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 Commission's Implementing Rules
and Policies

REPLY COMMENTS OF MINNESOTA TELECOM ALLIANCE

Brent J. Christensen
MINNESOTA TELECOM ALLIANCE
1000 Westgate Dr., Suite 252
St. Paul, Minnesota 55114
Phone: 651-291-7311
Fax: 651-290-2266

President / CEO of Minnesota
Telecom Alliance
TABLE OF CONTENTS

I. Introduction and Summary................................................................. 1

II. Discussion......................................................................................... 2

1. No cases have applied the IntraMTA Rule to IXC-LEC compensation, much less support refunds or retroactive application of that rule to IXC-LEC compensation. ................................................................. 2
   a. *Alma, Atlas*, and *Western Radio* merely confirmed that the IntraMTA Rule applies to CMRS-LEC compensation and did not involve refunds. ................................................................. 2
   b. *INS II* and *RIITA* did not address compensation by IXCs and do not support refunds. ................................................................. 4

2. If the IntraMTA rule is extended to IXCs, it should be on a prospective basis only. ................................................................. 5
   a. The AT&T Comments demonstrate that any application of the IntraMTA Rule to IXCs should be prospective only. ......................... 6
   b. *Synchronized VOIP* demonstrates that retroactive application would be inappropriate in this case. ................................................................. 7

3. No carriers can claim the benefit of the IntraMTA rule without providing the cooperation needed to measure or estimate the levels of IntraMTA traffic. ................................................................. 8

4. There is no prohibition on IXCs voluntarily making compensation arrangements based on LEC tariffs for exchange of IntraMTA traffic. ................................................................. 9
   a. Carriers are allowed to adopt alternative compensation arrangements in the absence of express prohibition. ................................................................. 9
   b. There is no express prohibition on IXCs accepting tariff charges for exchange of IntraMTA traffic. ................................................................. 10
   c. The limitation of the IntraMTA Rule to CMRS-LEC compensation has not prevented the use of IXCs to exchange IntraMTA traffic. .......... 12

5. The filed rate doctrine applies only in a tariff regime where tariffs control................................................................. 12

III. Conclusion....................................................................................... 13
I. INTRODUCTION AND SUMMARY

The Minnesota Telecom Alliance (MTA) submits these Reply Comments pursuant to the Commission’s December 10, 2014 Public Notice. The Initial Comments filed February 9, 2015 demonstrate that the IntraMTA Rule applies to compensation between CMRS providers and LECs, but does not apply to compensation between IXCs and LECs. This approach was established in the Local Competition Order, applied again in the T-Mobile Declaratory Ruling, and continued through the ICC/USF Order.

Further, although the application of the IntraMTA Rule to CMRS-LEC compensation has been consistently upheld and a state commission’s application of the Intra MTA Rule to a LEC has been upheld, there are no cases that have applied the IntraMTA Rule to IXCs.

The Initial Comments also show that there is no basis for retroactive application if the Commission decides to extend the IntraMTA Rule to IXC-LEC compensation in this case, and no basis to relieve IXCs of their fully informed and long-standing decisions to pay access to LECs for any IntraMTA traffic that the IXCs may have exchanged with the LECs.

Finally, the filed rate doctrine cannot apply unless the services in question are subject to the tariff regime under the Act. If the services are subject to the tariff regime (and filed rate doctrine), Sprint/Level 3 and Verizon have no claims, as the Joint Petition and Initial Comments

---

1 The MTA is a trade association representing the interests of 42 small, medium, and large companies that provide advanced telecommunications services, including voice, data and video to consumers throughout rural, suburban, and urban Minnesota. MTA members CenturyLink, Consolidated Communications (including Mankato Citizens Telephone Company and Mid-Communications, Inc.), and TDS Telecommunications Corporation (including Arvig Telephone Company, LLC, Bridge Water Telephone Company, LLC, Mid-State Telephone Company, LLC, and Winsted Telephone Company, LLC do not join in these comments.


demonstrate. If the application of tariffs is prohibited (as Sprint/Level 3 and Verizon claim), there is no prohibition on the IXCs voluntarily entering into compensation arrangements based on their payment of access charges (which Sprint/Level 3 and Verizon have done for over 18 years). This fundamental inconsistency alone eliminates any claim to for refunds.

