

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition for Declaratory Ruling to Clarify the Applicability of the IntraMTA Rule to LEC-IXC Traffic and Confirm that Related IXC Conduct is Inconsistent with the Communications Act of 1934, as Amended, and the Commission's Implementing Rules and Policies)	WC Docket No. 14-228
)	
)	

**COMMENTS OF
ITTA – THE VOICE OF MID-SIZE COMMUNICATIONS COMPANIES**

ITTA – The Voice of Mid-Size Communications Companies hereby submits its comments in response to the Public Notice¹ issued by the Federal Communications Commission (“FCC” or “Commission”) on December 10, 2014 requesting comment on a petition for declaratory ruling (“Petition”) filed by Bright House Networks LLC, the CenturyLink LECs, Consolidated Communications Inc., Cox Communications, Inc., FairPoint Communications, Inc., Frontier Communications Corporation, LICT Corporation, Time Warner Cable Inc., Windstream

¹ “Wireline Competition Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic,” Public Notice, CC Docket No. 01-92, WC Docket Nos. 10-90, 14-228, DA 14-1808 (rel. Dec. 10, 2014).

Corporation, the Iowa RLEC Group, and the Missouri RLEC Group (collectively “Petitioners”) on November 10, 2014.²

Petitioners request that the Commission issue a declaratory ruling to confirm that the “intraMTA rule,” under which intraMTA calls exchanged between local exchange carriers (“LECs”) and commercial mobile radio service (“CMRS”) carriers are subject to reciprocal compensation, does not apply to LEC charges billed to an interexchange carrier (“IXC”) when the IXC terminates traffic to or receives traffic from a LEC via ordered tariffed switched access services.³ Petitioners also ask the Commission to declare that the attempts of certain IXCs to misapply the intraMTA rule to avoid paying access charges and to claim entitlement to substantial retroactive refunds are inconsistent with the Communications Act and the Commission’s implementing rules and policies.⁴

ITTA urges the Commission to grant the relief requested by Petitioners. As explained in the Petition, the intraMTA rule that entitles wireless carriers to enter into reciprocal compensation arrangements with respect to the exchange of LEC-CMRS traffic has no application to traffic exchanged between LECs and IXCs over switched access trunks. The intraMTA rule has been in place for nearly two decades and the Commission’s resolution of certain unrelated issues regarding application of the intraMTA rule in the 2011 *USF/ICC Transformation Order* in no way altered the scope of the rule or the industry’s longstanding

² Petition for Waiver of Bright House Networks LLC, the CenturyLink LECs, Consolidated Communications Inc., Cox Communications, Inc., FairPoint Communications, Inc., Frontier Communications Corporation, LICT Corporation, Time Warner Cable Inc., Windstream Corporation, the Iowa RLEC Group, and the Missouri RLEC Group, WC Docket No. 14-228 (filed Nov. 10, 2014) (“Petition”).

³ *Id.* at 2.

⁴ *Id.*

understanding that it requires IXCs to pay tariffed access charges for all traffic routed over access trunks absent an agreement with the LEC to the contrary.

For Sprint, Verizon, and other IXCs to now claim that some traffic they voluntarily routed over tariffed switched access facilities should not be subject to intrastate or interstate access charges because it was intraMTA wireless traffic is entirely inconsistent with the industry's settled interpretation of the rule and historical billing practices. These IXCs not only paid both terminating and originating access charges for years in connection with this alleged intraMTA traffic, but also presumably recovered the costs associated with those payments from their own retail and wholesale customers. Indeed, although Verizon and Sprint have filed dozens of lawsuits making such claims, they have for years engaged in the very same billing practices through their LEC operations that they now contend are unlawful.

Furthermore, for Sprint and Level 3 to engage in self-help regarding access charge payments made pursuant to LECs' switched access tariffs constitutes an unjust and unreasonable practice. The Commission should confirm that such efforts, particularly via non-payment of undisputed current bills and charges, are prohibited by Section 201 and other relevant provisions of the Act.

I. THE COMMISSION SHOULD AFFIRM THAT THE IntraMTA RULE DOES NOT PRECLUDE ASSESSMENT OF ACCESS CHARGES ON IXCs FOR IntraMTA TRAFFIC

As the Petition demonstrates, the Commission's rules and precedent confirm that any intraMTA traffic routed by an IXC outside the framework of an interconnection agreement or other arrangement for the exchange of traffic is properly subject to access charges.⁵ Sections 251 and 252 of the Act and the FCC's implementing rules make clear that a CMRS carrier is not

⁵ *Id.* at 22-31.

required to negotiate terms that give effect to the intraMTA rule and is free to accept alternative arrangements for the exchange of intraMTA wireless traffic pursuant to an interconnection agreement or similar arrangement with a LEC if chooses to do so. Here, however, the relevant IXCs are acting outside the confines of any applicable agreements that would allow them to avoid access charges under the intraMTA rule.

