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January 16, 2007

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JAN 16 2007
PUBLIC SERVICE COMMISSION

Beth A. O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Re: Case Nos. 2006-00215, 2006-00217, 2006-00218, 2006-00220, 2006-00252; 2006-00255; 2006-00288; 2006-00292; 2006-00294; 2006-00296; 2006-00298; 2006-00300

Dear Beth:

Attached are copies of the Petition for Rehearing of the CMRS Providers for filing in each of the referenced cases. An additional five copies are also being filed.

If you have any questions about this filing, please contact me.

Submitted by:

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and

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RECEIVED
JAN 16 2007
PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	Case No. 2006-00215
Petition of Duo County Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	Case No. 2006-00217
Petition of Logan Telephone Cooperative Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	Case No. 2006-00218
Petition of West Kentucky Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular f/k/a ACC Kentucky License LLC, Pursuant to the Communications Act of 1934, as Amended by the Telecommunications Act of 1996	Case No. 2006-00220

Petition of North Central Telephone Cooperative Corporation, For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular Corporation f/k/a ACC Kentucky License LLC, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00252
Petition of South Central Rural Telephone Cooperative Corporation, Inc., For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00255
Petition of Foothills Rural Telephone Cooperative Corporation, Inc., For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00292
Petition of Brandenburg Telephone Company For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00288

Petition of Gearheart Communications Inc. d/b/a Coalfields Telephone Company, For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00294
Petition of Mountain Rural Telephone Cooperative Corporation, Inc., For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00296
Petition of Peoples Rural Telephone Cooperative Corporation, Inc., For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00298
Petition of Thacker-Grigsby Telephone Company, Inc., For Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement With Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated d/b/a Verizon Wireless, and Kentucky RSA No. 1 Partnership d/b/a Verizon Wireless, Pursuant To the Communications Act of 1934, As Amended by the Telecommunications Act of 1996	Case No. 2006-00300

CMRS PROVIDERS' PETITION FOR REHEARING AND/OR CLARIFICATION OF CERTAIN ASPECTS OF THE COMMISSION'S ORDER

I. INTRODUCTION

Pursuant to KRS 278.400, the CMRS Providers[1] respectfully submit this Petition for Rehearing and/or Clarification of Certain Aspects of the Commission's *Order* issued on December 22, 2006 ("*Dec. 22 Order*").[2] In certain decisions contained in the *Dec. 22 Order*, the Commission has erroneously applied legal standards that may be relevant as to carriers other than CMRS providers, but that contradict standards applicable to CMRS providers. Other portions of the Order lack the clarity necessary to enable the parties to formulate contract terms to implement the Commission's rulings. Accordingly, the CMRS Providers respectfully request rehearing and/or clarification of certain aspects of the Commission's decisions on Issues 1, 2, 5, 6, 7, 8, 9, 10, and 11, as further explained below.

II. THE COMMISSION SHOULD GRANT REHEARING ON ISSUES 1 AND 9 AND REQUIRE THAT RECIPROCAL COMPENSATION BE PAID FOR ALL LAND-TO-MOBILE INTRAMTA TRAFFIC

A. The Commission's *Dec. 22 Order* is Inconsistent With Federal Law

The Commission's *Dec. 22 Order* resolved Issues 1 and 9 in favor of the RLECs. In so doing, the Commission relieved the RLECs of paying reciprocal compensation for intraMTA

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[1] Alltel Communications, Inc. ("Alltel"); New Cingular Wireless PCS, LLC, successor to BellSouth Mobility LLC, BellSouth Personal Communications LLC and Cincinnati SMSA Limited Partnership d/b/a Cingular Wireless ("Cingular"); Sprint Spectrum L.P., on behalf of itself and SprintCom, Inc., d/b/a Sprint PCS ("Sprint PCS"); T-Mobile USA, Inc., Powertel/Memphis, Inc., and T-Mobile Central LLC ("T-Mobile"); and Cellco Partnership d/b/a Verizon Wireless, GTE Wireless of the Midwest Incorporated, and Kentucky RSA No. 1 Partnership ("Verizon Wireless").

[2] Under KRS 278.400, an application for rehearing is due twenty days after service of a Commission order. The twentieth day after service was Sunday, January 14. This petition is filed the first business day after January 14 and is timely filed.

land-to-mobile calls that are dialed on a 1+ basis and carried by interexchange carriers ("IXCs"). *Dec. 22 Order*, p. 7. The Commission's decision is based on a misunderstanding of federal law, contradicts federal court authority, and should be corrected on Rehearing.

The Commission relieved the RLECs of the obligation to pay reciprocal compensation for intraMTA 1+ traffic based on its conclusion that:

> The Telecom Act of 1996 ("Telecom Act") clearly intends that reciprocal compensation arrangements apply to "local" traffic exchanged between carriers. Other traffic, such as toll, is not required to be subject to reciprocal compensation.

Dec. 22 Order, p. 8. This conclusion is directly at odds with the 1996 Act and the FCC's Rules for four main reasons. First, Section 251(b)(5) does not refer to "local" traffic, but instead broadly requires LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5) (emphasis added). Second, the FCC's *First Report & Order* determined that Section 251(b)(5) applies to all "traffic to or from a CMRS network that originates and terminates within the same MTA" even though an MTA is larger than traditional "local" calling areas.[3]

Third, FCC Rule 47 C.F.R. § 51.701(b)(2) does not depend on whether a call is "local" or "1+," but only on whether the call is within an MTA. For traffic between a LEC and a CMRS Provider the rule provides:

> 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....

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[3] *First Report & Order*, ¶ 1036. *See also id.* ¶ 1043 ("we reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates in the same MTA . . . is subject to transport and termination rates . . . .").

47 C.F.R. § 51.701(b)(2). Significantly, the FCC Rule is slightly different for traffic between two LECs – it does include an exception for 1+ toll traffic. Rule 51.701(b)(1) states:

> For purposes of this subpart, telecommunications traffic means: Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access. (emphasis added).

