Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: October 27, 2011 **Released: November 18, 2011**

Comment Date on Sections XVII.A-K: **January 18, 2012**
Reply Comment Date on Sections XVII.A-K: **February 17, 2012**
Comment Date on Sections XVII.L-R: **February 24, 2012**
Reply Comment Date on Sections XVII.L-R: **March 30, 2012**

By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement.

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financial incentives to ensure compliance."[1274] We note that commenters advocating for additional enforcement measures such as financial penalties provide no sufficient reason that the Commission's existing enforcement mechanisms are inadequate to address any rule violations.[1275] We also note that a phantom traffic-specific penalty rate or other financial penalty provision would likely divert additional industry and Commission resources to disputes over the applicability and enforcement of the penalty rate. Based on the availability of the Commission's existing enforcement mechanisms, we think it is unlikely that any benefits of an additional phantom-traffic specific enforcement mechanism will outweigh its costs. Therefore, we decline to adopt a "penalty rate" or other financial punishment in connection with phantom traffic.

734. Parties also proposed that the Commission allow selective call blocking, which would permit carriers in the call path to block traffic that is unidentified or for which parties refuse to accept financial responsibility.[1276] We decline to adopt any remedy that would condone, let alone expressly permit, call blocking.[1277] The Commission has a longstanding prohibition on call blocking.[1278] In the *2007 Call Blocking Order*, the Wireline Competition Bureau emphasized that "the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Communications Act of 1934, as amended" and that "Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way."[1279] We find no reason to depart from this conclusion. We continue to believe that call blocking has the potential to degrade the reliability of the nation's telecommunications network.[1280] Further, as NASUCA highlights in its reply comments, call blocking ultimately harms the consumer, "whose only error may be relying on an originating carrier that does not fulfill its signaling duties."[1281]

735. *Other Proposals*. Finally, parties proposed that the Commission should impose rules surrounding the proper look-up[1282] and routing for traffic.[1283] Because these proposals are unrelated to the Commission's limited phantom traffic objectives related to signaling, and because we find little evidence

[1274] GVNW Section XV Comments at 6; *see also* Frontier Section XV Comments at 12; WGA Section XV Comments at 5.

[1275] *See supra* note 1267. Although we decline to adopt any specific enforcement mechanism related to phantom traffic and continue to believe our existing enforcement mechanisms are adequate, we will monitor this issue and, if necessary, may determine that additional measures are appropriate.

[1276] *See, e.g.*, Frontier Section XV Reply at 9; Missouri Commission Section XV Comments at 9; RNK Communications Section XV Comments at 9.

[1277] We note that at least two states currently allow for blocking of intrastate traffic in certain circumstances. *See* Missouri Commission Section XV Comments at 9; Ohio Commission Section XV Comments at 11-12.

[1278] *See Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11629, 11631 paras. 1, 6; *see also Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987) (denying application for review of Bureau order, which required petitioners to interconnect their facilities with those of an interexchange carrier in order to permit the completion of interstate calls over certain facilities).

[1279] *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6.

[1280] *Id*. at 11631, para. 5 (internal citation omitted).

[1281] NASUCA and NJ Rate Counsel Section XV Reply at 11.

[1282] *See, e.g.*, CenturyLink Section XV Comments at 24.

[1283] *See, e.g.*, Aventure Section XV Comments at 7-9; Rural Associations Section XV Comments at 29-30.

(ii) Other Pending Matters

975. Our conclusions in this Order effectively address, in whole or in part, certain pending petitions. For one, Global NAPS filed a petition for declaratory ruling regarding the manner and extent to which VoIP traffic could be subject to access charges generally, and intrastate access charges in particular.[2044] AT&T also filed a petition requesting that, on a transitional basis, the Commission declare that interstate and intrastate access charges may be imposed on VoIP traffic in certain circumstances, as well as limited waivers that would enable it to offset forgone revenues from voluntary reductions in intrastate terminating access charges.[2045] In addition, Vaya Telecom (Vaya) filed a petition seeking a declaration that "a LEC's attempt to collect intrastate access charges on LEC-to-LEC VoIP traffic exchanges is an unlawful practice."[2046] Because our transitional intercarrier compensation framework for VoIP-PSTN declines to apply all existing intercarrier compensation regimes as they currently exist, Global NAPS's and Vaya's petitions are granted in part and AT&T's is denied in part.[2047] To the extent that AT&T proposes a specific approach for alternative rate reforms and revenue recovery, we find the mechanisms adopted in this Order to be more appropriate for the reasons discussed above, and thus deny its requests in that regard.[2048] Further, Grande filed a petition seeking a Commission declaration that carriers categorically may rely on a customer's certification that traffic originated in IP and therefore is enhanced and not subject to access charges.[2049] To the extent that this would deviate from the regime we adopt, the petition is denied.[2050] We decline to address the classification of VoIP services generally at this time, nor do we otherwise elect to grant the other requests for declaratory rulings raised by the Global NAPS, Vaya, AT&T, and Grande petitions.[2051]

XV. INTERCARRIER COMPENSATION FOR WIRELESS TRAFFIC

A. Introduction

976. In this section, we address compensation for non-access traffic exchanged between LECs and CMRS providers. As discussed further below, two compensation regimes currently apply to non-access LEC-CMRS traffic. Under section 20.11, LECs have a duty to provide interconnection to CMRS providers and LECs and CMRS providers must pay each other "reasonable compensation" in connection with traffic that originates on the other's network.[2052] Under the reciprocal compensation regime in

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[2044] *See* Global NAPS Petition for Declaratory Ruling and for Preemption of the PA, NH and MD State Commissions, WC Docket No. 10-60 (filed Mar. 5, 2010).

[2045] *See* AT&T Petition for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152 (filed July 17, 2008).

[2046] Petition of Vaya Telecom, Inc. Regarding LEC-to-LEC VoIP Traffic Exchanges, CC Docket No. 01-92 at 1 (filed Aug. 26, 2011).

[2047] *See generally supra* Section XIV.C.1.

[2048] *See supra* Section XIII.

[2049] *See* Grande Petition for Declaratory Ruling, WC Docket No. 05-283 (filed Oct. 3, 2005).

[2050] *See generally* paras. 964-966 (establishing an approach under which terminating carriers can use interconnection agreements to obtain compensation for toll VoIP-PSTN traffic, including a means to identify VoIP-PSTN traffic).

[2051] It is well-established that the Commission has broad discretion whether to issue such a ruling. *See* 47 C.F.R § 1.2; *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973) (Commission did not abuse its discretion by declining to grant a declaratory ruling.).