II. DISCUSSION

Contrary to the claims of Sprint/Level 3 and Verizon: (1) there are no cases that support claims for refunds for previously exchanged IntraMTA traffic; (2) there are no cases that limit a carrier’s right (under reciprocal compensation rules) to voluntarily establish compensation arrangements at rates different from Commission established default levels; and (3) there are no cases that have held that the IntraMTA rule applies to IXCs’ carriage of IntraMTA traffic.

1. No cases have applied the IntraMTA Rule to IXC-LEC compensation, much less support refunds or retroactive application of that rule to IXC-LEC compensation.

Sprint/Level 3 and Verizon rely heavily on several federal appellate decisions, none of which dealt with compensation between IXCs and LECs. Further, none of the cases relied upon by Sprint/Level 3 and Verizon authorized refunds to the carriers involved in the disputes. Accordingly, these cases do not support their claims.

   a. Alma, Atlas, and Western Radio merely confirmed that the IntraMTA Rule applies to CMRS-LEC compensation and did not involve refunds.

   Sprint/Level 3 and Verizon rely heavily on Alma,6 Atlas7 and Western Radio8 to support application of the IntraMTA rule to IXCs and payment of refunds.9 To the contrary, all of those cases were limited to reciprocal compensation arrangements between CMRS providers and LECs, not IXCs, and none of those cases support the refunds and retroactive remedies requested.

---

6 Alma Communications v. Mo. Pub. Serv. Comm’n, 490 F.3d 691 (8th Cir. 2007).
8 Western Radio Services Co. v. Qwest Corp., 678 F.3d 970 (9th Cir. 2012).
9 Sprint/Level 3 Comments at 1, 3, 6, 10-12; Verizon Comments at 2, 5-13.
by Sprint/Level 3 and Verizon.

_Alma_ involved a federal court review of the Missouri Commission’s findings regarding an arbitration of an interconnection agreement. _Alma_ concluded that the presence of an intermediate carrier did not preclude a reciprocal compensation arrangement between a LEC and CMRS provider. _Alma_ also did not involve any claim for refund. Accordingly, _Alma_ does not address the questions presented in this matter.

_Atlas_ similarly involved a federal court review of an Oklahoma Commission decision involving an arbitration of interconnection agreements. _Atlas_ also concluded that the presence of an intermediate carrier did not preclude reciprocal compensation between rural LECs and CMRS providers, and did not involve any claims for refund. Similar to _Alma_, _Atlas_ does not address the questions presented in this matter.

_Western Radio_ involved a payment dispute between a CMRS provider and a LEC. The court clearly recognized that the identity of the carriers was critical to application of compensation standards, noting that a Commission rule provided “no such exemption for the reciprocal compensation regime as between LECs and CMRS providers.” _Western Radio_ similarly recognized that the treatment of the IntraMTA Rule in _Atlas_ and _Alma_ and in the ICC/USF Order was specific to compensation between CMRS providers and LECs:

Further, we note that the FCC has issued a new report and order, effective December 29, 2011, that cites this case law [Alma and Atlas] approvingly and clarifies that in the LEC-CMRS context, this is indeed how reciprocal compensation rules are to operate.11 _Western Radio_ expressly recognized that the context and identity of the parties to a dispute matters, and that the IntraMTA Rule (and related Commission and court decisions) applies in the context of traffic exchange and reciprocal compensation arrangements between CMRS providers

---

10 _Western Radio Services Co._, 678 F.3d at 988 (emphasis original).
11 _Id._ at 989.
and LECs.