In subparts (b)(1) and (b)(2), the FCC intentionally crafted two different reciprocal compensation standards – one for traffic involving a CMRS provider that depends only on the MTA boundary, and a second for LEC-LEC traffic that depends on whether the call is carried by an IXC.

Fourth, in 2001, the FCC eliminated the term "local traffic" from its Rule 51.701(b). This was done to prevent state commissions from using historical concepts of "local calling areas" in their application of reciprocal compensation rules.[4] Going forward, the FCC thus replaced the term "local traffic" with the term "telecommunications traffic," which it defined broadly to include all intraMTA traffic.

The Commission erred in the *Dec. 22 Order* when it established reciprocal compensation obligations based on the Commission's concept of "local" instead of based on the MTA rule adopted by the FCC. Every federal court that has looked at this issue has confirmed that LECs must pay reciprocal compensation for all intraMTA traffic, regardless of the existence or nature of an intermediary carrier.[5] In fact, a decision issued by the Eighth Circuit Court of Appeals on

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[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Remand and Report and Order, ¶ 34 (April 27, 2001).

[5] *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1265 (10th Cir. 2005); *WWC License, L.L.C. v. Boyle et al.*, Case No. 4:03CV 3393, Mem. Op., p. 6 (D. Neb. Jan 20, 2005), *appealed on other grounds and affirmed, WWC License, L.L.C. v. Boyle*, 459 F.3d 880 (8th Cir. 2006); *Alma Communications Company v. Missouri Public Service Commission*, Case No. 05-4358-CV-C-NKL, Order Granting T-Mobile's Mot. Summ. J., p. 10 (W.D. Mo. May 19, 2006).

January 8, 2007, extends that basic principle of local competition even further. *Rural Iowa Indep. Tel. Ass'n v. Iowa Utilities Bd.*, 2007 WL 37937 (8th Cir. Jan. 8, 2007) (Exhibit A hereto). In that decision the Eighth Circuit confirmed that LECs owe reciprocal compensation for all land-to-mobile intraMTA traffic, but then went further and found that LECs are prohibited from sending any intraMTA wireless traffic to IXCs, and thus cannot obtain access charges from IXCs on such calls. *Id.* at *5. The Court stated:

> The IUB recognized that by forcing their customers to initiate calls in this manner [calls to CMRS] the rural carriers got a double benefit – not only would there be fewer outbound calls to balance inbound traffic under a reciprocal compensation agreement, but the calls would then be carried by an IXC and subject to access charges.

In the instant case, however, the CMRS Providers have not challenged the RLECs' practice of collecting access charges from IXCs on calls to intraMTA wireless numbers outside of the landline local calling area. Instead, the CMRS Providers simply want to be compensated for terminating these calls in the manner provided for by federal law. If the CMRS Providers' proposal is accepted, the RLECs will continue to collect access charges on these 1+ calls that will far exceed what they will pay in reciprocal compensation to the CMRS Providers. If the RLECs' proposal is accepted, they will have clear anticompetitive incentives to take action that will allow them to increase their access revenues while reducing reciprocal compensation payments to competitors by understating the volume of intraMTA traffic which is flowing in the land-to-mobile direction. The Commission should prevent this by granting rehearing on this issue and require the RLECs to pay reciprocal compensation for all intraMTA land-to-mobile calls.

B. The Commission should clarify Footnote 8

Footnote 8 of the *Dec. 22 Order* states:

> Whereas CMRS providers, unlike the RLECs, are generally responsible for performing the interexchange function for calls that originate on the CMRS Provider's network. Nevertheless, only local traffic is subject to reciprocal compensation between the carriers.

Applicants request clarification of this statement. A wireless carrier may have customers with numbers in many different local calling areas in an MTA. As a result, many intraMTA mobile-to-land calls would not be considered "local" based on the Local Exchange Routing Guide (LERG). Footnote 8 suggests that mobile-to-land calls are not subject to reciprocal compensation unless they are made to landline numbers within a "local" calling area identified in the LERG. On reconsideration, the Commission should clarify how it intends to treat intraMTA mobile-to-land traffic when the wireless customer's number is not locally rated in the local service territory of the called party. As noted above, the CMRS providers have advocated from the beginning that reciprocal compensation obligations in both directions be based solely on the MTA boundary.

III. THE COMMISSION SHOULD GRANT REHEARING ON ISSUE 2 AND REQUIRE THAT DIRECT INTERCONNECTION SHOULD BE BASED UPON THE CHOICE OF A REQUESTING CMRS PROVIDER, NOT A PREDETERMINED TRAFFIC THRESHOLD

Issue 2 concerned whether the parties' interconnection agreement would apply to traffic delivered via both direct and indirect interconnection. The Commission correctly decided that the agreement should cover direct interconnection and indirect interconnection accomplished through common trunks of a third-party carrier. *Dec. 22 Order*, p. 9. The Commission went on, however, to require dedicated (i.e., direct) interconnection when exchanged traffic reaches "a DS1 level." *Dec. 22 Order,* p. 9. This ruling is inconsistent with federal law, is unsupported by the evidence in the record, and is a dramatically different standard than that employed in the

Level 3 decision cited by the Commission. The Commission should grant rehearing and eliminate its direct connection threshold. In the alternative, it should change that standard to an OC3 threshold consistent with Level 3.

A. Under Federal Law, The CMRS Providers Are Not Required to Establish Direct Connections with the RLECs

Section 251(a)(1) clearly requires telecommunications carriers to interconnect "directly or indirectly with other carriers" (emphasis added). The FCC stated clearly that the choice of interconnection type is to be made by carriers "based upon their most efficient technical and economic choices."[6] Accordingly, both the 8th and 10th Circuit Courts of Appeal have ruled that CMRS Providers have the statutory right to utilize indirect interconnection.[7] Moreover, FCC regulations pre-dating the Act expressly require incumbent LECs to provide the type of interconnection requested by CMRS Providers:

> A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier.

47 C.F.R. § 20.11(a).

The *Dec. 22 Order* conflicts with federal law by requiring direct interconnection when a DS1 level of traffic is exchanged. The Commission neither mentioned nor addressed this clear federal authority, nor did it provide a factual basis to deny the CMRS Providers their right to

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[6] *First Report & Order*, ¶ 997.

