] However, Citizens has a distinct interest in these proceedings relative to Issue #9 herein.[11] Unless expressly distinguished in this Opinion and Order, however, the position of the 18 Rural ILECs will be addressed collectively.

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[10] Citizens did not separately endorse the Exceptions filed in this case.

[11] Issue #9 states "Is the situation of Citizens Telephone Company of Kecksburg legally different from the situation of the other twenty Rural ILECs because of the decision of the Commonwealth Court of Pennsylvania in *Armstrong Telecommunications v. PA Public Utility Commission,* 835 A.2d 409 (Pa. Commw. 2003)?"

ISSUE 5: Whether the 47 U.S.C. Section 252 negotiation and arbitration process is the applicable procedure for changing the ITORP process in Pennsylvania regarding indirect wireless traffic transiting a third party tandem?

(a) Positions of the Parties

After explaining the benefits of the ITORP process and the pre-TA96 existence of the ITORP arrangements, the Rural ILECs take the position that the arbitration and negotiation provisions of TA96 § 252 should not apply to revise such arrangements. The Rural ILECs emphasize that ITORP was the result of a statewide toll, access, and settlement process which was applied to all incumbent LECs. (MB at 36). Based on the foregoing, the Rural ILECs propose that Verizon Wireless be required to petition the Commission for the institution of a generic investigation into the continuation of ITORP for wireless three-party traffic, with notice and opportunity for all industry stakeholders, including Verizon PA, to participate. (MB at 37).

Verizon Wireless asserts that the mere existence of an intraLATA toll arrangement such as ITORP does not preclude it, as a non-party to the agreement, from initiating a request for the negotiation of interconnection and reciprocal compensation arrangements under TA96. (RB at 16). Thus, Verizon Wireless suggests that there is no statutory impediment to the assertion of its rights to establish reciprocal compensation pursuant to 47 U.S.C. § 251(b)(5). According to Verizon Wireless, the only impediment would be whether or not, as discussed in Issue #1, if the rural exemption must be terminated in order for the Rural ILECs to be required to engage in binding arbitration.

Nextel maintains that a determination of whether and how ITORP arrangements should be modified is not relevant to resolution of the issues in this case. (MB at 13).

(b) ALJ Recommendation

ALJ Weismandel agreed with Verizon Wireless and Nextel. He concluded that "[a]n interconnection agreement reached between a Rural ILEC and Cellco [Verizon Wireless], whether by negotiation or by arbitration, need not impact nor be impacted by the ITORP process." (I.D. at 16).

In reaching this determination, the ALJ provided a brief history of the ITORP process and its application to the dispute involved here. Based on his observations that ITORP pertained to the settlement of IntraLATA toll, he concluded that ITORP is not implicated because toll calls are not involved. The ALJ was convinced that references to ITORP provided little clarification, but instead, served to cause confusion in relation to the issues. (I.D. at 16).

(c) Exceptions

The Rural ILECs excepted to the ALJ's conclusion that the ITORP process is not an issue that must be addressed in the context of either negotiating or arbitrating interconnection agreements with Verizon Wireless. They contend that the ALJ's conclusion that ITORP is not implicated because toll calls are not involved is flawed and submit that Verizon Wireless chose to interconnect with the Rural ILECs through the Pennsylvania statewide ITORP arrangement. The Rural ILECs find it relevant to describe the manner in which a Rural ILEC customer's call to a Verizon Wireless' customer is routed through Verizon PA's ITORP facilities. The Rural ILECs explain that a call from a Rural ILEC subscriber is transmitted over the Rural ILECs' meet point with Verizon PA where it then travels over Verizon PA's ITORP transmission facilities where it is then switched to a Verizon PA tandem switch and finally delivered to Verizon Wireless. In light of the foregoing, and absent any direct interconnection with Verizon Wireless, the Rural ILECs argue that the call is considered "telephone toll service" in

accordance with 47 U.S.C. § 53(48), notwithstanding the fact that the two subscribers are within the same MTA.[32] Thus, the Rural ILECs argue that the ALJ's attempt to distinguish this traffic on the basis of local and toll for the purpose of excluding consideration of the ITORP process is erroneous. (Exc. at 8).

The Rural ILECs also attempt to distinguish the FCC discussion in the *Local Competition Order* from the circumstances involved in these remanded proceedings. They argue that the *Local Competition Order* defined calls that originate and terminate in the same MTA as "local" in order to establish reciprocal compensation obligations between wireline and CMRS carriers. They state that the FCC did not purport to categorize intraMTA exchange traffic as local for any other purpose. Therefore, the Rural ILECs contend that the FCC subsequently removed the word "local" from its reciprocal compensation rules and acknowledged that it erred in using the term "local" to establish reciprocal compensation responsibility on direct interconnections. The Rural ILECs explain that the FCC held that all telecommunications traffic not excluded by TA96 § 251(g) is subject to reciprocal compensation. As such, the Rural ILECs state that the FCC revised § 51.701 of its regulations, 47 C.F.R. § 51.701, to strike the word "local" before "telecommunications traffic" at each occurrence. (Exc. at 8-9).

The Rural LECs further argue that this Commission, in the *ITORP Investigation Order* and in *In Re: Generic Investigation of Intrastate Access Charge Reform*, addressed the application of access charges to wireless carriers. The Rural ILECs note that the *Generic Access Charge Investigation* was subsequently consolidated with the *Global Order* without making any changes in the TSFA and Exhibit G agreements applicable to ITORP wireless traffic. Based on the foregoing, the Rural ILECs are of the opinion that the ITORP arrangement applicable to wireless traffic has

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[32] The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. 47 U.S.C. Section 153(48).

been reviewed and approved by the Commission since the enactment of TA96. (Exc. at 16).

