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April 29, 2002

HAND DELIVERY

FILED[3]
APR 2 9 2002
Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: **In the Matter of the Mid-Missouri Group's Filing to Revise its Access Services Tariff, P.S.C. Mo. No. 2**
Case No. TT-99-428 et al.

Dear Secretary Roberts:

Enclosed for filing with the Commission is an original and eight (8) copies of Response of AT&T Wireless Services, Inc., Sprint Spectrum L.P., Southwestern Bell Wireless, LLC and Southwestern Bell Telephone Company, in Opposition to the MITG's and STCG's Joint Application for Rehearing.

Thank you for your attention to this matter. If you have any questions, please contact me.

Very truly yours,

LATHROP & GAGE L.C.

By: Paul S. DeFord
Paul S. DeFord

Attachment
cc: All parties of record

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Missouri Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Mid-Missouri Group's Filing to Revise its Access Services Tariff, P.S.C. Mo. No. 2	)))	Case No. TT-99-428 *et al.*

RESPONSE OF AT&T WIRELESS SERVICES, INC., SPRINT SPECTRUM L.P., SOUTHWESTERN BELL WIRELESS, LLC AND SOUTHWESTERN BELL TELEPHONE COMPANY, IN OPPOSITION TO THE MITG'S AND STCG'S JOINT APPLICATION FOR REHEARING

AT&T Wireless Services, Inc. ("AWS"), Sprint Spectrum L.P. ("Sprint PCS"), Southwestern Bell Wireless, LLC d/b/a Cingular Wireless ("Cingular") (jointly, "Wireless Carriers") and Southwestern Bell Telephone Company ("SWBT"), hereby respond to the Joint Application for Rehearing filed by the Missouri Independent Telephone Company Group ("MITG" formerly known as the "Mid-Missouri Group") and Small Telephone Company Group ("STCG"). The Wireless Carriers and SWBT oppose MITG's and STCG's request that the Commission grant rehearing, assign a new judge and set a procedural schedule for supplemental hearings, additional briefs and/or proposed findings of fact and conclusions of law. The Commission's *Amended Report and Order* fully complies with the law and is consistent with the scope of the remand from the Western District Court of Appeals. The MITG and STCG have nonetheless filed an exceedingly lengthy, wholly meritless request for rehearing. This Response is not intended to address each allegation and argument raised in the Joint Application for Rehearing and therefore, failure to mention any specific point or allegation should not be taken to signify acquiescence.

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The MITG and STCG have divided their Application for Rehearing into three general points under which they contend the Commission's *Amended Report and Order* is deficient and unlawful. Those three general points are as follows:

Point One Unlawful Procedure;

Point Two Insufficient Findings and Rational; and

Point Three Unlawful, Unreasonable and Unsupported by Record Evidence.

As previously indicated, each of the allegations of error and arguments presented under these points and their subheadings are wholly without merit and the Application for Rehearing should be denied. Nonetheless, a few of these arguments and allegations warrant a brief response and those points will be addressed in *reverse* of the order presented by the MITG and the SCTG.

POINT THREE: THE COMMISSION'S DECISION IS LAWFUL, REASONABLE AND SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE.

The MITG and the STCG contend that the Commission's *Amended Report and Order* erroneously interprets federal law. Again, the MITG and the STCG are completely wrong. In fact, a number of authorities, including the Iowa Board of Public Utilities, the FCC and the United States District Court for the District of Montana (9th Circuit) have interpreted and applied federal law in exactly the same manner as the Commission's *Amended Report and Order.*

Most recently, the United States District Court for the District of Montana stated as follows:

"The Court notes for the benefit of the parties that this case presents very similar issues to those presented in *3-Rivers Telephone Coop., Inc. v. U.S. West Communications, Inc.*, 125 F.Supp.2d 417 (D. Mont. 2000), which was previously

decided by this Court. In that case the Court relied on the FCC ruling entitled *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC Docket 96-325. The FCC Ruling provided the following at ¶ 1036:

> Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges. (emphasis added).

In the instant case there is an attempt by the plaintiff to force a CMRS provider to pay an access charge for calls terminating at the plaintiff's facilities. This attempt is being made under the argument that the indirect method of transit used by the CMRS providers makes them subject to an access charge. Such an attempt is in direct contravention of the ruling promulgated by the FCC in the above-mentioned case. A party may receive an access charge for a long distance telephone call. However, when the call is considered local traffic, the appropriate compensation is reciprocal compensation pursuant to the rules set out by the FCC in 47 C.F.R. 20.11.

The Court is not inclined to reverse its decision in the *3-Rivers* case or to "clarify" its opinion to allow the plaintiff in this case to levy access charges for local traffic which originates and terminates within the same Major Trading Area. Such a clarification would result in the abrogation of the FCC ruling relied upon in *3-Rivers*."

The foregoing quoted language provides a clear indication that the Commission's Application of federal law is correct and consistent with that of the federal court. For the

Commission's convenience, a complete copy of the Court's April 3, 2002 decision in the *Mid Rivers Telephone Cooperative Inc. v. Qwest Corporation, et al.* case is attached hereto as Appendix "A". Also attached as Appendix "B" is the Iowa Utility Board's Order Affirming Decision in it's Docket No. SPU-00-7 *et al, In Re: Exchange of Transit Traffic.* This Iowa decision is directly on point and interprets federal law exactly as the Commission has in this case. The Wireless carriers and SWBT are not aware of any court or other regulatory body that has ruled in a manner inconsistent with the *Amended Report and Order.*

POINT TWO: THE FINDINGS AND RATIONALE IN THE COMMISSION'S *AMENDED REPORT AND ORDER* ARE MORE THAN ADEQUATE AND SUFFICIENT.

The MITG's and the STCG's continued attack on the sufficiency of the Commission's Findings of Fact and Conclusions of Law stems from their inability or refusal to accept the reality that the facts necessary for the Commission to resolve the issue presented in this case are simple and direct. In these circumstances, it is prudent for the Commission to ignore irrelevant facts and argument and address only the matters necessary to demonstrate how it arrived at the correct legal conclusion.

