



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Application of North County Communications  
Corporation of California (U5631C) for Approval of  
Default Rate for Termination of Intrastate, IntraMTA  
Traffic Originated by CMRS Carriers

A.10-01-003  
(Filed January 6, 2010)

**METROPCS CALIFORNIA, LLC'S (U3079C) PROTEST OF NORTH COUNTY  
COMMUNICATIONS CORPORATION APPLICATION**

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**METROPCS CALIFORNIA, LLC'S (U3079) PROTEST  
OF NORTH COUNTY'S APPLICATION<sup>1</sup>**

MetroPCS California, LLC (“MetroPCS”), by its attorneys and pursuant to Section 2.6(a) of the Commission’s rules, hereby respectfully submits this Protest opposing the Application of North County Communications Corporation of California (“North County”) for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic Originated by CMRS Carriers before the Public Utilities Commission of the State of California (the “Commission”).<sup>2</sup> If this Commission elects to determine a rate for the traffic at issue in this proceeding – which it should not do for the reasons set forth in MetroPCS’ concurrently filed Motion to Dismiss North County’s Application or In the Alternative Motion to Hold in Abeyance (the “MetroPCS Motions”) – the Commission should (1) first make provision for the discovery that will be essential to allow the Commission to properly understand the nature and character of the traffic at issue in this proceeding; and, (2) ultimately, conclude that the traffic originating with wireless carriers should be handled by North County on a “bill-and-keep” basis. If for any reason this

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<sup>1</sup> Due to its unique position as a party to the related FCC action, MetroPCS has opted to individually file pleadings in this proceeding. *See North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, File No. EB-06-MD-008, 09-100 (2009) (“*Order on Review*”). However, MetroPCS supports the Wireless Coalition’s concurrently-filed Protest, Motion to Dismiss and Motion to Hold in Abeyance.

<sup>2</sup> Application of North County Communications Corporation of California (U5631C) for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic Originated by CMRS Carriers, January 5, 2010 (“Application”).

Commission does not endorse bill-and-keep, North County must be compelled to submit a cost study to prove that any payments it is seeking are reasonable and cost-justified. This is particularly necessary because North County has chosen to implement a one-way business model that raises serious regulatory arbitrage and “traffic pumping” concerns.<sup>3</sup>

## I. INTRODUCTION

This proceeding marks yet another stop in North County’s ongoing quest to find a forum that will validate the excessive rate it seeks to be paid for telecommunications traffic it receives that originates on the networks of commercial mobile radio service (“CMRS”) providers. At issue here is unidirectional traffic destined to “chat-lines”<sup>4</sup> that competitive local exchange carrier (“CLEC”) North County hosts. North County has a termination monopoly for this traffic, and a powerful arbitrage incentive to charge an over-inflated rate for delivering this one-way traffic.<sup>5</sup> If this Commission does not dismiss the North County Application – as it properly

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<sup>3</sup> Due to these concerns, the Commission – following the lead of the Federal Communications Commission (“FCC”) in similar cases involving unidirectional traffic – should rule that under no circumstance can North County be paid more than \$0.0007/minute of use (“MOU”). *See* discussion *infra* at Section III.D.

<sup>4</sup> For the purposes of the North County/MetroPCS FCC proceeding, the FCC noted that a chat-line provider offers a service that “combine[s] multiple incoming calls that happen to arrive in a common time frame, but are otherwise unscheduled by the parties and may result in connecting callers who are unknown to one another.” *North County Communication Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, DA 09-719 at ¶ 3, n. 7 (Mar. 30, 2009) (“*FCC Bureau Order*”). Chat-line service is distinguishable from traditional business dial-in conference calling in which a designated group of identifiable callers call a known dial-up conference number at a pre-arranged time for a specific business purpose and one of the callers has made arrangements for payment.

<sup>5</sup> MetroPCS uses the phrase “termination monopoly” in the sense that North County is the only host of the particular chat-line numbers that it serves, and thus CMRS customers desiring to call these chat-lines have no choice but to direct traffic to North County. By using the phrase “terminating monopoly,” or by otherwise referring to “terminating compensation,” MetroPCS does not concede that North County is in fact performing the kind of terminating services that give rise to a compensation right. *See Complaint of Xchange Telecom, Inc. Against Sprint Nextel Corporation for Refusal to Pay Terminating Compensation, Case 07-C-1541; Petition of Xchange Telecom Corp. for a Declaratory Ruling Establishing the Just and Reasonable Rate for Termination of Traffic Between Wireless Carriers and CLECs, Case 09-C-0370; Order Granting Motion to Dismiss in Part and Denying in Part and Granting Complaint in Part and Denying in Part.*, rel. February 4, 2010, at 14, n. 28 (noting that calls “routed off the terminating end

should – the Commission needs to conduct a full evidentiary hearing in order to enable MetroPCS and the other interested wireless carriers to develop the pertinent facts.<sup>6</sup> Those facts will demonstrate that North County has implemented a traffic pumping scheme designed to generate a high volume of one-way local traffic on which it is seeking to collect excessive terminating compensation.