Also, the Rural ILECs cite *Iowa Utils. Bd. II*[33] for the proposition that the court held that pre-TA96 agreements, such as ITORP, and which were the product of voluntary arrangements between carriers remain valid and are not subject to the negotiation and approval process. (Exc. at 17-18).

Verizon Wireless agrees with the ALJ that ITORP is not relevant to the Rural ILECs' interconnection and reciprocal compensation duties under TA96. Verizon Wireless repeats that it is not attempting to change the ITORP process in Pennsylvania, as alleged by the Rural ILECs. Rather, Verizon Wireless submits that it is merely seeking compensation for the transport and termination of traffic that the FCC has defined as subject to the reciprocal compensation regime.[34] Verizon Wireless contends that by formally requesting negotiation of a reciprocal compensation arrangement, it invoked the dispute procedures under TA96. (VZ Wireless R.Ex. at 4-5).

Verizon Wireless further replies in detail to the Rural ILECs' arguments. Most of Verizon Wireless' rebuttal has been substantively addressed in our consideration of Issue #1, above. Verizon Wireless disagrees with the Rural ILECs' contention that ITORP is relevant for any of the reasons advanced by the Rural ILECs. (VZ Wireless R.Exc. at 7-8).

Verizon Wireless also responds to the claims that ITORP is relevant because they rate calls to Verizon Wireless as "toll" calls and not "local" calls. Verizon

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[33] *See Iowa Utilities Board, et al. v. FCC*, 219 F.3d 744 (8th Cir. 1999) (*Iowa Utilities Board II*), aff'd in part, rev'd in part, and remanded on other grounds in *Verizon Communications Inc. v. FCC*, 434 U.S. 467 (2002).

[34] *See* 47 C.F.R. §51.701(b)(2).

Wireless contends this allegation is not accurate. Verizon Wireless argues that whether the Rural ILECs charge their customers "local" or "toll" rates for calls to Verizon Wireless customers is irrelevant to the reciprocal compensation obligation under TA96. Rather, Verizon Wireless argues that what is relevant is whether the call originates and terminates within the same MTA. If the call originates and terminates within the same MTA, it constitutes "telecommunications traffic" that is subject to the FCC's reciprocal compensation rules. 47 C.F.R. § 51.701.[35] Verizon Wireless asserts that the FCC's reciprocal compensation rules clearly apply to intraMTA traffic indirectly exchanged between the Rural ILECs and Verizon Wireless. (VZ Wireless R.Exc. at 8).

Verizon Wireless also replies that, contrary to the position of the Rural ILECs, the *Global Order* acknowledged that reciprocal compensation is the intercarrier compensation mechanism applicable to the exchange of "local traffic" under § 251.[36] (VZ Wireless R.Exc. at 9).

With regard to the Rural ILECs' citation to *Iowa Utilities Board II* for the proposition that the ITORP agreements survived TA96, Verizon Wireless argues that this claim is irrelevant because it is not seeking renegotiation of ITORP and is not a party to the ITORP agreements. Moreover, Verizon Wireless asserts that even if it were a party to the ITORP arrangements, FCC rules at 47 C.F.R. § 51.717(a) provides that a wireless carrier operating under any pre-1996 Act arrangement that did not provide for reciprocal compensation could renegotiate the terms of the agreement pursuant to TA96. (VZ Wireless R.Exc. at 10, n. 36).

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[35] *See* 47 CFR §§ 51.701(a) ("The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications carriers."); 51.701(b)(2) ("For purposes of this subpart, telecommunications traffic means . . . [t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call originates and terminates within the same Major Trading Area. . . .").

[36] *See In re Nextlink Pennsylvania, Inc.*, 196 P.U.R. 4th at n. 192.

In conclusion, Verizon Wireless states that if the Rural ILECs believe that their ITORP agreements with Verizon PA should be modified in light of their reciprocal compensation obligations to Verizon Wireless, they are free to negotiate such modifications with Verizon PA and to enlist the Commission's assistance if needed. However, Verizon Wireless emphasizes that the Rural ILECs are not entitled to use an agreement with a non-party regarding intraLATA toll settlements to insulate themselves from the reciprocal compensation obligations imposed by federal law. (VZ Wireless R.Exc. at 10).

Nextel also disagrees with the Rural ILECs that ITORP is relevant to the exchange of local, intraMTA traffic between ILECs and CMRS providers. Nextel maintains its argument that it made in its Main and Reply Briefs that TA96 and the FCC's implementing rules set forth the appropriate reciprocal compensation regime for the exchange of local exchange traffic between ILECs and CMRS carriers, as well as cost-based pricing guidelines that must be followed in mandatory arbitration if a voluntary agreement cannot be struck.[37] Thus Nextel agrees with the ALJ recommendation that ITORP is in no way implicated in this proceeding.

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[37] *See* Nextel MB at 14; Nextel RB at 11-12.