[2052] 47 C.F.R. § 20.11.

section 251(b)(5), LECs have an obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic,[2053] and CMRS providers that have entered into a reciprocal compensation arrangement with a LEC must compensate the LEC for terminating traffic originating on the CMRS provider's network.[2054]

977. The Commission has not addressed the relationship between these two regimes and has not clarified what "reasonable compensation" pursuant to 20.11 means. As a result, application of these provisions has been a continuing and growing source of confusion and dispute. Moreover, following the Commission's 2009 *North County Order*, which addressed a competitive LEC's complaint against a CMRS provider seeking "reasonable compensation" under section 20.11, requests to clarify this area of intercarrier compensation have increased.[2055] The *North County Order* held that the state public utility commission was the appropriate forum under the rule for determining a reasonable rate for termination of the CMRS provider's intrastate, intraMTA traffic, and also declined to establish any federal methodology governing how the state should determine a reasonable rate.[2056] CMRS providers have raised concerns that as a result, costly litigation is proliferating and the incidence of intraMTA traffic stimulation is growing.[2057]

978. As part of our comprehensive ICC reform, we believe it is now appropriate for the Commission to clarify the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers. Accordingly, as described herein, we clarify that the compensation obligations under section 20.11 are coextensive with the reciprocal compensation requirements under section 251. In addition, consistent with our overall reform approach, we adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers. To ease the move to bill-and-keep for rural, rate-of-return regulated LECs, we adopt an interim default rule limiting their responsibility for transport costs for this category of traffic. We find that these steps are consistent with our overall reform and will support our goal of modernizing and unifying the intercarrier compensation system.

979. We also address certain pending issues and disputes regarding what is now commonly known as the intraMTA rule, which provides that traffic between a LEC and a CMRS provider that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than interstate or intrastate access charges.[2058] We resolve two issues that have been raised before the Commission regarding the correct application of this rule to specific traffic patterns. First, one wireless service provider claims that calls that it receives from other carriers, routes through its own base stations, and passes on to third-party carriers for termination have "originated" at its

[2053] 47 U.S.C. § 251(b)(5); *see also* 47 C.F.R. § 51.703.

[2054] *See Local Competition First Report and Order*, 11 FCC Rcd at 16016-18, paras. 1041-45. Specifically, the Commission determined that, pursuant to section 251(b)(5), CMRS providers will "receive reciprocal compensation for terminating certain traffic that originates on the networks of other carriers, and will pay such compensation for certain traffic that they transmit and terminate to other carriers." *Id*. at 16018, para. 1045.

[2055] *See North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, 24 FCC Rcd 14036 (2009) (*North County Order*), *aff'd*, *MetroPCS California LLC v. FCC*, 644 F.3d 410 (D.C. Cir. 2011).

[2056] *See North County Order*, 24 FCC Rcd at 14036-37, para. 1, 14044, para. 21.

[2057] *See*, *e.g.*, CTIA Section XV Comments at 4.

[2058] *See Local Competition First Report and Order,* 11 FCC Rcd at 16014, para. 1036; *see also* 47 C.F.R. § 24.202(a) (defining the term "Major Trading Area").

own base stations for purposes of applying the intraMTA rule.[2059] As explained below, we disagree. Second, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception. In addition to these clarifications, we also deny requests that the intraMTA rule be modified to encompass a larger geographic license area, the regional economic area grouping, or REAG.[2060]

B. Background

980. There are currently two regimes affecting intercarrier compensation for non-access traffic exchanged between LECs and CMRS providers. Before the 1996 Act was passed, the Commission, pursuant to section 332 and 201(a) of the Act, adopted rule 20.11 to govern LEC interconnection with CMRS providers.[2061] Section 20.11(a) required a LEC to provide the type of interconnection reasonably requested by a CMRS provider, and section 20.11(b) required mutual and reasonable compensation for the exchange of traffic between LECs and CMRS providers.[2062] In particular, Section 20.11(b) required the originating carrier, whether LEC or CMRS provider, to pay "reasonable compensation" to the terminating carrier in connection with traffic that terminates on the latter's network facilities.[2063]

981. As noted elsewhere, section 251(b)(5), part of the 1996 Act, obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[2064] In the *Local Competition First Report and Order*, the Commission determined that, pursuant to that provision, "traffic to or from a CMRS network that originates and terminates within the same MTA is subject to [reciprocal compensation obligations] under section 251(b)(5) rather than interstate and intrastate access charges."[2065]

982. At the same time, the Commission amended section 20.11 to provide that LECs and CMRS providers "shall also comply with applicable provisions of part 51 of this chapter."[2066] Thus, the "reasonable compensation" requirements under section 20.11 continued to apply in parallel with the new

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[2059] Letter from W. Scott McCollough, Counsel for Halo Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Attach. at 9 (filed Aug. 12, 2011) (Halo Aug. 12, 2011 *Ex Parte* Letter); Letter from W. Scott McCollough, Counsel for Halo Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (filed Oct. 17, 2011) (Halo Oct. 17, 2011 *Ex Parte* Letter). *But see* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-92, Attach. at 7 (filed July 18, 2011) (NTCA July 18, 2011 *Ex Parte* Letter); ERTA July 8, 2011 *Ex Parte* Letter at 1, 3; NECA et al. Sept. 23, 2011 *Ex Parte* Letter at 1.

[2060] T-Mobile *August 3 PN* Comments at 11-14.

[2061] *See Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1499, paras. 231-32 (1994) (*CMRS Second Report and Order*) (subsequent history omitted). Section 332(c)(1)(B) provides in part that "[u]pon 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 Act." 47 U.S.C. § 332(c)(1)(B).

[2062] *CMRS Second Report and Order*, 9 FCC Rcd at 1498, paras. 231-32; *see also* 47 C.F.R. § 20.11(a), (b).

[2063] 47 C.F.R. § 20.11(b).

[2064] 47 U.S.C. § 251(b)(5); *see* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). *See also Local Competition First Report and Order*, 11 FCC Rcd at 16016, para. 1041.

[2065] *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; *see also* 47 C.F.R. § 51.701(b)(1).

[2066] 47 C.F.R. § 20.11(c).

obligations under section 251(b)(5) and implementing rules in Part 51.[2067] The Commission has not, however, clarified what "reasonable compensation" pursuant to section 20.11 means.