Sprint/Level 3 also recognizes that “the issue that the Commission was addressing” determines the meaning of the Commission’s orders,¹² but Sprint/Level 3 fail to apply that limitation to their own arguments.

b. **INS II and RIITA did not address compensation by IXCs and do not support refunds.**

Sprint/Level 3 and Verizon also rely heavily on *INS II*¹³ and *RIITA*¹⁴ to support their claims.¹⁵ However, *INS II* and *RIITA* were based on findings that: (i) the Commission had not addressed compensation between IXC and LECs (which allowed the Iowa Board to resolve that issue so long as the Iowa Board decision did not expressly violate the Act or other decision by the Commission); and (ii) the carrier disputing application of the LEC access charges (Qwest) was not an IXC.

As noted in *INS II*, the Commission’s “reciprocal compensation rules do not directly address the intermediary carrier compensation to be paid....”¹⁶ Accordingly, the Eighth Circuit affirmed the district court decisions that the Iowa Board was authorized to resolve the question of intermediary carrier compensation so long as its resolution “was consistent with federal law.”¹⁷ *RIITA* was based on similar holdings that the Iowa Board “acted within its authority and did not violate federal law.”¹⁸

*INS II* was also based on findings that Qwest was not an IXC. In *INS II*, the district court found that the question of whether Qwest was liable for access charges was dependent upon on

---

¹² Sprint/Level 3 Comments at 19.
¹³ *Iowa Network Serv’s., Inc. v. Qwest Corp.*, 385 F.Supp.2d 850, 865 (S.D. Iowa 2005), aff’d 466 F.3d 1091 (8th Cir. 2006).
¹⁴ *Rural Iowa Ind. Tel. Ass’n v. Iowa Util. Bd.*, 476 F.3d 572 (8th Cir. 2007).
¹⁵ Sprint/Level 3 Comments at 1, 3-6, 10,-13; Verizon Comments at 2, 5-13.
¹⁶ *Iowa Network Serv’s., Inc.*, 466 F.3d at 1096.
¹⁷ *Id*.
¹⁸ *Rural Iowa Ind. Tel. Ass’n*, 476 F.3d at 577.
whether it was an IXC.\textsuperscript{19} The Iowa Board concluded Qwest was not acting as an IXC, a decision accepted by the district court.\textsuperscript{20}

Further, neither \textit{INS II} nor \textit{RIITA} authorized any refunds or retroactive application. Rather, the Iowa Board expressly rejected Qwest claims for refund for any traffic prior to the time that Qwest objected to payment, as explained below.

Sprint/Level 3 and Verizon also cite \textit{3-Rivers}.\textsuperscript{21} \textit{3-Rivers} involved litigation arising from the refusal of U. S. West to continue to pay access charges, and there is no indication that there was any refund for periods prior to the time that U. S. West refused to pay. Accordingly, \textit{3-Rivers} does not support Sprint/Level 3 and Verizon claims for refund for periods prior to their initiation of claims in 2014.

\section*{2. If the IntraMTA rule is extended to IXCs, it should be on a prospective basis only.}

Sprint/Level 3 and Verizon claim that the IntraMTA Rule should be applied to support refunds for traffic that they knowingly and voluntarily paid for at access rate levels for over 18 years without any notice of objection.\textsuperscript{23} To the contrary, if the Commission extends the IntraMTA Rule to apply to compensation between IXCs and LECs, that change must be limited to prospective application.

It is simply not credible to claim that the LECs should have known that the IntraMTA Rule could be stretched to apply to traffic carried on IXC access trunks when that fact appears to have not been noticed by the IXCs themselves who paid access charges for any IntraMTA traffic they may have carried without question and without complaint for 18 years. While a complete

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{19} \textit{Iowa Network Serv's, Inc. v. Qwest Corp.}, 385 F.Supp.2d 850, 871 (S.D. Iowa 2005).
\item \textsuperscript{20} \textit{Id.} at 876 (“[T]he Court recognizes and accepts the Board's finding that Qwest is not an IXC in the instant case.”).
\item \textsuperscript{21} Sprint/Level 3 Comments at 13; Verizon Comments at 15.
\item \textsuperscript{23} Sprint/Level 3 Comments at 26-29; Verizon Comments at 15-18.
\end{itemize}
\end{footnotesize}
turnabout may be expedient for Sprint/Level 3 and Verizon, there is no basis to compel the rest of the industry to follow along.

a. The AT&T Comments demonstrate that any application of the IntraMTA Rule to IXCs should be prospective only.