This is the fourth forum in which North County has sought to validate the inflated compensation rate that wireless carriers reasonably have declined to pay. North County currently has litigation pending in both the California federal courts,<sup>7</sup> and in California state courts.<sup>8</sup> Both actions are against nearly all CMRS carriers in California – with the exception of MetroPCS. With respect to MetroPCS, North County initiated a complaint proceeding before the FCC in which it sought to establish a high rate which it made clear it intended to “cram down” on other CMRS carriers in California. The actions North County took in the course of the FCC proceedings with respect to its proposed rate are instructive. In the early stages of the proceeding, North County was seeking to charge MetroPCS and other wireless carriers at a high terminating rate of \$0.004/MOU with a \$0.007 per call set up charge. In the course of discovery, North County learned of an isolated instance in which MetroPCS had agreed to pay a rural local exchange carrier (“RLEC”) – which was not similarly situated to North County – \$0.011/MOU for call termination. At that point, without conducting any cost study of its own, North County

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office switch by any means including protocol conversion may not be considered terminated and, therefore, reciprocal compensation may not apply”).

<sup>6</sup> Although North County and MetroPCS engaged in discovery in the FCC action initiated by North County, that discovery was limited and did not address many of the issues that would need to be resolved by this Commission.

<sup>7</sup> See *North County Communications Corp. v. California Catalog & Technology DBA CCT Telecoms, et al.*, Notice of Appeal, Case No. 06-CV-1542 (S.D. Cal. Dec. 26, 2007) (the 9th Circuit Docket No. is 08-55048) (“*North County v. CCT*”); see also *North County v. CCT*, Order (S.D. Cal. Nov. 26, 2007).

unilaterally hiked the rate it was seeking from MetroPCS and all other CMRS carriers to \$0.011/MOU, which at the time was the highest rate it was aware that any CMRS carrier was paying.<sup>9</sup> Now, North County is trying to impose that unjustifiable rate on all CMRS carriers. This Commission should not become an accomplice to the North County arbitrage.

The North County Application asks the Commission to set a rate “[p]ursuant to . . . FCC rule 20.11(b).”<sup>10</sup> In doing so, North County purports to follow the FCC’s *Order on Review* in the MetroPCS/North County complaint proceeding indicating that North County should go in the first instance to a state commission that “may employ whatever non-tariff procedural mechanism it deems appropriate under state law, as long as such mechanism affords interested parties an opportunity to be heard prior to the determination of the rate.”<sup>11</sup> Yet, even North County admits that the “Commission’s Rules of Practice and Procedure do not specify a procedural mechanism for this purpose.”<sup>12</sup> This means that there is no appropriate mechanism under state law for this Commission to set the rate sought by North County.

If the Commission chooses nonetheless to initiate a proceeding to consider what rate if any North County may charge for the traffic at issue in this proceeding, the Commission must allow the parties to conduct adequate discovery to test the claims made by North County in its Application, and to ascertain the type and amount of traffic that North County terminates, the

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<sup>8</sup> *North County Communications Corp. v. A+ Wireless, Inc. DBA Advantage Wireless, et al*, Complaint for Damages and Injunctive Relief (Cal. Sup. January 11, 2008).

<sup>9</sup> North County also argued that since wireless carriers pay such rates, under the Communications Act, as amended, wireless carriers are obligated to pay the same rate to North County. The FCC has rejected this argument.

<sup>10</sup> Application at 2.

<sup>11</sup> *Order on Review* at ¶ 10 (emphasis added).

<sup>12</sup> Application at 2.

extent and cost of the network facilities that North County is operating, and the nature of the arrangements that North County has with the chat-line operators it serves.

As the sole target of the multi-year complaint proceeding prosecuted by North County before the FCC, MetroPCS is in a unique position to elucidate the relevant facts in this proceeding. Nearly all of the traffic at issue here is directed to chat-line providers which generate a high volume of incoming calls but do not originate any outbound traffic. The one-way nature of the traffic means that North County is benefited by unreasonably high termination rates and is incited to “pump” as much traffic as it can. Traffic pumping schemes of this nature are a growing problem in both the local termination and the access segments of the intercarrier compensation market.

If the Commission decides to set a rate for the traffic at issue in this proceeding, it should adopt an approach that will discourage unproductive regulatory arbitrage. Specifically, to discourage traffic pumping, this Commission should rule that, because North County is generating grossly imbalanced intraMTA traffic, it can collect terminating compensation only pursuant to a voluntary agreement.<sup>13</sup> The default rate in the absence of a voluntary agreement should be “bill-and-keep.”<sup>14</sup> This would correct the market distortions caused by North County’s one-way business model, and minimize its ability to generate monopoly rents.

If the Commission does not impose a bill-and-keep scheme, it must compel North County to conduct a cost study to prove a reasonable, cost-justified rate. However, due to the one-way

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<sup>13</sup> The FCC’s *T-Mobile Declaratory Ruling* makes clear that CLECs cannot charge CMRS carriers via tariff, so the only avenue available is voluntary negotiation. See *T-Mobile et al, Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005) (“*T-Mobile Declaratory Ruling*”).

<sup>14</sup> Bill-and-keep is a rate arrangement in which each carrier exchanging traffic performs the service of terminating the other carrier’s traffic without exchanging monetary compensation and seeks any necessary compensation from its own customers.

nature of the traffic, under all circumstances the rate must be capped at a level that would remove the incentive for North County to engage in regulatory arbitrage and traffic pumping. Such a cap would follow the approach taken in the FCC's *ISP Remand Order*, and confirmed in the FCC's *ISP Mandamus Order*.<sup>15</sup> Those FCC orders curtailed the regulatory arbitrage of CLECs who were seeking out Internet service providers ("ISPs") as customers to obtain large volumes of inbound traffic. The FCC set a rate cap of \$0.0007/MOU for CLEC traffic that exceeded a 3:1 ratio of terminating to originating traffic. The intent was to reduce or eliminate the incentive for CLECs to pursue business plans purposely designed to artificially inflate the volume of the traffic they terminate or the rate they charge.