The MITG and the STCG cite a litany of prior Commission decisions which they assert conflict with the Commission decision in this case. None of the prior Commission decisions referenced directly addressed whether it would be lawful to apply access charges to intraMTA CMRS originated traffic. Moreover, none of the arguments the MITG and the STCG present in

their Application for Rehearing are new. The Commission has rejected and should continue to reject these legally unsupportable assertions.

POINT ONE: THE PROCEDURES FOLLOWED BY THE COMMISSION WERE LAWFUL.

The MITG and STCG generally contend that by not holding additional hearings the Commission has violated their procedural due process rights. The cases cited in the Joint Application for Rehearing do not stand for the proposition that MITG and STCG assert; rather, they stand for the proposition that on remand all relevant factors must be considered prior to rendering a new or amended decision. The *Amended Report and Order* sets forth facts and conclusions sufficient to satisfy a reviewing court. Nothing the Commission has done would lead to the conclusion that the Commission failed to meet the relevant test or that would require it to have additional hearings. Indeed, it would appear that the Commission simply recognized that the **relevant** facts were apparent from the briefs and record before it, and that it needed only to edit its prior *Report and Order* to clarify which relevant factors it was relying upon in reaching its decision.

Case law also specifically recognizes the ability of an administrative body, acting on remand, to either reopen the hearing and have additional evidence presented *or* to formulate findings and conclusions based on the evidence already presented to it. *Ruffin v. City of Clinton*, 849 S.W.2d 108 (Mo. App. W.D. 1993). Thus the procedural due process based demand for additional hearings was never well founded and the Commission's action in issuing its *Amended Report and Order* was proper in all respects.

Typical of their obfuscatory approach, one has to question the intent of the MITG and STCG reference to the fact that new Commissioners participated in issuing the *Amended Report and Order.* Clearly, there is nothing to indicate that the participating Commissioners did not fulfill their statutory obligations in this matter.

The MITG and STCG contention that they were entitled to a hearing pursuant to 4 CSR 240-2.115 is absolutely incorrect, and is disingenuous at best. The referenced Commission rule addresses **Non-unanimous Stipulation and Agreements**. It does not address the treatment of separately **Proposed Stipulations of Fact** as were submitted in this case. The Proposed Stipulations of Fact were submitted pursuant to a directive in a Commission Order. They were not intended to constitute the basis of a compromise and settlement of the case before the Commission. The MITG and the STCG were not willing to reach agreement with the Staff, the Wireless Carriers and SWBT. As a result, the MITG and the STCG jointly submitted their own version of a Stipulation of Facts. Their lengthy list of proposed facts were, in large part, not relevant to the only issue the Commission was called upon to decide in this case.

The MITG and the STCG also demanded that the Commission assign a new Regulatory Law Judge ("RLJ") pursuant to Section 536.083 RSMo 2000. However, the basis for their demand overstates the scope of the Appellate Court's remand. Section 536.083 requires that "no person who acted as a hearing officer or who otherwise conducted the first administrative hearing involving any single issue shall conduct any subsequent administrative hearing or appeal involving the same issue and the same parties." The remand does not require any further administrative hearings and is not an "appeal" of the Commission's prior action. Accordingly, the Commission was under no obligation to assign a new RLJ. (Where no second hearing is held, procedural safeguards, such as assignment of a different person to conduct the proceedings,

are not applicable. *Id.* at 111.) In addition, it would have been a waste of the Commission's time and resources to assign a new RLJ to do what the current RLJ has done, *i.e.*, edit the Commission Report and Order to include an explicit recitation of the relevant facts upon which the decision is based under the heading "Findings of Fact."

CONCLUSION

The Western District Court of Appeals has remanded this case for a specific and limited purpose. The Appellate Court seeks an explicit recitation of the critical and relevant facts upon which the decision (*Amended Report and Order)* turns, *i.e.*, that the tariff amendments at issue would have the effect of imposing access charges on the termination of local (intraMTA) calls. The Commission has fulfilled its obligations on remand through a simple editorial revision to its prior *Report and Order.* There was no reason to re-open the record, to set a procedural schedule or to assign a new RLJ to this case. The *Amended Report and Order* is consistent with the law and the rulings of all other regulatory bodies and courts that have addressed this issue. For all of the foregoing reasons the Joint Application for Rehearing should be denied.

Dated this 29th day of April, 2002.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 29th day of April, 2002, to:

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APR 0 4 2002

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.
2002 APR 3 PM 1 23
PATRICK E. DUFFY, CLERK
BY _____
DEPUTY CLERK

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

MID-RIVERS TELEPHONE COOPERATIVE, INC., a Montana corporation, Plaintiff, vs. QWEST CORPORATION; a Colorado corporation; GOLD CREEK CELLULAR OF MONTANA LIMITED PARTNERSHIP, a Colorado limited partnership, d/b/a VERIZON WIRELESS, and WESTERN WIRELESS, a Washington corporation, Defendants.	CV 01-163-BLG-RFC ORDER

FACTS

Mid Rivers is a rural independent telephone company that provides local telecommunications services and exchange access in rural areas in the State of Montana. Verizon and Western Wireless ("Western") are wireless carriers in the state of Montana.[1] Qwest is a company which provides local telephone service as well as long distance telephone service within Local Access and Transport Areas ("LATAs") in Montana.

US West is the predecessor in interest to Mid-Rivers and Qwest. In 1952, US West agreed to the physical interconnection of their networks by establishing meet points for the

[1]These companies are also referred to as Commercial Mobile Radio Services or "CMRS".

APPENDIX A

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purpose of exchanging interexchange traffic. Mid Rivers bills for terminating intrastate interexchange traffic.

Verizon and Western have contracted with Qwest to transport and terminate traffic originating on their wireless systems to subscribers of the Qwest landline system. Verizon and Western pay Qwest for this service.

Verizon and Western have also contracted with Qwest to provide a service where Qwest delivers traffic originated on the Verizon and Western networks for termination on the networks of other local exchange carriers, including Mid-Rivers, with which Qwest maintains interconnection facilities. Verizon and Western pay Qwest for this service.

