Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of

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 the Illinois RLECs


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Summary

The Illinois RLEs support the Petition filed in the captioned docket. They contend that the Sprint, Verizon and Level 3 have knowingly purchased exchange access service from the Illinois RLECs over Feature Group D trunks. Without regard to whether Sprint, Verizon, Level 3 or any other IXC may originate or terminate some amount of intraMTA CMRS traffic over those trunks, the Illinois RLECs currently make Feature Group D trunks available only for interexchange access service under intrastate and interstate tariffs and the Illinois RLECs are compelled by the filed rate doctrine to charge and collect those tariffed rates.

The Illinois RLECs further contend that Sprint, Verizon and Level 3 have acted as IXCs in carrying the traffic at issue. Sprint, Verizon and Level 3 are not CMRS carriers entitled to seek reciprocal compensation and are also not certificated in Illinois as local carriers entitled to originate or terminate local traffic or seek local interconnection arrangements.

Finally, the Illinois RLECs contend that short-paying current access bills as a means of recognizing the intraMTA CMRS traffic Sprint, Verizon and Level 3 carry is not just or reasonable, and the FCC should prohibit any attempt by Sprint, Verizon and Level 3 to do so.
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WC Docket No. 14-228

COMMENTS IN SUPPORT OF THE PETITION FOR DECLARATORY RULING OF THE LEC PETITIONERS

Pursuant to 47 C.F.R. § 1.2 of the Commission Rules, Adams Telephone Co-Operative, Adams TelSystems, Inc., Egyptian Telephone Cooperative Association, Madison Telephone Company, McDonough Telephone Cooperative, Metamora Telephone Company, Mid Century Telephone Co-operative, Shawnee Telephone Company, Wabash Telephone Cooperative, Inc. (collectively, the “Illinois RLECs”) file these comments in support of the Petition filed in the captioned docket and request that the relief sought in the Petition promptly be granted.

I. Introduction

A. The Parties and Types of Traffic at Issue

For over 18 years, Sprint (“Sprint”)1 Verizon Communications2 and Level 33 have presented themselves to the Illinois RLECs as interexchange carriers (“IXCs”)4 and have originated traffic from and terminated traffic to the Illinois RLECs over the interexchange access

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1 Sprint Communications Company L.P. is the named plaintiff in a lawsuit filed in Illinois as Case No. 2:14-cv-02104, now consolidated in the Northern District of Texas as Case No. 3:14-md-02587-D.
2 MCI Communications Services, Inc. and Verizon Select Services Inc. are the named plaintiffs in a lawsuit filed in Illinois as case No, Case No. 14-cv-2212, now consolidated in the Northern District of Texas as Case No. 3:14-md-02587-D
3 Level 3 Communications Inc.
4 Although Sprint and Verizon have affiliate that provide wireless telephone service as a Commercial Mobile Radio Service (“CMRS”), those affiliate are not a party to Sprint or Verizon’s claims.
facilities offered by those RLECs. Conversely, the Illinois RLECs have billed these IXCs out of the access tariffs that support the facilities these IXCs have used and the traffic records available to the Illinois RLECs. Beginning in mid-2014 and with very little notice, however, these IXCs began asserting to the Illinois RLECs that, in addition to being IXCs for some traffic, these IXCs have long been “intermediate carriers” for traffic that they terminate to or originate from various unnamed Commercial Mobile Radio Service (“CMRS”) carriers.

In making their recent demands, these IXCs seek to arbitrage the differing treatment in intercarrier compensation between IXC and local traffic. Intercarrier compensation for IXC traffic is currently rated at a higher price than intercarrier compensation for local traffic. In fact, as of July 2012, the FCC made the exchange of local traffic with a CMRS carrier “bill and keep.”

