

National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Telephone Cooperative Association (NTCA)
New York State Department of Public Service (New York Commission)
Nextel Communications, Inc.
North County Communications
National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
Office of the Public Utility Counsel of Texas (Texas Counsel)
Oklahoma Rural Telephone Coalition
Onvoy, Inc.
Parrish, Blessing & Associates
Personal Communications Industry Association (PCIA)
Public Service Commission of Wisconsin (Wisconsin Commission)
Public Utility Commission of Texas (Texas Commission)
Qwest Communications International Inc.
Regulatory Utility Commission of Alaska (Alaska Commission)
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Ronan Telephone Company and Hot Springs (Ronan/Hot Springs)
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Singapore Telecommunications Limited
Sprint Corp.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)
United Utilities, Inc.
Verizon
Verizon Wireless
VoiceStream Wireless Corp.
Western Alliance
WorldCom, Inc.
Z-Tel Communications, Inc.

REPLIES

ACS of Anchorage, Inc.
Ad Hoc Telecommunications Users Committee
Advanced Paging, Inc., A.V. Luttamus Communications, Inc., and NEP, LLC
Allegiance Telecom, Inc.
Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance
Allied Personal Communications Industry Association of California
ALLTEL Communications, Inc.
Arch Wireless, Inc.
Association for Local Telecommunications Services (ALTS)
AT&T
AT&T Wireless Services, Inc.

BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cellular Telecommunications & Internet Association (CTIA)
Cincinnati Bell Telephone
Cook Telecom, Inc.
District of Columbia Office of the People's Counsel (DC People's Counsel)
e.spire Communications, Inc. and KMC Telecom, Inc. (e.spire and KMC)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc. and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Genuity Solutions, Inc.
Global NAPs, Inc.
GVNW Consulting, Inc.
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Leap Wireless International
Level 3 Communications, LLC
Maryland Office of People's Counsel (MD-OPC)
Midwest Wireless Communications LLC, Midwest Wireless Iowa LLC, and Midwest Wireless Wisconsin LLC (Midwest)
Missouri Independent Telephone Group (MITG)
Missouri Small Telephone Company Group (MSTG)
National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Rural Telephone Association and Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
National Telephone Cooperative Association (NTCA)
Network Services LLC
Nextel Communications, Inc.
North County Communications
Office of the Public Utility Counsel of Texas (Texas Counsel)
Personal Communications Industry Association (PCIA)
Qwest Communications International, Inc.
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Rural Cellular Association
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Small Business Administration, Office of Advocacy (SBA)
Small Company Group of New York
Sprint Corp.
SureWest Communications
Taylor Communications Group, Inc.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)

Verizon
Verizon Wireless
VoiceStream Wireless Corp.
WebLink Wireless, Inc.
WorldCom, Inc.

APPENDIX C**T-MOBILE USA, WESTERN WIRELESS, NEXTEL COMMUNICATIONS
AND NEXTEL PARTNERS PETITION
CC DOCKET NO. 01-92****COMMENTS**

Alliance of Incumbent Rural Independent Telephone Companies
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cellular Telecommunication & Internet Association (CTIA)
Cingular Wireless LLC
Fred Williamson & Associates, Inc.
Frontier & Citizens Incumbent Local Exchange Carriers
ICORE, Inc.
John Staurulakis, Inc. (JSI)
Michigan Rural Incumbent Local Exchange Carriers
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Telecommunications Cooperative Association (NTCA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Qwest Communications International, Inc.
Rural Cellular Association and Rural Telecommunications Group
Rural Incumbent Local Exchange Carriers (Rural ILEC)
Rural Iowa Independent Telephone Association
SBC Communications, Inc.
South Dakota Telephone Assoc., et. al.
Sprint Corp.
Telecom Consulting Associates, Inc.
Triton PCS License Company, LLC
United States Cellular Corp.
United States Telecom Association (USTA)
Verizon Wireless
Warinner, Gesigner & Associates, LLC
Warinner, Gesigner & Associates on behalf of KLM Telephone Company, *et al.*

REPLIES

Alabama Rural Local Exchange Carriers
AT&T Corp.
AT&T Wireless Services, Inc.
Beacon Telecommunications Advisors, LLC
California RTCs
Cellular Telecommunication & Internet Association (CTIA)
Fred Williamson & Associates Inc.
GVNW Consulting, Inc.
Joint CMRS Petitioners
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Exchange Carrier Association, Inc. (NECA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Carriers (TDS Telecommunications Corp. *et al.*)
SBC Communications, Inc.
Supra Telecommunications & Information Systems, Inc.
Triton PCS License Company, LLC
Verizon Wireless

APPENDIX D**FINAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁶⁷ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Intercarrier Compensation NPRM* in CC Docket No. 01-92.⁶⁸ The Commission sought written public comment on the proposals in the *Intercarrier Compensation NPRM*, including comment on the issues raised in the IRFA.⁶⁹ Relevant comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.⁷⁰ To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the order preceding the FRFA, the rules and statements set forth in those preceding sections are controlling.