[7] *WWC License, L.L.C. v. Boyle*, 459 F.3d 880, 892 (8th Cir. 2006); *Atlas Tel. Co. v. Okla. Corp. Comm'n*, 400 F.3d 1256, 1265 (10th Cir. 2005) ("*Atlas Telephone*").

establish indirect interconnection.[8] The Commission should grant rehearing on this issue and conform its result to federal law.

B. No Evidence Supports a DS1 Level Threshold

The Commission should rehear Issue 2 because there is no rational basis in the record or commission precedent to set a direct-connection threshold at a DS1 level. The *Dec. 22 Order* states that (based on its precedent) traffic can be commingled until it reaches a "significant volume." *Dec. 22 Order*, p. 5. The referenced precedent is the *Level 3 Order* in which the Commission ruled that a landline CLEC was required to establish only a Single Point of Interconnection (POI) with BellSouth per LATA, but that the CLEC would have to establish a second POI when traffic through the first POI reached "an OC-3 level."[9] In so ruling, the Commission relied on record evidence that balanced "the efficiencies to be gained by not requiring new entrants to deploy a POI in every local calling area" against "the incumbent's interest in paying minimal originating traffic costs."[10]

In this case, the RLECs submitted no evidence demonstrating that requiring direct connections at any particular level is efficient, pro-competitive, or otherwise consistent with the Act. As a result, such an outcome is not justified on this record. In fact, the first time a DS1 level of traffic was even mentioned in this case was on page 11 of the RLECs' Post-Hearing

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[8] The CMRS Providers note that their right to interconnect indirectly does not in any way affect or limit an RLEC's ability to establish dedicated one-way facilities to deliver land originated traffic to a wireless carrier.

[9] Case No. 2000-00404, *The Petition of Level 3 Communications, LLC for Arbitration With BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of The Communications Act of 1934, as Amended by The Telecommunications Act of 1996*, Order at 3 (March 14, 2001) ("*Level 3 Order*").

[10] *Id.*

Brief. The CMRS Providers adamantly disagree with any claim that direct connection is an efficient way to exchange a DS1 level's worth of traffic. To the contrary, such a requirement only serves to chill competitive entry and raise the cost of providing service in a rural area. The Commission should grant rehearing on Issue 2 because there is no evidence in the record to support a decision that requires direct connection at a DS1 level of traffic.

C. If The Commission does not Eliminate its DS1 Threshold, it Should Change the Threshold to an OC3 Level

The Commission cited the *Level 3 Order* for the proposition that "a DS1 level of traffic was a reasonable threshold beyond which traffic over common trunks would need to be migrated to dedicated facilities." *Dec. 22 Order*, p. 9. Because there was no evidence on this issue in this docket, the Commission presumably wished to incorporate the standard in the *Level 3 Order*. The *Level 3 Order*, however, did not find a DS1 to be a significant level of traffic, but instead stated that Level 3 was required "to establish another POI when the amount of traffic passing through a BellSouth access tandem switch reaches an OC-3 level" (emphasis added).[11] An OC3 level is the equivalent of 84 DS1s. If the Commission is going to rely on its *Level 3 Order* it should correct the reference to incorporate the same OC3 standard applied in that case.

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[11] That order was then modified on reconsideration (by agreement of the parties) to reference a DS3 level. Case No. 2000-00404, *The Petition of Level 3 Communications, LLC for Arbitration With BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of The Communications Act of 1934, as Amended by The Telecommunications Act of 1996*, Order on Reconsideration at 1 (April 23, 2001). In a later arbitration case the Commission used a DS3 Level. Case No. 2001-224, *Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of proposed Agreement With Verizon South Inc. Pursuant to The Communications Act of 1934, as Amended by The Telecommunications Act of 1996*, Order at 16 (Nov. 15, 2001).

IV. THE COMMISSION SHOULD GRANT REHEARING ON ISSUE 5 TO CLARIFY THE RESPONSIBILITY OF AN ORIGINATING CARRIER TO BEAR THE COST OF TRANSPORTING ITS ORIGINATING TRAFFIC TO THE NETWORK OF THE TERMINATING CARRIER

Issue 5 asked the following question: "Is each Party obligated to pay for the transit costs associated with the delivery of traffic originated on its network to the terminating party's network?" The *Dec. 22 Order* states:

> Based on this statute [47 U.S.C. § 251(c)(2)(B)], the Commission finds that the RLECs should not be required to establish interconnection points beyond their local service territory. Thus, for indirect interconnection, the interconnection may occur through a third party at a suitable network node of the incumbent.

Dec. 22 Order, p. 12. The issue of the location of an RLEC's point of interconnection with a transit provider is not in dispute. Each RLEC is and will continue to be physically connected with BellSouth within the RLEC's own service territory, and the CMRS Providers do not propose otherwise. The question asked in Issue 5, however, was whether an RLEC (like every other carrier) must pay the transit charges associated with traffic originated by its own customers. The parties have exchanged initial drafts of proposed conformed interconnection agreements and read the Commission's *Dec. 22 Order* differently on this point. The RLECs read the reference to "interconnection points" as changing compensation obligations, while the CMRS Providers believe that the reference only depicts the physical location of RLEC facilities. The CMRS Providers request that the Commission clarify its ruling on Rehearing.

Clearly, RLECs have financial responsibility for transport that occurs off their networks. In the case of direct interconnection with a CMRS Provider, for example, the RLEC is

responsible to pay the cost incurred in transporting the call from the point of interconnection to the CMRS Provider's terminating switch.[12] All such transport occurs off the RLEC's network.

In the case of indirect interconnection, a third-party is added between the networks of the CMRS Provider and the RLEC. Just as with direct interconnection, the originating carrier has financial responsibility all the way to the terminating carrier's switch that serves the called party. Therefore, requiring the RLEC to pay third-party network transit charges to deliver its indirect traffic is no different than requiring the RLEC to pay the CMRS Provider's network costs to deliver the RLEC's direct traffic. All such costs, whether caused by direct or indirect interconnection, occur off the RLEC's network. The location of the point of physical interconnection is irrelevant to a carrier's obligation to pay the cost of transporting its traffic to the switch of the terminating carrier. Requiring RLECs to pay for the transit costs which are incurred as a result of an RLEC's choice to send traffic indirectly to a CMRS provider, is consistent with the federal requirement that compensation be "reciprocal" and paid by the originating carrier.