North County is asking this Commission to endorse a rate of \$0.011/MOU. North County does not offer any evidence to demonstrate that its proposed rate is based on its costs. And, the fact that it cannot seem to get any major carrier to voluntarily agree to pay \$0.011/MOU demonstrates that North County's proposed rate is not a market-based rate.

## **II. NORTH COUNTY'S PROPOSED RATE IS NOT MARKET-BASED OR COST-BASED**

North County provides no probative evidence to support the \$0.011 rate it seeks in this proceeding. North County's Application cites only the following: (1) By Resolution T-16880, issued on September 2, 2004, the Commission approved an interconnection agreement between MetroPCS California/Florida and Citizens Telecommunications Company of California, Inc. ("Citizens") that provided for mobile-to-landline traffic termination at this very same rate, \$0.011; (2) North County claims that it has over 70 arrangements with other carriers (both wireline and CMRS) for intrastate traffic termination at \$0.011; and (3) North County's proposed

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<sup>15</sup> *High-Cost Universal Service Support, et al*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 at Order on Remand, ¶ 20 (rel. Nov. 5, 2008) ("*ISP Mandamus Order*").

rate is below the cost-based intrastate access rate that the Commission recently approved in D. 07-12-020. Based on the above, North County submits that “its proposed rate of \$0.011 is eminently reasonable and should be established as the default rate applicable to North County’s termination of intrastate, intraMTA CMRS traffic in the absence of a negotiated agreement.”<sup>16</sup> In three separate sections below, MetroPCS demonstrates that none of the above assertions provide any justification for the rate North County proposes.

**A. The Rate MetroPCS Pays to Rural ILEC Citizens is Irrelevant to This Proceeding**

North County argues that, since MetroPCS has entered into an interconnection agreement with Citizens at \$0.011,<sup>17</sup> MetroPCS *and every other California CMRS carrier* must pay North County a comparable rate. North County is incorrect as a matter of law. In the prior FCC complaint proceeding, the FCC properly determined that MetroPCS’ willingness or obligation to pay other carriers a different rate for terminating intrastate traffic than it was willing to pay North County was beside the point.<sup>18</sup> North County initiated this proceeding pursuant to federal law, which is not concerned with whether the services of two separate carriers are “like.” Rather, it is concerned with “whether two services offered by the same carrier are like.”<sup>19</sup> Thus, the relevant concern is the amount that a carrier charges to similarly situated carriers, not the amount it pays to two different carriers.<sup>20</sup> North County provides the service here, not MetroPCS or Citizens.

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<sup>16</sup> Application at 3.

<sup>17</sup> North County also makes a passing reference to a voluntary agreement that MetroPCS had with Global Valley Networks (“Global Valley”). Global Valley has since merged into Citizens, and MetroPCS previously had terminated its agreement with Global Valley. In addition, the MetroPCS agreement with Global Valley also was based on costs provided to MetroPCS by Global Valley. Such agreement is further distinguishable on the same basis as the Citizens agreement, as discussed in detail below.

<sup>18</sup> *FCC Bureau Order* at ¶¶ 21-23.

<sup>19</sup> *Core Comm. and Z-Tel Comm., Inc v. SBC Comm. et. al.*, 18 FCC Rcd 7568 at ¶ 34 (rel. April 17, 2003), vacated on other grounds, *SBC Comm., Inc. v. FCC*, 407 F.3d 1223 (D.C. Cir. 2005).

<sup>20</sup> *Id.* ¶ 32 (emphasis in original).

Thus, if North County terminates traffic to chat-line numbers from other CMRS carriers at a lower rate than it seeks from MetroPCS, that would be relevant. However what MetroPCS pays another carrier – particularly for services that are not shown to be similar to those provided by North County – is clearly irrelevant.<sup>21</sup>

Even if this Commission were inclined to look at the rate that MetroPCS pays other carriers, North County fails to produce any evidence to demonstrate that North County is similarly situated to Citizens. Unlike North County, Citizens is an incumbent local exchange carrier that provides a full range of facility-based landline telephone services to the public, and whose customers originate substantial amounts of traffic that is delivered to MetroPCS for termination. Citizens serves Tier 3 high cost rural markets, unlike North County which serves urban markets. Thus, the voluntary MetroPCS arrangement with Citizens clearly is distinguishable from the traffic delivered to North County.<sup>22</sup>

Another important distinction is that MetroPCS' intercarrier compensation agreement with Citizens was based upon a Citizens-specific cost study. North County has failed to offer any evidence that it is comparable to Citizens in terms of the services offered, the nature and scope of its network, the inbound/outbound traffic mix or its cost structure and cost basis. To the contrary, North County previously has admitted that neither its original billing rate, nor its increased billing rate, was supported by any North County cost study, nor has North County

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<sup>21</sup> The FCC held in the complaint proceeding that “MetroPCS’ willingness or obligation to pay other carriers a different rate for terminating intrastate traffic than what it is willing to pay North County for terminating services does not fall within the scope of section 202(a) of the [Telecommunications] Act.” See *FCC Bureau Order* at ¶¶ 21-23. North County received a final judgment on the merits on this issue, and has not appealed. As the Supreme Court has found, “[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Federated Department Stores, Inc. v. Mottie*, 452 U.S. 394, 398 (1981); see also *Commissioner v. Sunnen*, 333 U.S. 591, 597 (1948); *Cromwell v. County of Sac*, 94 U.S. 351, 352 -353 (1877). Accordingly, North County is be barred from re-raising the discrimination issue in this forum.