Mid-Rivers alleges that Qwest continues to send traffic originated by wireless callers to Mid-Rivers for termination over the meet point facilities established for interexchange traffic without compensation.

Qwest continues to deliver and compensate Mid-Rivers for traffic originated by its subscribers sent to Mid-Rivers for termination. Mid-Rivers alleges that Qwest commingles this traffic with the traffic originated by Verizon and Western. Mid-Rivers states that they are unable to identify the wireless traffic on a real-time basis, and can't block such calls.

During the relevant time period, Mid-Rivers has had contracts with Verizon and Western for termination of wireless traffic delivered by Verizon and Western to Mid-Rivers for termination to Mid-Rivers subscribers.

In their complaint, the plaintiff alleges claims of tortious interference with contract, tortious interference with business advantage and unjust enrichment. The only claim brought against Verizon and Western Wireless is the unjust enrichment claim.

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Verizon filed a motion to dismiss the plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Verizon argues that Mid-Rivers' state common law claim of unjust enrichment conflicts with and is preempted by federal law. They ask that Mid-Rivers' complaint be dismissed, or in the alternative, that Mid-Rivers be required to amend its complaint to state a claim under 47 U.S.C. § 207. Oral Argument on the motion to dismiss was held on April 2, 2002.

STANDARD OF REVIEW

In considering a motion to dismiss pursuant to Rule 12(b)(6) Fed. R. Civ. P. the Court must accept as true all well-pleaded allegations of fact in the complaint and construe them in the light most favorable to the plaintiffs. Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000). Dismissal for failure to state a claim is appropriate if it "appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957).

MOTION TO DISMISS

Verizon argues that the traffic at issue in this case is wireless calls that traverse the Qwest system and terminate at independent local exchange companies. They argue that this is the same type of traffic that this Court decided was governed by federal law and not state law in 3 Rivers Tel. Coop. Inc. v. US West Communications, Inc., 125 F.Supp. 2d 417, 419-420 (D. Mont. 2000).

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Verizon asserts that the unjust enrichment claim is preempted by federal law which governs the exchange and compensation for CMRS traffic. They point out that 47 U.S.C. § 332 gives the Federal Communications Commission ("FCC") the authority to regulate the interconnection between providers of mobile communications and other carriers. They also point out that the FCC has created federal regulations to govern this area. Verizon argues that if Mid-Rivers claims that they have violated the rules promulgated by the FCC, then its remedy lies with an action filed pursuant to the violation of these federal laws, and not a state claim.

Verizon contends that because federal law establishes the rights and remedies regarding rates charged by CMRS providers, the state common law claim is preempted. They argue that because the FCC has created standards for compensation for these types of services, a state law claim conflicts with federal law. According to Verizon, the damages for the unjust enrichment claim are calculated under state law. If any compensation is due, they argue, the amount should be determined using FCC principles of reasonable, mutual compensation.

Mid-Rivers responds by arguing that federal law doesn't expressly or impliedly preempt all state causes of action for the traffic at issue in this case. They argue that the preemption of the ability of states to regulate commercial mobile service is narrowly conceived. Mid-rivers also argues that awarding damages based on a state tort claims is not necessarily equivalent to rate regulation, and thus not preempted. They argue that the federal scheme establishes a vital role for states.

Mid-Rivers next argues that Verizon's analysis is flawed because they incorrectly characterize the arrangements at issue. They argue that the FCC rules do not contemplate permitting one or more parties to utilize another carrier's network without compensation. To the

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extent that the traffic at issue is found to be governed exclusively by federal law, Mid-Rivers seeks leave to amend its complaint to demand recovery for violations of federal law.

ANALYSIS

The Federal Communications Act discusses state preemption in the area of entry or rates for commercial mobile service. 47 U.S.C. § 332(c)(3)(A) states the following in pertinent part:

> ...no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service except that this paragraph shall not prohibit a State from regulating other terms and conditions of commercial mobile services.
>
> Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service...

The FCC has made its intention clear to preempt state law in areas such as rates and entry for mobile services. However, the statute contains a savings clause which may cast some doubt on whether all claims based on state law are preempted. 47 U.S.C. § 414 states the following:

> Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.

While this clause may appear to cover most actions, courts in other circuits have found this not to be true. To read this clause expansively would abrogate the very regulation of mobile service providers that the act was intended to create. AT&T Co. v. Central Office Telephone, Inc., 524 U.S. 214, 228, 118 S.Ct. 1956 (1998). The Act cannot be read so as to destroy itself. Cahnmann v. Sprint Corp., 133 F.3d 484, 488 (7th Cir. 1998). This clause has been read

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"...narrowly to avoid swallowing the rule, but not so narrowly as to render it a dead letter."

Bastien v. AT&T Wireless Services, Inc., 205 F.3d 983, 987 (7th Cir. 2000).

Due to the rapid growth in the wireless telecommunications industry, in 1993, Congress amended the Communications Act of 1934, 47 U.S.C. § 151 et seq., to provide a comprehensive and uniform regulatory framework for all CMRS providers. The FCC regulates the interconnection between commercial mobile service providers and common carriers. 47 U.S.C. § 332(c)(1)(B) states the following:

> Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this sub-paragraph shall not be construed as a limitation or expansion of the Commissioner's authority to order interconnection pursuant to this Chapter.

Federal regulations were promulgated to help govern the area of interconnection and mobile service providers. 47 C.F.R. § 20.11 states the following in pertinent part:

> (b) Local exchange carriers and commercial mobile radio service providers shall shall comply with the principles of mutual compensation.
>
> (1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.
>
> (2) A commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

Remedies for parties alleging violations of the laws and regulations were also provided for . 47 U.S.C. § 207 states the following:

> Any person claiming to be damaged by any common carrier subject to the provisions of this chapter may either make complaint to the Commission as

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> hereinafter provided for, or may bring suit for the recovery of damages for which such common carrier may be liable under the provisions of this chapter, in any district court of the United States of competent jurisdiction...

