

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

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| In the Matter of                       | ) |                     |
|  | ) |                     |
| Comments on Petition for Declaratory   | ) | CC Docket No. 01-92 |
| Ruling: Lawfulness of Incumbent Local  | ) |                     |
| Exchange Carriers Wireless Termination | ) |                     |
| Tariffs                                | ) |                     |
|  | ) |                     |

**COMMENTS ON PETITION FOR DECLARATORY RULING REGARDING  
INTERCARRIER COMPENSATION FOR WIRELESS TRAFFIC**

The Michigan rural Incumbent Local Exchange Carriers (“Michigan ILECs”)<sup>1</sup> are compensated by CMRS carriers for the transport and local switching of telecommunication service based on a lawfully filed tariff that contains just and reasonable rates that are cost based, and provides to CMRS carriers a reciprocal compensation arrangement. The Michigan ILECs are issuing carriers in Michigan Public Service Commission (“MPSC”) Tariff 24R, which is administered by the Michigan Exchange Carriers Association, Inc. (“MECA”). Contrary to the CMRS Petitioners’ assertion, this Commission has not previously held that rural ILEC tariffs are not a proper mechanism for establishing a reciprocal compensation arrangement.

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<sup>1</sup> The Michigan ILECs include: Ace Telephone Company of Michigan; Allendale Telephone Company; Baraga Telephone Company; Barry County Telephone Company; Blanchard Telephone Association, Inc; Bloomingdale Telephone Company; Carr Telephone Company; CenturyTel of Michigan; CenturyTel Midwest, Inc.; CenturyTel of Northern Michigan, Inc.; CenturyTel of Upper Michigan; Chapin Telephone Company; Chippewa County Telephone Company; Deerfield Farmers’ Telephone Company; Drenthe Telephone Company; Hiawatha Telephone Company; Kaleva Telephone Company; Lennon Telephone Company; Midway Telephone Company; Midway Telephone Company; Ogden Telephone Company; Ontonagon County Telephone Company; Pigeon Telephone Company; Sand Creek Telephone Company; Springport Telephone Company; upper Peninsula Telephone Company; Waldron Telephone Company; Westphalia Telephone Company; and Winn Telephone Company.

## **I. BACKGROUND**

The Michigan ILECs provide CMRS carriers a transport and local switching service on the ILEC's network. The Michigan ILECs currently charge CMRS carriers for these transport and local switching services pursuant to a tariffed reciprocal compensation arrangement, not a bill-and-keep arrangement.<sup>2</sup> While the traffic exchanged with the Michigan ILECs may be small volume from the perspective of the CMRS carriers given the relative size of many of the regional and national CMRS providers, the same is not true from the perspective of the rural ILEC. Due to the growth of the CMRS industry and the migration of traditional toll traffic to CMRS networks, mobile originated traffic is becoming an ever more significant portion of the traffic terminated on the networks of the Michigan ILECs. Nevertheless, the Michigan ILECs are currently terminating more traffic from CMRS carriers on their networks than they originate to CMRS carriers. It is imperative that the Michigan ILECs be allowed to recover costs associated with the transport and termination of this traffic in an administratively efficient manner.

It would be a huge and unnecessary burden for each of the twenty-eight (28) Michigan ILECs to negotiate a separate interconnection agreement with each and every CMRS provider that terminates traffic on its network. The Michigan ILECs like many small, rural ILECs simply lack the resources to pursue interconnection negotiations with each CMRS provider that sends traffic to the ILEC's network. Historically, the most efficient method to set rates, terms and conditions, has been to file tariffs with the state commission. Without a filed ILEC tariff, the ILEC would be unable to

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<sup>2</sup> While a bill-and-keep compensation arrangement might be a viable alternative in the future, the Michigan ILECs generally terminate more calls from CMRS carriers than they originate to CMRS carriers. Therefore, they are currently not in a "quiet area" that would make bill-and-keep mutually beneficial to the Michigan ILECs and CMRS carriers.