The FCC's *TSR Wireless Order* (which has been relied on by the Commission) stated this rule clearly:

> Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . . .[13]

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[12] 47 C.F.R. § 51.701(c): "[T]ransport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch . . . ."

[13] *TSR Wireless* v. *U S West*, 15 FCC Rcd. 11166, 11184 ¶ 31 (2000), *aff'd Qwest v. FCC*, 252 F.3d 462 (D.C. Cir. 2001) ("*TSR Wireless*") (emphasis added).

The FCC could not have been more clear. Compensation obligations depend on who originated the call, not the exchange boundary or the network boundary. This is exactly what this Commission has already decided in the *Level 3*[14] and *Brandenburg*[15] cases, and what four separate courts of appeal have confirmed.[16]

Despite this clear precedent, the RLECs interpret the Commission's reference to Section 251(c)(2)(B) as modifying the RLECs' compensation obligations. As a result, the Commission should clarify that its reference in the *Dec. 22 Order* to Section 251(c)(2)(B) applies only to the location of the physical interconnection with the RLEC network, and does not modify compensation obligations which extend from the physical interconnection point to the switch where the traffic is terminated. This clarification is consistent with the FCC's determination in the *First Report & Order* that "the term 'interconnection' under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic." *First Report & Order*, ¶ 26; *see also id.* ¶ 176 (distinguishing "interconnection" under Section 251(c)(2) from "transport and termination" under Section 251(b)(5)). Conforming contract language then would

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[14] *The Petition of Level 3 Communications, LLC for Arbitration With BellSouth Telecommunications, Inc. Pursuant to Sections 252(b) of The Communications Act of 1934, as Amended by The Telecommunications Act of 1996*, Order at 1 (March 14, 2001).

[15] *Petition of Brandenburg Telecom LLC for Arbitration of Certain Terms and Conditions of proposed Agreement With Verizon South Inc. Pursuant to The Communications Act of 1934, as Amended by The Telecommunications Act of 1996*, Order at 16 (Nov. 15, 2001).

[16] *Mountain Communications, Inc. v. FCC*, 355 F.3d 644, 648-49 (D.C. Cir. 2004) (LEC cannot require CMRS provider to pay costs of transporting LEC calls to CMRS network); *Atlas Tel. Co. v. Oklahoma Corporation Comm'n*, 400 F.3d 1256, 1268 (10th Cir. 2005) (rural LECs required to pay transit costs for calls delivered to CMRS network); *WWC License, L.L.C. v. Boyle*, 459 F.3d 880, 892 (8th Cir. 2006) (requiring rural LEC to deliver and pay for calls at the third party tandem); *MCIMetro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, 352 F.3d 872, 881 (4th Cir. 2003) ("Rule 703(b) is unequivocal in prohibiting LECs from levying charges for traffic originating on their own networks, and, by its own terms, admits of no exceptions").

ensure that physical interconnection would occur within the RLEC network, but also impose appropriate and reciprocal compensation obligations on each originating carrier.

V. THE COMMISSION SHOULD GRANT REHEARING ON ISSUE 6 AND CLARIFY THE *DEC. 22 ORDER* TO MAKE CLEAR THAT BELLSOUTH TANDEM RECORDS CONTAIN SUFFICIENT INFORMATION TO ALLOW APPROPRIATE RLEC BILLING

Issue 6 asked the following question: "Can the RLECs use industry standard records (e.g., EMI 11-01-01 records provided by transiting carriers) to measure and bill CMRS providers for terminating mobile-originated telecommunications traffic?" The *Dec. 22 Order* states:

> The Commission reiterates its prior considerations above and finds that a terminating carrier should have the ability to adequately and independently verify traffic exchanged with an originating carrier. The Commission further finds that, in circumstances where the transit carrier (here BellSouth) cannot provide to the RLECs adequate verification of the jurisdictional nature and the rating of transited calls, then dedicated trunk groups should be utilized.

Dec. 22 Order, p. 12. This portion of the *Order* is potentially confusing when compared with the Commission's ruling on Issue 15:

> Because there is currently no way to determine whether a call is interstate or intrastate for billing purposes, a factor must be used.

Dec. 22 Order, p. 19. As the *Dec. 22 Order* correctly notes, and as the parties agreed, no technology can currently provide a terminating carrier with "verification of the jurisdictional nature" of CMRS calls although it can provide a termination carrier with sufficient information to identify the originating carrier. That is true whether the parties are directly interconnected or indirectly interconnected. In fact, the Commission recognized and solved that problem by adopting a three percent interMTA factor (Issue 15), and by requiring carriers to populate all industry standard signaling fields (Issue 17). With an interMTA factor in place, once the terminating carrier knows the total number of minutes received from a particular carrier, it applies the factor to split those minutes into the various jurisdictional categories.

The CMRS Providers are concerned that the above quotation from the *Dec. 22 Order* not be construed to prohibit indirect interconnection altogether. If, for example, indirect interconnection were prohibited unless the terminating carrier could independently verify whether each particular call was intraMTA or interMTA, then indirect interconnection would never be allowed, which is not a position the RLECs took in this case. And, moving to direct interconnection would provide no additional information as to whether the call was interMTA or intraMTA. A factor would still need to be utilized. Said another way, the remedy (moving to direct interconnection) would not solve the problem (lack of verification of jurisdiction).

To eliminate this confusion and the potential for future disputes the Commission should clarify that its concerns are met if the terminating carrier is provided with information (including through BellSouth 11-01-01 records) that allows it to bill appropriately under the interconnection agreement. This would ensure that a terminating RLEC would be able to confirm the number of minutes received from a CMRS Provider, apply the interMTA percentage, and thus obtain appropriate compensation for terminating wireless traffic. So long as those records are available, this provision of the *Dec. 22 Order* would not require direct interconnection.