The FCC has reserved for itself the authority to govern the interconnection between CMRS providers and common carriers. In order to accomplish the FCC's stated goal of regulatory uniformity, Congress passed numerous federal regulations. 47 C.F.R. § 20.11 provides the rules of mutual compensation between the two parties.

The defendant argues that the plaintiff's claim is preempted by federal law. Implied preemption can properly be found only when the circumstances clearly indicate a legislative intent to preempt. Nordyke v. King, 229 F.3d 1266, 1270 (9th Cir. 2000). While this entire area is not explicitly preempted in the Communications Act, the promulgation of the regulations and statutes cited above indicate a deliberate intention by the FCC to subject the type of traffic issue in this case to federal law.

Therefore defendant Verizon's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is **GRANTED.** The plaintiffs have **30 days** from the date of this order to file an amended complaint if they so choose. Defendant Western's motion to dismiss is **DENIED** as **MOOT.**

The Court notes for the benefit of the parties that this case presents very similar issues to those presented in 3-Rivers Telephone Coop., Inc.v. U.S. West Communications Inc., 125 F.Supp.2d 417 (D. Mont. 2000), which was previously decided by this Court. In that case the Court relied on an FCC ruling entitled *In The Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* FCC Docket 96-325. The FCC Ruling provided the following at ¶ 1036:

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Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and **intrastate access charges.** (emphasis added)

In the instant case there is an attempt by the plaintiff to force a CMRS provider to pay an access charge for calls terminating at the plaintiff's facilities. This attempt is being made under the argument that the indirect method of transit used by the CMRS providers makes them subject to an access charge. Such an attempt is in direct contravention of the ruling promulgated by the FCC in the above-mentioned case. A party may receive an access charge for a long distance telephone call. However, when the call is considered local traffic, the appropriate compensation is reciprocal compensation pursuant to the rules set out by the FCC in 47 C.F.R. 20.11.

The Court is not inclined to reverse its decision in the 3-Rivers case or to "clarify" its opinion to allow the plaintiff in this case to levy access charges for local traffic which originates and terminates within the same Major Trading Area. Such a clarification would result in the abrogation of the FCC ruling relied upon in 3-Rivers.

The Clerk of Court is directed to notify the parties of the making of this order.

Dated this 9th day of April, 2002.

Richard F. Cebull
UNITED STATES DISTRICT JUDGE

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STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: EXCHANGE OF TRANSIT TRAFFIC	DOCKET NO. SPU-00-7 TF-00-275 (DRU-00-2)

ORDER AFFIRMING PROPOSED DECISION AND ORDER

(Issued March 18, 2002)

PROCEDURAL HISTORY

On May 19, 2000, Qwest Corporation (Qwest) filed a petition with the Utilities Board (Board) for a declaratory order regarding the exchange of local traffic by wireless and other local calling entities using Qwest's facilities. Qwest's petition was identified as Docket No. DRU-00-2. However, due to the complexity and number of issues presented by the petition, the Board subsequently docketed the petition as a contested case proceeding, identified as Docket No. SPU-00-7.

On November 26, 2001, Board Chairman Munns, sitting as a Presiding Officer pursuant to earlier order of the Board, issued a "Proposed Decision and Order" in this docket. As summarized in the proposed decision, this case concerns telephone traffic between a wireless customer and a wireline customer served by an independent telephone company. Currently, if the wireless customer places such a call, the wireless companies deliver the call to Qwest, which transports the traffic to Iowa Network Systems, Inc. (INS), a centralized equal access service provider. INS

then carries the call to the independent local exchange carriers (LECs) for connection to the called customer. Qwest charges the wireless companies a transit fee for carrying the traffic. INS charges a "centralized equal access" (CEA) fee to Qwest for carrying the traffic. The independent LECs assess access charges to Qwest for terminating the wireless traffic to their customers.

In the proposed decision and order, the Presiding Officer concluded that federal law defines the wireless traffic at issue as "local," so access charges do not apply. The wireless carriers are entitled to interconnect directly with the independent LECs on a bill-and-keep basis, pursuant to Board and Federal Communications Commission (FCC) rules. Qwest is entitled to compensation for carrying this traffic but has no obligation to pay access or other terminating fees because this is local traffic. If the wireless carriers want to use INS facilities for an indirect connection, they may do so, but INS is entitled to compensation for providing those services. The appropriate rate for INS's services cannot be determined on this record. The parties were encouraged to negotiate an agreement regarding these matters under the federal Act, with Board arbitration available for any issues the parties are unable to resolve by negotiation.

On December 11, 2001, notices of appeal were filed by INS, the Rural Iowa Independent Telephone Association (RIITA), Qwest, Iowa Telecommunications Association (ITA), and Central Scott Telephone Company (Central Scott). On December 21, 2001, the Board issued an order waiving rules 7.8(2)"c" and "d" and establishing a procedural schedule for this appeal.

Pursuant to that schedule, on January 11, 2002, responses to the notices of appeal were filed by INS, Qwest, RIITA, ITA, Central Scott, U.S. Cellular, and Verizon Wireless (collectively referred to hereinafter as Verizon), Sprint Spectrum L.P. d/b/a Sprint PCS and Sprint Communications Company L.P. (Sprint), South Slope Cooperative Telephone Company, Inc. (South Slope), and AT&T Wireless Services, Inc. (AT&T Wireless).

The parties raise numerous alleged issues regarding the Proposed Decision, but almost all of them fall within the four major issues identified and decided by the Presiding Officer. Accordingly, this order will be organized along the lines of the Proposed Decision, with a concluding section for issues not decided in the Proposed Decision.

Some of the parties requested that the Board establish a schedule for further briefing and, in some cases, oral argument. The Board will deny those requests. The parties fully briefed each of these issues after the hearing and the notices of appeal and responsive filings are substantial and appear to contain all arguments the parties would present to the Board if additional briefing were permitted. No purpose would be served by burdening the record with repetitive argument.

ANALYSIS

Issue 1. Do access charges apply to intraMTA CMRS traffic?