<sup>22</sup> The agreement will continue in effect as an interim arrangement until a new agreement is executed.

claimed either rate to be cost-based.<sup>23</sup> Consequently, there is no basis in fact or in law for North County to claim it should receive the same rates as Citizens.<sup>24</sup>

**B. North County’s Arrangements with Other CMRS and Wireline Carriers do Not Support a Rate of \$0.011 for the Termination of CMRS Traffic**

North County provides no evidence to support its claim that it has entered into over 70 agreements with CMRS and wireline carriers at \$0.011/MOU. Even if it has, MetroPCS suspects that most if not all of these agreements were entered into under circumstances that make them largely irrelevant. For example, the vast majority of the arrangements referred to by North County may involve tariffed arrangements between North County, a CLEC, and other LECs or CLECs. Notably, North County admits in its Application that the arrangements it alludes to “include individually negotiated agreements and implied contracts under which carriers are paying such compensation pursuant to North County’s tariff.”<sup>25</sup> As this Commission knows, as a CLEC, North County is prohibited by law from relying on its tariff to impose a rate on a CMRS carrier.<sup>26</sup> And, the North County Application admits that the FCC, in the *Order on Review*, ruled that the state commission must employ a “*non-tariff* procedure mechanism” to establish an

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<sup>23</sup> In seeking the rate MetroPCS pays to Citizens, North County is taking advantage of confidential discovery responses supplied by MetroPCS in pre-FCC-complaint mediation. Specifically, when North County discovered that MetroPCS was paying Citizens \$0.011/MOU, it immediately began billing MetroPCS and all other wireless carriers at its increased rate of \$0.011/MOU. North County justified this use of confidential discovery information on the ground that the MetroPCS/Citizens rate was on file at the Commission. This does not alter the fact that North County used the confidential discovery information to locate the MetroPCS/Citizens rate in the first instance.

<sup>24</sup> If the Commission wants to consider what MetroPCS is paying other carriers, it should look to the numerous bill-and-keep arrangements MetroPCS has with a large number of CLECs, or the \$0.0007/MOU rate MetroPCS has with CLEC Pac-West which terminates a considerable volume of chat-line traffic to MetroPCS.

<sup>25</sup> Application at 1, n. 4. It is not clear what an implied contract means to North County. North County has been billing carriers at \$0.011 and it may mean that those carriers who continue to send traffic impliedly agree to pay those rates. If so, the Commission must discount North County’s argument entirely, as implied agreements where the parties are not acting as if such an agreement binds them are not relevant.

<sup>26</sup> See *T-Mobile Declaratory Ruling* at ¶¶ 15-16.

appropriate rate.<sup>27</sup> Thus, rates collected by North County pursuant to tariff are irrelevant absent separate independent proof that the rate is reasonable and justified as applied to a CMRS carrier. Otherwise, North County and the Commission will have improperly circumvented the *T-Mobile Declaratory Ruling*.

In addition, many interconnection agreements include minimum traffic provisions, meaning that the stated rate is not applied and collected unless and until the volume or net volume of traffic exceeds a stated threshold. Obviously, it would be illusory to claim that a party is paying a rate of \$0.011/MOU if the actual traffic volume is so low that nothing is actually paid. If North County has agreements with minimum traffic provisions with parties who do not exchange enough traffic to meet the applicable threshold, then these agreements provide no evidentiary support for a rate of \$0.011.<sup>28</sup>

The circumstances surrounding North County's agreements also may serve to undermine their relevance to this proceeding. If any of the agreements were entered into after North County threatened or filed litigation, it may be that the potential expense of litigation was greater than the cost of paying an exorbitant rate to North County – especially for carriers sending low traffic volumes to North County. An agreement entered into under these coercive circumstances would not demonstrate that \$0.011 is a reasonable, fair or market-based rate.

The Commission also must disregard any agreements North County has entered into with wireline carriers because CMRS carriers and wireline carriers are not similarly situated vis-à-vis North County. In addition to its inbound-only chat-line business, North County runs an outbound-only telemarketing business. Federal laws prohibit telemarketers from calling wireless

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<sup>27</sup> Application at 2 (emphasis added by North County).

<sup>28</sup> Under North County's theory, if it charged \$1.00 per minute in such circumstances, that rate would be justified. This clearly demonstrates the untenable nature of North County's position.

numbers. This means that CMRS carriers do not receive the calls originated by North County's telemarketing customers. In contrast, non-CMRS carriers may receive calls from the North County telemarketing customers. As a result, the traffic mix between North County and a wireline carrier and North County and a CMRS carrier is likely to be completely different. Thus, North County's claims that it has arrangements with non-CMRS carriers pursuant to its tariff are otherwise irrelevant to this proceeding.