(d) Disposition

On consideration of the positions of the Parties, we shall deny the Exceptions of the Rural ILECs on this issue. We conclude that a generic investigation relative to the ITORP arrangement may not serve as an impediment to the adjudication of Verizon Wireless' rights. These rights are asserted pursuant to federal law and seek to obtain reciprocal compensation for the exchange of traffic. Based on the FCC *Local Competition Order*, Verizon Wireless has this right, as a matter of federal law, to obtain compensation for the exchange of traffic that is consistent with TA96 and applicable federal regulations. We conclude that the Rural ILEC arguments attempting to distinguish traffic which originates and terminates within an MTA as toll lacks merit. Pursuant to the *Local Competition Order* and applicable federal rules, Verizon Wireless, as a CMRS carrier, has generally held the right to renegotiate all non-reciprocal agreements which existed prior to August 8, 1996. FCC rule 47 C.F.R. § 51.717 provides in pertinent part:

> Sec. 51.717 Renegotiation of existing non-reciprocal arrangements.
>
> (a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.
>
> (b) From the date that a CMRS provider makes a request under paragraph (a) of this section until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

Based on the foregoing, notwithstanding the stated retention of the ITORP facilities arrangement by which indirect traffic is currently exchanged, the intercarrier compensation methodology that existed prior to TA96 must be regarded as superseded by operation of law. We find this conclusion to be in accord with *Verizon North Inc., et al., v. Strand et al.*, 367 F.3d 577 (6th Cir. 2004) wherein the court invalidated certain state imposed tariffs which had the effect of frustrating the objective of TA96 to encourage competitors and incumbent LECs to engage in arbitration.

ISSUE 6: Whether the reciprocal compensation requirements of 47 U.S.C. § 251(b)(5) and the related negotiation and arbitration process in § 252(b) apply to traffic being exchanged indirectly by a CMRS provider and a rural telephone company through a third-party tandem provider?

(a) Positions of the Parties

Verizon Wireless contends that the reciprocal compensation requirements under Section 251(b)(5) and the related negotiation and arbitration process in Section 252(b) apply to all telecommunications traffic exchanged indirectly by a CMRS provider and a rural telephone company through a third-party tandem provider. Verizon Wireless asserts that Section 251(b) obligates *all* ILECs, including rural ILECs, to establish reciprocal compensation arrangements for the exchange of telecommunications traffic pursuant to the requirements of the statute and the FCC's rules. Furthermore, Verizon Wireless explains that Section 252 provides telecommunications carriers only two options for arriving at these mandated agreements – either through voluntary negotiations or as a result of compulsory arbitration.[38] (VZ Wireless MB at 16-21).

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[38] *See Exchange of Transit Traffic*, Iowa Utilities Board, Order Aff'g Proposed Decision and Order, Docket Nos. SPU-00-7, TF-00-275 (DRU-00-2) (March 18, 2002).

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF: APPLICATION OF SOUTHWESTERN BELL WIRELESS L.L.C. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	Cause No. PUD 200200149
IN THE MATTER OF: APPLICATION OF AT&T WIRELESS SERVICES, INC. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	Cause No. PUD 200200150
IN THE MATTER OF: APPLICATION OF W.W.C. LICENSE, L.L.C. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACTOF 1996	)	Cause No. PUD 200200151
IN THE MATTER OF APPLICATION OF SPRING SPECTRUM, L.P. D/B/A SPRINT PCS FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	)	Cause No. PUD 200200153 ORDER NO. 466613

HEARING: August 1, 2002, before the Commission *en banc*

APPEARANCES: Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"), J. Paul Walters, Jr.;
AT&T Wireless Services Inc., Marc Edwards and Lawrence S. Smith;
WWC License, LLC ("Western Wireless"), Mark J. Ayotte, Philip R. Schenkenberg and Dallas E. Ferguson;
Sprint Spectrum, L.P. d/b/a/ Sprint PCS ("Sprint Spectrum"), Brett D. Leopold and Nancy Thompson;
Public Utility Division, Maribeth D. Snapp, Deputy General Counsel and Elizabeth Ryan, Assistant General Counsel;
The Rural Independent Local Exchange Companies, Ron Comingdeer, Kendall W. Parrish, and Kimberly K. Brown.

INTERLOCUTORY ORDER

EXHIBIT PS-6

AUG 12 2002

RECEIVED

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, the above-consolidated Causes come on for consideration and order, regarding the Arbitrator's Report and Recommendation on the unresolved issues of the interconnection agreements between the Commercial Mobile Radio Service Providers ("CMRS Providers")[1] and the Rural Independent Local Exchange Companies ("RTCs").[2]

This Cause is an arbitration of interconnection agreements pursuant to the Telecommunications Act of 1996 ("ACT") [47 U.S.C. § 252]. The subject of the interconnection agreements in this Cause concern wireless to landline calls and landline to wireless calls between CMRS Providers and RTCs. The parties agreed to many provisions of the interconnection agreements; however negotiations broke down over the reciprocal compensation arrangements for telecommunication transport and termination, and the rate for that telecommunication transport and termination. Accordingly, the CMRS Providers filed petitions before the Commission for arbitration of the unresolved issues pursuant to the Act.

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[1] Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"); AT&T Wireless Services Inc.; WWC License, LLC ("Western Wireless"); Sprint Spectrum, L.P. d/b/a/ Sprint PCS ("Sprint Spectrum")

[2] Atlas Telephone Company; Beggs Telephone Company; Bixby Telephone Company; Canadian Valley Telephone Company; Central Oklahoma Telephone Company; Cherokee Telephone Company; Chickasaw Telephone Company; Chouteau Telephone Company; Cimarron Telephone Company; Cross Telephone Company; Dobson Telephone Company; Grand Telephone Company; Hinton Telephone Company; KanOkla Telephone Association; McCloud Telephone Company; Medicine Park Telephone Company; Oklahoma Telephone & Telegraph; Oklahoma Western Telephone Company; Panhandle Telephone Cooperative, Inc.; Pine Telephone Company; Pinnacle Communications; Pioneer Telephone Cooperative, Inc.; Pottawatomie Telephone Company; Salina-Spavinaw Telephone Company; Santa Rosa Telephone Cooperative, Inc.; Shidler Telephone Company; South Central Telephone Association; Southwest Oklahoma Telephone Company; Terral Telephone Company; Totah Telephone Company, Inc. and Valliant Telephone Company.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission having considered the recommendation of the Arbitrator, Administrative Law Judge Robert E. Goldfield, the record in the above-consolidated Causes and the oral argument of counsel, finds as follows:

The Commission finds that it has jurisdiction in the Cause pursuant to the Telecommunications Act of 1996, 47 U.S.C. §§ 251 & 252; Title 17 O.S. 131 et seq., and Commission rules OAC 165: 55 et seq.