The AT&T Comments recognize that any application of the IntraMTA Rule to IXCs should be prospective only. AT&T summarized the appropriate approach saying:

If the Commission were to agree with IXCs and hold that its orders and rules create a self-executing prohibition against billing access charges (even without an applicable interconnection agreement) to IXCs for intraMTA traffic, then the Commission should apply such a ruling only prospectively, and only to the extent that the IXC/CMRS provider submits sufficient information to verify the intraMTA traffic.24

AT&T appropriately summarized the relevant considerations, noting that the IXCs’ payments of hundreds of millions of dollars cannot be reconciled to the Sprint/Level 3 and Verizon claims that the rule against such charges was clear:

Here, retroactivity would be inappropriate regardless of whether a declaration that access charges are improper is deemed to be a new rule or a clarification. Given that the industry practice for years was that, absent an interconnection agreement providing for reciprocal compensation for this traffic, LECs would bill, and IXCs would pay, switched access charges on intraMTA traffic routed over access trunks, a Commission ruling to the contrary would substitute new law for reasonably clear old law. If the prior law had been merely ambiguous, or in the IXCs’ favor, then IXCs presumably would not have paid LECs hundreds of millions of dollars of access charges on such intraMTA traffic for nearly twenty years.25

In the event that the Commission decides that the IntraMTA Rule should apply to compensation between IXCs and LECs, that decision should have prospective application only.

24 AT&T Comments at 13.
25 AT&T Comments at 14.
b. *Synchronized VOIP* demonstrates that retroactive application would be inappropriate in this case.

The Commission’s analysis in the recent *Synchronized VOIP* case demonstrates that, whatever decision the Commission makes with respect to the IntraMTA Rule in this case, there is no basis for a retroactive application to traffic exchanged prior to Sprint/Level 3 and Verizon’s first claims in 2014 that the IntraMTA Rule applied to them. Rather, the merits of claims for retroactive application are virtually the opposite of the claims for retroactive application upheld in *Synchronized VOIP*.

In *Synchronized VOIP*, the charges in question were subject to constant and open dispute from the very beginning. The CLECs asserted their rights immediately by billing the IXCs for services, which the IXCs refused to pay. The parties also openly advocated their positions in numerous submissions to the Commission. Accordingly, the Commission found that there was neither a change in established law nor reasonable reliance by the IXCs on a contrary interpretation of law. Rather, the Commission found “minimal evidence … of any reliance at all – reasonable or otherwise – on a contrary interpretation of the … rule.”

In complete contrast, Sprint/Level 3 and Verizon paid the charges they now claim to have been clearly unlawful and inappropriate for over 18 years, month-by-month, without any notice or objection to the LECs and without making any claims to the Commission or to any other forum. The entire industry was in complete accord on the obligation of the IXCs to pay

---


27 AT&T refused payment immediately. Verizon paid for over a year before refusing, a fact the Commission noted undercut Verizon’s claim. *Synchronized VoIP* at ¶ 47 and n. 169.

28 *Synchronized VoIP* at ¶ 47.

29 *Synchronized VoIP* at ¶ 45.
access charges for traffic routed over access trunks. It is hard to imagine a point law that was
more settled in its application.30

The reasonableness of the LECs reliance on this settled interpretation is demonstrated by
the same facts. Bills were routinely sent by the LECs and routinely paid by the IXCs. LECs
relied on revenue streams that included these revenues from IXCs in making plans, making
network investments, borrowing funds, reporting to lenders, paying taxes, and filing industry
reports. The reliance was reasonable in that there was no basis to doubt that the IXCs owed the
money, and it was (and remains) inconceivable that the IXCs would, over 18 years, pay hundreds
of millions of dollars that they did not owe where the basis of the charges was obviously fully
known to the IXCs and the IXCs were fully capable of determining and protecting their own
rights.