The North County Application makes no specific reference to any particular agreement it has with a CMRS carrier. This is no surprise. North County indicated in the course of the FCC complaint proceeding that it actually had managed to enter into very few agreements with CMRS carriers. And, the few isolated CMRS agreements it had were largely irrelevant because of the distinguishable circumstances under which they were completed. For example, one such agreement that North County referenced publicly in the FCC complaint proceeding was with Alltel. MetroPCS submitted to the FCC a declaration from Alltel's Vice President of Interconnection setting forth the facts and circumstances surrounding the North County agreement with Alltel.<sup>29</sup> The declaration established that Alltel originated only a minimal amount of traffic to North County.<sup>30</sup> Alltel indicated that the costs of defending the litigation initiated by North County would have far exceeded the minimal amount of terminating compensation that Alltel would have to pay North County, even at an inflated rate.<sup>31</sup> Alltel further noted that it anticipated the net compensation to be paid under its interconnection

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<sup>29</sup> Alltel has since been acquired by Verizon Wireless, but at the time was a mid-sized CMRS carrier, similar to MetroPCS.

<sup>30</sup> See Declaration of Ron Williams at ¶ 7 ("Alltel Declaration") (originally included as Attachment 13 to the Opposition of MetroPCS California, LLC to Legal Brief of North County Communications Corporation, File No. EB-06-MD-007, filed Oct. 15, 2007; attached hereto as Attachment 1).

<sup>31</sup> See Alltel Declaration at ¶ 9.

agreement with North County to be less than \$120.00 per annum.<sup>32</sup> Lastly, the Alltel declaration stated that the rate agreed to with North County was not a market-based rate in any respect, but merely reflected an economic decision by Alltel to avoid the costs of defending a lawsuit.<sup>33</sup> Thus, it is clear that the “agreement” with Alltel was not a voluntary arms-length agreement – and certainly did not reflect a true “market-based” rate for traffic termination.

Notably, most of the major wireless carriers in California – including Verizon Wireless, AT&T Mobility, T-Mobile, MetroPCS, Leap Wireless and United States Cellular – continue to refuse to pay North County’s unilaterally-imposed \$0.011 rate.<sup>34</sup> Standing alone, this fact demonstrates that North County has failed to establish \$0.011 as a reasonable, “market” rate for the termination of CMRS traffic.<sup>35</sup>

**C. North County’s Reliance on the California Public Utilities Commission’s UNE-P Proxy Rate Decision is Completely Misplaced**

North County asserts that its proposed reciprocal compensation rate is reasonable due to its relationship to the cost of call termination functionality as reflected by incumbent LEC access charges.<sup>36</sup> Specifically, North County claims that “[b]y D.06-05-040,<sup>37</sup> the Commission eliminated non-cost-based rates from the access charges assessed by the largest incumbent LECs. The resulting access rate for end office switching functionality provided by Verizon California

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at ¶¶ 9-10.

<sup>34</sup> *See North County v. CCT.*

<sup>35</sup> And North County is the only CLEC suing every telecommunications carrier to collect a rate this high while other CLECs are content in their bill-and-keep arrangements with CMRS carriers. This too makes it clear that North County’s “market-based” evidence falls flat.

<sup>36</sup> Application at 5.

<sup>37</sup> *See Application of Pacific Bell Telephone Company d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules under Sections 251 and 252 of the Telecommunications Act of 1996, A. 05-07-024, Decision Confirming the Assigned Administrative Law Judge’s Ruling Granting in Part the Motion for Enforcement of Decision 06-01-043 (May 26, 2006) (“D. 06-05-040”).*

Inc., which is the very same functionality provided by North County when terminating intraMTA CMRS traffic, is \$0.0155535.”<sup>38</sup>

The cited proceeding is inapposite for many reasons. First, it had nothing to do with the determination of appropriate CLEC/CMRS compensation rates. Rather, that proceeding was initiated to resolve disputed issues between AT&T and various CLECs resulting from the FCC’s Triennial Review Order (“TRO”)<sup>39</sup> and Triennial Review Remand Order (“TRRO”).<sup>40</sup> AT&T and the CLECs were charged by this Commission to negotiate amendments to their existing interconnection agreements to implement the TRRO and to bring unresolved issues to the state commission.<sup>41</sup> The proceeding North County seeks to invoke dealt with rates for UNE-P facilities that CLECs would no longer be permitted to purchase at TELRIC.

Finally, the Commission decision cited by North County relates to a dispute between ILECs and CLECs, not between a CLEC and a CMRS carrier. CLECs do not generally (if ever) provide UNE-P lines (or the equivalent resale elements that make up UNE-P) and CMRS carriers do not generally (if ever) buy UNE-P services. Moreover, assumed usage for UNE-P lines utilized by CLECs to provide traditional end-user services to their customers has no logical nexus to a CLEC which is offering chat-line services. In sum, North County’s attempt to rely on

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<sup>38</sup> Application at 5.

<sup>39</sup> See *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 18 FCC Rcd 16978 (2003).

<sup>40</sup> See *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005). As the Commission is aware, in those orders the FCC eliminated or restricted various unbundling obligations for particular unbundled network elements (UNEs).

<sup>41</sup> See *In re Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service, Rulemaking 95-04-043; Investigation 95-04-044*, Order Closing the Triennial Review Nine-Month Phase, Decision.05-07-043 (2005).

D.06-05-040 which established proxy rates for unconverted UNE-P lines should be disregarded entirely by this Commission.<sup>42</sup>

The truth is that when the Commission has set termination rates for LECs, they have been far below the rate North County seeks. For example, this Commission recently approved a series of cost-based termination rates in consolidated proceedings for 10 RLECs.<sup>43</sup> These RLEC reciprocal compensation rates, as determined in arbitration and approved by the Commission, were substantially lower than the rate proposed by North County, despite the fact that RLECs face significantly higher costs.<sup>44</sup> The fact that North County's proposed rate is so much higher than the cost-based RLEC rates, when its costs are no doubt significantly lower than an RLEC's costs, serves to further emphasize the unreasonable nature of the relief that North County seeks.