The Commission further finds that notice was properly given pursuant to the law and the Commission's rules.

The Commission further finds that the Order issued in this Cause is applicable to the parties of this Arbitration only.

The Commission further finds that the procedural history, summary of evidence and the standard of review set forth in the July 2, 2002, Report and Recommendations of the Arbitrator are, hereby, adopted as the procedural history, summary of evidence and the standard of review of the Commission. Furthermore, the Report and Recommendations of the Arbitrator, which is attached hereto as "Attachment A" is incorporated herein by reference.

The Commission further finds that the recommendations of the Arbitrator regarding the disputed issues between CMRS Providers and RTCs, which were not appealed by any party, are adopted as the findings of the Commission.

The Commission further finds that the recommendations of the Arbitrator regarding the unresolved issues of the interconnection agreements, which the RTCs appealed, is hereby adopted as the findings of the Commission. Specifically, the Commission finds as follows regarding the unresolved issues:

Unresolved Issue No. 1. What traffic within a Major Trading Area is subject to reciprocal compensation?

The Arbitrator recommended that all traffic exchanged between the parties, which originates and terminates in the same Major Trading Area as determined at the beginning of the call, is subject to reciprocal compensation. Such traffic shall be referred to as intra-MTA traffic hereafter.

Unresolved Issue No. 2. Do reciprocal compensation principles apply when the parties are not directly interconnected?

The Arbitrator recommended that each carrier must pay each other's reciprocal compensation for all intra-MTA traffic whether the carriers are directly or indirectly connected, regardless of an intermediary carrier.

Unresolved Issue No. 3. May the RTCs charge terminating access rates for any traffic in an intra-MTA area or Major Trading Area?

The Arbitrator recommended that calls made to and from CMRS Providers within the major traffic area are subject to transport and termination charges rather than interstate and intrastate access charges.

Unresolved Issue No. 4. What are the appropriate rates to be charged for transport and termination of traffic subject to reciprocal compensation?

The Arbitrator recommended that, at this time, a rate should not be set. Agreeing with Staff, the Arbitrator recommended that transport and termination be provided on a "bill and keep" basis until an individual study

establishes that it is economically and justifiably appropriate to do otherwise. If the Commission determines that an imbalance in the exchange of intra-MTA traffic is occurring, then a forward-looking cost study should be done to establish a rate.

Unresolved Issue No. 5. Is the Hatfield Associates Inc., (HAI) Model an appropriate model for determining rates in accordance with FCC rules and orders for Section 251 (b) (5) traffic?

The Arbitrator recommended that the HAI model was not an appropriate model. The Arbitrator stated that the model is suspect and unreliable due to the ability to manipulate inputs to obtain a desired result.

Unresolved Issue No. 6. Is it reasonable and in compliance with the FCC requirements for RTCs to utilize a composite rate?

The Arbitrator, for the following reasons, recommended that it was not reasonable to utilize a composite rate: (1) A uniform transport and termination rate is not appropriate because each company must have its own rate based upon its own costs; (2) It is inappropriate to develop costs on either an aggregate, weighted average, or composite basis; (3) It is inappropriate to average tariff rates to arrive at a uniform rate for every company; and finally (4) It is inappropriate to average the results of a cost study to support a rate.

Unresolved Issue No. 7. Is Western Wireless entitled to be compensated at the tandem interconnection rate?

The Arbitrator recommended that the rates are to be symmetrical utilizing the RTC's tandem interconnection rate.

Unresolved Issue No. 8. Is Western Wireless entitled to establish a single point of interconnection at a tandem switch and obtain a virtual NPA NXX in the RTC's end office switches?

The Arbitrator recommended that Western Wireless have the option of establishing local numbers in an RTC's switch without having a direct connection.

Unresolved Issue No. 9 (A). How should "Cell Site" be defined?

The Arbitrator recommended that the definition be consistent with the definition used by SWBT in its Wireless Interconnection Agreement, which is as follows: "Cell Site is a transmitter/receiver location, operated by the cellular carrier, through which radio links are established between the cellular system and mobile units. The area reliably serviced as a given call site is referred to as a 'cell.'"

Unresolved Issue No. 9 (B). How should "traffic" be defined?

The Arbitrator recommended that the definition be the definition used in 47 C.F.R. 51.701(b)(2) which states that telecommunications traffic is traffic exchanged between a local exchange carrier and a CMRS Provider which, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in 47 C.F.R. § 24.202(a).

Unresolved Issue No. 9 (C). Should the contract contain incomplete sentences that do not clearly relate to any other sections?

The Arbitrator recommended striking those paragraphs that contained incomplete sentences that did not relate to any other section. (Paragraph 2.2, 2.3 and 2.4)

Unresolved Issue No. 9 (D). What language regarding Internet Service Provider ("ISP") traffic should be adopted?

The Arbitrator recommended that the language in Paragraph 2.5 of the CMRS Providers' proposed agreement be used, which primarily states that there is no internet service provider bound traffic between them and that internet service provider bound traffic will not be separately identified or accounted for under the agreement.

Unresolved Issue No. 9 (E)(1). What language should be adopted for Section 3.0 in the contract?