A. Summary of arguments

ITA and INS argue the Proposed Decision is in error when it concludes that the FCC has ruled that intraMTA[1] CMRS[2] traffic is "local" and that access charges therefore do not apply. (See, e.g., INS Notice of Appeal at pages 8-9.) The ITA and INS rely upon paragraphs 45 and 46 of the FCC Remand Order,[3] in which the FCC finds that 47 U.S.C. § 251(g) excludes certain types of telecommunications traffic (specifically, data traffic bound for an internet service provider, or ISP) from the other provisions of § 251. INS and ITA argue that this reasoning also excludes intraMTA CMRS traffic that was being treated as access traffic prior to the passage of the Telecommunications Act of 1996[4].

Qwest, Verizon, and Sprint respond that the Proposed Decision correctly concludes that access charges do not apply to intraMTA CMRS traffic because it is local traffic. They argue that in paragraph 47 of the ISP Remand Order, the FCC

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[1] "IntraMTA traffic" is wireless originated or terminated traffic within a federally-defined Major Trading Area (MTA). The majority of Iowa is in the Des Moines MTA.
[2] "CMRS" is Commercial Mobile Radio Service, the federal term for cellular, PCS, and other wireless communications systems where at least one end of the call uses technology that can be, and ordinarily is, used while mobile.
[3] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, "Order On Remand And Report And Order," 16 FCC Rcd 9151 (2001) (hereinafter the ISP Remand Order).
[4] INS also argues that in November of 2001 it filed revisions to its FCC tariff that make it the governing tariff for all delivery if CMRS traffic in Iowa, see INS Notice of Appeal at pages 4-5. INS offers no explanation as to how a federally-filed tariff can govern intrastate traffic and still comply with 47 U.S.C. § 152(b), which prohibits the FCC from exercising jurisdiction over intrastate communications services. The Board finds this argument without merit and will not further address it.

specifically stated that its § 251(g) analysis does not apply to CMRS traffic. Thus, the ITA and INS argument is in error and should be rejected.

B. Analysis

The argument advanced by INS and ITA relies upon selected quotes from the FCC's ISP Remand Order, but ignores other language in the order that is more directly applicable to this case. INS, for example, argues that paragraph 30 of the ISP Remand Order substituted a new analysis under 47 U.S.C. § 251(g) for the § 251(b) analysis in the earlier Local Competition Order (cited in the Proposed Decision in this docket). However, paragraph 30 of the ISP Remand Order is directed to ISP-bound data traffic on the wireline network and does not apply to wireless traffic. In paragraph 47 of the same ISP Remand Order, the FCC clearly states that the ISP data traffic analysis does not apply to CMRS traffic and that the analysis of the Local Competition Order continues to hold true:

> 47. **We note that the exchange of traffic between LECs and commercial mobile radio service (CMRS) providers is subject to a slightly different analysis.** In the Local Competition Order, the Commission noted its jurisdiction to regulate LEC-CMRS interconnection under section 332 of the Act but decided, at its option, to apply sections 251 and 252 to LEC-CMRS interconnection. At that time, the Commission declined to delineate the precise contours of or the relationship between its jurisdiction over LEC-CMRS interconnection under sections 251 and 332, but it made clear that it was not rejecting section 332 as an independent basis for jurisdiction. **The Commission went on to conclude that section 251(b)(5) obligations extend to traffic transmitted between LECs and CMRS providers, because the latter are telecommunications carriers.** The Commission also held that reciprocal compensation, rather than interstate or intrastate access

> charges, applies to LEC-CMRS traffic that originates and terminates within the same Major Trading Area (MTA). In so holding, the Commission expressly relied on its "authority under section 251(g) to preserve the current interstate access charge regime" to ensure that interstate access charges would be assessed only for traffic "currently subject to interstate access charges," although the Commission's section 332 jurisdiction could serve as an alternative basis to reach this result. **Thus the analysis we adopt in this Order, that section 251(g) limits the scope of section 251(b)(5), does not affect either the application of the latter section to LEC-CMRS interconnection or our jurisdiction over LEC-CMRS interconnection under section 332.**

ISP Remand Order, paragraph 47 (bold emphasis added, other emphasis in original; footnotes omitted.) In other words, INS and ITA rely upon the reasoning of a particular FCC order relating to ISP traffic to support their position regarding wireless traffic. However, the same FCC order clearly states, in a later paragraph, that the reasoning applicable to ISP traffic does not apply to wireless traffic. INS and ITA ignore this clear, contrary language from the same FCC order. The Board rejects the ITA and INS arguments regarding the application of access charges to intraMTA CMRS traffic and affirms the Proposed Decision and Order on this point.

Issue 2. Should the ITA's proposed tariff be approved?

A. Summary of arguments

While this case was pending, ITA filed with the Board a proposed tariff that would allow the independent LECs to concur in the tariff and charge access-based rates to the CMRS providers and to Qwest for termination of intraMTA CMRS calls. The Proposed Decision and Order rejected ITA's proposed tariff because it would

have imposed access charges on local calls. (Proposed Decision and Order at page 21.)

ITA argues the rejection of its proposed tariff was in error for a variety of reasons. First, ITA argues the proposed tariff was not an "access" tariff, so it cannot be rejected for attempting to apply access charges to local service. Instead, ITA calls the tariff a "wireless transport and termination tariff." (ITA Notice of Appeal at pages 12-13.) ITA admits the proposed rate is based on the sum of the traffic-sensitive access rate elements contained in the ITA access tariff, but argues that does not make the resulting rates into access charges. (Id.)

Second, ITA argues its proposed tariff rates are lower than the weighted average forward-looking economic costs (TELRIC rates) of the participating telephone companies. ITA asserts this proves the proposed rates are lawful and reasonable. (Id.)

Third, ITA argues that if Qwest is permitted to have a tariff for providing transit services to wireless carriers, ITA should be permitted to have one, too. (Id.) (The Board notes that the Proposed Decision and Order recognized the ability of INS to file such a tariff see page 30, footnote 5. It is not clear why ITA should be permitted to file such a tariff, however, when its members are terminating the traffic, rather than transiting it. The Board's rules require that local traffic be originated and terminated on a bill and keep basis, as discussed below, making a tariff unnecessary and inappropriate.)