983. The Commission's decision not to interpret "reasonable compensation" has led to disputes. In 2009, the Commission addressed a complaint brought by North County Communications Corp. (North County), a competitive LEC, against MetroPCS California, LLC (MetroPCS), a CMRS provider, alleging that, although there was no compensation agreement between the parties, MetroPCS had violated section 20.11(b) of the Commission's rules by failing to pay reasonable compensation to North County for terminating its traffic and asking the Commission to prescribe a termination rate and award appropriate damages. [2068]

984. In an Order reviewing an earlier decision by the Enforcement Bureau, the Commission affirmed the Bureau's finding that the California PUC was the more appropriate forum for determining a reasonable termination rate under section 20.11 for the intrastate traffic at issue and that the competitive LEC therefore was required to obtain a rate determination by the state before its section 20.11 claim before the Commission could proceed.[2069] In declining to establish an applicable rate, the Commission noted its previous decision to interpret section 20.11 to preserve state authority over intrastate traffic and concluded that if the Commission decides to depart from this precedent, it should do so in "a more general rulemaking proceeding."[2070] The Commission also declined to provide guidance to the California PUC about how to establish a reasonable termination rate.[2071] The U.S. Court of Appeals for the D.C. Circuit upheld the Commission's decision, finding that even if the Commission had authority under sections 201 and 332 of the Act to regulate intrastate rates for mobile termination, the Commission was not required to exercise this authority in every instance.[2072] The court also noted with approval the Commission's determination to defer reconsideration of its policy under section 20.11 to a general rulemaking proceeding.[2073]

985. CMRS providers have argued that the Commission's *North County Order,* by declining to determine reasonable compensation under section 20.11 and deferring such determinations to the states without providing any guidance, has caused the problem of traffic stimulation to grow. They argue that the Commission's decision has led to competitive LECs seeking terminating compensation rates far above cost and to a dramatic increase in litigation as competitive LECs seek to establish or enforce termination rates in state administrative and judicial forums.[2074] They have asked the Commission to address the issue as part of its comprehensive effort to reform the intercarrier compensation system.

[2067] *See* 47 C.F.R. §§ 51.701-51.717; *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4863, para. 14 (2005) (*T-Mobile Order*), *petitions for review pending*, *Ronan Tel. Co. et al. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005). We address pending petitions for reconsideration of these provisions elsewhere in this order.

[2068] *North County Order*, 24 FCC Rcd at 14040, para. 12.

[2069] *Id.*

[2070] *Id*. at 14039, para. 10, 14042, para. 16 (internal quotations omitted).

[2071] *Id*. at 14044, para. 21.

[2072] *MetroPCS California v. FCC*, 644 F.3d 410, 412, 414 (D.C. Cir. 2011).

[2073] *Id.* at 414.

[2074] *See* CTIA Section XV Comments at 4 (asserting that the *North County Order* has "reduced the LECs' incentives to negotiate reasonable agreements and created confusion among state commissions and federal courts, leading to an upsurge in costly litigation"); Leap Section XV Comments at 5; MetroPCS Section XV Comments at 11-12 (continued…)

986. In the *USF/ICC Transformation NPRM*, we sought comment on a number of issues relating to the reform of our rules regulating wireless termination charges. As part of a general reduction of intercarrier compensation rates to eventually eliminate per-minute rates, we sought comment on whether to set a specific rate for wireless termination charges, and whether we should address certain pending compensation disputes, including disputes over the application of section 20.11.[2075] We also sought comment on allegations that traffic stimulation involving reciprocal compensation between CMRS providers and competitive LECs was increasing,[2076] and we sought comment on the steps that could be taken to address this activity.[2077] We also sought comment on the impact of the *North County* decisions on traffic stimulation and asked whether, as an interim measure, we should adopt any procedural or substantive rules governing competitive LEC-CMRS compensation arrangements under section 20.11 of the Commission's rules, such as establishing a default compensation rate.[2078]

987. We also sought comment on the proper interpretation of the intraMTA rule, which provides that traffic between a LEC and a CMRS provider that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than interstate or intrastate access charges.[2079] The Commission had previously sought comment on this question in 2005, finding that rural LECs took the position that traffic between a LEC and a CMRS provider that must be routed through an IXC should be treated as access traffic even if it is intraMTA, while CMRS providers argued that all such traffic was subject to reciprocal compensation.[2080] In the *USF/ICC Transformation NPRM*, we invited parties to refresh the record, and sought comment on how issues involving the intraMTA rule were affected by our broader proposals for intercarrier compensation reform.[2081]

C. LEC-CMRS Non-Access Traffic

988. Given our adoption of a uniform, federal framework for comprehensive intercarrier compensation reform, we believe it is now appropriate to clarify the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers. First, we clarify that the scope of compensation obligations under section 20.11 is coextensive with the scope of the reciprocal compensation requirements under section 251 of the Act. Next, we exercise our authority to set a pricing methodology for LEC-CMRS intraMTA traffic and adopt bill-and-keep as the immediately applicable

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(asserting CMRS providers must "continuously monitor innumerable LEC and CLEC filings at the state level and be compelled to defend themselves against unreasonable rates before 50 separate state utilities commissions"); Sprint Nextel Section XV Comments at 22 (between 2009 and 2010, charges for Sprint Nextel's intraMTA traffic terminating to Tekstar increased by 71 percent); Verizon Section XV Comments at 36-39 ("[T]raffic pumping schemes have flourished in the wake of the *North County Order*, which opened the door to pumping of intraMTA CMRS traffic by CLECs.").

[2075] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4721-22, paras. 539, 540.

[2076] *Id.* at 4771, para. 672 (citing CTIA Aug. 26, 2010 *Ex Parte* Letter, Attach. at 5).

[2077] *Id*.

[2078] *Id*. at 4771, para. 673 (citing Letter from Tamara Preiss, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket no. 01-92, WC Docket No. 07-135 at 3 (filed June 28, 2010) (Verizon June 28, 2010 *Ex Parte* Letter) (proposing an immediate rate of $0.0007/minute for all intraMTA CLEC-CMRS traffic)).

[2079] *Id*. at 4777, para. 684.

[2080] *See Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4744-46, paras. 134-38.

[2081] *Id.* The Commission also sought comment in 2005 on whether to eliminate or modify the intraMTA rule. *See id*.

default compensation methodology for non-access traffic between LECs and CMRS providers under section 20.11 and Part 51 of our rules.

989. As outlined above, two compensation regimes currently apply to non-access LEC-CMRS traffic, and the Commission has not clarified the intersection between the two.[2082] We conclude, based on the record, that it is appropriate for the Commission to clarify the relationship between the obligations in sections 20.11 and 251(b)(5).