The Arbitrator recommended that the terms "transport and termination" in relation to CMRS Providers' traffic be utilized.

Unresolved Issue No. 9 (E)(2). Must a Type 2A and 2B interconnection be physically located within the wire center boundary of the telephone company's tandem switch?

The Arbitrator recommended that a Type 2A and 2B connection need not be located within a RTCs' end office exchange boundary, but § 251(a) of the Act does not require the RTCs to construct facilities beyond their exchange boundaries to provide interconnection at the request of a wireless carrier.

Unresolved Issue No. 9 (E)(3). When the percentages of usage on two-way interconnection trunks are reviewed and modified, shall charges between the parties be trued-up?

The Arbitrator did not recommended a true up, but rather recommended that if the parties can measure the actual minutes of use, they shall bill accordingly.

Unresolved Issue No. 9 (E)(4). Under what circumstances may a point of interconnection be changed?

The Arbitrator recommended that the point of interconnection should not be changed without agreement of the parties.

Unresolved Issue No. 9 (F). Should the contract contain a provision addressing circumstances when traffic levels are "de minimus"?

Since the Arbitrator recommended "bill and keep" as the primary compensation mechanism, a de minimus provision is not necessary.

Unresolved Issue No. 9 (G). Should the Commission adopt the CMRS Providers' proposal for determining the origination and termination points of a call?

The Arbitrator recommended Staff's position that the origination point of a call is the location of the initial cell site when a call begins.

Unresolved Issue No. 9 (H). What is the proper time period for payment of amounts due on a billing statement?

The Arbitrator, agreeing with the RTCs, recommended that the proper time period for payment is 30 days from the date of the billing statement.

Unresolved Issue No. 9 (I). Should the CMRS Providers be solely responsible for the services they provide to their end users?

The Arbitrator, agreeing with RTCs, recommended that each party be responsible for the services they provide to their respective end users, and, therefore language should be included to reflect the reciprocal nature of the parties' responsibilities.

Unresolved Issue No. 9 (J). (Has been resolved.)

Unresolved Issue No. 9 (K). Should the contract contain the proposed wording in Paragraph 14.21 involving expanded networks, and should the terms and rates of the Agreement apply to such expanded networks?

The Arbitrator recommended that CMRS Providers provide notice to the RTCs prior to implementation, and that the notice requirement also apply to affiliates of the wireless carriers.

The Commission further finds that with respect to Unresolved Issue No. 4, regarding the Commission utilizing the "bill and keep" method instead of establishing a reciprocal compensation rate, that the Commission appreciates the concern of the RTCs. However, although the Commission finds that there is a presumption of "balanced traffic," nothing in this Order precludes a RTC from filing an application to rebut that presumption by arguing that an imbalance of traffic is occurring and that the RTC is losing revenue. Upon an RTC filing an application, a hearing can be set where the RTC will have an opportunity to persuade the Commission through the presentation of individual traffic and cost studies, whereby, the Commission may set an appropriate reciprocal compensation rate for the RTC.

The Commission further finds that pursuant to Commission Order No. 462431, the parties are to prepare their respective interconnection agreements in conformance with the Commission's Order herein by August 22, 2002.

ORDER

IT IS, THEREFORE, THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the Report and Recommendation of the Arbitrator, attached hereto and marked Attachment A, is adopted by the Commission, and that the above Findings of Fact and Conclusions of Law, are, hereby, the Order of the Commission.

OKLAHOMA CORPORATION COMMISSION

DISSENT

Chairman Denise A. Bode

Bob Anthony

Vice-Chairman Bob Anthony

Ed Apple

Commissioner Ed Apple

DONE AND PERFORMED THIS 9TH DAY OF AUGUST, 2002

Peggy Mitchell

Secretary, Peggy Mitchell

ATTACHMENT A

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF: APPLICATION OF SOUTHWESTERN BELL WIRELESS LLC FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200149
IN THE MATTER OF APPLICATION OF AT&T WIRELESS SERVICES, INC. FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200150
IN THE MATTER OF APPLICATION OF WWC LICENSE, LLC FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200151
IN THE MATTER OF APPLICATION OF SPRINT SPECTRUM, L.P. D/B/A SPRINT PCS FOR ARBITRATION UNDER THE TELECOMMUNICATIONS ACT OF 1996	Cause No. PUD 200200153

FILED
JUL - 2 2002
COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

REPORT AND RECOMMENDATIONS
OF THE ARBITRATOR

I. Procedural History

Southwestern Bell Wireless LLC, d/b/a Cingular Wireless ("Cingular"), AT&T Wireless Services, Inc. ("AWS"), WWC License, LLC ("Western Wireless") and Sprint Spectrum, L.P. d/b/a Sprint PCS ("Sprint Spectrum") (collectively, the "CMRS Providers") petitioned the Oklahoma Corporation Commission ("Commission"), pursuant to Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) (the "Act"), to arbitrate unresolved issues after unsuccessful negotiations for a reciprocal transport and termination agreement between the CMRS Providers and the respondent Rural Telephone Companies ("RTCs"). The CMRS Providers are Commercial Mobile Radio Service providers, licensed to provide cellular telecommunications service within the State of Oklahoma. The negotiations between the CMRS Providers and the RTCs resulted in the agreement attached to each petition filed by each respective CMRS Provider (collectively, the "Agreement"). The Agreement sets forth the terms and conditions to which the parties have agreed, as well as language proposed by the parties regarding the unresolved issues for

arbitration. The final unresolved issues are summarized in the Final Issues Matrix filed in this cause.