charge a CMRS carrier for transport and local switching of telecommunications service, essentially forcing a bill-and-keep compensation regime on the rural ILECs. Since there is an imbalance of traffic exchanged between the Michigan ILECs and CMRS carriers, a bill-and-keep approach will not allow for mutual recovery of costs, and is contrary to Section 252 (d) (2) (B) (1). The CMRS Petitioners raise several issues with rates, terms and conditions of specific tariff filings which they characterize as “the fundamental problem with these wireless termination tariffs”<sup>3</sup>

However, specific issues with the individual tariff filings do not provide a reasonable basis for the Commission to determine that all such tariffs are “unfair and unlawful.” As stated previously, the Michigan ILECs are issuing carriers in MECA’s MPSC Tariff 24R, and the rates are just and reasonable and cost based. Indeed, the MPSC has held that the methodology used to establish rates in the tariff is equivalent to the TELRIC method.<sup>4</sup> Unlike the Missouri tariff cited by the CMRS Petitioners, MPSC Tariff 24R explicitly provides a reciprocal compensation arrangement to CMRS carriers for legitimate local traffic that is properly billed to an ILEC.<sup>5</sup>

Over the years many issues have been raised concerning tariffs, but these issues have almost always been easily resolved, and tariffs remain the most efficient and best method to set rates, and terms and conditions. Tariffs also ensure parity among CMRS carriers, large and small, by establishing uniformity of rates, terms and conditions. It does not matter whether a CMRS provider knows of the existence of an ILEC tariff prior to its call being transported and switched on the

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<sup>3</sup> T-Mobile, USA, Inc. Petition, p.5.

<sup>4</sup> Michigan Public Service Commission Minute Action, August 13, 1997; Case U-10860, September 12, 1996, p. 5.

<sup>5</sup> MECA’s MPSC Tariff 24R, Part II, Sheet 20, Section 2.4.8.

ILEC's network. Long distance toll carriers have been able to handle this same arrangement for years. Once the transport and switching service has been provided to the CMRS carriers, an ILEC should properly be allowed to collect from the CMRS provider an appropriate amount for the transport and switching service based on the filed rates in the ILEC's tariff.

Despite the CMRS Petitioners' comments, the termination of wireless traffic on ILEC networks is neither hugely lucrative nor a reason to by-pass the negotiation process by filing termination tariffs. Moreover, a filed ILEC tariff does not prevent a CMRS carrier from requesting an ILEC to voluntarily negotiate the terms of a reciprocal compensation arrangement pursuant to 252 (a) (1).<sup>6</sup> In reality, it is because there are so many telecommunications carriers, and any carrier can have a call terminated on any exchange, that tariffs have historically been used in this country.

## **II. TARIFFS ARE THE BEST METHOD FOR RURAL ILECS, WHICH HAVE AN EXEMPTION FROM THE DUTY TO NEGOTIATE, TO ESTABLISH RECIPROCAL COMPENSATION ARRANGEMENTS.**

The Michigan ILECs, pursuant to Section 251 (a) of the Telecommunications Act of 1996, are indirectly interconnected with CMRS carriers and are providing transport and local switching services.<sup>7</sup> In order to be compensated for the transport and local switching provided to CMRS carriers, the Michigan ILECs filed a tariff with the MPSC. MECA's MPSC Tariff No. 24R contains just and reasonable rates that are cost based, and in compliance with Section 251 (b) (5) of the Telecommunication Act of 1996, provides for a reciprocal compensation arrangement to CMRS

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<sup>6</sup> Upon request, some Michigan ILECs have voluntarily negotiated with a requesting CMRS carrier the terms of mutual and reciprocal cost recovery after the filing of MPSC Tariff 24R.

<sup>7</sup> The Michigan ILECs are indirectly interconnected with CMRS carriers. Service is currently being exchanged between the Michigan ILECs and CMRS carriers. The only matter at issue is the compensation of mutual and reciprocal costs.

providers who provide invoices for properly billed termination of traffic on the CMRS providers network from one of the Michigan ILECs' exchanges.