990. To bring the 20.11 and section 251 obligations in line, we first harmonize the scope of the compensation obligations in section 20.11 and those in Part 51. We accordingly conclude that section 20.11 applies only to LEC-CMRS traffic that, since the *Local Competition First Report and Order*, has been subject to the reciprocal compensation framework under section 251(b)(5) of the Act. Thus, section 20.11 does not apply to access traffic that, prior to this Order, was subject to section 251(g). Furthermore, we clarify that the terms "mutual compensation" in section 20.11 and "reciprocal compensation" in section 251(b)(5) and Part 51 are synonymous when applied to non-access LEC-CMRS traffic.[2083]

991. Next, we find that it is in the public interest to establish a default federal pricing methodology for determining reasonable compensation under section 20.11. Commenters urge the Commission to address the current absence of guidance on compensation rates for traffic between competitive LECs and CMRS providers and to address the growing problem of traffic stimulation.[2084] They argue that the decision in the *North County Order* to defer setting of reasonable compensation under section 20.11 for intrastate traffic to the states without providing any guidance has led to CLECs seeking terminating compensation rates far above cost and to a dramatic increase in litigation as CLECs seek to establish or enforce termination rates in state administrative and judicial forums.[2085] They recommend that the Commission resolve this problem by establishing a default federal termination rate for CLEC-CMRS traffic of $0.0007 or by adopting a bill-and-keep methodology.[2086]

[2082] *See supra* paras. 980-982.

[2083] *See* 47 C.F.R. § 51.701(b)(2) (providing that traffic exchanged between a LEC and a CMRS provider is subject to reciprocal compensation if "at the beginning of the call, [it] originates and terminates within the same Major Trading Area"). Because they are coextensive, we use the terms "reciprocal compensation" and "mutual compensation" synonymously.

[2084] *See* CTIA Section XV Comments at 4-5; Sprint Nextel Section XV Comments at 22; Verizon Section XV Comments at 35, 45. *See also* Leap Section XV Comments at 6 (traffic pumping involving reciprocal compensation rates for traffic between CMRS providers and LECs is "indeed increasing"); MetroPCS Section XV Comments at 2 (traffic pumping is a "growing problem" for wireless services); T-Mobile Section XV Comments at 4 ("T-Mobile has observed traffic stimulation involving intraMTA traffic, resulting from reciprocal compensation rates that exceed the actual costs of terminating traffic.").

[2085] *See* CTIA Section XV Comments at 4 (asserting that *North County* has "reduced the LECs' incentives to negotiate reasonable agreements and created confusion among state commissions and federal courts, leading to an upsurge in costly litigation"); Leap Section XV Comments at 5; MetroPCS Section XV Comments at 11-12 (asserting CMRS providers must "continuously monitor innumerable LEC and CLEC filings at the state level and be compelled to defend themselves against unreasonable rates before 50 separate state utilities commissions"); Sprint Nextel Section XV Comments at 22 (between 2009 and 2010, charges for Sprint Nextel's intraMTA traffic terminating to Tekstar increased by 71 percent); Verizon Section XV Comments at 36-39 ("[T]raffic pumping schemes have flourished in the wake of the *North County Order*, which opened the door to pumping of intraMTA CMRS traffic by CLECs.").

[2086] *See* Verizon Section XV Comments at 45 (arguing that "the Commission must close, once and for all, the longstanding gap in its intercarrier compensation regime and adopt rules to actually govern CMRS-CLEC intraMTA compensation arrangements," and proposing a default rate of $.0007); MetroPCS *USF/ICC Transformation NPRM* Comments at 22 (proposing immediate bill-and-keep for all traffic to or from wireless carriers); *see also* Sprint (continued…)

992. Currently, reciprocal compensation under the Part 51 rules is subject to a federal pricing methodology. Reciprocal compensation under section 20.11, however, is not currently subject to a federal pricing methodology. As we recently explained in the *North County Order*, we have instead traditionally regarded state commissions as the "more appropriate forum for determining the reasonable compensation rate [under section 20.11] for . . . termination of intrastate, intraMTA traffic," and have to date declined to provide guidance to the states on how to carry out that responsibility.[2087] We have long made clear, however, that we "would not hesitate to preempt any rates set by the states that would undermine the federal policy that encourages CMRS providers and LECs to interconnect."[2088] And we observed in the *North County Order* that the various "policy arguments" in favor of a greater federal role in implementing section 20.11 were "better suited to a more general rulemaking proceeding," citing this proceeding in particular.[2089]

993. We now conclude, based on the record in this proceeding, that we should establish a federal methodology for implementing section 20.11's reasonable compensation mechanism.[2090] Although we believed in the *North County Order* that the interconnection process under section 20.11 would likely not be "procedurally onerous,"[2091] the record shows that the absence of a federal methodology has been a growing source of confusion and litigation.[2092] MetroPCS, for example, states that it is embroiled in disputes over traffic stimulation schemes in a number of jurisdictions and notes other proceedings in New York and Michigan. The California commission, the state commission implicated by the *North County Order*, also "recommends that the FCC provide guidance on what factors should be considered in setting a 'reasonable rate' for such arrangements."[2093] Adoption of a federal pricing methodology promotes the policy goals outlined in this Order of avoiding wasteful arbitrage opportunities caused by disparate intercarrier compensation rates and modernizing and unifying the intercarrier compensation system to promote efficiency and network investment.[2094] It is also necessary

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Nextel Section XV Comments at 22 (arguing that CMRS-CLEC traffic should be subject to reciprocal compensation regime, and that in the absence of an interconnection agreement, all traffic should be subject to bill-and-keep).

[2087] *North County Order*, 24 FCC Rcd at 14040, para. 12, 14044, para. 21.

[2088] *MetroPCS California, LLC v. FCC*, 644 F.3d 410, 413 (D.C. Cir. 2011) (citing *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Servs.*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1497, para. 228 (1994)).

[2089] *North County Order*, 24 FCC Rcd at 14042, para. 16 (internal quotation marks omitted).

[2090] *See FCC v. Fox Television Stations, Inc*., 129 S. Ct. 1800, 1811 (2009) (holding that an agency need not show that "reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates").

[2091] *See North County Order*, 24 FCC Rcd at 14041-42, para. 15.

[2092] *See* CTIA Section XV Comments at 4-5 & Attach. A; MetroPCS Section XV Comments at 9-10.

[2093] CPUC Section XV Comments at 9.

[2094] We note that North County, which argues that the Commission should continue to defer to the states to establish a rate for section 20.11 claims, has itself noted in another proceeding that the overall process under section 20.11 as a consequence of the current deferral to states is time-consuming and burdensome. *See North County Order*, 24 FCC Rcd at 14041-42, para. 15. *See also* California PUC Section XV Comments at 9 (recommending that the FCC provide guidance on setting a "reasonable rate" for such arrangements); RNK Section XV Comments at 12-13 (the Commission should provide a federal pricing methodology for reciprocal compensation between CMRS providers and CLECs, and states should implement that methodology).

to effectuate our decision to harmonize section 20.11 with section 251(b)(5), which, as noted, has long been governed by a federal pricing methodology.