On April 2, 2002, the Commission issued its Order consolidating the causes filed by Cingular (PUD 200200149), Western Wireless (PUD 200200151) and Sprint Spectrum (PUD 2000200153) into the cause filed by AWS, PUD 200200150, as the surviving cause for purposes of the petitions of arbitration filed by the CMRS Providers.

This Cause came on for hearing on the merits pursuant to Notice and Order of the Commission on June 17-19, 2002. The Administrative Law Judge, Robert E. Goldfield, acting as arbitrator pursuant to the Act ("Arbitrator"), proceeded to hear testimony of witnesses sworn and examined and to take evidence on the record. At the conclusion of the hearing on the merits, the Arbitrator took the issues presented under advisement, and after due deliberation, issued this Report and Recommendations of the Arbitrator.

II. Standards of Review

The Act gives the state commissions guidelines and procedures for approval of either negotiated or arbitrated agreements. State commissions are to limit consideration of any petition for arbitration (and any response thereto) to the issues set forth in the petition and in the response. 47 U.S.C. §252(b)(4). The state commission is to resolve each issue set forth in the petition, and the response, by imposing appropriate conditions if required to implement the requirements of §251 of the Act. 47 U.S.C. §252(b)(4)(c).

All parties have submitted extensive testimony, as well as briefs in these proceedings. The Arbitrator made no decision with respect to settled issues. The Arbitrator makes his recommendations on the disputed issues based upon the evidentiary record contained in this consolidated cause, the prefiled testimony, briefs filed by the parties and the testimony of the witnesses appearing on behalf of the parties.

III. Summary of Evidence

Summaries of the testimony of witnesses presented in this Cause are attached as Exhibit A.

IV. Findings of Fact, Conclusions of Law and Recommendations

The recommendations of the Arbitrator as to each disputed issue are reflected in Exhibit B attached to this Report. In addition to what is included within Exhibit B, the Arbitrator makes the following findings and conclusions:

1. The Commission has jurisdiction over the issues addressed in this matter pursuant to Commission Rule Subchapter 165:55-17 and 47 U.S.C. §§ 251-252.

2. The Commission finds that the recommendations made herein in no way affect past OCC orders regarding access rulings or anything else, as these matters all concern land line to land line calls.

3. The Arbitrator further finds that this cause concerns wireless to land line and land line to wireless calls and concerns wireless carriers, a carrier that we don't regulate, and a land line carrier that we do regulate. Therefore, the Arbitrator further finds that OCC rules and regulations of the OCC generally do not apply.

4. The Arbitrator finds the FCC regulations generally apply in this case. The effects of those regulations result in some strange final determinations, for instance, the much maligned local call from Broken Bow to Boise City. Despite some argument to the contrary, the Arbitrator finds that the MTA controls this case and most of its results.

5. Each RTC is an incumbent local exchange carrier, and each of the CMRS Providers is a CMRS provider as defined by the FCC.

6. Section 251(b)(5) of the Act and FCC Rule 51.703 require local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of "telecommunications traffic".

7. FCC Rule 51.701(b) defines "telecommunications traffic" between a local exchange carrier and a CMRS provider to be traffic that "at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter."

8. A bill-and-keep arrangement as defined in FCC Rule 51.713 is an acceptable mechanism for providing reciprocal compensation between carriers.

9. FCC Rule 51.711 requires transport and termination rates to be symmetrical, which means that the rates charged by an incumbent local exchange carrier for transport and termination are the same rates charged by a carrier other than an incumbent local exchange carrier.

10. The RTCs proposed a reciprocal compensation rate of $0.053804. That rate is not based on a reliable, forward looking cost study. In addition, the proposed rate was stated to be equivalent to the RTC's Radio Common Carrier tariffed rate. However, the RTC's RCC tariff does not contain a rate, but instead cross-references the RTC's ORTC intrastate access tariff. The reciprocal compensation rate proposed by the RTCs in this proceeding is in fact their intrastate terminating access rate.

11. The Arbitrator further finds that the Hatfield model, which was utilized by the RTCs herein, has already been found suspect by the Arbitrator in at least one previous hearing due to the ability of the persons using it to be able to manipulate the inputs to reach about almost any imaginable result. In this case the result utilizing the Hatfield model is approximately ten cents per minute, but the RTCs are gracious and offer a 50 percent discount. To be even more gracious, they offer to use input suggested by the wireless carriers' experts even though their inputs were not an exhaustive study.

12. The Arbitrator further finds that there is no comparison between the RTC rural areas and SWBT's generally high density city areas, but if the RTC's rate is 29 times higher than that of Southwestern Bell Telephone Company, the Arbitrator questions the differences between the varied RTCs. So the Arbitrator finds that it seems to be impossible for an average cost study to be representative of all those varied companies. It doesn't really matter whether 1994 data or the 2000 data, which was not allowed, is used, the results are still questionable.

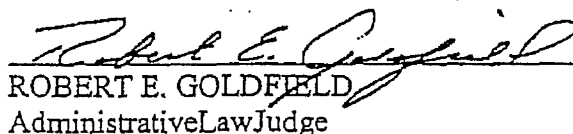
13. Because no forward-looking rate was established, and traffic is roughly balanced, bill-and-keep should be adopted as the appropriate mechanism for providing reciprocal compensation. Any party may seek to establish rates in a subsequent docket, but must present an individual cost study that complies with the Act, and must show that establishing rates and rendering bills is more economically appropriate than bill and keep.

14. Western Wireless' mobile switching centers serve a geographic area greater than that served by any RTC tandem switch. In accordance with FCC Rule 51.711(a)(3), if rates are established in a subsequent docket, Western Wireless will be compensated at the RTC's tandem interconnection rate on all calls.

