

## Intercarrier Compensation Reforms—Wireless Compensation

11.23.11

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*Wireless Compensation:* The Order clarifies certain aspects of intercarrier compensation for traffic exchanged between Commercial Mobile Radio Service providers (wireless carriers) and LECs. Most significantly, the Order adopts bill-and-keep as the default compensation for intraMTA traffic exchanged between LECs and wireless carriers, as of the effective date of the Order. The FCC did not adopt any “glide path” for moving to bill-and-keep for wireless interconnection. The Order also (i) clarifies that compensation obligations under 47 C.F.R. § 20.11 are coextensive with reciprocal compensation under 47 U.S.C. § 251(b)(5); (ii) adopts an interim default rule limiting rate-of-return LEC’s responsibility for transport costs for non-access wireless traffic; and (iii) reaffirms that neither interstate nor intrastate access charges apply to intraMTA traffic. While these changes will affect many existing LEC-wireless compensation arrangements over time, the FCC did not abrogate existing commercial arrangements or permit a “fresh look” with respect to existing contracts.

*Background:* Two separate regimes govern intercarrier compensation for non-access traffic exchanged between wireless carriers and LECs: Section 20.11 of the FCC’s rules was adopted in 1994 and requires that wireless carriers and LECs comply with “principles of mutual compensation” and that each pay “reasonable compensation.” Section 251(b)(5) was adopted as part of the 1996 Act and requires “reciprocal compensation.” The FCC noted that the existence of these two overlapping regimes has led to disputes between wireless carriers and LECs, including the scope of wireless carriers’ obligation to pay reciprocal compensation under Rule 20.11, in the absence of a compensation agreement.

*LEC-Wireless Non-Access Traffic:* The Order clarifies that compensation obligations under Section 251(b)(5) and Rule 20.11 are co-extensive, and that neither applies to access traffic that is subject to Section 251(g). The Order clarifies that the term “mutual compensation” in Rule 20.11 is synonymous with the term “reciprocal compensation” in Section 251(b)(5). With these baseline clarifications, the Order adopts bill-and-keep as the default federal pricing methodology for traffic between LECs and wireless carriers under **both** Rule 20.11 and Part 51 of its rules (which implements Section 251(b)(5)), effective **immediately**. The FCC did not establish a “glide path” for this traffic because of: (1) the ongoing growth of non-access wireless-LEC traffic; (2) the far smaller risk of market disruption, given LECs’ current lack of reliance on reciprocal compensation payments from wireless providers; and (3) less risk of overburdening the universal service funds. As noted, however, the Order does not abrogate existing compensation arrangements or allow a “fresh look” at them. In addition, to help ease the movement to bill-and-keep for rate-of-return carriers, the Order establishes an interim default rule limiting the responsibility of such carriers to transport traffic. Under current rules, carriers are responsible for transporting calls all the way to the terminating provider. For rate-of-return carriers, the FCC limits this obligation to include only transport to the edge of the carrier’s network. The FCC is seeking comment on whether and how it should change its transport rules for all carriers in the Further Notice.

*Legal Authority:* In addition to its authority with respect to all “telecommunications” under Section 251(b)(5), the FCC finds that it has authority under Section 332 to regulate traffic exchanged between LECs and wireless carriers. This authority was specifically affirmed in the 8th Circuit’s decision in *Iowa Utilities Board* (the ruling initially reviewing the FCC’s *Local Competition* Order implementing the 1996 Act), which ruled that the FCC had authority under section 332 to issue rules of “special concern to the CMRS providers,” including default pricing rules for intercarrier compensation.

*IntraMTA Rule:* Under the intraMTA rule (which the FCC adopted in its *First Local Competition* order), calls between wireless carriers and LECs that originate and terminate in the same Major Trading Area (MTA) are subject to reciprocal compensation charges under section 251(b)(5). In response to issues regarding the scope and interpretation of the intraMTA rule, the Order clarifies that a call is considered to be originated by a wireless carrier only if the calling party initiates the call through the wireless carrier itself. The fact that a wireless carrier might **transit** a call originated by another type of provider does not convert the call into a wireless-originated call. The FCC also affirmed, consistent with a number of federal appellate court and state commission decisions, that an intraMTA call is subject to reciprocal compensation (as opposed to access charges) even if the originating carrier routes the call to a long distance or transiting carrier to complete the call. The FCC, however, rejected T-Mobile’s request to expand the scope of the rule to REAGs—a newer (and larger) FCC wireless license area—on the grounds that the industry is familiar with the current rule and the intraMTA rule will be largely irrelevant after the transition period.

*Negotiation with Wireless Carriers:* The Order reaffirms the rule from its 2005 *T-Mobile* Order that ILECs can compel

wireless carriers to negotiate in good faith to establish an interconnection agreement. For now, the FCC declines to expand that right to CLECs. However, the FCC seeks comment on this question in the Further Notice.

*Analysis:* Although we are continuing to study the order and evaluate its impact, it appears these rule changes should resolve many of the intercarrier compensation disputes between wireless carriers and LECs—at least on prospective basis. Wireless carriers will be able to demand that any carrier seeking a new (or renewed) interconnection or traffic compensation agreement exchange intraMTA traffic on a bill-and-keep basis. We are continuing to evaluate how the Order would affect any pending carrier disputes for backward-looking reciprocal compensation. There are two potentially negative aspects of the Order from the perspective of wireless carriers. First, the Order could be read to affirm that interMTA traffic is subject to access charges (a position which some wireless carriers have been disputing). Second, the interim transport rule for rate of return carriers may cause an increase in transport costs. Finally, while we expect negatively affected parties to appeal, the fact that the FCC has independent authority to adopt the default bill and keep mechanisms for wireless carriers under Section 332 suggests that this section of the Order is one of the most immune from a successful attack on appeal.

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