3. **No carriers can claim the benefit of the IntraMTA rule without providing the
   cooperation needed to measure or estimate the levels of IntraMTA traffic.**

Sprint/Level 3 and Verizon claim that the use of samples and traffic studies relieves all
concerns of LECs.31 However, neither Sprint/Level 3 nor Verizon provide any suggestions as to
how such samples and studies could be obtained if they do nothing, nor do Sprint/Level 3 and
Verizon acknowledge that they have not taken any steps to provide such samples and studies.

The Commission has made it clear that the IntraMTA Rule cannot be invoked unless a
carrier provides the cooperation needed to measure or at least estimate the amount of IntraMTA

---

30 Verizon Tel. Cos. v. FCC, 269 F.3d 1098, 1109 (D.C. Cir. 2001)(“[T]he governing principle is that when there is a
"substitution of new law for old law that was reasonably clear," the new rule may justifiably be given prospectively-
only effect in order to “protect the settled expectations of those who had relied on the preexisting rule.” By contrast,
retroactive effect is appropriate for “new applications of [existing] law, clarifications, and additions.” In a case in
which there is a "substitution of new law for old law that was reasonably clear," a decision to deny retroactive effect
is uncontroversial. In cases in which there are “new applications of existing law, clarifications, and additions,” the
courts start with a presumption in favor of retroactivity. However, retroactivity will be denied “when to apply the
new rule to past conduct or to prior events would work a `manifest injustice.’”)(internal citation omitted).
31 Sprint/Level 3 Comments at 5, 23-25; Verizon Comments at 16.
traffic to which the IntraMTA Rule should be applied.\textsuperscript{32} IXC cooperation would be essential because of the information available to the IXCs. The IXCs that carry IntraMTA traffic presumably have direct information regarding the quantities of IntraMTA traffic the IXCs may be carrying as a result of: (1) contractual arrangements to carry traffic for other carriers, including CMRS providers; and (2) the IXCs’ location in the network.

Sprint/Level 3 and Verizon’s denials of any obligation to take any action or provide any information to LECs cannot be reconciled with the Commission’s prior decision (in the context of IntraMTA compensation between CMRS providers and LECs) that requires cooperation in determining the levels of IntraMTA traffic.\textsuperscript{33}

4. \textit{There is no prohibition on IXCs voluntarily making compensation arrangements based on LEC tariffs for exchange of IntraMTA traffic.}

Sprint/Level 3 claim that a specific agreement is required before access charges can be applied to IntraMTA traffic,\textsuperscript{34} and that such an agreement must be in writing.\textsuperscript{35} Verizon claims that there is an unconditional prohibition on applying access tariffs to IntraMTA traffic.\textsuperscript{36} These claims are mistaken.

a. \textbf{Carriers are allowed to adopt alternative compensation arrangements in the absence of express prohibition.}

\textit{T-Mobile} establishes that, in the absence of express prohibitions, carriers (including CMRS providers) can accept application of state tariffs to CMRS traffic and do not need an express written contract to do so. \textit{T-Mobile} specifically addressed the limitations of default

\textsuperscript{32} \textit{Local Competition Order} ¶ 1044.
\textsuperscript{33} \textit{Id.}
\textsuperscript{34} Sprint/Level 3 Comments at 21 (“As a general matter, LECs cannot impose access charges on intraMTA traffic unless they enter an agreement to the contrary with specific customers.”).
\textsuperscript{35} Sprint/Level 3 Comments at 21-22 (“[A] CMRS carrier or an IXC could agree to pay access charges to a LEC for intraMTA traffic calls. Of course, if Petitioners believe that such agreements exist they should be produced and their effect determined.”).
\textsuperscript{36} Verizon Comments at 11.
compensation rights and the flexibility available to carriers in the absence of express prohibitions:

Although section 20.11 and the Commission’s reciprocal compensation rules establish default rights to intercarrier compensation, they do not preclude carriers from accepting alternative compensation arrangements.\(^{37}\)

T-Mobile shows that carriers are not required to enter into written agreements in order to implement reciprocal compensation arrangements in the absence of a clear prohibition.\(^{38}\)

b. There is no express prohibition on IXCs accepting tariff charges for exchange of IntraMTA traffic.