**D. Wireless Carriers' Bill-and-Keep Arrangements Reflect a More Accurate Picture of the Market for Reciprocal Compensation Agreements Between CMRS Carriers and CLECs**

If the Commission decides to consider existing arrangements in this proceeding, the many bill-and-keep arrangements wireless carriers have with diverse wireline carriers provide a more accurate representation of the market for CLEC/CMRS reciprocal compensation than the agreements referenced by North County. MetroPCS, for example, is in *de facto* bill-and-keep

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<sup>42</sup> North County also states that its "proposed rate is below the cost-based intrastate access rate that the Commission very recently approved in D.07-12-020 for application by CLECs when carrying out identical traffic termination functions for other types of intrastate traffic." Application at 2. The decision referenced by North County deals with a reduction in access charges, not reciprocal compensation charges. Moreover, North County provides no evidence to demonstrate its traffic termination functions at all, much less provide a comparison against carriers with regard to an intrastate access rate.

<sup>43</sup> *Petition by The Siskiyou Telephone Company (U 1017 C) for Arbitration of a Compensation Agreement with Cingular Wireless Pursuant to 47 C.F.R. § 20.11(e) and Related Matters*, D.09-01-019, 2009 Cal. PUC LEXIS 11 (2009).

<sup>44</sup> *See Petition by The Siskiyou Telephone Company (U 1017 C) for Arbitration of a Compensation Agreement with Cingular Wireless Pursuant to 47 C.F.R. § 20.11(e) and Related Matters*, A.06-02-28, *et seq.*, Final Arbitrator's Report, filed Jan. 14, 2008.

arrangements with over 70 carriers, including over 50 CLECs.<sup>45</sup> This widespread usage of *de facto* bill-and-keep agreements between MetroPCS, a CMRS carrier, and numerous CLECs provides further evidence in support of the Commission setting bill-and-keep as a default rate for the traffic at issue in this proceeding. MetroPCS believes its experience is not unique, and that many other wireless carriers also have numerous bill-and-keep billing arrangements.

### **III. IF THIS COMMISSION DECIDES TO ADOPT A RATE, IT MUST TAKE INTO ACCOUNT THE ARBITRAGE RISK PRESENTED BY THE NORTH COUNTY BUSINESS MODEL**

#### **A. This Commission Should Guard Against the Practice of Traffic Pumping**

Traffic pumping has become a serious problem in both the local terminating compensation and the interexchange access segments of the intercarrier compensation markets. Business models that generate high volumes of one-way, incoming traffic encourage carriers to engage in regulatory arbitrage. This is especially true when the terminating carrier has monopoly access to its end users. Unidirectional or grossly imbalanced traffic enables a carrier to collect monopoly rents without having to suffer the consequences of paying to terminate traffic on the originating carrier's system at the correspondingly high reciprocal rate.<sup>46</sup> As such, carriers who have one-way traffic business models have no market incentive to set rates at reasonable levels, and have every incentive to generate high "pumped up" traffic volumes by targeting customers with incoming traffic only (like ISPs, and chat-lines).

North County is in the business of hosting "chat-lines." In the North County/MetroPCS FCC proceeding, the FCC found that a chat-line provider offers a service that "combines multiple incoming calls that happen to arrive in a common time frame, but are otherwise unscheduled by

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<sup>45</sup> Unlike North County, MetroPCS is not fighting with all of the carriers with which it connects.

<sup>46</sup> Significantly, in the case of CLECs, the rates imposed for local terminating compensation can be largely unregulated. Obviously, this creates a powerful financial incentive for North County to engage in arbitrage by setting the compensation rates at an artificially high level.

the parties and may result in connecting callers who are unknown to one another.”<sup>47</sup> Chat-line service is distinguishable from traditional business dial-in conference calling in which a designated group of identifiable callers call a known dial-up conference number at a pre-arranged time for a specific business purpose and one of the callers has made arrangements for payment. Callers to a chat-line service generally are patched together on an anonymous basis with other random callers with which they may have no particular connection other than the fact that they happened to call the same chat-line number at the same time. Many chat-line calls originate and terminate in the “local” service area, or MTA, meaning that, if compensation is due, the calls are subject to the local terminating compensation regime rather than to the interexchange access regime. Notably, telephone numbers devoted to chat-line service receive large volumes of incoming calls, have long hold times, but are not often used to place outgoing calls. So, there is a significant traffic imbalance, particularly when a carrier specializes in servicing chat-lines to the exclusion of other traditional telephone services where inbound and outbound calls are likely to be more balanced. For example, in the FCC proceeding against MetroPCS, North County stipulated that either 100% or nearly 100% of the traffic flowing between North County and MetroPCS was in-bound to North County.

