

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

In the Matter of)	
)	
<i>Petition</i> for Declaratory Ruling to Clarify)	WC Docket No. 14-228
the Applicability of the IntraMTA Rule to)	
LEC-IXC Traffic and Confirm that Related)	
IXC Conduct is Inconsistent with the)	
Communications Act of 1934, as Amended,)	
and the Commission's Implementing Rules)	
and Policies)	

**REPLY COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these reply comments in response to the Public Notice released by the Wireline Competition Bureau seeking comment on a Petition for Declaratory Ruling regarding the applicability of the intraMTA rule to LEC-IXC traffic.¹

NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom. NTTA’s mission is to be the national

¹ *Wireline Competition Bureau Seeks Comment on Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rules to LEC-IXC Traffic*, Public Notice, CC Docket No. 01-92, WC Docket Nos. 10-90, 14-228, rel. December 10, 2014, DA 14-1808 (*Public Notice*)

advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

The Petition for Declaratory Ruling was filed by a group of incumbent and competitive local exchange carriers and relates to the proper treatment of intraMTA traffic – most importantly how such traffic is exchanged, and compensated for, between interexchange carriers (IXCs) and LECs.² NTTA will address issues raised in the *Petition* and will respond to initial comments made by interested parties on February 9, 2015. NTTA fully supports the *Petition* for the reasons set forth below.

II. SUPPORT OF PETITION FOR DECLARATORY RULING

The *Petitioners* request the Commission issue a declaratory ruling to confirm “the intraMTA rule...does not apply to LEC charges billed to an IXC when the IXC terminates traffic to or receives traffic from a LEC via tariffed switched access services.” In addition, the *Petitioners* ask for a Commission declaration that “the attempts of certain IXCs to misapply the intraMTA rule to avoid paying access charges and to claim entitlement to substantial retroactive refunds are inconsistent with the Communications Act of 1934, as Amended...and the Commission’s implementing rules and policies.”

A substantial number of NTTA members are directly and adversely affected by the actions taken by the IXCs. NTTA members are involved in the multi-district litigation currently being handled at the U.S. District Court, Northern District of Texas in Dallas. Thus, NTTA members are seeking relief and resolution of this issue in multiple jurisdictions. Numerous parties are in situations similar to those faced by NTTA members, and it is well within the Commission’s jurisdiction to rule on this issue.

The issue to be decided can be reduced to the meaning of the intraMTA rule and whether it should be applied to traffic handled and terminated by an IXC to a LEC, and where complete

² Petition for Declaratory Ruling of the LEC Petitioners, (filed Nov. 10, 2014) (*Petition*). The *Petitioners* include Bright House Networks, LLC, the CenturyLink LECs, Consolidated Communications, Inc., Cox Communications, Inc., FairPoint Communications, Inc., Frontier Communications Corporation, LICT Corporation, Time Warner Cable, Inc., Windstream Corporation, the Iowa RLEC Group, and the Missouri RLEC Group.

control over the data related to that traffic is controlled by the IXC. Furthermore, the intraMTA rule expressly applies to local traffic exchanged between a CMRS carrier and a LEC and not to traffic exchanged between an IXC and a LEC.

Even if the Commission issues a ruling that, incorrectly in NTTA's opinion, states any traffic exchanged between an IXC and a LEC is subject to reciprocal compensation, further problems arise as to the identification and billing of such traffic. The Petition contains a summary of such issues that must be addressed should the Commission deny the Petitioner's request.³ However, the issue really can be boiled down to this – how are LECs terminating or originating such traffic supposed to determine if the traffic falls under the newly-expanded intraMTA rule? Thus far, the IXCs have unilaterally determined the extent of such traffic and have not, to NTTA's knowledge, engaged with the affected LECs prior to stopping payment on what for years has been traffic terminated via switched access services and subject to switched access charges.