The origination and termination of IXC traffic is handled under a tariff system, which was explicitly maintained by Section 251(g) of the Telecommunications Act. 47 U.S.C. § 251(g). By contrast, traffic exchanged between two “local” carriers is handled through interconnection arrangements and interconnection agreements. State regulators (like the Illinois Commerce Commission) and the Federal Communications Commission (“FCC”) have long defined IXC traffic for wireline telephone service on the basis of local exchanges that are geographically small. As the FCC’s 1996 “Local Competition Order” acknowledged, IXCs have bridged those exchanges, whether contiguous or extremely remote, between local carriers who normally have no business relationship. Moreover, under applicable federal and state law,

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7 Local Competition Order at ¶ 1034.
IXCs are the technical “owners” of the traffic they carry with the right to bill their IXC end user customers directly and the obligation to take responsibility to compensate the local carriers on each end of the call for the cost of network resources used to originate or terminate the call to the customers.

Since the advent of local telephone competition in the 1990s, local wireline competitors have commonly established interconnecting facilities in the same relatively small exchanges as the incumbent wireline carriers with which they compete, which has made the exchanging and recording of local traffic relatively straightforward. By comparison, the recording and billing of IXC calls has long been subject to a far more complex network arrangement due in part to the geographically remote locations of the calling and called parties and the fundamental responsibilities of the IXCs.

That same 1996 *Local Competition Order* now suddenly forms the basis of these IXCs’ demands, as that Order created a distinction between local calling areas for wirelines service (the local exchange along with established EAS connections) and local calling areas involving a CMRS customer as either the calling or called party. For those CMRS calls, the FCC moved past the legacy definition built on local exchange areas and defined the local calling area as a “major trading area” or “MTA.” MTAs are geographically quite large and frequently span state lines, sometimes multiple state lines. Through this change, the FCC created a circumstance where “local” traffic could be exchanged between carriers that were geographically remote from one another. “Local calling” and “local calls,” however, remained in the control of the originating carrier, which had the originating customer relationship and was responsible for making local interconnection arrangement with the terminating carrier. By contrast, IXC calling continued to present a very different model where “long distance calling” and “long distance
calls” were under the control of the IXC, which had ownership of the originating customer and was responsible for compensating the originating and termination carriers.

The Illinois RLECs are traditional landline telephone local exchange companies (“LECs”) serving rural and sparsely populated areas in Illinois. The Illinois RLECs are compensated by interexchange carriers for completing (receiving or sending) calls between the IXC customers in the Illinois RLECs exchanges and customers of other remote landline and wireless carriers. Those interexchange carriers can purchase these call origination and call termination services from the filed access tariffs of the Illinois RLECs. In the case of “local” traffic exchanged by the Illinois RLECs with a competing LEC or with a CMRS provider, the competing LEC or CMRS provider can obtain these services from the Illinois RLECs by entering into an interconnection agreement or a reciprocal compensation agreement pursuant to Sections 251(c)(2) and 251(b)(5) of the federal Telecommunications Act of 1996 (“the 1996 Act”). 47 U.S.C. §§ 251(c)(2) and 251(b)(5). The IXCs, now claiming to be “intermediate” or “transiting” carriers, do not allege that they are parties or otherwise privy to any approved interconnection agreement or reciprocal compensation arrangement with the Illinois RLECs. Nor do they allege that the CMRS carriers for which they are originating or terminating calls have interconnection agreements with the Illinois RLECs.

B. The IXC’s Claims

Two of these IXCs, Sprint and Verizon have brought federal lawsuits against some or all of the Illinois RLECs. Sprint’s complaint asserted that the Illinois RLECs “billed Sprint improperly out of their intrastate access tariffs, and . . . under interstate access tariffs” for

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8 Some of the Illinois RLECs have traffic termination agreements with various wireless carriers, including Sprint’s wireless affiliate and Verizon’s wireless affiliate to terminate local traffic as reported to the Illinois RLECs by their tandem providers. 9 Under the Federal Telecommunications Act, agreements for interconnection and reciprocal compensation must be approved by the state public utility commission. 47 U.S.C. § 252(e).
intraMTA calls.”10 Verizon makes essentially identical claims. In several different ways, Sprint and Verizon present the question whether FCC decisions and rules exempt these IXCs from paying tariffed access charges for services they have ordered, received, and paid for without dispute or objection for over 18 years.