VI. THE COMMISSION SHOULD GRANT REHEARING ON ISSUES 7 AND 8 TO CLARIFY THAT THE RLECS ARE RESPONSIBLE FOR THEIR SHARE OF THE COST OF TWO-WAY DIRECT INTERCONNECTION FACILITIES WHETHER THE FACILITIES ARE INSIDE OR OUTSIDE AN RLEC SERVICE TERRITORY

The *Dec. 22 Order* appears to adopt the pro-competitive terms and conditions for direct interconnection urged by the CMRS providers in Issues 7 and 8. The Commission recognized, based on FCC determinations, that it is the RLECs who must accommodate the CMRS providers' choice of whether to use one-way or two-way interconnection trunking. *Dec. 22 Order*, p. 13. The *Dec. 22 Order* also found that two-way trunking facilities, whether provided by the RLEC or the CMRS Provider, should be established "in a manner that is most efficient"

with costs "shared proportionately based on the level of traffic being exchanged" and, that for one-way facilities each party bears the trunk costs to accommodate the originating traffic of each carrier. *Dec. 22 Order*, pp. 14-15.

Notwithstanding these clear statements, the *Dec. 22 Order* contains a sentence that, if not clarified now, will lead to disputes between the RLECs and the CMRS Providers. Prior to recitation of the Commission's findings mentioned above, the *Dec. 22 Order* acknowledged that 47 C.F.R. § 51.703 imposes the requirement that "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network," but then stated:

> However, this rule must be interpreted in light of the limitation found in 47 U.S.C. § 251(c)(2)(B), which provides for interconnection obligations only within the RLEC's network.

Dec. 22 Order, p. 14. The Commission does not, however, explain the Commission's intended *ultimate effect* of this sentence.

As discussed in Section IV above, the CMRS Providers are concerned that the reference to Section 251(c)(2)(B) may be misinterpreted by RLECs to mean that their financial responsibility for direct interconnection facilities stops at their network boundary. Because Section 251(c)(2)(3) applies only to physical connectivity – not transport, or compensation – such an interpretation would be contrary to FCC Orders, Commission precedent, and Court decisions.

The FCC has clearly and unequivocally stated that the facilities which are subject to cost sharing may be provided by either party, even non-party service providers:

> ... flat rates, rather than usage-sensitive rates, should apply to the purchase of dedicated facilities. As discussed in the NPRM, economic efficiency may generally be maximized when non-traffic services, such as the use of dedicated facilities for the transport of traffic, are priced on a flat-rated basis. We, therefore, require all interconnecting parties to be offered the option of purchasing dedicated

> facilities, for the transport of traffic, on a flat-rated basis. As discussed [ ], the connection between an incumbent LEC's end or tandem office and an interconnecting LEC's network is likely to be a dedicated facility. We recognize that the facility itself can be provided in a number of different ways -- by use of two service providers, by the other carrier, or jointly in a meet-point arrangement. We conclude first that, no matter what the specific arrangements, these costs should be recovered in a cost-causative manner and that usage-based charges should be limited to situations where costs are usage sensitive.[17]

In order to be consistent with the FCC's explanation of compensation obligations for shared facilities, the Commission's reference to the "limitation found in 47 U.S.C. § 251(c)(2)(B)" can only mean that, where direct interconnection facilities are installed between the parties' networks, one end of the direct interconnection facility must connect "[a]t any technically feasible point within the incumbent LEC's network." *See* 47 C.F.R. § 51.305(a)(2). Reading in an additional restriction that the RLEC does not owe any compensation for the costs incurred as a result of traffic it originates or "causes" to be terminated on a CMRS network beyond its local service area contradicts the FCC's cost allocation rules. *See* 47 C.F.R. §§ 51.703(b) and 51.709(b).

Thus, the CMRS providers seek clarification that the proportionate sharing of direct interconnection facility costs ordered by the Commission requires each party to pay its proportionate share of costs for dedicated facilities that interconnect the parties' respective networks to the extent such facilities are used to deliver an originating party's traffic to the terminating party's network within the MTA. Specifically, clarification is requested that the RLECs are responsible for their share of the cost of such facilities regardless of whether the facilities are inside or outside an RLEC service territory.

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[17] *First Report & Order*, ¶ 1063 (emphasis added).

VII. THE COMMISSION SHOULD CLARIFY THE PROCESS THAT WILL BE USED TO SET RATES TO REPLACE THE ADOPTED PROXY RATES

On Issues 10 and 11, the *Dec. 22 Order* held, among other things, "the RLECs must submit TELRIC studies within 90 days," which rates (once approved) will apply on a going forward basis. The CMRS Providers seek clarification of the process to be followed, and wish to ensure that (1) the RLECs will provide their TELRIC studies to the CMRS Providers concurrent with their submission to the Commission, (2) the CMRS Providers will have standing to conduct discovery and present evidence as to whether the rates should be approved, and (3) reciprocal compensation rates will be established consistent with the mandates of Section 252(d)(2) of the Act. To implement this, the Commission should set a procedural schedule to ensure a full, fair and efficient litigation of these issues.

The CMRS Providers are parties to these dockets, have a property interest in the proper setting of the reciprocal compensation rates, and are entitled to due process as the Commission sets reciprocal compensation rates they will pay. *See MCI Telecommunications Corporation v. Bellsouth Telecommunications Inc.*, 9 F.Supp.2d 766, 772 (E.D. Ky. 1998) (CLECs had a property interest in telecommunications rates and thus had due process rights when such rates were set by Commission.) These due process rights require that the CMRS Providers have an opportunity to fully litigate whether filed studies meet TELRIC standards. As the Commission has said again and again, rates can only be approved if they fully met the requirements of 47 U.S.C. § 252(d)(2) and the FCC's Rules. The Commission should ensure these standards are met by requiring any RLEC that seeks to prospectively change its proxy rate to submit its TELRIC study to the CMRS Providers concurrent with its submission to the Commission, by allowing the CMRS Providers to conduct discovery and present their own witnesses, and by setting all matters for a contested hearing. In essence, the CMRS Providers simply wish to

ensure that the procedures contained in the Commission's August 18, 2006 procedural order are again provided to the CMRS Providers in this second phase of these dockets. Finally, in order to ensure the efficient and fair litigation of these issues, the Commission should enter a procedural schedule (or direct the parties to negotiate a procedural schedule) to address these issues.