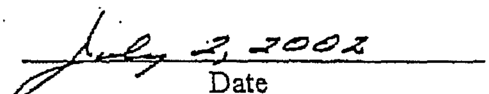
15. Exhibit B reflects the issue and the recommendation as to each issue by identifying which of the competing provisions or positions proposed by the parties for identified sections of the Agreement (whether or not modified by the Arbitrator) are recommended by the Arbitrator. Only the language recommended by the Arbitrator is indicated on the attached Exhibit B. If approved, this Report and Recommendation and Exhibit B reflect the decision announced by the Arbitrator orally on July 2, 2002, which is formally submitted for recommendation by this Report and Recommendation on this day.

V. Conclusion

The Arbitrator has made the Findings and Recommendations as set forth above based upon the requirements of the Telecommunications Act of 1996 and the record created by the parties. If this recommendation is adopted, the parties would be ordered to submit for approval, in accordance with the procedural schedule, revised interconnection agreements (a total of 128 agreements) that conform the rulings herein.



ROBERT E. GOLDFIELD
AdministrativeLawJudge



Date

Appendix 1 - Exhibit 1

SDTA Member Company	Reciprocal Compensation Rates	
	Western Wireless Corporation under 2003 Contracts*	Other Carriers**
Alliance Communications Cooperative, Inc.	$.007 to $.02	$0.028
Armour Independent Telephone Co.	$0.009	$0.038
Beresford Municipal Telephone Co.	$0.07	$0.033
Bridgewater-Canistota Independent Tel. Co.	$0.02	$0.033
CRST Telephone Authority	$0.009	$0.028
Faith Muncipal Telephone Company	$0.007	$0.050
Fort Randall Telephone Company	$0.009	$0.028
Golden West Telecomunications Coop.	$0.009	$0.028
Interstate Telecommunications Cooperative	$0.007	$0.028
James Valley Telecommunications	$0.009	$0.028
Jefferson Telephone Co. (Long Lines)	$0.029	$0.038
Kadoka Telephone Company	$0.029	$0.038
Kennebec Telephone Company, Inc.	$0.029	$0.038
McCook Cooperative Telephone Co.	$0.029	$0.038
Midstate Communications	$0.020	$0.028
Mt. Rushmore Telephone Company	$0.009	$0.038
PrairieWave Community Telephone	$0.005	$0.028
RC Communications,Inc.	$0.020	$0.033
Roberts County Telephone Cooperative	$0.020	$0.050
Santel Communications Coop.	$0.009	$0.028
Sioux Valley Telephone Co.	$0.007	$0.028
Splitrock Properties, Inc.	$0.020	$0.028
Stockholm-Strandburg Telephone Co.	$0.020	$0.038
Swiftel Communications (Brookings)	$0.007	$0.028
Tri-County Telcom, Inc.	$0.029	$0.050
Union Telephone Co.	$0.009	$0.028
Valley Telecommunications Cooperative	$0.020	$0.028
Venture Communications Coop.	$0.009	$0.028
Vivian Telephone Company	$0.009	$0.028
West River Cooperative Telephone Co.	$0.020	$0.028
West River Telecomunications Coop.	$0.007	$0.038
Western Telephone Company	$0.029	$0.033

* Contracts filed with and approved by PUC, up for renewal or termination year end 2005.

** Negotiated under contracts prior to 2003. Contracts filed with and approved by PUC.

EXHIBIT PS-7

Appendix 1 - Exhibit 3

Intrastate Access Rates*		
SDTA Member Company	Originating Intrastate	Terminating Intrastate
Alliance Communications Cooperative, Inc.	$0.1252	$0.1447
Armour Independent Telephone Co.	$0.1252	$0.1447
Beresford Municipal Telephone Co.	$0.1252	$0.1447
Bridgewater-Canistota Independent Tel. Co.	$0.1252	$0.1447
CRST Telephone Authority	$0.1252	$0.1447
Faith Muncipal Telephone Company	$0.1252	$0.1447
Fort Randall Telephone Company	$0.0931	$0.0931
Golden West Telecomunications Coop.	$0.1252	$0.1447
Interstate Telecommunications Cooperative	$0.1252	$0.1447
James Valley Telecommunications	$0.1252	$0.1447
Jefferson Telephone Co. (Long Lines)	$0.1252	$0.1447
Kadoka Telephone Company	$0.1325	$0.1325
Kennebec Telephone Company, Inc.	$0.1252	$0.1447
McCook Cooperative Telephone Co.	$0.1252	$0.1447
Midstate Communications	$0.1252	$0.1447
Mt. Rushmore Telephone Company	$0.0931	$0.0931
PrairieWave Community Telephone	$0.1463	$0.1463
RC Communications,Inc.	$0.1252	$0.1447
Roberts County Telephone Cooperative	$0.1252	$0.1447
Santel Communications Coop.	$0.1252	$0.1447
Sioux Valley Telephone Co.	$0.1252	$0.1447
Splitrock Properties, Inc.	$0.1252	$0.1447
Stockholm-Strandburg Telephone Co.	$0.1252	$0.1447
Swiftel Communications (Brookings)	$0.1252	$0.1447
Tri-County Telcom, Inc.	$0.1252	$0.1447
Union Telephone Co.	$0.1252	$0.1447
Valley Telecommunications Cooperative	$0.1252	$0.1447
Venture Communications Coop.	$0.1252	$0.1447
Vivian Telephone Company	$0.1252	$0.1447
West River Cooperative Telephone Co.	$0.1252	$0.1447
West River Telecomunications Coop.	$0.1252	$0.1447
Western Telephone Company	$0.1252	$0.1447

*All SDTA member companies other than Prairie Wave Community Telephone, Fort Randall Telephone, Mt. Rushmore Telephone, and Kadoka Telephone Company are members of the Local Exchange Carrier's Assn. and thus charge LECA tariffed rates for intrastate access. The LECA transport rate is non-distance sensitive.