Their complaints, however, do not contain a single allegation regarding the existence of a contract. Rather, these IXCs admit there is no “negotiated contract” between them and the Illinois RLECs. To support their claims, these IXCs cite FCC Rule 47 C.F.R. § 51.701(b)(2): “Telecommunications 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” to assert that some unidentified amount of traffic they have exchanged with the Illinois RLECs is intraMTA and subject to reciprocal compensation, not access charges. While pointing to an 18-year-old FCC Order, these IXCs also rely on the FCC’s more than three-year-old Transformation Order11 (referred to by some other parties as the “Connect America Fund Order”) as bolstering their newfound position that they are entitled to be treated as a CMRS provider when terminating intraMTA traffic.

The Transformation Order, however, explained that the exchange of non-access traffic between a LEC and a CMRS provider arose from interconnection between the LEC and CMRS provider pursuant to 47 C.F.R § 20.11 or a reciprocal compensation arrangement pursuant to 47 U.S.C. § 251(b)(5).12 The Transformation Order is one of several FCC Orders addressing compensation between LECs and CMRS providers since the 1996 Amendments to the

[10] See Sprint’s First Amended Complaint ¶ 24 in Case No. 2:14-cv-02104 (C.D. Ill.) now consolidated in the Case No. 3:14-md-02587-D (N.D. Tex.).
[12] Id. at ¶ 989
Telecommunications Act. These IXCs are not CMRS providers (and do not allege they are CMRS providers). These IXCs are not certificated to carry local traffic and have not requested interconnection pursuant to 47 C.F.R. § 20.11 or a reciprocal compensation arrangements pursuant to 47 U.S.C. § 251(b)(5).

On the contrary, these IXCs looks like IXCs, walk like IXCs and quack like IXCs. These IXCs state that when one of the Illinois RLECs hands off a call to one of these IXCs for ultimate delivery to a CMRS carrier, or when a CMRS carrier hands off a call to these IXCs for ultimate delivery to an Illinois RLEC, these IXCs carry the calls over what are known as Feature Group D facilities. Thus, these IXCs concede that the Illinois RLECs are charging these IXCs for Feature Group D service pursuant to each Illinois RLEC’s respective interstate or intrastate access tariff, but these IXCs seek to avoid compliance with the Illinois RLECs’ access tariffs, alleging that they are in conflict with FCC rules.

II. Argument

The positions these IXCs are taking is incorrect because, historically, each has ordered service out of valid access tariffs to originate and terminate traffic with the Illinois RLECs, and the Illinois RLECs have billed these IXCs under the appropriate tariffs. Although a properly certificated carrier may negotiate local interconnection arrangements with the Illinois RLECS, these IXCs may not now claim that the past traffic they sent or received as IXC traffic over the Illinois RLECs’ access facilities was not access. Nor is it just and reasonable for them to demand a refund, let alone pursue the self-help tactics they are currently employing by partial-paying their current access bills. If these IXCs were (or are) entitled to the reciprocal compensation regime for intraMTA wireless calls, they must obtain appropriate certification and

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specifically request local interconnection pursuant to 47 C.F.R. § 20.11 and/or make reciprocal compensation arrangements pursuant to 47 U.S.C. § 251(b)(5) in order to establish a local interconnection and identify the relevant local minutes or fairly negotiate a factor for local intraMTA CMRS traffic. These IXCs have requested neither. On the contrary, these IXCs have never sought qualification to provide local service; rather, they have requested, received, and fully paid for exchange access service in accordance with the respective Illinois RLECs’ interstate and intrastate access tariffs.

A. The Illinois RLECs Are Properly Billing These IXCs Consistent With Valid Access Tariffs.

These IXCs have been billed Consistent with the valid tariffs of the Illinois RLECs.