CONCLUSION

For the foregoing reasons, the CMRS Providers respectfully request that the Commission grant rehearing and/or clarification by amending its rulings in the *Dec. 22 Order* as follows:

(a) Requiring the RLECs to pay reciprocal compensation for all intraMTA land-to-mobile calls, including those that are dialed on a 1+ basis and carried by an interexchange carrier ("IXC");

(b) Ruling that no direct interconnection shall be required or, in the alternative, applying the OC3 threshold for direct interconnection set by the Commission in the *Level 3 Order*;

(c) Clarifying that the originating carrier is obligated to pay all costs incurred, including transit costs, to delver traffic originating on its network to the terminating carrier;

(d) Clarifying the uncertainty arising from the Commission's ruling on Issue 6 by specifying that BellSouth tandem records contain sufficient information to allow for appropriate RLEC billing;

(e) Clarifying the uncertainty arising from the Commission's quotation of 47 U.S.C. § 251(c)(2)(B) by specifying that the RLECs' responsibility to bear their proportionate share of the costs of interconnection facilities is in not limited by the point of physical interconnection;

(f) Amending its ruling to specify that the CMRS providers will be notified of, and permitted to participate fully in, any future proceedings concerning the RLECs' TELRIC studies and rates.

Dated: January 16, 2007

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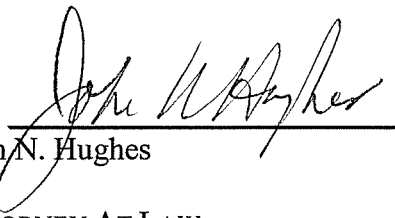
By: 
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CERTIFICATE OF SERVICE

This is to certify that a copy of the CMRS Providers' Petition for Rehearing and/or Clarification of Certain Aspects of the Commission's Order was served on the parties listed below by electronic mail (as indicated) and by depositing in the United States mail, first class and postage prepaid, on the 16th day of January, 2007.

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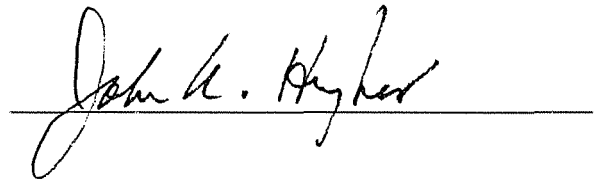

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Briefs and Other Related Documents
Rural Iowa Independent Telephone Ass'n v. Iowa Utilities Bd.C.A.8 (Iowa),2007.Only the Westlaw citation is currently available.

United States Court of Appeals,Eighth Circuit.
RURAL IOWA INDEPENDENT TELEPHONE ASSOCIATION, Plaintiff-Appellant,
v.
IOWA UTILITIES BOARD, Utilities Division, Department of Commerce, sued as: Iowa Utilities Board; Diane Munns, individually and in her official capacity as a member of the Iowa Utilities Board; Mark O. Lambert, individually and in his official capacity as a member of the Iowa Utilities Board; Elliot Smith, individually and an his official capacity as a member of the Iowa Utilities Board, Defendants-Appellees,
Qwest Corporation, Intervenor Defendant-Appellee.
No. 05-3579.

Submitted: May 15, 2006.
Filed: Jan. 8, 2007.

Thomas George Fisher, Jr., Des Moines, IA, for Plaintiff-Appellant.
David Jay Lynch, Iowa Utilities Board Department of Commerce, Des Moines, IA, for Defendant-Appellee.
Amy Marie Bjork, Dorsey & Whitney, Des Moines, IA, Roy E. Hoffinger, Bobbee J. Musgrave, Steven J. Perfrement, Paul J. Lopach, Musgrave & Theis, Denver, CO, for Intervenor Defendant-Appellee.

Before BYE, HANSEN, and SMITH, Circuit Judges.
BYE, Circuit Judge.
***1** The Rural Iowa Independent Telephone Association (RIITA), an industry association comprised of rural telephone carriers, challenges a decision of the Iowa Utilities Board (IUB) regarding wireless phone calls which originate and terminate within the same major trading area (MTA), or intraMTA wireless calls. The IUB determined the rural carriers could not charge Qwest Corporation long-distance access charges when Qwest bundled inbound intraMTA wireless traffic with long-distance traffic before delivering it to the rural carriers. The IUB further determined the rural carriers could not force their customers to use Qwest as an interexchange carrier (IXC) (commonly understood as a long-distance carrier) for outbound intraMTA wireless calls. The district court [FN1] granted summary judgment upholding the IUB's decision. We affirm.

FN1. The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa.

I

This case exemplifies the tension which can result when the regulatory scheme created by the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C.) (the Act), is applied to wireless phone service. The "two types of charges which one carrier can extract from another for the provision of telecommunication services" are reciprocal compensation, which governs local service, and "access fee[s] charged by common carriers for use in carrying long-distance telecommunications via their infrastructure, or toll services." *Iowa Network Servs., Inc. v. Qwest Corp.*, 363 F.3d 683, 686 (8th Cir.2004). Under the Act, phone companies are supposed to reach interconnection agreements to determine the charges and amounts paid amongst themselves for local phone calls. See 47 U.S.C. § § 251(a) & (b) (setting forth the duties to interconnect and to establish reciprocal compensation arrangements), and 252 (outlining the procedures for reaching interconnection agreements). Access charges, on the other hand, are determined by tariffs which carriers file either with the Federal Communications Commission (FCC) (when the charges pertain to purely interstate communications) or the applicable state utility commissions (when the charges pertain to intrastate communications). *See Iowa Network*, 363 F.3d at 686.