Verizon broadly claims that “T-Mobile prohibited these charges in the future …”\(^{39}\) and that “the Commission’s rules and orders unconditionally prohibit imposing access charges on

\(^{37}\) T-Mobile at ¶ 12 (emphasis added).
\(^{38}\) In its underlying decision in INS, the Iowa Board similarly found that Qwest had entered into binding arrangements by using access services and paying access charges up until the time of its objection:

Prior to May 12, 1999, Qwest ordered, used, and paid for CEA [centralized equal access] and access services from INS and the independent LECs for this traffic. The parties’ actions demonstrate an agreement that the access charge tariffs were applicable up to a certain time, and that agreement should be enforced up to the moment that one of the parties (Qwest, in this case) unambiguously informed the other that the agreement was no longer in effect.

In re Exchange of Transit Traffic, Docket No. SPU-00-7; TF-00-275; (DRU-00-2) Order Affirming Proposed Decision and Order at 16-17 [hereinafter Iowa Board Order].

The Iowa Board further emphasized the importance of Qwest’s payment of charges in establishing a contractually determined level of compensation for IntraMTA traffic, stating:

Before Qwest gave notice that it no longer considered the CEA and access charge tariffs applicable, the parties had agreed that those tariffs applied to this traffic, as evidenced by the fact that INS and the independent LECs billed Qwest pursuant to those tariffs and Qwest paid those bills.

When the wrong tariff is applied in a dispute between a regulated utility and a typical end-user, it may be appropriate to revisit and recalculate past bills to correct the error. However, in a dispute between two telephone companies, each possessed of substantial subject matter expertise and a thorough understanding of the various circumstances applicable to the situation, it is more appropriate to enforce the parties’ agreement regarding the applicable tariff (as evidenced by their actions), at least until one company has adequately notified the other that it no longer agrees regarding application of the tariff. In this case, that notice was given so as to be effective in May of 1999.

Iowa Board Order at 17-18.

\(^{39}\) Verizon Comments at 13.
intraMTA wireless traffic.” Sprint also quotes a portion of the Commission’s decision in T-Mobile saying that:

Moreover, the Commission did amend 47 C.F.R. § 20.11 “to prohibit LECs from imposing compensation obligations for non-access traffic pursuant to tariff.”

Both Sprint/Level 3 and Verizon fail to note that in T-Mobile, the Commission addressed application of reciprocal compensation rules to CMRS providers and precluded the application of tariffs, but only as to CMRS providers, and only on a going-forward basis. Specifically, the rule adopted in T-Mobile is expressly limited to “commercial mobile radio service providers.”

Thus, contrary to Sprint/Level 3’s and Verizon’s claims, the Commission has provided separate treatment of CMRS providers and has expressly limited the Rule prohibiting the application of LEC tariffs to CMRS providers.

Sprint/Level 3 also argues that the Commission has never distinguished treatment of CMRS providers and IXCs, and that the use of the term “CMRS traffic” necessarily includes both CMRS and IXCs. However, in T-Mobile the Commission used the term “CMRS traffic” when it is clear the Commission was addressing only reciprocal compensation rules pertaining to CMRS providers, as demonstrated by the amendment to 47 C.F.R. § 20.11. Accordingly, T-Mobile and the express terms of 47 C.F.R. § 20.11 demonstrate the absence of any prohibition on application of tariffs to the IXCs’ exchange of IntraMTA traffic.