1. The Position Taken by These IXCs is Barred By The Filed Tariff Doctrine.

These IXCs claim that they cannot be billed for intraMTA CMRS traffic out of the Illinois RLECs’ access tariffs. In fact, the Illinois RLECs are affirmatively required to charge the rates contained in their filed tariffs. 

Maislin Indus., 497 U.S. at 127; Dreamscape Design, Inc., 414 F.3d at 669; see also Goldwasser, 222 F.3d at 402 (filed rate doctrine applies to state tariffs). “[T]he obligation created by a filed tariff cannot be altered by an agreement of the parties.” Ill. Bell Tel. Co., Inc. v. Global NAPs Ill., Inc., 551 F.3d 587, 593 (7th Cir. 2008).

Telecommunications tariff charges are determined by the type of service requested and purchased from the tariff, not the type of traffic for which a customer uses the service. In this case, the IXCs ordered Feature Group D access trunks from each of the Illinois RLECs and routed traffic over those trunks. As a result, these IXCs acted as “IXCs” and undertook to pay

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14 These IXCs have argued, referencing Footnote 2133 of the Transformation Order, that three court decisions support their assertion that intraMTA traffic they claim to carry is subject to reciprocal compensation – Alma Communications Co. v. Missouri Public Service Comm’n, 490 F.3d 619 (8th Cir. 2007); Iowa Network Services v. Qwest Corp., 466 F.3d 1091 (8th Cir. 2006); Atlas Telephone Co. v. Oklahoma Corp. Commission, 400 F.3d 1256 (10th Cir. 2005). Each of these cases, however, was rooted in the actions of state utility commissions allowing CMRS carriers to interconnect with rural LECs through an RBOC tandem and the resulting obligations on the
the switched access rates established by the filed tariffs for use of those trunks, regardless of whether the traffic these IXCs routed was considered local or long distance. These IXCs have never challenged the validity of the tariffs before either the FCC or the ICC. In fact, it was not until mid-2014 that these IXCs took any steps to dispute their access bills as required by the Illinois RLECs’ tariffs.

The filed-rate doctrine, which is based both on historical antipathy to rate setting by courts, deemed a task they are inherently unsuitable to perform competently, and on a policy of forbidding price discrimination by public utilities and common carriers, forbids a court to revise a public utility’s or (as here) common carrier’s filed tariff, which is to say the terms of sale that the carrier has filed with the agency that regulates the carrier’s service.\(^{15}\)

Here, these IXCs ordered access services from the Illinois RLECs’ access tariffs. Absent some effort to qualify themselves as local exchange carriers and establish arrangements for a local interconnection, the Illinois RLECs were required by law to apply those tariffs to all traffic these IXCs delivered over their access facilities. These IXCs paid for the traffic without dispute pursuant to these tariffs for many years, including nearly three years after the 2011 *Transformation Order* was issued. Now, these IXCs seek to avoid the applicability of these tariffs by asking numerous federal and state courts for relief, rather than seek local certification and appropriate local interconnection arrangements.

2. **These IXCs Are Acting as IXCs, Not CMRS Carriers or “Intermediate” Carriers.**

The FCC Orders these IXCs cite in support of their position apply to calls exchanged between LECs, such as the Illinois RLECs, and CMRS providers, such as Sprint Wireless and Verizon Wireless, pursuant to approved interconnection or reciprocal compensation agreements. All local exchange carriers are obligated to establish reciprocal compensation arrangements for tandem provider. *See Sprint Communs. Co., L.P. v. Butler-Bremer Mutual Tele Co.*, 2014 U.S. Dist. Lexis 141758 (N.D. Iowa Oct. 6, 2014) (Memorandum Opinion and Order Regarding Defendants’ Motion to Dismiss or Stay).