Wireless phone service, and the manner in which wireless calls are transported over existing telephonic infrastructure, does not always "fit neatly," *id.* at 687, into these two categories of charges. For example, the geographical boundaries of the MTAs associated with wireless calls are not always the same as the boundaries for the local exchange areas associated with traditional local phone service. Consequently, *intra* MTA wireless calls can pass through or over more than one local exchange area and thus be considered *inter* exchange traffic and be delivered with long-distance calls.

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Until 1999, Qwest not only delivered intraMTA wireless calls together with long-distance traffic to the rural carriers in Iowa, but also paid access charges to the rural carriers on the intraMTA wireless calls. Three years earlier, however, the FCC had determined intraMTA wireless calls should be considered local in nature rather than long-distance, and therefore be subject to reciprocal compensation rather than access charges. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, 11 F.C.C.R. 15499, ¶ ¶ 1036, 1043 (1996) (hereinafter Local Competition Order). In April 1999, although Qwest continued to deliver intraMTA wireless calls to the rural carriers bundled together with long-distance traffic, it advised the rural carriers that it planned to stop paying access charges on such calls pursuant to the FCC's Local Competition Order.

***2** When the rural carriers disagreed with Qwest's position on the continued payment of access charges for intraMTA wireless traffic, Qwest filed a petition with the IUB for a declaratory order regarding its obligations, as a transiting carrier, with respect to wireless traffic exchanged between cellular phone companies and the rural carriers using Qwest's network. The IUB opened a docket on Qwest's petition, allowed a number of intervenors to join the action, and held extensive proceedings including a nine-day evidentiary hearing. Following these proceedings, the IUB issued a "Proposed Decision and Order" [FN2] concluding the intraMTA wireless traffic at issue was local in nature, and Qwest was not required to pay access charges to the rural carriers. The IUB indicated cellular phone companies and rural carriers should negotiate interconnection agreements amongst themselves for reciprocal compensation.

> FN2. Under the statutes and rules governing the IUB, a proposed decision issued by the presiding officer becomes final unless a party files a timely administrative appeal. *See* Iowa Code § 17A .15(3).

RIITA filed an administrative appeal of the proposed decision challenging the conclusion that Qwest was not required to pay access charges for intraMTA wireless traffic. Another issue raised on appeal was whether the proposed decision failed to recognize the "right" of the rural carriers' customers to dial "0" or "1" prior to dialing an intraMTA wireless number, thereby routing the outbound call through an IXC (long-distance carrier) in order to complete the call, and triggering access charges. The final decision issued by the IUB reaffirmed that Qwest was not responsible for access charges for intraMTA wireless traffic. With respect to a customer's "right" to dial an outbound local wireless call as a long-distance call, the IUB said:

[This] argument assumes that customers should pay [access] charges in order to make local calls to wireless customers. However, it is obvious that if the customers were given the choice between making a local call to a wireless customer or making a toll call to the same wireless customer, most customers would likely waive their "right" to make a toll call using their preferred interexchange carrier in favor of making the same call as a local one, with no additional charges. The Board will affirm the Proposed Decision and Order on this issue and direct the [rural carriers] to allow their customers to dial these local calls as local calls.

Appellant App. at 87.

RIITA filed an action against the IUB in federal district court challenging this final administrative decision. After the district court allowed Qwest to intervene, Qwest argued the case should be dismissed because RIITA was directly challenging an FCC ruling, and therefore its suit should be brought in the first instance in a court of appeals pursuant to the Hobbs Act, 28 U.S.C. § 2342. The district court agreed and dismissed the suit. The case then took a detour through our court to determine whether the Hobbs Act deprived the district court of jurisdiction to review the IUB's decision. *See Rural Iowa Indep. Tel. Ass'n v. Iowa Utils. Bd.*, 362 F.3d 1027 (8th Cir.2004). We disagreed with the conclusion that RIITA's suit directly challenged an FCC ruling, and remanded to the district court to determine whether the IUB's decision was consistent with the FCC's rulings and other federal law. *Id.* at 1030.

***3** On remand, the district court determined the IUB's decision did not violate federal law. Specifically, the district court determined the IUB was within its authority to require the rural carriers to engage in the negotiation/arbitration process set forth in sections 251 and 252 of the Act. Further, the district court held the IUB was within its authority to determine a transit carrier, like Qwest, should not have to pay access charges for intraMTA wireless traffic.

RIITA filed a timely appeal. On appeal, RIITA

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contends the district court erred in affirming the IUB's decision regarding inbound wireless traffic claiming the "core issue is not whether the [carriers] can charge wireless carriers for local calls, but whether they can charge Qwest for forcing the traffic on them." RIITA's Br. at 18. RIITA further contends the district court failed to address the IUB's error in holding rural carriers cannot use IXCs for outbound wireless traffic.

III

We review de novo whether the IUB's decision complied with federal law. *Connect Commc'ns Corp. v. Sw. Bell Tel., L.P.*, 467 F.3d 703, 708 (8th Cir.2006).

RIITA first argues rural carriers should be allowed to collect access charges from Qwest for inbound intraMTA wireless calls, and the IUB could not require the rural carriers to negotiate reciprocal compensation with wireless carriers. We disagree, noting we have already upheld the sum and substance of the IUB's decision in the related case of *Iowa Network Services, Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir.2006) (*Iowa Network II*).

Iowa Network II dealt with the same dispute over intraMTA calls, but between Qwest and Iowa Network Services (INS). Like Qwest, INS acted as a transiting carrier for the inbound intraMTA calls (i.e., when a wireless customer calls a rural carrier's customer, the wireless carrier delivers the call to Qwest's network, which in turn delivers the call to INS's network, which in turn delivers the call to the rural carrier for termination at its customer's phone). The dispute between INS and Qwest was also over access charges, and involved two of the same basic issues here: 1) whether the IUB erred in determining the calls were local calls to which access charges should not apply, and 2) whether the IUB was within its authority to require the parties involved to seek reciprocal compensation for payment of the calls via the negotiation/arbitration process set forth in sections 251 and 252 of the Act. With respect to both of those issues, we held the IUB acted within its authority and did not violate federal law. *See Iowa Network II*, 466 F.3d at 1096, 1097-98.