Notably, the U.S. District Court for the Northern District of Iowa affirmed this longstanding interpretation of the intraMTA rule when it referred this matter to the Commission for consideration.⁶ Specifically, the Court observed that the FCC’s conclusion in the 1996 *Local Competition First Report and Order* that service arrangements involving intraMTA traffic between CMRS providers and LECs are subject to reciprocal compensation did not extend to arrangements involving such traffic between LECs and IXCs.⁷ The Court also confirmed that the Commission’s findings concerning payments for intraMTA traffic in the *USF/ICC Transformation Order* did not change the scope of the intraMTA rule.⁸ Consequently, IXCs that exchange intraMTA wireless traffic with LECs outside of a LEC-CMRS arrangement governing such traffic do so pursuant to “the terms of otherwise applicable... tariffs.”⁹

Should the Commission nonetheless hold that a LEC is not permitted to impose access charges on IXCs for intraMTA traffic in the circumstances addressed in the Petition (which it should not), any such holding should be prospective only. Requiring retroactive refunds cannot be squared with the status of filed tariffs under the Act. Under Section 204(a)(3), LECs’

⁶ *Sprint Communications Co., L.P. v. Butler-Bremer Mutual Tel. Co.*, 2014 U.S. Dist. LEXIS 141758 (N.D. Iowa Oct. 6, 2014).

⁷ *Id.* at *11.

⁸ *Id.*

⁹ *T-Mobile Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶ 12 (2005).

switched access tariffs are deemed lawful once they become effective.¹⁰ Therefore, any remedies associated with the terms of such tariffs later found to be unreasonable must be prospective only. Relatedly, the “filed rate” doctrine prohibits carriers and their customers from departing from the terms of a filed tariff, such that any attempt by an IXC to obtain refunds for charges assessed pursuant to the applicable tariffs would be barred.¹¹

Moreover, the Commission has recognized that new applications and interpretations of legal requirements should not be applied retroactively if such application would result in “manifest injustice.”¹² Should the Commission adopt a different interpretation of the intraMTA rule after so many years, it would result in huge financial and administrative burdens on LECs that cannot be squared with traditional notions of equity and fairness. IXCs should not receive a windfall of tens or hundreds of millions of dollars in connection with an unexpected departure from FCC precedent and the industry’s settled understanding of and reasonable reliance on the intraMTA rule when it has been in place for nearly two decades without objection.

II. THE COMMISSION SHOULD AFFIRM THAT IXC SELF-HELP IN REFUSING TO PAY UNDISPUTED CHARGES TO OBTAIN A REFUND OF PREVIOUS ACCESS PAYMENTS VIOLATES THE COMMUNICATIONS ACT

Sprint and Level 3 have helped themselves to “refunds” regarding alleged intraMTA wireless traffic by withholding payment for unrelated and undisputed tariffed access services while continuing to route traffic to terminating LECs and accepting traffic from originating

¹⁰ 47 U.S.C. § 204(a)(3).

¹¹ See *AT&T v. Central Office Telephone*, 524 U.S. 214, 222-23 (1998).

¹² See *Communications Vending Corp. of Arizona, Inc. v. Citizens Communications Co.*, 17 FCC Rcd 24201, ¶ 33 (2002).

LECs for purposes of effecting these impermissible refunds.¹³ Such behavior constitutes an “unjust or unreasonable” practice prohibited under Section 201(b) of the Act in at least two ways.¹⁴ First, to the extent the IXC is recovering the costs of access charge payments from its retail or wholesale customers, it is unjust and unreasonable for the IXC to at the same time withhold access charge payments from the LEC.

Second, it is unjust and unreasonable for an IXC to grant itself “refunds” for access charges it previously paid when that result is prohibited by other provisions of the Communications Act. Under Section 204, a carrier may not provide a refund, either directly or indirectly, that is inconsistent with its filed tariffs.¹⁵ Similarly, under Section 503(a) of the Act, no customer may receive or accept any valuable consideration as a rebate or offset against tariffed charges.¹⁶ Thus, an IXC’s attempts to effect refunds by withholding payment for other undisputed access services not only is inconsistent with its obligations under Section 201(b), but also violates other provisions of the Act.

¹³ See Petition at 18-21. Another method IXCs may use to achieve *de facto* refunds in violation of the Act is by claiming intraMTA traffic factors far in excess of likely intraMTA traffic. See Letter from Gerard J. Duffy, WTA, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 14-228, CC Docket No. 01-92, at 2 (filed Dec. 19, 2014).

¹⁴ 47 U.S.C. § 201(b).

¹⁵ 47 U.S.C. § 204.

¹⁶ 47 U.S.C. § 503(a).

III. CONCLUSION

For the foregoing reasons, the Commission should issue a declaratory ruling to confirm that the intraMTA rule does not apply to LEC charges billed to an IXC when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services. The Commission also should declare that the attempts of certain IXCs to misapply the intraMTA rule to avoid paying access charges and to claim entitlement to substantial retroactive refunds are inconsistent with the Communications Act and the Commission's implementing rules and policies.

To the extent the Commission nonetheless determines that a LEC is not permitted to impose access charges on IXCs for intraMTA traffic when no agreement or similar arrangement is in place (which it should not), any such holding should be prospective only. Requiring retroactive refunds under the circumstances addressed in the Petition would be manifestly unjust and inconsistent with the status of filed tariffs under the Act.

Respectfully submitted,

**ITTA – THE VOICE OF MID-SIZE
COMMUNICATIONS COMPANIES**

By: /s/ Genevieve Morelli

Genevieve Morelli

Micah M. Caldwell

1101 Vermont Ave., NW

Suite 501

Washington, DC 20005

(202) 898-1520

gmorelli@itta.us

mcaldwell@itta.us

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