\(^{15}\) *Arshberry v. Illinois*, 244 F.3d 558, 562 (2001).
the transport and termination of telecommunications. 47 U.S.C. § 251(b)(5). These IXCs do not allege that they are CMRS providers or even local exchange providers. Nor do these IXCs allege that they have requested an interconnection or made any type of reciprocal compensation arrangements with any of the Illinois RLECs for the transport and termination of CMRS calls. Thus, these IXCs are neither CMRS carriers nor local exchange carriers entitled to avail themselves of the reciprocal compensation regime.16

These IXCs seek to dodge the absence of a CMRS carrier by posing as “transit” providers. But an IXC provides telephone toll service. See 47 U.S.C. § 153(55). An IXC is not a transit provider. At a very fundamental level, an IXC owns the customer relationship with the party originating the call and is responsible for how the call is originated and terminated. That makes an IXC fundamentally different from a CMRS carrier or a local exchange carrier, each of which own the customer relationships with the customers originating the calls and each of which is responsible for the routing and termination of their customers’ calls. For these IXCs’ interpretation to stand up, they must be asserting that they have been taking ownership of calls originated by the Illinois RLECs and billing customers who are not these IXCs’ customers.

Similarly, a transit provider is not a LEC and is not even referenced in the intraMTA rule (47 C.F.R. § 51.701(b)) on which these IXCs base their claim. The lack of a reference to a “transit” provider within Section 51.701(b) is not surprising. The FCC has declined to impose an obligation to negotiate interconnection with a transit provider on incumbent LECs or any other LECs. See, e.g., In the Matter of Petition of Worldcom, Inc. et al., Memorandum Opinion and

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16 Federal regulations provide LECs with the right to seek interconnection agreements with any interconnecting CMRS carriers. See 47 C.F.R. § 20.11; Declaratory Ruling and Report and Order, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-02, FCC 05-42 (Rel’d February 24, 2005) (extending FCC’s authority to allow LECs to demand negotiations for interconnection from CMRS carriers). By presenting themselves as IXCs, these IXCs prevented the Illinois RLECs from seeking what would have been appropriate interconnection arrangements if Sprint were in fact providing local interconnection.
Order, CC Docket Nos. 00-218, et al., DA 02-1731, released July 17, 2002 at ¶ 117. Moreover, a transit provider is not even involved in any reciprocal compensation obligation since, in those specific situations where a transit provider is used in the exchange of local traffic, the reciprocal compensation arrangement is solely between the two local carriers involved in the end user traffic. See id. at ¶ 544 (citing In the Mater of Texcom, Inc. v. Bell Atlantic Corp., Order on Reconsideration, 17 FCC Rcd 6275, 6276-77 (¶ 4) (2002)).

Without qualifying themselves as local carriers and making arrangements for the exchange of local traffic they originate, these IXCs are acting as IXCs and interconnecting with the Illinois RLECs only through their access tariffs. As part of the 1996 Telecommunications Act, Congress explicitly preserved existing access arrangements between IXCs and LECs through Section 251(g).

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, . . . . Based on our authority under section 251(g) [of the 1996 Act] 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. . . .

Those arrangements include the Illinois RLECs’ switched access tariffs, which have been on file since well before the 1996 Act went into effect.

In support of their position, these IXCs recite FCC rules that govern intercarrier compensation arrangements between local exchange carriers and CMRS providers. These IXCs

