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

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 Commissions
Implementing Rules and Policies

In the Matter of
Connect America Fund

Developing an Unified Intercarrier Compensation Regime

COMMENTS OF RONAN TELEPHONE COMPANY AND HOT SPRINGS TELEPHONE COMPANY

On November 10, 2014, a group of large and small ILECs filed a Petition for Declaratory Ruling with the Commission, requesting a ruling regarding the applicability of the intra-MTA rule to LEC-IXC traffic. The Wireline Competition Bureau issued a Notice on December 10, 2014, setting dates for the filing of comments, due February 9, 2015 and March 11, 2015; DA 14-1808. Ronan Telephone Company (RTC) and Hot Springs Telephone Company (HSTC) submit the following comments in support of the Petition.

RTC and HSTC are small rural ILECs in western Montana, serving portions of the Flathead Indian Reservation (the Confederated Salish and Kootenai Tribes). The problems
identified in the Petition are being confronted on a large scale by RTC and HSTC in Montana. The carriers that are refusing to pay the tariffed charges are Level 3, Global Crossing and Verizon. Carriers have been withholding access payments for as long as two years, and have failed to pay over $100,000. RTC/HSTC cannot afford the loss of such large sums in the current environment: revenues are declining from FCC reforms, competitive pressures, and other new regulatory requirements (for example, the five year build-out plan for broadband requires large new investments in the face of dwindling revenues).

**Legal Arguments**

RTC/HSTC concur in the legal arguments presented in the Petition filed on November 10, 2014 herein. The “intra-MTA rule” (47 C.F.R. §51.701) which provides for local reciprocal compensation arrangements for the exchange of wireless traffic in interconnection agreements (47 U.S.C. §§ 251, 252) does not prohibit tariffed access charges for traffic transmitted over wireline long distance trunks. These charges are assessed in accordance with valid intrastate and interstate tariffs. It is in fact contrary to law for a carrier to charge any more or less than the charges contained in their tariffs, See §69-3-301, MCA and 47 U.S.C. §203. The carriers can choose between local interconnection (and the associated reciprocal compensation provisions), or the switched access tariffs over long distance trunks. The carriers in these instances have made their choice and are bound by law to pay the tariffed charges.

It is worth noting that the two dominant wireless carriers in Montana (carrying perhaps more than 95% of the wireless traffic) both have interconnection agreements and direct trunk connections with RTC and HSTC. These connections carry traffic on a bill-and-keep basis.
These major wireless carriers have an established connection with RTC and HSTC, by which they can originate and terminate LEC-CMRS traffic without charges. But instead, the carriers have voluntarily chosen to utilize the switched access trunks instead of reciprocal compensation trunks, and must pay the tariffed charges in full, regardless of the nature of the traffic.

In addition, the state switched access tariffs of RTC contain a specific provision regarding the provision of access services over long distance trunks for “local” traffic:

All transport and termination of intra-LCA (intra-local calling area) traffic that originates on RTC’s network and terminates on a CMRS provider’s network, and all intra-LCA traffic that originates on a CMRS provider’s network and terminates on RTC’s network, shall also be governed by the rates and charges contained in this tariff. RTC Access Service Tariff, Montana PSC No. 2; Section 6.1.

RTC/HSTC tariffs clearly provide that all traffic transmitted over the access trunks are responsible for the access tariffed rates.

Claims for Retroactive Refunds/Credits

Level 3 and Verizon are also claiming that RTC/HSTC should reimburse them for past access charge payments, based on allegations that some of the traffic was wireless; and in some cases withholding current payments based on alleged past overpayments. First, this is inconsistent with the regulatory filed rate doctrine and the prohibition against retroactive ratemaking. See e.g., Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578, 101 S.Ct. 2925 (1981). Second, the significant revenue losses would seriously damage the ILECs financially. Since access revenues would be significantly reduced if these carriers claims are held to be valid, the amounts ILECs are entitled to through the CAF access recovery mechanism would substantially increase. Since this issue is nationwide in scope, this would endanger the FCC’s
“cap” on the size of the CAF fund.

This loss of revenue is also endangering the construction of new facilities to satisfy the FCC’s broadband build-out requirements. Significant new capital is required for these build-outs, however, the unlawful withholding of access charges is jeopardizing the funding of these broadband improvements in rural areas. Even before any judicial or regulatory decision, the loss of revenue, and the costs of collection and litigation, have imposed substantial burdens on small companies.

Measurement

Level 3 and Verizon claim that they can substantiate the amount of wireless traffic through surrogate traffic studies. The amount of wireless traffic is immaterial based on the law; but nevertheless, it would be impossible to measure with any accuracy the actual amount of minutes originating and terminating to wireless carriers. The inadequacies of the network systems, number portability, and the inability to accurately record the location and jurisdiction of each call, render such studies meaningless. If these arguments are given any credence, it will only lead to a costly, lengthy, and inconclusive quagmire of call analysis.

Summary

In conclusion, small rural carriers are being seriously damaged by the withholding of billed charges by certain long distance carriers, alleging that payment is not due for wireless traffic transmitted over tariffed access trunks. The ILECs tariffs require payment for all traffic transmitted over access trunks; and this simple principle should be upheld and reaffirmed.
This is a serious matter and requires timely attention by the Commission; otherwise there will be serious ramifications that effect the financial viability of small ILECs, the FCC’s CAF budget, and broadband build-out requirements. These lost revenues are very substantial and crucial to the financial health of small companies.

The Petition filed herein describes in detail the legal issues and arguments. RTC/HSTC concur and support those arguments, and urge the Commission to agree and issue a ruling in the very near future which resolves this issue nationwide.

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Respectfully Submitted,

/s/
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