---

40 Verizon Comments at 11.
41 Sprint Comments at 22 (emphasis original)
42 47 C.F.R. § 20.11 was amended by adding Subsection (e) which reads:

Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

43 Sprint/Level 3 Comments at 9 (“In a series of decisions beginning in 1996, the Commission has repeatedly set forth the intraMTA rule without so much as mentioning billing parties, let alone limiting the rule’s reach to the LEC-CMRS billing relationship.”). See also id. at 7-15.
44 Sprint Comments at 1, 4, 8.
45 T-Mobile at ¶ 9 (“Going forward, however, we amend our rules to make clear our preference for contractual arrangements by prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff.”).
c. The limitation of the IntraMTA Rule to CMRS-LEC compensation has not prevented the use of IXCs to exchange IntraMTA traffic.

Sprint/Level 3 also argue that limiting the IntraMTA Rule to compensation between the CMRS providers and LECs, “the CMRS provider would avoid using the IXC – and would do so regardless of whether the CMRS or the IXC were to pay those access charges.” The pending consolidated litigation proves that this statement is incorrect.

CMRS providers have obviously used IXCs (Sprint/Level 3 and Verizon), notwithstanding the fact that, until 2014, both Sprint/Level 3 and Verizon paid access charges. Claims of efficiency losses have no basis in fact.

5. The filed rate doctrine applies only in a tariff regime where tariffs control.

The Act created two parallel and independent compensation regimes - tariffs and contracts. Under the Act, if tariffs do not apply to IntraMTA traffic, then compensation arrangements must necessarily be under the contract regime of the Act.

Sprint/Level 3 claims that the filed rate doctrine undercuts Petitioners’ argument (in the litigation cases) that the IXCs have entered into an implied contract and supports IXC claims for refund. To the contrary, the filed rate doctrine can apply only if the service is provided under the tariff regime of the Act and tariffs control. If the services are subject to tariffs, the IXCs have no claims. If the services are outside the tariff regime of the Act, then neither tariffs nor the filed rate doctrine would apply. This is a fundamental inconsistency in Sprint’s position.

The cases cited by Sprint/Level 3 show that the filed rate doctrine applies only in a context in which the tariffs provide the exclusive compensation regime. For example, in Brown

---

46 Sprint/Level 3 Comments at 14 (“If IXC-routed calls were subject to terminating access charges, the CMRS provider would avoid using the IXC and instead pursue the less effective means of reaching LEC subscribers directly – and would do so regardless of whether the CMRS or the IXC were to pay those access charges.” See also CTIA Comments at 6-7.

47 Sprint/Level 3 Comments at 5, 24-26.
v. MCI\textsuperscript{48}, the services were clearly covered by tariff, and the plaintiff was seeking only to enforce the tariff terms.\textsuperscript{49} Similarly, in \textit{Sancom v. Qwest}\textsuperscript{50} the claims related to tariffed services, not services governed by reciprocal compensation.

\section*{III. CONCLUSION}

For the reasons set forth above, the Commission should find that neither the \textit{Local Competition Order} nor the \textit{ICC/USF Order} has extended the IntraMTA Rule to compensation between IXCs and LECs. The Commission should also affirm the obligation of parties seeking reciprocal compensation for IntraMTA traffic, including any IXCs, to cooperate and provide their counterparties (the LECs) with contemporaneous, not after-the-fact, traffic information, studies, and samples from which reasonable estimates of the amounts of IntraMTA traffic (and thus compensation levels for such amounts of traffic) can be determined. Finally, the Commission should also affirm that the \textit{Local Competition Order} and \textit{ICC/USF Order} followed the Commission’s well established pattern of allowing carriers, including IXCs carrying IntraMTA traffic, to deviate from compensation guidelines and default compensation levels if they knowingly and willingly choose to do so.

Date: March 11, 2015

Respectfully submitted

MINNESOTA TELECOM ALLIANCE

/s/ Brent J. Christensen
By Brent J. Christensen,
President/Chief Executive Officer

\textsuperscript{48} 277 F.3d 1166, 1171 (9th Cir. 2002).
\textsuperscript{49} \textit{Id.} at 1171-1172.
\textsuperscript{50} 2008 WL 2627465 (D.S.D. June 26, 2008).