A. Need for, and Objectives of, the Rules

2. In the *Intercarrier Compensation NPRM*, the Commission acknowledged a number of problems with the current intercarrier compensation regimes (access charges and reciprocal compensation) and discussed a number of areas where a new approach might be adopted.⁷¹ Among other issues, the Commission asked commenters to address the appropriate regulatory framework governing interconnection, including compensation arrangements, between LECs and CMRS providers.⁷² Subsequently, the Commission received a petition for declaratory ruling filed by CMRS providers (T-Mobile Petition) asking the Commission to find that state wireless termination tariffs are not the proper mechanism for establishing reciprocal compensation arrangements between incumbent LECs and CMRS providers.⁷³ The T-Mobile Petition was incorporated into the Commission's intercarrier compensation rulemaking proceeding, along with the comments, replies, and *ex partes* filed in response to the petition.⁷⁴

3. In this Declaratory Ruling and Report and Order (Order), the Commission denies the T-Mobile Petition because neither the Act nor the existing rules preclude an incumbent LEC's use of tariffed compensation arrangements in the absence of an interconnection agreement or a competitive carrier's request to enter into one. On a prospective basis, however, the Commission amends its rules to prohibit the use of tariffs to impose compensation obligations with respect to non-access CMRS traffic

⁶⁷ 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁶⁸ *See Intercarrier Compensation NPRM*, 16 FCC Rcd. at 9657-73, paras. 131-81.

⁶⁹ *Id.* at 9657, para. 131.

⁷⁰ *See* 5 U.S.C. § 604.

⁷¹ *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9612, para. 2.

⁷² *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9642, paras. 89-90.

⁷³ T-Mobile Petition at 1.

⁷⁴ *See Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 19046 (2002).

and to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act, and that during the period of negotiation and arbitration, the parties will be entitled to compensation in accordance with the interim rate provisions set forth in section 51.715 of the Commission's rules.⁷⁵ By clarifying these interconnection and compensation obligations, the Commission will resolve a significant carrier dispute pending in the marketplace that has provoked a substantial and increasing amount of litigation, and will facilitate the exchange of traffic between wireline LECs and CMRS providers and encourage the establishment of interconnection and compensation terms through the negotiation and arbitration processes contemplated by the 1996 Act.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In the IRFA, the Commission noted the numerous problems that had developed under the existing rules governing intercarrier compensation, and it sought comment on whether proposed new approaches would encourage efficient use of, and investment in the telecommunications network, and whether the transition would be administratively feasible.⁷⁶ In response to the *Inter-carrier Compensation NPRM*, the Commission received 75 comments, 62 replies, and numerous *ex parte* submissions. In addition, a number of additional comments, replies, and *ex partes* were submitted in this proceeding in connection with the T-Mobile petition. Those comments expressly addressed to the IRFA raised concerns regarding the more comprehensive reform proposals discussed in the *Inter-carrier Compensation NPRM* rather than the more narrow LEC-CMRS issues addressed in this Order.⁷⁷

5. In connection with the issues we address here, several parties commenting on the T-Mobile Petition expressed concern that striking down tariffs would impose a burden on rural incumbent LECs. They argued that LECs lacked the ability under the law to obtain a compensation agreement with CMRS providers without the inducement to negotiate provided by tariffs, and further asserted that small carriers would be adversely impacted by any obligation to terminate CMRS traffic without compensation.⁷⁸ Conversely, some carriers expressed a concern that the negotiation and arbitration process was an inefficient method of establishing a compensation arrangement between two carriers where the traffic volume between them was small, and argued that non-negotiated arrangements were therefore a better method of imposing compensation obligations.⁷⁹ We address these issues in section E

⁷⁵See *supra* para. 16.

⁷⁶*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9658, paras 134-35.

⁷⁷See, e.g., SBA Reply at 12-14.

⁷⁸See, e.g., ICORE T-Mobile Comments at 7; Michigan ILECs T-Mobile Comments at 3; Montana LECs T-Mobile Comments at 3; NTCA T-Mobile Comments at 3; Rural ILECs T-Mobile Comments at 7-8; TCA T-Mobile Comments at 4.

⁷⁹See, e.g., AT&T Wireless T-Mobile Comments at 3; Triton PCS T-Mobile Comments at 6-7. While most carriers raising this concern have been CMRS providers, some small LECs have also asserted that negotiations are not an efficient method of establishing terms given the amount of traffic at issue. See Montana LECs T-Mobile Comments at 6; TCA T-Mobile Comments at 2. But see, e.g., Rural ILECs T-Mobile Comments at 7 (asserting that volume of traffic is significant in proportion to the total traffic for small incumbent LECs); Frontier & Citizens T-Mobile Comments at 4 (amount of CMRS-to-rural incumbent LEC traffic is significant and growing).