994. We have already concluded above that a bill-and-keep methodology for intercarrier compensation, including reciprocal compensation, best serves our policy goals and requirements of the Act.[2095] Consistent with that determination and our clarification above that compensation obligations under section 20.11 are coextensive with reciprocal compensation requirements, we conclude that bill-and-keep should also be the default pricing methodology between LECs and CMRS providers under section 20.11 of our rules.[2096] Thus, we conclude that bill-and-keep should be the default applicable to LEC-CMRS reciprocal compensation arrangements under both section 20.11 and Part 51. We reject claims that a default rate set via a bill-and-keep methodology under any circumstances would be inadequate because it would be less than the actual cost of terminating calls that originate with a CMRS provider.[2097] As we explain above, a bill-and-keep regime requires each carrier to recover its costs from its own end-users.[2098]

995. We further conclude that, under either section 20.11 or the Part 51 rules, for traffic to or from a CMRS provider subject to reciprocal compensation under either section 20.11 or the Part 51 rules, the bill-and-keep default should apply immediately. Although we have adopted a glide path to a bill-and-keep methodology for access charges generally and for reciprocal compensation between two wireline carriers, we find that a different approach is warranted for non-access traffic between LECs and CMRS providers for several reasons. First, we find a greater need for immediate application of a bill-and-keep methodology in this context to address traffic stimulation. The record demonstrates there is a significant and growing problem of traffic stimulation and regulatory arbitrage in LEC-CMRS non-access traffic.[2099] In contrast, we find little evidence of such problems with regard to traffic between two LECs, where traffic stimulation appears to be occurring largely within the access regime, rather than for traffic currently subject to reciprocal compensation payments. This likely reflects in part the fact that the applicable "local calling area" for CMRS providers within which calls are subject to reciprocal

[2095] *See supra* Section XII.A.1-A.2.

[2096] By default, we mean that bill-and-keep will satisfy terminating compensation obligations except where carriers mutually agree to the contrary.

[2097] North County Section XV Reply at 8, 9; *see also, e.g.*, Core Section XV Comments at 13-14 (reciprocal compensation rates are set by state commissions pursuant to TELRIC, and use of a lower rate would require carriers to terminate traffic below cost, resulting in a windfall for originating carriers); Earthlink Section XV Reply at 11 (footnote omitted) (arguing that "a bill-and-keep arrangement does not 'comply with the principles of mutual compensation' under FCC Rule 20.11(b)"); PAETEC Section XV Reply at 23 (arguing that "[t]he Commission should not reverse rule 20.11 in this proceeding. Instead, the Commission should affirm the right to mutual compensation at reasonable rates").

[2098] *See supra* para. 742.

[2099] *See, e.g.*, MetroPCS Section XV Comments at 8 ("Access stimulation . . . is not confined to the long-distance market. The local terminating compensation market also has proven to be a troubling source of regulatory arbitrage."), 11-12; Sprint XV Comments at 22 (noting an increase in intraMTA traffic pumping); Verizon Section XV Reply at 27 ("Verizon and other carriers have seen a large increase in intraMTA arbitrage in the wake of the Commission's *North County Order*"). *See also* Letter from Scott Bergman, CTIA-The Wireless Association, to Marlene H. Dortch, Secretary, FCC, WC Docket 07-135, CC Docket 01-92 (filed Nov. 24, 2010); *see generally* Verizon June 28, 2010 *Ex Parte* Letter; Leap Wireless *Access Stimulation NPRM* Reply; MetroPCS *Access Stimulation NPRM* Comments.

compensation is much larger than it is for LECs.[2100] Thus, what would be access stimulation if between a LEC and an IXC will in many cases arise under reciprocal compensation when a CMRS provider is involved.[2101] For similar reasons, CMRS providers are more likely to be exposed to traffic stimulation that is not subject to the measures we adopt above to address this problem within the access traffic regime. Further, although the record reflects that LEC-CMRS intraMTA traffic stimulation is growing most rapidly in traffic terminated by competitive LECs,[2102] we are concerned that absent any measures to address traffic stimulation for intraMTA LEC-CMRS traffic, incumbent LECs that sought revenues from access stimulation may quickly adapt their stimulation efforts to wireless reciprocal compensation. For these reasons, we find addressing the traffic stimulation problem in reciprocal compensation is more urgent for LEC-CMRS traffic, and the bill-and-keep default methodology we adopt today should eliminate the opportunity for parties to engage in such practices in connection with such traffic.[2103]

996. Although, as discussed above, we find that adopting a gradual glide path to a bill-and-keep methodology for intercarrier compensation generally, including reciprocal compensation between LECs, will help avoid market disruption to service providers and consumers, we conclude that an immediate transition for reciprocal compensation traffic exchanged between LECs and CMRS providers presents a far smaller risk of market disruption than would an immediate shift to a bill-and-keep methodology for intercarrier compensation more generally. First, for reciprocal compensation between CMRS providers and competitive LECs, we have until recently had no pricing methodology applicable to competitive LEC-CMRS traffic, as reflected in the fact that the carriers in the recent *North County Order* had specifically asked the Commission to establish one for the first time. Competitive LECs thus had no basis for reliance on such a methodology in their business models, and we see no reason why, in setting a methodology for the first time, we should not require competitive LECs to meet that methodology immediately, particularly given that competitive LECs are not subject to retail rate regulation in the manner of incumbents, and therefore have flexibility to adapt their businesses more quickly.

997. Even for incumbent LECs, we are confident the impact is not significant, particularly when balanced against the overall benefits of providing the clarification. For one, incumbent LECs and

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[2100] More specifically, the area within which a LEC-CMRS call is subject to reciprocal compensation rather than access is the Major Trading Area (MTA), which is generally much larger than the applicable local calling area for LEC-LEC calls. *See TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, 11178 para. 31 (2000) (noting MTAs typically are large areas that may encompass multiple LATAs, and often cross state boundaries). Thus traffic that would be subject to access rules if exchanged between LECs falls under the reciprocal compensation regime when exchanged with a CMRS provider.

[2101] *See* Leap Wireless *Access Stimulation NPRM* Reply, at 9 (arguing against proposals that "fail to even consider the circumstances in which the stimulated traffic is access traffic for landline carriers but intraMTA or 'local' traffic for the wireless carrier that originates the traffic").

[2102] *See*, *e.g.*, CTIA *Access Stimulation NPRM* Reply, at 4 ("CLECs now account for more traffic stimulation than ILECs, as access stimulation schemes have shifted from ILECs to CLECs to avoid increased Commission oversight of rural ILECs.").