The local compensation arbitrage problem presented by this case is analogous in many ways to the traffic pumping problems that are plaguing the interexchange access market. Arbitrage schemes in which carriers set high interstate access termination rates and then engage in traffic pumping to collect excessive compensation have been the subject of a number of

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<sup>47</sup> *FCC Bureau Order* at ¶ 3, n. 7; *see also Total Telecom. Services, Inc. and Atlas Telephone Co., Inc. v. AT&T Corp.*, 16 FCC Rcd 5726 at ¶ 5 (2001). In some cases, including certain chat-lines served by North County, no fee is charged by the chat-line service provider to the persons who dial in. This is similar to the free conference-calling schemes used by rural ILECs and CLECs to generate excessive access revenues.

lawsuits in federal court.<sup>48</sup> Such traffic pumping schemes also are being reviewed by the FCC in a rulemaking to consider rule changes to discourage schemes by LECs which are designed to artificially inflate terminating access charge revenues.<sup>49</sup>

Significantly, the Iowa Utilities Board (“IUB”) recently recognized a traffic pumping problem in that state and concluded that the involved LECs would not be allowed to seek compensation for calls to conference lines and chat-lines according to a tariff. The IUB found that these conference and chat-line providers were more like business partners to the LECs, and not customers or end users under particular tariffs.<sup>50</sup> In the end, the IUB found that “the lack of timely, legitimate billing for tariffed services by the Respondents demonstrates that the [free calling service companies] did not actually subscribe to a billable tariffed service.”<sup>51</sup> The IUB, recognizing that such relationships were problematic, initiated a rule-making proceeding noting that:

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<sup>48</sup> See *The Farmers’ Telephone Company of Riceville, Iowa, Inc. and Superior Telephone Cooperative v. AT&T, Inc.*, Docket No. 1:07cv00859, United States District Court for the Southern District of New York, filed February 5, 2007; *AT&T Corp. v. Superior Telephone Cooperative, et. al.*, Docket No. 4:07-CV-00043, Complaint, United States District Court for the Southern District of Iowa, Central Division, filed January 29, 2007; *AT&T Corp. v. Reasnor Telephone Company, et. al.*, Docket No. 4:07-CV-00117, Complaint, United States District Court for the Southern District of Iowa, Central Division, filed March 22, 2007; *Qwest Communications Corp. v. Superior Telephone Cooperative, et. al.*, Docket No. FCU-07-2, Complaint, Request for Declaratory Relief and Request for Emergency Injunctive Relief, State of Iowa Department of Commerce Utilities Board, filed February 20, 2007; *Qwest Communications Corp. v. Superior Telephone Company, et. al.*, Docket No. 4:07-CV-00078, Complaint and Jury Demand, United States District Court for the Southern District of Iowa, Central Division, filed February 20, 2007; and *Sprint Communications Company L.P., v. Superior Telephone Cooperative, et. al.*, Complaint, United States District Court for the Southern District of Iowa, Central Division, filed May 7, 2007.

<sup>49</sup> See *In the Matter of Establishing Just and Reasonable Rates for Local Exchanges Carriers*, Notice of Proposed Rule Making, FCC 07-176 (rel. October 2, 2007) (“NPRM”), 72 Fed. Reg. 64179 (November 15, 2007).

<sup>50</sup> See *Qwest Communications Corp. v. Superior Telephone Cooperative*, Iowa Utilities Board, FCU 2007-0002, Final Order, Sept. 21, 2009, available at <https://efs.iowa.gov/efiling/groups/external/documents/docket/023026.pdf>.

<sup>51</sup> *Id.* at 21.

[T]raffic pumping presents a situation where LECs bill IXCs for a monopoly service (access) and use a portion of the money generated from the monopoly service to support a competitive service (conference, chat, international, and credit card calling) that generates the abnormally high volume of incoming calls, forcing the IXCs to use and pay for the monopoly service.<sup>52</sup>

Because the North County business model presents similar risks, the Commission must allow MetroPCS to fully explore the relationship between North County and its chat-line service provider customers if this proceeding continues.

**B. Multiple Considerations Support A Bill-and-Keep Rate on a Prospective Basis**

If the Commission elects to consider setting a rate for North County, the best solution is for the Commission to establish a bill-and-keep regime. North County is asking this Commission to determine a rate under federal rules. This being the case, the Commission must look to federal precedents. Significantly, bill-and-keep regimes have been utilized by the FCC in two prior analogous situations; (1) the *Wireless Access Charge Proceeding*<sup>53</sup> and the (2) *ISP Remand Order*.<sup>54</sup>

In the *Wireless Access Charge Proceeding*, Sprint PCS, a CMRS provider, began sending invoices to AT&T, an IXC, asking AT&T to compensate Sprint PCS for the costs of terminating interexchange traffic bound for Sprint PCS's CMRS customers. AT&T refused to pay. The FCC found there to be no rule that enabled Sprint PCS to unilaterally impose access charges on AT&T. The FCC also held that, while a CMRS provider is not prohibited from seeking to charge an IXC a wireless access fee for the use of its network, the IXC is not required to pay

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<sup>52</sup> *Id.* at 59.

<sup>53</sup> *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192 (2002) (the "*Wireless Access Charge Proceeding*").

<sup>54</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act, Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

such charges absent a voluntary contractual obligation to do so. In essence, the Commission adopted a bill-and-keep regime in the absence of a voluntary agreement between the two parties.