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17 Local Competition Order, 11 FCC Rcd 15499 at ¶ 1043 (emphasis added).
18 For interstate access, the Illinois RLECs each concur in the National Exchange Carrier Association (NECA) tariff. For intrastate access, the Illinois RLECs each have their own tariffs.
19 These IXCs’ reliance on the FCC’s 2011 Transformation Order and on FCC rule 51.701(b)(2) (see FAC ¶ 32) is similarly misplaced. Like the rule, the portions of the Order that these IXCs rely upon address the exchange of traffic between CMRS carriers and LECs. See 26 FCC Rcd 17663 at ¶¶ 976, 980-81, 988. By contrast, the rules governing the exchange of traffic between a LEC and an IXC are contained in Part 69 of the FCC’s rules, 47 C.F.R. § 69.1 et seq.
conclude that intraMTA calls are *never* subject to switched access charges. While these IXCs styles themselves as “intermediate carriers,” that term is not defined in the 1934 Communications Act (nor in the Illinois Public Utility Act).20 These IXCs do not allege that they are CMRS carriers. And these IXCs have not acted as local exchange carriers because they do not allege that they have originated any local traffic (or are even certificated to do so) or made any provision to establish reciprocal compensation with any Illinois RLEC. These IXCs have consistently acted only in their IXC capacity. The FCC’s intraMTA rule applies only to CMRS carriers. Absent an effort to qualify itself to carry local traffic and to establish local interconnection, an IXC that is not the subject of the rule may not seek to benefit from it.

The FCC has concluded before that traffic should be handled based on the type of carrier seeking service. Three decades ago the FCC exempted certain “enhanced services” from paying access charges. The FCC, however, rejected an argument that an intermediate carrier like these IXCs should benefit from the exemption by being able to originate or terminate traffic over interexchange access facilities without paying for that service:

Dial Info argues that it should be exempt from access charges for the interstate services, such as 800 service, it uses in offering its enhanced services. As NYNEX observes in its comments, Dial Info does not pay interstate access charges directly; the LECs bill the interexchange carriers that provide 800 service to Dial Info. Thus, Dial Info seems to be suggesting that these interexchange carriers should receive an exemption from access charges for the interstate services they provide Dial Info and presumably should be required to pass through the cost savings to Dial Info. . . . End users that purchase interstate services from interexchange carriers do not thereby create an access charge exemption for those carriers. Thus, to the extent that Dial Info is suggesting that some kind of access charge credit for 800 or 976 service should be

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20 See 220 ILCS 5/3-101 et seq.
available, Dial Info has misinterpreted our rules: it cannot be credited for an exemption from access charges on that traffic.21

Here, similarly, the fact that the FCC has exempted CMRS providers from paying access charges for intraMTA calls does not allow these IXCs to avoid paying for access services they actually requested and used instead of establishing local interconnection and a reasonable means to identify local traffic.

B. The Self-Help These IXCs Are Pursuing Is Not Just or Reasonable, Particularly Because they Do Not Have Any Basis To Seek Refunds For Past Traffic

To differing extents, these IXCs are refusing to pay their current access bills either in part or in full, citing their demands for refunds of past access related to intraMTA traffic or traffic factors they have unilaterally imposed on current traffic. They have not, however, engaged in any good faith attempt to “resolve” these disputes; rather they simply repeat their assertions and withhold part or all of their payments. They have made no good faith attempt to demonstrate how the payments they are withholding represent prior claims. These self-help strategies are unjust and unreasonable and thus contrary to Section 201(b) of the Telecommunications Act. 47 U.S.C. § 201(b). Were these IXCs simple end user customers, the Illinois RLECs would have the simple option of cutting off their service and pursuing unpaid bills. Commission precedent, however, obligates the Illinois RLECs (and all LECs) to originate and terminate all IXC traffic and the FCC has repeatedly deterred LECs from blocking or degrading that traffic.22 These IXCs are gaming the FCC’s rules in violation of Section 201(b) and to the ultimate detriment of their own end customers as well as the rest of the customers of the Illinois RLECs.