[2103] *See* Leap Wireless *Access Stimulation NPRM* Reply, at 2 (asserting that traffic stimulation is a significant and growing problem in both access and local traffic and proposing adoption of bill-and-keep to address the problem). In light of our decision to adopt a default bill-and-keep methodology for traffic exchanged between LECs and CMRS providers, we find it is not necessary to adopt special rules proposed by some commenters to curb traffic stimulation with respect to such traffic. *See, e.g.*, CTIA Section XV Comments at 7-8; AT&T Section XV Comments at 21; Leap Section XV Comments at 6-7; MetroPCS Section XV Comments at 4-5, 10; T-Mobile Section XV Comments at 8-9; Verizon Section XV Reply Comments at 31. Further, such measures would not be as effective in eliminating regulatory arbitrage schemes, as we note above. *See also* Leap Wireless *Access Stimulation NPRM* Reply, at 7 ("the only truly effectively global resolution of these issues is for the Commission to adopt bill and keep compensation for all traffic").

CMRS providers that fail to pursue an interconnection agreement do not receive any compensation for intraMTA traffic today.[2104] For incumbent LECs that do have agreements for compensation for intraMTA traffic, most large incumbent LECs have already adopted $0.0007 or less as their reciprocal compensation rate.[2105] For rate-of-return carriers, there is no allegation in the record that reforming LEC-CMRS reciprocal compensation obligations in this manner would have a harmful impact on them. And, in any event, we have adopted mechanisms that should address any such impacts. First, we adopt a new recovery mechanism, which includes recovery for net reciprocal compensation revenues, to provide all incumbent LECs with a stable, predictable recovery for reduced intercarrier compensation revenues.[2106] Second, we adopt an additional measure to further ease the move to bill-and-keep LEC-CMRS traffic for rate-of-return carriers. Specifically, we limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchanged between CMRS providers and rural, rate-of-return regulated LECs.

998. Some commenters proposed a rule allocating the responsibility for transport costs for non-access traffic to the non-rural terminating provider, stating that in the absence of such a rule, rural LECs could be forced to incur unrecoverable transport costs at a time when ICC reforms may already have a negative impact on network cost recovery.[2107] We recognize that immediately moving to a default bill-and-keep methodology for intraMTA traffic raises issues regarding the default point at which financial responsibility for the exchange of traffic shifts from the originating carrier to the terminating carrier.[2108] Therefore, in the attached FNPRM, we seek comment on whether and how to address this aspect of bill-and-keep arrangements.[2109] We find it appropriate, however, to establish an interim default rule allocating responsibility for transport costs applicable to non-access traffic exchanged between CMRS providers and rural, rate-of-return regulated LECs to provide a gradual transition for such carriers. Given our commitment to providing a measured transition, we believe it is appropriate to help ensure no flash cuts for rate-of-return carriers. We note that price cap carriers did not raise concerns about transport costs, and we conclude that no particular transition is required or warranted for traffic exchanged between

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[2104] *See T-Mobile Order*, 20 FCC Rcd at 4863-65, paras. 14-16. *See also id.* at 4863 n.57 ("Under the amended rules, . . . in the absence of a request for an interconnection agreement, no compensation is owed for termination.").

[2105] *See, e.g.*, T-Mobile Section XV Comments at n.16 (stating that "in T-Mobile's experience, the vast majority of RBOC agreements provide for terminating rates at or below $0.0007 per minute").

[2106] For a detailed description of the recovery mechanism, *see supra* Section XIII.

[2107] *See, e.g.*, NECA et al. *August 3 PN* Comments at 41-42 (proposing a "Rural Transport Rule"); *see also* Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90, CC Docket 01-92, at 6 (filed Oct. 19, 2011); Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 at 2 (filed Oct. 20, 2011).

[2108] AT&T *USF/ICC Transformation NPRM* Reply at 24-25. *See also* CTIA *USF/ICC Transformation NPRM* Comments at 39 (proposing that the originating carrier would be responsible for assuming the costs of delivering a call, including securing any necessary transport services, to the terminating carrier's network edge).

[2109] *See infra* Section XVII.N. We have previously sought comment on the allocation of transport costs for non-access traffic on several occasions. *See USF/ICC Transformation NPRM*, 26 FCC Rcd at 4774-76 paras. 680-82; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6619-20, App.C, para 270 (seeking comment on interconnection proposal including "rural transport rule" that would have limited the transport and provisioning obligations of a rural rate-of-return regulated incumbent LEC to its meet point when the non-rural terminating carrier's point of presence is located outside of the rural rate-of-return incumbent LEC's service area); *Intercarrier Compensation FNPRM,* 20 FCC Rcd at 4727 para. 90, 4729 para. 93 (seeking comment on a proposal to require competitive carriers seeking to exchange traffic with an incumbent LEC to be responsible for transport costs outside the incumbent's local calling area).

CMRS providers and these carriers.

999. Specifically, for such traffic, the rural, rate-of-return LEC will be responsible for transport to the CMRS provider's chosen interconnection point[2110] when it is located within the LEC's service area.[2111] When the CMRS provider's chosen interconnection point is located outside the LEC's service area, we provide that the LEC's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. Although we do not prejudge our consideration of what allocation rule should ultimately apply to the exchange of all telecommunications traffic, including traffic that is considered access traffic today, under a bill-and-keep methodology, we believe that this rule is warranted for the interim period to help minimize disputes and provide greater certainty until rules are adopted to complete the transition to a bill-and-keep methodology for all intercarrier compensation.[2112]

1000. Beyond adopting these measures, we also emphasize that, although we establish bill-and-keep as an immediately applicable default methodology, we are not abrogating existing commercial contracts or interconnection agreements or otherwise allowing for a "fresh look" in light of our reforms.[2113] Thus, incumbent LECs may have an extended period of time under existing compensation arrangements before needing to renegotiate subject to the new default bill-and-keep methodology. As a result, while we are concerned that an immediate transition from reciprocal compensation to a bill-and-keep methodology more generally would risk overburdening the universal service fund that underlies the interim recovery mechanism, we think that the impact on the fund resulting from an immediate transition for LEC-CMRS reciprocal compensation alone will not do so.[2114] For the reasons discussed, we find that an immediate transition away from reciprocal compensation to a bill-and-keep methodology in this context is practical.

1001. As we found above, we believe that sections 251 and 252 affirmatively provide us authority to establish bill-and-keep as the default methodology applicable to traffic within the scope of section 251(b)(5), including for traffic exchanged between LECs and CMRS providers.[2115] Further, as we have concluded above that we have authority under section 332 to regulate intrastate access traffic exchanged between LECs and CMRS providers and thus authority to specify a transition to bill-and-keep for such traffic, we conclude for similar reasons that we have authority to regulate intrastate reciprocal

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[2110] *See* 47 C.F.R. § 51.701(c)(defining transport as "from the interconnection point between the two carriers to the terminating carrier's end office switch").