Fourth, ITA argues the Board should follow Missouri's example and approve a model tariff in which the independent telephone companies can concur, since ITA believes the wireless carriers will never request or participate in negotiations. (ITA Notice of Appeal, pages 12-13.)

ITA also argues that review and approval of a tariff is the only way in which the Board can consider market price information for this traffic, as contemplated in the Proposed Decision and Order. Specifically, if the negotiations envisioned in the Proposed Decision and Order fail and the Board is forced to arbitrate interconnection agreements between the independent LECs and the wireless carriers, the Board will not be able to consider market rate information in determining the applicable rates, according to ITA. This is because 47 U.S.C. §252(d)(2)(A) requires that such rates be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." The FCC rules implementing that statute limit the Board to consideration of forward-looking economic costs (i.e., TELRIC methodology), the FCC's default proxies, or bill and keep. The default proxies were struck down in Iowa Utilities Board v. FCC, 219 F.3d 744, 755-56 (8th Cir. 2000), and bill and keep is inappropriate due to traffic imbalances, so in any future arbitration proceeding the Board would be limited to TELRIC pricing, according to ITA. (ITA Notice of Appeal, pages 17-19.)

Verizon responds that the Proposed Decision and Order properly rejected the ITA tariff. Verizon argues the Proposed Decision and Order did not find the proposed tariff was an access tariff, but instead found that the proposed charges are access

charges, which cannot be applied to local traffic. Verizon says that ITA admits its proposed charges are nothing more than the sum of the traffic-sensitive access elements in the ITA access tariff. (Verizon response at pages 2-5.)

Verizon also argues that experience in other states shows that negotiations can be effective in resolving these issues, citing Minnesota and South Dakota. (Id. at pages 7-9.)

Next, Verizon argues ITA mischaracterizes the Proposed Decision and Order regarding the evidence that will be considered in future rate-setting proceedings, should arbitration be necessary. (Id. at page 9.) When discussing the cost evidence to be considered in any future proceeding, the Proposed Decision and Order refers only to the transit rates to be charged by INS, not to the termination fees that may be charged by the independent LECs (if the Board's bill and keep rule is found to be inapplicable).

Finally, Verizon argues the use of bill and keep is consistent with the Board's rule, 199 IAC 38.6, which requires a showing that an imbalance has existed for six months before bill and keep may be rejected. No such evidence was offered, so the Board's rule requires the use of bill and keep, for the exchange of these calls.

Sprint also supports rejection of the ITA tariff, noting that the ITA witness's justification for the proposed rates is that they were based upon access rate elements; Sprint concludes that the resulting rates are, in fact, access charges regardless of how ITA wants to label them. (Sprint response at pages 7-8.) Because local traffic is not subject to access charges, and because intraMTA CMRS traffic is

local, the ITA's attempt to establish an access rate regime for that wireless traffic must be rejected.

Qwest responds to the ITA by arguing that the record evidence supports a finding that the proposed tariff was an access tariff, despite ITA's preferred label, because it attempts to impose access charges. (Qwest response at page 15.) Qwest also argues the evidence includes other examples of why the proposed tariff should be rejected as unreasonable. For example, the proposed tariff gives unreasonably preferential treatment to INS. (Tr. 2407; Ex. 105, § 1.1A.) The proposed ITA tariff gives the independent LECs unilateral discretion regarding points of interconnection and frequency of billing, provisions that Qwest believes to be unreasonable. (Id.)

B. Analysis

The Board will affirm the Proposed Decision And Order and reject the proposed ITA tariff. Despite ITA's claims to the contrary, the rates in the proposed tariff are entirely based on access rate elements and the resulting rates are, in fact, access rates. Otherwise, they have no cost justification at all. Moreover, the Board's rules (199 IAC 38.6) specify the use of bill and keep for the exchange of local traffic, at least until such time as a continuing and significant traffic imbalance has been shown. This record contains, at best, very limited evidence regarding any alleged traffic imbalance between these CMRS carriers and the independent LECs. The evidence falls far short of the requirements of Rule 38.6. Moreover, ITA's numbers appear to be skewed by the independent LECs' practice of requiring that their own

customers dial CMRS customers as toll calls, using 1+ or 0+ for that purpose (and thereby increasing their own originating access charge revenue). If the independent LECs were to treat intraMTA calls from their own customers to CMRS customers as local traffic, then the traffic would be more evenly balanced.

Issue 3. If intraMTA CMRS traffic is local, then how should this traffic be exchanged?

A. Summary of arguments

RIITA, ITA, and INS argue that the Board should approve the proposed ITA tariff rather than require negotiations and should not apply its rule regarding bill and keep to the intra-MTA wireless traffic at issue in this docket. These issues were discussed in the preceding section and will not be repeated here. The remaining issues under this heading concern whether the parties can be required to negotiate interconnection agreements under the Telecommunications Act of 1996.

Central Scott argues the wireless carriers (and, presumably, Qwest) have no right to interconnect with the independent LECs pursuant to a § 252 negotiated interconnection agreement because the independent LECs are all rural LECs under § 251(f)(1) and are therefore exempt from § 251(c) duties and obligations. Instead, according to Central Scott, rural LECs may exercise their discretion in choosing how to meet their interconnection obligations under § 251(a) and may choose to do so directly or indirectly. (Central Scott Notice of Appeal at pages 8, 13-14.)

Verizon responds to Central Scott's argument by first noting that there is no record evidence that Central Scott, or any of the other independent LECs, fits the

definition of a rural carrier. (Verizon response at page 22.) Verizon also points out that Iowa Code § 476.101 provides a state law basis for interconnection requirements without a rural exemption. (Verizon response at page 23.) Finally, Verizon argues that 47 U.S.C. § 251(f) authorizes states to remove a rural exemption, where appropriate. Verizon argues this is an appropriate situation. (Id.)

Qwest also responds to Central Scott's rural exemption argument, see Qwest response at page 51. Qwest argues that regardless of any rural exemption, Central Scott is still obligated to interconnect, directly or indirectly, with CMRS providers, pursuant to 47 U.S.C. § 251(a)(1) and to establish reciprocal compensation arrangements for transport and termination under § 251(b)(5). Qwest also notes the Board has the authority to terminate Central Scott's rural exemption, pursuant to § 251(f)(1).