The CMRS Petitioners' assertion that small ILECs are preempting interconnection negotiations by unilaterally filing state tariffs is overly broad, misguided, and unwarranted. Citing Commission rulings from 1987 and 1989, the CMRS Petitioners claim that the small ILECs are precluded from filing tariffs before conducting good faith negotiations on an interconnection agreement.<sup>8</sup> The Commission's prior rulings, however, can easily be distinguished from the present situation. Both the 1987 and 1989 rulings involved Bell Operating Companies ("BOCs") or large ILECs, not small rural ILECs. More importantly, these Commission rulings were made prior to the Telecommunications Act of 1996, which pursuant to Section 251 (f) (1) specifically provides an exemption to rural ILECs from the "Duty to Negotiate" contained within Section 251 (c). According to Section 251 (f) (1) (A), a rural ILEC has an exemption from the duty to negotiate until:

- (i) such company has received a bona fide request for interconnection, services, or network elements, and
- (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b) (7) and (c) (1)(D) thereof).

Section 251 (f) (1) (B) further requires that the "party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the state commission."

Although the Michigan ILECs have a rural exemption from the duty to negotiate, the ILECs acknowledge that pursuant to Section 251 (b) (5) they are required to establish a reciprocal

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<sup>8</sup> The CMRS Petitioners cite *Second Radio Common Carrier Order*, 2 FCC Rcd 2910, 2916 ¶ 56 (1987); and *Third Radio Common Carrier Order*, 4 FCC Rcd 2369, 2370-71 ¶¶ 13-14 (1989).

compensation arrangement for the transport and local switching of telecommunications service. Nevertheless, the Telecommunications Act of 1996 does not mandate that the reciprocal compensation arrangement be in the form of an interconnection agreement. Since rural ILECs are required to establish a reciprocal compensation arrangement, but are specifically exempted from the duty to negotiate, the only practical way for a rural ILEC to comply with 251 (b) (5) without voluntarily waiving its specifically provided exemption from the duty to negotiate based on 251 (f) (1), is to file a tariff that contains a reciprocal compensation arrangement. Indeed, this is exactly what the Michigan ILECs have done in order to comply with Section 251 (b) (5).

CMRS carriers generally hide behind the ILECs' duty pursuant to 251 (b) (5) to establish reciprocal compensation arrangements, refusing to pay for transport and switching service provided by an ILEC, citing as an excuse their claim that a negotiated interconnection agreement is necessary between the parties. This is often the case with the Michigan ILECs, despite the rural ILECs' exemption from the duty to negotiate and the presence of a reciprocal compensation arrangement in the ILECs' lawfully filed tariff. Meanwhile, each ILEC continues to provide the transport and local switching service to the CMRS carrier without being compensated. The CMRS Petitioners simply want to void rural ILEC tariffs to avoid compensating ILECs for transport and switching of telecommunications service.

The Telecommunications Act requires a rural ILEC to establish a reciprocal compensation arrangement, however, it does not mandate that the rural ILEC enter into an interconnection agreement with the CMRS carrier. More importantly, the Telecommunications Act specifically exempts the rural ILEC from the duty to negotiate reciprocal compensation arrangements. Therefore,

a rural ILEC should be allowed to establish the required reciprocal compensation arrangement through the use of a tariff or some other appropriate method.

This Commission should declare that rural ILECs have an exemption from the duty to negotiate, and that rural ILECs can file tariffs with state commissions to be compensated for termination and local switching service provided to CMRS carriers, where the rural ILEC has established a reciprocal compensation arrangement in compliance with Section 251 (b) (5) of the Telecommunications Act of 1996.

### III. CONCLUSION

The Michigan ILECs respectfully request that the Commission declare the following:

- A. That rural ILECs, pursuant to 251 (f) (1) have an exemption from the duty to negotiate, and can file tariffs with a state commission in order to be compensated by CMRS carriers for providing transport and local switching service, where the rural ILEC has established a reciprocal compensation arrangement in compliance with Section 251 (b) (5) of the Telecommunications Act of 1996.

The Michigan ILECs believe that the requested Commission action will lay the foundation for rural ILECs and CMRS carriers to receive reciprocal compensation for the transport and local switching of telecommunication services.

Respectfully submitted,



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