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 TCA

TCA hereby submits these comments with respect to the Petition for Declaratory Ruling filed by the LEC Coalition on November 10, 2014.\(^1\) The LEC Coalition, which includes more than 150 RLECs, several mid-size LECs and cable companies, requests a declaratory ruling regarding the applicability of the “intraMTA rule” to wireless calls routed through an IXC. Under the intraMTA rule, intraMTA calls exchanged between LECs and commercial mobile radio service (“CMRS”) carriers are subject to reciprocal compensation. The LEC Coalition seeks confirmation that the intraMTA rule does not apply to charges billed to an interexchange carrier (“IXC”) when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services.\(^2\) The LEC Coalition also asks the Commission to declare the claims of certain IXCs of entitlement to substantial retroactive refunds inconsistent with the

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\(^1\) 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).

Communications Act of 1934, as amended ("the Act"), and the Commission’s implementing rules and policies.\(^3\)

TCA supports the November 10, 2014 Petition of the LEC Coalition for declaratory ruling. Sprint and Verizon have filed almost seventy lawsuits against more than 850 defendants\(^4\) alleging they do not owe switched access charges on intraMTA wireless traffic exchanged with LECs over long distance trunks and retroactively seeking refunds. Sprint’s lawsuits also seek a declaration from the courts that future intraMTA wireless traffic delivered over the Feature Group D access trunks will be exempt from access charges. Furthermore, Sprint and Level 3 have withheld payment from many LECs in an attempt to obtain de facto refunds of switched access charges that those IXCs voluntarily paid but now dispute. TCA agrees with the LEC Coalition and the U.S. District Court for the Northern District of Iowa that under the doctrine of primary jurisdiction this Commission, and not the courts, is in the best position to address the issues raised by these multiple disputes and lawsuits.

TCA is a national consulting firm that performs financial, regulatory and marketing services for over one-hundred rural LECs and their affiliates. The vast majority of TCA clients are rate-of-return regulated in both the interstate and state jurisdictions and offer traditional voice and broadband services to their customers. Because of their sparsely-populated, high-cost service areas, TCA clients rely upon the access regime designed by federal and state regulators to recover their costs.

The deluge of intraMTA billing disputes and consequent lawsuits launched by the IXCs impose substantial enforcement costs on the LECs, especially small, rural LECs with limited resources. For many, if not most rural LECs, defending the lawsuits filed against them (or filing lawsuits themselves for non-payment) coupled with the risk of conflicting judicial rulings across

\(^3\) Ibid.
\(^4\) WTA Ex Parte, December 19, 2014 at p. 1.
multiple jurisdictions makes collecting duly authorized access charges prohibitively expensive. That the disputes and lawsuits represent an avoidance strategy is amply demonstrated by the fact that for the nearly two decades since the formation of the intraMTA rule, IXCs have paid tariffed access charges in connection with the purported intraMTA wireless traffic without objection. As the LEC Coalition points out, the complaining IXCs very likely recovered the access payments—with which they now take issue—through rates and charges they assessed on their customers. Moreover, the LEC divisions of Verizon and Sprint likely adhere to the very same billing practices which they now find objectionable.

The LEC Coalition rightly observes that the intraMTA rule requires parties exchanging such traffic to cooperate to identify its nature and measure (or estimate) it. When first establishing the intraMTA rule, the Commission noted “… parties may calculate overall compensation amounts by extrapolating from traffic studies and samples,” and the Commission repeated this directive in the USF/ICC Transformation Order. These directives are especially important in light of the fact that the large IXCs have for years comingled all forms of access traffic over the same access trunks, including the traffic they now allege is subject to the intraMTA rule. But in spite of these directives, the LEC Coalition reports that Sprint, Verizon and Level 3 have not provided meaningful estimates of the amount of traffic they claim to have transported and in many cases have not supplied any traffic data at all in support of their claims. WTA has succinctly summarized the cooperation, or lack thereof, provided by the large IXCs:

…neither the IXCs nor their still largely unidentified CMRS provider customers ever notified LECs prior to mid-2014 whether and to what degree they were comingling intraMTA calls on particular access trunks during any given period of time. Nor did the IXCs provide call identification information that would have helped the IXCs and LECs to work together to measure or estimate the amount of

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intraMTA traffic that was being intermixed by the IXCs with other traffic on access trunks. Even more recently after disputes and lawsuits were filed during mid-2014, several IXCs have submitted proposed intraMTA traffic factors to some LECs, but have generally failed to furnish the call detail necessary for the LECs to check the accuracy of such proposed factors.\(^7\)

Perhaps the most egregious actions of the complaining IXCs is to withhold payment of undisputed balances for tariffed access services involving calls unconnected with intraMTA wireless traffic. The LEC Coalition reports Level 3 has withheld payment while not even taking the time to file lawsuits, and Sprint has also withheld payment in some instances.\(^8\) As the LEC Coalition points out, withholding payment of undisputed portions of access bills is not only a violation of the terms of filed tariffs but is also a violation of the duty to negotiate in good faith.\(^9\)

In conclusion, TCA supports the LEC Coalition Petition for Declaratory Ruling to clarify the applicability of the intraMTA Rule to LEC-IXC traffic. The Commission should affirm that the intraMTA rule does not apply to charges billed to an IXC when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services. Moreover, the Commission must make clear that the large IXCs are not entitled to retroactive relief and for them to engage in “self-help” by withholding billed amounts not in dispute in an effort to obtain refunds is completely inconsistent with Commission rules and policy.

Respectfully submitted,

[electronically filed]
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\(^7\) WTA *Ex Parte* at p.1.
\(^8\) Petition at p. 35.
\(^9\) 47 U.S.C §251(c)(1) and 47 C.F.R §51.301.