22 See 47 C.F.R § 51.209(b); see generally Rural Call Completion, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Red 16154 (2013) (reaffirming the Commission's prohibition on call blocking and imposing new obligations designed to monitor performance with respect to rural call completion); USF/ICC Transformation Order ¶ 839 (noting that Section 201 "generally restricts carriers from blocking traffic").
In reliance on FCC orders which prevent the LECs from pursuing simple legal processes, Level 3 and Sprint have adjudicated their own claims for refunds and are imposing a form of servitude on the Illinois RLECs by forcing them to continue to terminate traffic to and originate traffic from these LECs without compensation for the full services provided. Sprint and Level 3 are simply collecting their own refunds without the benefit of a judicial decision in their favor and, in the case of Level 3, without even bothering to seek one. The Commission can and should declare these actions "unjust" and "unreasonable" under Section 201(b) and therefore unlawful.23

As the Petitioners in this docket stated:

As an initial matter, such conduct constitutes an unjust and unreasonable practice with respect to an IXC’s own end-user customers to the extent that the IXC has recovered the costs of access charge payments from those customers (whether through its general rates or as a separate line-item charge). IXCs generally may recover the costs of paying access charges as long as they accurately describe the nature of the fee; the Commission has prohibited the gross overbilling of customers for fictitious charges and confirmed that unjust or unreasonable line-item charges are subject to challenge under Section 201(b). Where an IXC chooses to withhold access charge payments absent any legitimate basis for disputing the LEC’s current charges, it is manifestly unjust and unreasonable for the IXC to "recover" the associated "costs" from the relevant end user customers. And where customers that have placed "intraMTA wireless" calls already have paid access charge recovery fees billed by an IXC, the IXC’s efforts to effect a de facto refund of the underlying access charge payments without refunding those fees to the relevant end-user customers also are unjust and unreasonable.

In addition, such conduct is an unjust and unreasonable practice with respect to originating and terminating LECs because IXCs are taking such action to effect a result that is prohibited by the Act. Notably, under Section 204 of the Act, a carrier may not provide a refund, directly or indirectly, that is inconsistent with its filed tariffs. Furthermore, under Section 503(a) of the Act, no customer may "receive or accept . . . any . . . valuable consideration as a rebate or offset against [tariffed] charges. . . ." Consequently, an IXC’s attempt to effect a de facto refund by withholding payment of unrelated charges not only is inconsistent with its obligations under Section 201(b), but also violates other provisions of the Act.

Petition at p. 36-37 (footnotes omitted).

23 47 U.S.C. § 201(b) (providing that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate and foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful").
It is manifestly unjust that the Commission would hobble the Illinois RLECs from the simple act of refusing service to a short-paying (or even a non-paying) customer while declining to provide the Illinois RLECs with any legal process for adjudicating the LEC’s claims for payment. To allow this blatant self-help would allow the IXCs to avoid not only payment, but to avoid any real adjudication of their position as well. Although Sprint and Verizon have at least brought court actions that would allow the adjudication of their claims, FCC inaction -- that allows them to collect their “damages” before even proving their rights -- inappropriately inverts the legal process. The Commission should impose its jurisdiction to review IXC conduct under such circumstances and prohibit the inappropriate self-help.24

Finally, if the Commission condones this behavior or, worse, allows the IXCs to unilaterally short pay their bills or even seek the refunds Sprint and Verizon are demanding, it will put at risk the ability of the Illinois RLECs to provide service not only to the end user customers of Sprint and Level 3, but the rest of the RLECs customer base. Like all other LECs, the Illinois RLECs receive a substantial percentage of their overall revenues from access and have for all of the years for which Sprint and Verizon are demanding refunds. If the Commission is willing to allow IXCs to unilaterally recoup as many as 10 years25 of (wrongly) claimed overpayments by stopping current access payments over the course of years or, worse, siding with the position taken by these IXCs, the Illinois RLECs will either have to price local exchange service above acceptable affordable rates, seek additional universal service funding from the federal or state funds or see their investments dry up. The impact on federal universal service, state universal service and, ultimately on end user customers would be catastrophic.

25 The Illinois RLECs believe Sprint and Verizon will take the position that the appropriate statute of limitations under Illinois law is 10 years, a position which the Illinois RLECs dispute.
III. Conclusion

For the foregoing reason, the Petition should be granted and the Commission should clarify its intercarrier compensation policies in a manner consistent with the Petition.

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Respectfully submitted

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