On this point, RIITA makes only one additional argument-not directly addressed in *Iowa Network II*-that merits discussion. RIITA contends the FCC's order in *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al.*, 20 F.C.C.R. 4855 (2005) (hereinafter *T-Mobile*) allows a carrier to charge access fees for intraMTA traffic, and thus the IUB's decision prohibiting such charges is inconsistent with federal law. We disagree.

***4** The primary import of *T-Mobile* was to amend an FCC rule to prohibit local exchange carriers (like RIITA's members) from collecting payment for wireless intraMTA calls via access charges. The FCC did, however, state it was not per se unlawful for parties terminating wireless calls to collect charges from wireless carriers through the use of tariffs (i.e., access charges), as long as such tariffs did not conflict with an existing interconnection agreement. *T-Mobile*, 20 F.C.C.R 4855 at ¶ 9. RIITA relies upon that portion of the *T-Mobile* order to contend the FCC specifically affirmed the use of tariffs by companies receiving local wireless traffic.

T-Mobile is distinguishable from this case. First, it addressed disputes which were directly between local exchange carriers and wireless carriers. Here, Qwest merely acts as a conduit to facilitate what is essentially a transaction between a wireless carrier and a local exchange carrier. The rural carriers want Qwest, a transiting carrier, to pay for the calls in question instead of negotiating payment directly with the originating carriers. Thus, T-Mobile does not stand for the proposition RIITA espouses, i.e., that terminating carriers can make *transiting* carriers pay access charges for intraMTA calls instead of seeking payment directly from the originating carriers.

In addition, the FCC limited the holding in *T-Mobile,* indicating it did not apply to tariffs that "purport[ ] to apply ... even when a valid interconnection agreement *could be* in place." *Id.* at ¶ 13 n. 52 (emphasis added) (internal quotations and citation omitted). Thus, *T-Mobile* actually reaffirms the FCC's "clear preference for contractual arrangements for non-access" (i.e., intraMTA traffic), *id.* at ¶ 14, precisely what the IUB required RIITA members to seek in this case. *See Iowa Network II*, 466 F.3d at 1098 (noting the FCC's "stated desire to move away from tariffs and toward negotiation and arbitration in order to facilitate market competition," as reflected in the *T-Mobile* order). Because nothing prevents the rural carriers from having in place valid interconnection agreement between themselves and the originating wireless carriers, *T-Mobile* does not apply.

Finally, although the FCC indicated tariffs imposed by a terminating carrier upon an originating carrier were not "per se" unlawful, nothing in *T-Mobile*

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requires state public utility commissions to allow tariffs, or *prevents* state public utility commissions from doing what the IUB did here, that is, requiring terminating carriers to negotiate interconnection agreements directly with originating wireless carriers. As a consequence, we reiterate what we said in *Iowa Network II,* and once again hold that the IUB acted within its authority and did not violate federal law.

IV

RIITA next argues the IUB erred when it prohibited the rural carriers from using Qwest as an IXC for outbound intraMTA traffic. Some additional background will be helpful in understanding this issue. As we previously noted, carriers compensate one another for local calls with reciprocal compensation agreements. But because the originating and terminating traffic between two carriers tends to balance itself out (i.e., the same number of Qwest customers originate local phone calls for termination to Verizon customers as Verizon customers originate for termination to Qwest customers, and the cumulative length of the phone calls terminated by either carrier is about the same), there would normally be very little difference in the payment exchanged between two carriers. For this reason, the IUB adopted a rule called "mutual exchange of traffic" by which each carrier bills its own customers for local traffic and keeps the resulting revenue. This type of agreement is referred to under the Act as a "bill-and-keep" agreement. *See* 47 U.S.C. § 252(d)(2)(B)(i). In Iowa, only when one carrier can show a significant imbalance in the local traffic flow for at least six months does one carrier actually have to make payment to another carrier under a reciprocal compensation agreement. *See* Iowa Admin. Code 38.6(2).

***5** In the proceedings before the IUB, the Iowa Telecommunications Association (ITA) argued the "bill-and-keep" method of payment should not apply to local wireless traffic. The ITA contended the rural carriers should be able to charge any carrier delivering calls from wireless carriers' customers because the traffic was not in balance. The IUB rejected that position, noting the record contained very little evidence of a traffic imbalance. The IUB further noted what evidence there was of a traffic imbalance was skewed by the fact the rural carriers often required that outbound intraMTA traffic be treated as long distance calls. The rural carriers accomplished this by forcing their own customers to dial a "0" or "1" at the beginning of an intraMTA wireless call, thus routing the call to an IXC (long-distance carrier). This practice decreased the number of outbound local wireless calls. The IUB recognized that by forcing their customers to initiate calls in this manner, the rural carriers got a double benefit-not only would there be fewer outbound calls to balance inbound traffic under a reciprocal compensation agreement, but the calls would then be carried by an IXC and subject to access charges.

In claiming the IUB erred on the issue of outbound traffic, RIITA is merely attempting to perpetuate its members' practice of treating local wireless traffic as long-distance traffic subject to access charges. If the rural carriers can force their customers to dial a "0" or "1" to complete an intraMTA call, they can continue to force carriers like Qwest to pay access charges for local wireless traffic. As a consequence, we conclude the IUB acted within its authority when it directed the rural carriers to allow their customers to dial intraMTA calls as local calls.

V

For the reasons stated, we affirm the district court's grant of summary judgment and uphold the IUB's decision.

C.A.8 (Iowa),2007.
Rural Iowa Independent Telephone Ass'n v. Iowa Utilities Bd.
--- F.3d ----, 2007 WL 37937 (C.A.8 (Iowa))

Briefs and Other Related Documents (Back to top)

- 2006 WL 728713 (Appellate Brief) Brief for Defendant/Appellee Iowa Utilities Board (Feb. 17, 2006) Original Image of this Document (PDF)
- 2006 WL 304868 (Appellate Brief) Brief for Appellant (Jan. 20, 2006) Original Image of this Document (PDF)
- 05-3579 (Docket) (Sep. 21, 2005)

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