INS argues that it cannot be made to participate in negotiations and, potentially, arbitration proceedings leading to an interconnection agreement. INS argues that §§ 251(c) and 252, relating to negotiating interconnection agreements and arbitration proceedings, respectively, apply only to incumbent LECs and requesting telecommunications carriers, pursuant to § 251(b). (INS Notice of Appeal at page 16.) INS argues it is not an incumbent LEC, and therefore is not subject to the §§ 251(c) and 252 obligations. (Id. at page 17.) For the same reason, INS argues its agreement with Iowa Wireless is not an interconnection agreement that is subject to opt-in rights under 47 C.F.R. § 51.809.

Verizon responds that INS is subject to state law interconnection requirements pursuant to § 476.101 and 199 IAC 38.3. Furthermore, Verizon argues that the record in this docket reveals that INS is, in fact, a LEC and therefore subject to LEC obligations. (Verizon response at page 17.)

Qwest argues that INS admitted in this proceeding that it is a LEC with a duty to enter into reciprocal compensation agreements under § 251(b)(5), citing INS Ex. 201, page 5. (Qwest response, page 25.) Qwest concludes that if INS wants to be compensated for providing interconnection services in Iowa, it is within the Board's authority to require that INS negotiate and enter into reasonable agreements for that purpose.

B. Analysis

The Board will affirm the Proposed Decision and Order with respect to issue three. The record in this docket is not adequate to permit resolution of all of the issues related to interconnection between and among the various parties to this proceeding, because the parties were not focused on interconnection details. As a result, the record lacks solid information regarding such matters as rural exemption claims, appropriate interconnection rates, and other matters.

Under these circumstances, the best available option is to invoke the procedures of the federal Act and direct the parties to negotiate, then (if necessary) come to the Board for arbitration. The duty to negotiate applies directly to the LECs and wireless carriers, but may not apply to INS; however, the duty to interconnect (and, therefore, the duty to carry traffic) applies to INS just as it does to the other

parties, so if INS wants to be compensated for carrying this traffic it will have to participate in the negotiations and, if necessary, the subsequent arbitration proceedings.

With respect to Central Scott's specific claim of a rural exemption under § 251(f), the Board finds the issue was adequately addressed in the Proposed Decision and Order at page 33:

> The [independent LECs] may raise rural exemption claims with respect to this traffic. If so, the Board can establish procedures for making the necessary determinations under 47 U.S.C. § 251(f). Those determinations can be made within the time frame provided for negotiations and arbitration under § 252.

In other words, the Proposed Decision and Order recognized that this record is not adequate to make any rural exemption determinations. The independent LECs have not proven they are entitled to assert the exemption and no evidence has been offered regarding potential adverse economic impacts on users, economic burdens on the LECs, technical feasibility, or the public interest, convenience, and necessity. These are the factors the Board will consider if and when a rural exemption claim is made and disputed, but this is not the time for making those determinations.

Issue 4. Is Qwest entitled to a refund for the 24-month period prior to April 1999?

A. Summary of arguments

The sole issue raised in Qwest's application for rehearing is the proposed resolution of issue four, relating to Qwest's claim for refunds from the independent LECs. Qwest seeks a refund of the access charges it paid to INS and the

independents during the 24-month period prior to April 1999 (when Qwest stopped paying the bills it was receiving from INS and the independents). Qwest claims there is a standard (but unwritten) industry practice that billing errors should be corrected for 24 months prior to the discovery of the error.

The Proposed Decision and Order rejected Qwest's refund request, finding that prior to April, 1999, Qwest had ordered, received, and paid for services from INS and the independents and this payment history should not be changed at this time.

Qwest argues that if the traffic at issue was local traffic after April of 1999, and therefore not subject to access charges, then it was also local traffic prior to that date and not subject to access charges, so the access charges paid by Qwest should be refunded. (Qwest Notice of Appeal at pages 4-6.) Qwest also argues that it did not order these access services because it was not delivering toll traffic, the only type of traffic that can use access services. (Id., pages 6-7.)

INS argues Qwest is not entitled to any refunds, but should instead be required to pay the tariffed CEA and access charges up to the present and into the future, either because (a) this is the proper tariff to apply or (b) this is what the parties agreed upon. (INS response at pages 1-16.) INS next argues that Qwest did not give notice of its position that this is local traffic until April 12, 1999, so Qwest is bound by the tariff prior to that date. (INS response at pages 13-17.)

In the alternative, INS argues there is no standard industry practice for 24-month refunds where the parties have agreed otherwise, as INS argues was done

here, citing Qwest's acceptance of services and payment of bills prior to April 12, 1999. (INS response, pages 17-20.)

INS also argues that any refund would be illegal retroactive ratemaking and a violation of the filed rate doctrine, since it would amount to finding INS's CEA tariff to be retroactively unlawful. (INS response, pages 20-22.)

Finally, INS argues Qwest's calculation of the allegedly incorrect billings is so susceptible to error that it must be rejected. (INS response, pages 22-23.)

ITA argues that Qwest was acting as an interexchange carrier at least until the Proposed Decision and Order was issued, so access charges were appropriate and should be paid. (ITA response at pages 2-3.) Otherwise, ITA argues, Qwest was in violation of 199 IAC 22.14(2)(d)(7), which prohibits delivery of local traffic over access trunks. ITA also argues that the Proposed Decision and Order correctly found that Qwest ordered and received access services and therefore should be required to pay for those services. (Id.)

Finally, ITA argues there is no credible evidence in the record to support refunds. Qwest's confidential exhibit 36, which Qwest relies upon to prove the amount of its claimed refunds, was filed after the close of the hearing, preventing the parties from fully litigating the many apparent errors and inconsistencies alleged to be contained therein. (Id., pages 4-5.)

B. Analysis

The Board will affirm the Proposed Decision and Order with respect to issue four. Prior to April 12, 1999, Qwest ordered, used, and paid for CEA 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.