[2111] *See* 47 U.S.C § 214(e)(5)(defining "service area" in the context of universal service).

[2112] We note that some commenters proposed a similar but broader rule that would have applied to traffic exchanged between a rural, rate-of-return LEC and any other provider, CMRS or not. *See* NECA et al. *August 3 PN* Comments at 41-42 (proposing a "Rural Transport Rule"); Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 at 2 (filed Oct. 20, 2011). Because we adopt this as an interim rule to address concerns arising from our immediate adoption of bill-and-keep for non-access traffic with CMRS providers, a narrower rule that applies only to traffic between rural, rate-of-return LECs and CMRS providers is warranted.

[2113] *See supra* para. 815.

[2114] Adoption of bill-and-keep for this subset of traffic will also inform our understanding of the potential impact that the larger transition to bill-and-keep will have and, although we do not envision any concerns arising based on the reforms adopted in this Order, would enable us, if necessary, to make any adjustments as part of that larger transition. *See* MetroPCS Comments at 22-23 (arguing that "[m]oving just wireless traffic immediately to bill-and-keep would provide a worthwhile reference without having a major disruptive effect on the intercarrier compensation regime" and supporting immediate application of bill-and-keep to LEC-CMRS traffic).

[2115] *See supra* Section XII.A.2.

compensation between LECs and CMRS providers.[2116] Indeed, in *Iowa Utilities Board*, the Eighth Circuit specifically upheld Commission rules regulating LEC-CMRS reciprocal compensation based on these provisions.[2117]

1002. In the *North County Order*, the Commission found that any decision to reverse course and regulate intrastate rates under section 20.11 at the federal level was more appropriately addressed in a general rulemaking proceeding.[2118] Now that we are considering the issue in the context of this rulemaking proceeding, we find it appropriate to take this step for the reasons discussed above, and we conclude that our decision to establish a federal default pricing methodology for termination of LEC-CMRS intraMTA traffic as part of our broader effort in this proceeding to reform, modernize, and unify the intercarrier compensation system is consistent with our authority under the Act.

D. IntraMTA Rule

1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.[2119] As noted above, this rule, referred to as the "intraMTA rule," also governs the scope of traffic between LECs and CMRS providers that is subject to compensation under section 20.11(b). The *USF/ICC Transformation NPRM* sought comment, *inter alia,* on the proper interpretation of this rule.

1004. The record presents several issues regarding the scope and interpretation of the intraMTA rule. Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. We therefore take this opportunity to remove any ambiguity regarding the interpretation of the intraMTA rule.

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA."[2120] It further

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[2116] *See supra* para. 779.

[2117] In *Iowa Utilities Board v. FCC*, the Eighth Circuit found that "[b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by [CMRS] providers . . . and because section 332(c)(1)(b) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers." *Iowa Utils Bd. v. FCC*, 120 F. 3d 753, 800 n.21 (8th Cir. 1997) (vacating the Commission's pricing rules for lack of jurisdiction except for "the rules of special concern to CMRS providers" based in part upon the authority granted to the Commission in 47 U.S.C. § 332(c)(1)(B)). *See also Qwest v. FCC*, 252 F.3d 462, 465-66 (D.C. Cir. 2001) (describing the Eighth Circuit's analysis of section 332(c)(1)(B) in *Iowa Utils. Bd. v. FCC* and concluding that an attempt to relitigate the issue was barred by the doctrine of issue preclusion). On this basis, the court upheld several rules relating to reciprocal compensation for LEC-CMRS traffic, including rules governing charges for intrastate traffic. For example, the court upheld on this basis the adoption of section 51.703(b) of our rules, which prohibits LECs from assessing charges on any other telecommunications carrier for non-access traffic that originates on the LEC's network. 47 C.F.R. § 51.703(b).

[2118] *North County Order*, 24 FCC Rcd at 14039-40, para. 10, 14042, para. 16 (internal quotations omitted).

[2119] *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; 47 C.F.R. § 51.701(b)(2). The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

[2120] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 7; *see also* Halo Oct. 17, 2011 *Ex Parte* Letter. Halo is a nationwide licensee of non-exclusive spectrum in the 3650-3700 MHz band.

asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion."[2121] Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly."[2122] On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers.[2123] NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes.[2124] These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic.[2125] Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."[2126]

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules.[2127] Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[2128]

1007. In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area,[2129] the call is subject to access charges, not reciprocal compensation, even if the call originates and

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[2121] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 8.

[2122] *Id.* Attach. at 9.

[2123] ERTA July 8, 2011 *Ex Parte* Letter, at 3.

[2124] NTCA July 18, 2011 *Ex Parte* Letter at 7.

[2125] NTCA July 18, 2011 *Ex Parte* Letter at 1; ERTA *Ex Parte* Letter at 1, 3 (traffic from Halo includes "millions of minutes of intrastate access, interstate access, and CMRS traffic originated by customers of other companies;" one day study of Halo traffic showed traffic was originated by customers of "176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies").

[2126] CTIA *August 3 PN* Comments at 9.

[2127] *See Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp,* Order on Reconsideration, 17 FCC Rcd 6275, 6276 para. 4 (2002) ("Answer Indiana's argument assumes that GTE North receives reciprocal compensation from the originating carrier, but our reciprocal compensation rules do not provide for such compensation to a transiting carrier."); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177 n.70 (2000).

[2128] *See* NECA Sept. 23, 2011 *Ex Parte* Letter Attach. at 1; Halo Aug. 12, 2011 *Ex Parte* Letter at 9. We make no findings regarding whether any particular transiting services would in fact qualify as CMRS. *See* CTIA *August 3 PN* Comments at 9 & n.29 ("the information available does not reveal whether [Halo's] offering is a mobile service").