Interrogatory #2 Response - Supplementary Data

	Highest Interstate Access Rates*		Lowest Interstate Access Rates*	
SDTA Member Company	Local Switching**	Transport, Including Tandem Switching if Applicable	Local Switching**	Transport, Including Tandem Switching if Applicable
Alliance Communications	$0.010127	$0.014870	$0.010127	$0.011291
Alliance Communications - Baltic	$0.009111	$0.010469	$0.009111	$0.005877
Armour Independent Telephone Co.	$0.018029	$0.017196	$0.018029	$0.017196
Beresford Municipal Telephone	$0.016245	$0.006862	$0.016245	$0.006862
Bridgewater-Canistota Independent Tel. Co.	$0.018029	$0.010797	$0.018029	$0.009157
CRST Telephone Authority				
Faith Municipal Telephone Company	$0.018029	$0.047862	$0.018029	$0.047862
Fort Randall Tel. Co./Mt. Rushmore Tel. Co.	$0.007327	$0.013712	$0.007327	$0.000000
Golden West Telecommunications Coop.	$0.009111	$0.062268	$0.009111	$0.042450
Interstate Telecommunications Cooperative	$0.012678	$0.030451	$0.012678	$0.001415
James Valley Telecommunications	$0.016363	$0.031042	$0.016363	$0.026947
Jefferson Telephone Co. (Long Lines)	$0.018029	$0.019464	$0.018029	$0.019464
Kadoka Telephone Company	$0.018029	$0.041091	$0.018029	$0.041091
Kennebec Telephone Company, Inc.	$0.018029	$0.030944	$0.018029	$0.027690
McCook Cooperative Telephone Co.	$0.018029	$0.013257	$0.018029	$0.010305
Midstate Communications	$0.010894	$0.027361	$0.010894	$0.016701
PrairieWave Community Telephone	$0.018029	$0.007025	$0.018029	$0.005713
RC Communications, Inc.	$0.014462	$0.035043	$0.014462	$0.024409
Roberts County Telephone Cooperative	$0.014462	$0.030641	$0.014462	$0.030477
Santel Communications Coop.	$0.005543	$0.026516	$0.005543	$0.015226
Sioux Valley Telephone Co.	$0.007327	$0.024055	$0.007327	$0.007681
Splitrock Properties, Inc.	$0.010127	$0.072888	$0.010127	$0.072888
Stockholm-Strandburg Telephone Co.	$0.018029	$0.022908	$0.018029	$0.019162
Swiftel Communications (Brookings)	$0.009111	$0.012248	$0.009111	$0.010306
Tri-County Telcom, Inc.	$0.018029	$0.009322	$0.018029	$0.008994
Union Telephone Co.	$0.022419	$0.095198	$0.022419	$0.089893
Valley Telecommunications Cooperative	$0.007327	$0.049968	$0.007327	$0.039006
Venture Communications Coop.	$0.005543	$0.044581	$0.005543	$0.005277
Vivian Telephone Company	$0.009111	$0.058030	$0.009111	$0.010259
West River Cooperative Telephone Co.	$0.007327	$0.067516	$0.007327	$0.056692
West River Telecommunications Coop.***	$0.009111	$0.038035	$0.007644	$0.012400
Western Telephone Company	$0.018029	$0.031108	$0.018029	$0.027362

*The Splitrock Companies that are subsidiaries of Alliance Communications, James Valley Telecommunications, and Union Telephone Company do not participate in the NECA traffic sensitive pool and thus have their own tariffed interstate rates. All other SDTA member companies participate fully in the NECA tariff.

**The NECA local switching rate is a banded per minute rate. The NECA rate shown also includes an "Information Surcharge" component.

***West River Telecommunications Coop. operates two exchanges in SD, McLaughlin and Mobridge. The McLaughlin exchange rates are set forth in GVNW Inc. Tariff No. 2 and the Mobridge exchange rates are NECA rates found in NECA FCC Tariff No. 5. This is the reason for the different local switching rates.

South Dakota Telecommunications Companies	Minneapolis MTA 12	Denver MTA 22	DesMoines MTA 32
Alliance Communications Cooperative	X		X
Beresford Municipal Telephone Co.	X		X
Cheyenne River Sioux Tribe Telephone Authority	X		
Faith Municipal Telephone Co.		X	
Fort Randall Telephone Company	X	X	X
Mount Rushmore Telephone		X	
Golden West Telecommunications Cooperative	X	X	
Armour Independent Telephone Company	X		
Bridgewater-Canistota Telephone Company	X		
Kadoka Telephone Co.		X	
Sioux Valley Telephone Co.	X		
Union Telephone Co.	X		
Vivian Telephone Company	X	X	X
Interstate Telecommunication Cooperative	X		
James Valley Cooperative Telephone Co.	X		
Long Lines			X
Kennebec Telephone Co.	X		
Midstate Communications Inc.	X		
McCook Cooperative Telephone Company	X		
Prairie Wave Communications	X		X
Roberts County Telephone Cooperative Assn.	X		
RC Communications	X		
Santel Communications Cooperative	X		X
Stockholm-Strandburg Telephone Co.	X		
Swiftel Communications	X		
Tri-County Telcom, Inc.	X		
Valley Telephone Co.	X		
Valley Telecommunications Coop., Inc.	X		
Venture Communications Cooperative	X		
West River Cooperative Telephone Company	X	X	
West River Telecommunications Cooperative	X		
Western Telephone Co.	X		