INS has argued that the failure to apply the tariff after April of 1999 is a violation of the filed rate doctrine or is prohibited retroactive ratemaking, but those principles are not applicable to the unusual circumstances of this case. Normally, if a filed tariff establishes a rate for a service, such as carrying another carrier's traffic, that rate would apply to the traffic up to the date that the tariff was determined to be no longer reasonable and lawful. That rule does not apply in these circumstances, however, because there is no filed tariff that properly applies to this traffic. The only potentially relevant filed tariff is an access tariff, which does not apply to local traffic. In the absence of a relevant filed tariff, the filed rate doctrine does not apply, and Qwest is not obligated to pay CEA and access charges for this local traffic after April of 1999.

For the same reason, the general prohibition against retroactive ratemaking does not apply. The Board is not ordering that the rates of INS or the independent LECs should be changed retroactively; instead, the Board finds that INS and the independent LECs do not have any rates to apply to this traffic after April of 1999.

The situation prior to that date is different, however. 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.[5] 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 April of 1999.

Moreover, the Board's understanding is that Qwest's alleged industry practice of giving 24-month refunds is limited to billing mistakes, that is, mathematical errors, erroneous entries, and the like. The industry practice is obviously intended as a means of rough justice, to save all parties the expense of reviewing each and every mistake to determine when it first occurred and how far back it should be corrected. The practice is inapplicable in a case like this, where the dispute concerns difficult legal questions about which reasonable people may disagree, rather than simple computational errors.

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[5] Even in these circumstances, this is not always true, see State Central Bank of Keokuk v. Great River Gas Co., 368 N.W.2d 128 (Iowa 1985) (holding that when a customer qualified for two different

OTHER ISSUES RAISED IN THE NOTICES OF APPEAL

Some of the parties raise additional issues in their notices of appeal that they believe were not addressed in the Proposed Decision and Order, as follows.

Central Scott. Central Scott argues that Qwest is violating the EAS agreement between Central Scott and Qwest by delivering non-Qwest-originated traffic over the EAS trunks. Qwest responds that Central Scott is complaining about the mere possibility of a violation, without any proof that such a violation has actually occurred. (Qwest response, page 35.) Qwest also argues that it properly advised Central Scott that wireless-originated traffic was being terminated over the facilities that also carry EAS traffic between the two companies; Qwest offered to provide its 11-50-21 records to Central Scott to identify the traffic, but Central Scott declined the offer. (Qwest response, page 36.) Finally, Qwest notes that Central Scott sends traffic to Qwest over the same facilities for delivery to wireless carriers and their customers; the Central Scott witness explained this practice by asserting that "the trunk groups between us are just trunk groups." (Id., citing Tr. 1422.)

The Board finds that, to the extent wireless-originated or terminated local calls are being sent over the EAS trunks between Qwest and Central Scott, the parties have modified their EAS agreements by their practices to accept this usage. The evidence shows that both companies are using these trunks to carry local traffic between Central Scott's customers and customers of various wireless carriers; as the

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service tariffs, and learned that the other tariff would be less expensive overall, the customer was not entitled to refunds for past amounts paid under the higher-cost tariff).

Central Scott witness said, the parties have treated these facilities as "just trunk groups" for the exchange of traffic.

INS. INS argues that the Proposed Decision and Order failed to address issues relating to interMTA calls, including the means by which interMTA calls should be distinguished by intraMTA calls and INS's proposal that Qwest should be required to use dedicated trunks to separate this traffic. (INS Notice of Appeal, pages 18-22.)

Qwest responds that the Proposed Decision and Order clearly left it to the parties to negotiate these issues then bring them to the Board for arbitration if they are unable to resolve them through negotiations. (Qwest response, pages 27-31.)

The Board agrees with Qwest's response; the Proposed Decision and Order directed the parties to negotiate these and other issues. These are good examples of issues that cannot be resolved on the record made by the parties in this proceeding, but that can be resolved, if necessary, in a future arbitration proceeding (if negotiations fail).

INS also argues that the Proposed Decision and Order failed to recognize that the customers of the independent LECs have the right to dial 0+ or 1+ to reach wireless customers with an intraMTA wireless number, thereby using their preferred interexchange carrier (IXC) to complete the call. (INS Notice of Appeal, page 20.)

Qwest argues that is not an issue that had to be decided in this docket because it does not relate to the issues in Qwest's original petition. (Qwest response, pages 31-32.) Qwest also argues the independent LECs are engaged in an "egregious practice" of forcing their customers to make calls to local wireless

numbers using 1+ or 0+ in order to "rack up access charges and long distance fees for calls that the FCC has deemed local, and not subject to access charges or toll charges." (Id., footnote 14.)

INS's argument assumes that customers should pay toll charges in order to make local calls to wireless customers. However, it is obvious that if the customers were given the choice between making a local call to a wireless customer or making a toll call to the same wireless customer, most customers would likely waive their "right" to make a toll call using their preferred interexchange carrier in favor of making the same call as a local one, with no additional charges. The Board will affirm the Proposed Decision and Order on this issue and direct the independent LECs to allow their customers to dial these local calls as local calls.

Finally, INS argues the Board failed to address the issue of whether Qwest should be required to pay late payment penalties on the CEA billings that Qwest has refused to pay since April of 1999. As the Board is affirming the Proposed Decision and Order and finds that Qwest is not obligated to pay centralized equal access charges on local traffic, this issue is moot.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The requests for briefing or oral argument filed on December 11, 2001, by Iowa Network Services, Inc., Central Scott Telephone Company, Iowa

Telecommunications Association, and the Rural Iowa Independent Telephone Association are denied.

2. The Proposed Decision and Order issued in this docket on November 26, 2001, is affirmed. The notices of appeal filed on December 11, 2001, by Iowa Network Services, Inc., Rural Iowa Independent Telephone Association, Qwest Corporation, Iowa Telecommunications Association, and Central Scott Telephone Company, are denied.

3. Any arguments that may have been presented in a notice of appeal or responsive document that where not specifically discussed in the body of this order are rejected as either moot or without merit.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of March, 2002.