Finally, since enough controversy exists to (1) occupy several court proceedings, and (2) necessitate the filing of the Petition, NTTA recommends any changes made in the way the subject traffic has been treated occur on a going-forward basis only. The IXCs' attempts at halting payment and self-help of substantial retroactive refunds, in the words of the Petition, cannot be "squared with the status of filed tariffs."⁴ Furthermore, it strains the bounds of rationality to request such refunds when the IXCs had not, prior to the origination of this proceeding, made any complaints about terminating such traffic and paying the relevant switched access charges. As a result, any relief gained by the IXCs should be prospective in nature only.

III. REPLY TO COMMENTS

Verizon and Sprint filed comments in opposition to the relief sought by the Petition. Several parties filed comments in support of the Petition. While Verizon and Sprint in large part reiterate positions taken in court cases across the country, they fail to respond to one crucial issue – the standing they, or other IXCs, have in the participation in and enforcement of the exchange of "local" (intraMTA) traffic between two other parties (i.e., the LEC and CMRS carrier).

³ *Petition* at 8-9

⁴ *Id.* at 31

The intraMTA rule clearly applies to the exchange of traffic between a CMRS carrier and a LEC, and for certain IXCs, such as Sprint and Verizon, to unilaterally determine to halt payment of access charges and, in some cases, demand substantial retroactive refunds makes no sense. At most, the IXCs should have requested a review of any traffic believed to be subject to the intraMTA rule and handled via a duly negotiated interconnection or traffic exchange agreement. Nothing that NTTA can ascertain would allow the treatment being espoused by the IXCs.

The Washington Independent Telephone Association (WITA) explains the intraMTA rule does not apply to IXC traffic⁵, in direct contravention to Verizon's comments.⁶ However, in order to ensure the proper working of the intraMTA rule, parties should be required to "cooperate to identify, measure and/or estimate"⁷ such traffic. Indeed, for traffic terminated over IXC toll trunks it is difficult, if not impossible, for the terminating LEC to determine whether (1) such traffic is intraMTA in nature, and (2) whether the carrier receiving the traffic was a wireless (CMRS) carrier. Without the cooperation as advocated by the Rural Associations, the invocation of the intraMTA rule is nearly impossible.⁸

The Rural Associations also support the position that IXCs are not recognized as originating carriers eligible to invoke the intraMTA rule.⁹ The intraMTA rule was clearly adopted to address, from a regulatory perspective, certain aspects of the relationship between a CMRS carrier and a LEC. Specifically, the Commission defined intraMTA traffic as "local" in the case of wireless traffic in order to recognize the inherent differences between traditional wireline and wireless calling scopes. As a result, intraMTA CMRS-LEC traffic is compensated via local reciprocal compensation rules, instead of switched access tariffs. NTTA notes that nowhere in this regime is the IXC allowed to insert itself and start dictating terms of an agreement in which they have no legal part.

Finally, Verizon claims the Commission should leave the question of refunds to the courts.¹⁰ This position is untenable as the issue at hand – the operation of the intraMTA rule –

⁵ WITA Comments (filed 2/9/15) at 3

⁶ Verizon Comments (filed 2/9/15) at 4

⁷ WTA December 19, 2014 Ex Parte filing, WC Docket Nos. 10-90, 14-228 and CC Docket No. 01-92

⁸ Comments of NTCA, WTA, ERTA, and NECA (Rural Associations) at 3

⁹ *Id.*, at 4-8

¹⁰ Verizon Comments at 15

directly impacts the resolution of withheld access charges and claims for substantial refunds by the IXCs. As argued above, and as supported by the Rural Associations¹¹, the Commission can and must find that the tactics engaged in by the IXCs are not consistent with the Communications Act and Commission rulings.

IV. CONCLUSION

NTTA, as discussed herein, supports the Petition for Declaratory Ruling filed by the LEC Petitioners. To do otherwise would risk the unraveling of business relationships and business processes that have taken place since the inception of the intraMTA rule. The IXCs have not established a clear case of why they should be allowed to dictate terms of a relationship in which they have no part, and have thus failed to show why IXCs are carriers able to invoke the intraMTA rule in the first place. Finally, any compensation that flows from an FCC decision should be prospective only in the event the Petition is denied.

Respectfully Submitted,

Godfrey Enjady
President
National Tribal Telecommunications Association

March 11, 2015

¹¹ Rural Association Comments at 17-18