[2129] This occurs when the LEC and CMRS provider are "indirectly interconnected," i.e. when there is a third carrier to which they both have direct connections, and which is then used as a conduit for the exchange of traffic between them.

terminates within the same MTA.[2130] One commenter in this proceeding asks us to affirm that such traffic is subject to reciprocal compensation.[2131] We therefore clarify that the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC.[2132] Similarly, intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.[2133]

1008. Further, in response to the *USF/ICC Transformation NPRM*, T-Mobile proposed that we expand the scope of the intraMTA rule to reflect the fact that CMRS licenses are now issued for REAGs, geographic areas that are larger than MTAs.[2134] T-Mobile notes that the intraMTA rule was promulgated

[2130] *See, e.g.,* Letter from Sylvia Lesse, Counsel to the Missouri Companies, to William F. Caton, Acting Secretary, Federal Communications Commission, WT Docket No. 01-316 and CC Docket No. 01-92, Attach. (filed Mar. 22, 2002) (Missouri Companies Mar. 22 *Ex Parte* Letter); Letter from W.R. England, III, Counsel for Citizen Telephone Company of Missouri, *et al*, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, and 95-116 (filed Oct. 31, 2003) (Citizen Oct. 31, 2003 *Ex Parte* Letter). *See also* Letter from Glenn H. Brown, Counsel to Great Plains Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 8 (filed Sept. 23, 2003) (stating that the local exchange is the incumbent LEC's local service area rather than the MTA). We also sought comment on this issue in 2005 but have not since taken action to address it. *See Intercarrier Compensation FNPRM,* 20 FCC Rcd at 4745-46 paras. 137-38.

[2131] T-Mobile *August 3 PN* Comments at 11.

[2132] In a letter filed on Oct. 21, 2011, Vantage Point Solutions alleged "difficulties associated with the implementation of intraMTA local calling" between LECs and CMRS providers, and, while not advocating repeal of the rule, urged the Commission to "proceed with substantial caution" when "handling the rating and routing of intraMTA calls" that involve an interexchange carrier. Letter from Larry D. Thompson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 1-2 (filed Oct. 21, 2011) (Vantage Point Oct. 21, 2011 Ex Parte Letter). We find that the potential implementation issues raised by Vantage Point do not warrant a different construction of the intraMTA rule than what we adopt above. Although Vantage Point questions whether the intraMTA rule is feasible when a call is routed through interexchange carriers, many incumbent LECs have already, pursuant to state commission and appellate court decisions, extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers. *See, e.g.*, *Alma Communications Co. v. Missouri Public Service Comm'n*, 490 F.3d 619, 623-34 (8th Cir. 2007) (noting and affirming arbitration decision requiring incumbent LEC to compensate CMRS provider for costs incurred in transporting and terminating land-line to cell-phone calls placed to cell phones within the same MTA, even if those calls were routed through a long-distance carrier); *Atlas Telephone Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256 (10th Cir. 2005). Further, while Vantage Point asserts that it is not currently possible to determine if a call is interMTA or intraMTA, Vantage Point Oct. 21, 2011 Ex Parte Letter at 2-3, the Commission addressed this concern when it adopted the rule. *See Local Competition First Report and Order*, 11 FCC Rcd at 16017, para. 1044 (stating that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples).

[2133] *See* Sprint Nextel Section XV Comments at 22-23 (arguing that the Commission should reaffirm that all intraMTA traffic to or from a CMRS provider is subject to reciprocal compensation). This clarification is consistent with how the intraMTA rule has been interpreted by the federal appellate courts. *See Alma Communications Co. v. Missouri Public Service Comm'n*, 490 F.3d 619 (8th Cir. 2007); *Iowa Network Services, Inc. v. Qwest Corp.,* 466 F.3d 1091 (8th Cir. 2006); *Atlas Telephone Co. v. Oklahoma Corp. Commission,* 400 F.3d 1256 (10th Cir. 2005).

[2134] *See* T-Mobile *August 3 PN* Comments at 11-14. T-Mobile's proposal is also supported by MetroPCS. *See* MetroPCS *August 3 PN* Reply at 6-7.

at a time the MTA was the largest CMRS license area.[2135] T-Mobile argues that the REAG is currently the largest license being used to provide CMRS and that this change would move more telecommunications traffic under the reciprocal compensation umbrella pending the unification of all intercarrier compensation rates.[2136] We decline to adopt T-Mobile's proposal. Given the long experience of the industry dealing with the current rule, the very broad scope of the changes to the intercarrier compensation rules being made in this Order that will, after the transition period, make the rule irrelevant, and the limited support in the record for the suggested change even from CMRS commenters, we do not believe it is either necessary or appropriate to expand the scope of this rule as proposed by T-Mobile.

XVI. INTERCONNECTION

1009. Interconnection among communications networks is critical given the role of network effects.[2137] Historically, interconnection among voice communications networks has enabled competition and the associated consumer benefits that brings through innovation and reduced prices.[2138] The voice communications marketplace is currently transitioning from traditional circuit-switched telephone service to the use of IP services, and commenters observe that many carriers "apparently are equipped to receive IP voice traffic but are taking the position they will not use this equipment for years (until a prohibition on current per-minute charges takes effect)."[2139] These parties thus propose that in the immediate future the Commission "should (a) encourage all TDM network operators to investigate the steps they need to take to support IP-IP interconnection, and (b) put all TDM network operators on notice that they will be likely required to support IP-IP interconnection before any phase down of current ICC rates is complete."[2140]

1010. We anticipate that the reforms we adopt herein will further promote the deployment and use of IP networks. However, IP interconnection between providers also is critical. As such, we agree with commenters that, as the industry transitions to all IP networks, carriers should begin planning for the transition to IP-to-IP interconnection, and that such a transition will likely be appropriate before the completion of the intercarrier compensation phase down. We seek comment in the accompanying FNPRM regarding specific elements of the policy framework for IP-to-IP interconnection. We make clear, however, that our decision to address certain issues related to IP-to-IP interconnection in the FNPRM should not be misinterpreted to suggest any deviation from the Commission's longstanding view

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[2135] *See* T-Mobile *August 3 PN* Comments at 12.

[2136] *Id*. at 13.

[2137] *See, e.g.*, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket Nos. 04-70, 04-254, 04-323, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21578, para. 143 (2004) (citing Carl Shapiro and Hal Varian, *Information Rules*, Harvard Business School Press, Boston, 1999, at 13).

[2138] *See, e.g.*, *Interconnection Clarification Order*, 26 FCC Rcd at 8265-66, paras. 12-13; *Local Competition First Report and Order*, 11 FCC Rcd at 15506, para. 4; *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Third Report and Order, Transport Phase II, 9 FCC Rcd 2718, 2724, para. 25 (1994).

[2139] Sprint Nextel *USF/ICC Transformation NPRM* Comments at 28. *See also, e.g.*, Letter from Howard J. Symons, counsel for Cablevision, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, GN Docket No. 09-51, Attach. at 1-4 (filed Oct. 20, 2011); Letter from Thomas Jones, counsel for Cbeyond et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 11-119, 10-90, 07-135, 05-337, 03-109, CC Docket No. 01-92, 96-45, GN Docket No. 09-51, Attach. A at 5 (filed Oct. 3, 2011).

[2140] Sprint Nextel *USF/ICC Transformation NPRM* Comments at 28.