Here, as in the *Wireless Access Charge Proceeding*, North County's efforts to unilaterally impose a terminating reciprocal compensation rate on MetroPCS and other wireless carriers is akin to Sprint PCS' effort to unilaterally impose a terminating access rate on AT&T. While there is a rule requiring a CMRS provider to pay reasonable compensation to a LEC (47 C.F.R. § 20.11(b)), the determination as to what is reasonable should be left to voluntary negotiations among and between the parties since there is bargaining parity; the Commission should not intervene in the absence of a failure of one of the parties to negotiate in good faith.<sup>55</sup>

Bill-and-keep also was the end result endorsed by the FCC in the *ISP Remand Proceeding* as a means to discourage regulatory arbitrage. In the *ISP Remand Order*, the FCC stated “[b]ased upon the record before us, it appears that the most efficient recovery mechanism for ISP-bound traffic may be bill and keep.”<sup>56</sup>

[A] bill and keep regime for ISP-bound traffic may eliminate the [ ] incentives and concomitant opportunity for regulatory arbitrage by forcing carriers to look only to their ISP customers, rather than to other carriers, for cost recovery.<sup>57</sup>

An ever declining ISP default payment rate was established in the *ISP Remand Order* to effect a transition to bill-and-keep for CLECs which previously were collecting higher per minute rates. And, in cases where carriers were not exchanging traffic pursuant to interconnection agreements prior to the adoption of the *ISP Remand Order*, the FCC ruled that “carriers shall exchange ISP-

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<sup>55</sup> Notably, the FCC expressly rejected the North County charge that MetroPCS had failed to negotiate in good faith. That finding has not been appealed by North County and has become final and beyond review.

<sup>56</sup> *Id.* at ¶ 4.

<sup>57</sup> *Id.* at ¶ 74.

bound traffic on a bill-and-keep basis,”<sup>58</sup> noting that “[a]llowing carriers . . . to expand into new markets using the very intercarrier compensation mechanisms that have led to existing problems would exacerbate the market problems we seek to ameliorate.”<sup>59</sup>

There are ample reasons for this Commission to dictate a bill and keep arrangement between North County and CMRS carriers. North County’s decision to target a large number of chat-line service providers present the same risks of market distortions and regulatory arbitrage that were of concern to the FCC in the *ISP Remand Order*. A bill-and-keep default rate will remove the incentive for North County to inflate rates and pump traffic as a form of regulatory arbitrage. Rather, North County would have to look to its own customers to recoup its costs – or else negotiate a reasonable reciprocal compensation agreement with the other provider.

**C. If North County Rejects a Bill-and Keep Arrangement, it Must Conduct a Cost Study**

Setting North County’s rate at bill-and-keep would have the benefit of not disturbing the prevailing rate in the marketplace. As noted above, MetroPCS is in *de facto* bill-and-keep arrangements with numerous CLECs. If this Commission enables North County to collect compensation without a rigorous review of North County’s costs, these marketplace arrangements would be disturbed. Notably, the FCC takes costs into account in ascertaining termination rates. For example, as the FCC explained in the *ISP Remand Order*, the intercarrier compensation scheme is designed so that “the carrier whose customer initiated the call would pay the other carrier the *costs* of using its network.”<sup>60</sup> Similarly, the rate setting principles in Part 51 of the FCC rules that are intended to guide state action in arbitration proceedings conducted under Sections 251 and 252 of the Communications Act are intended to result in

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<sup>58</sup> *Id.* at ¶ 81.

<sup>59</sup> *Id.*

reasonable, cost-based rates.<sup>61</sup> The burden must be on North County to establish that its proposed rate is reasonable and cost-based because it is the moving party in this proceeding and there is only one-way traffic. However, North County has presented no evidence that its proposed rates are based on its costs in any respect.

North County appears to be asking this Commission to establish a generic, market-based default rate instead of a North County-specific rate that is based upon North County's particular business and cost structure. The Commission should reject this approach for many reasons. First, as noted above, North County utterly has failed to proffer any evidence indicating that \$0.011 is market-based in any respect. Second, rate setting agencies only should consider substituting a market-based rate for a cost-based rate established pursuant to a cost study when it is dealing with a competitive market. Competition tends to drive rates down to the carrier's marginal cost. This means that the market rate becomes a cost-based rate which justifies the regulator in adopting it. As noted above, however, market forces do not work properly when a carrier like North County only has incoming traffic and enjoys a termination monopoly. Third, as noted above, allowing North County to collect a high, non-carrier specific, non-cost based rate would open the floodgates of CLEC/CMRS proceedings and disrupt a segment of the compensation market that largely has settled at a bill-and-keep equilibrium.

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<sup>60</sup> *ISP Remand Order* at ¶ 20.

<sup>61</sup> 47 C.F.R. § 51.711; 47 C.F.R. § 51.711(a)(2).

**D. Any Going-Forward Rate in This Case Should be Capped at the Transition Default Rate Set in the ISP Remand Proceeding**

Even if the Commission orders North County to submit a cost study, under no circumstances should the going forward rate in this case be higher than the default transition rate of \$0.0007/MOU set in the *ISP Remand Order*.<sup>62</sup> In the *ISP Remand Order* proceeding, certain CLEC's claimed that the proposed \$0.0007 rate was below cost and non-compensatory. The FCC was unmoved by these arguments because the risk of arbitrage presented by one-way business models was so great. Specifically, the Commission expressed concern that the traditional reciprocal compensation system breaks down when a CLEC generates "large volumes of traffic that is virtually all one-way."<sup>63</sup> When traffic between carriers "flows exclusively in one direction," it creates "an opportunity for regulatory arbitrage" which leads to "uneconomic results."<sup>64</sup>

The FCC went so far as to indicate that a lower than cost rate would "eliminate the opportunity for regulatory arbitrage by forcing carriers to look only to their [own] customers, rather than to other carriers, for cost recovery."<sup>65</sup> The FCC further noted that "carriers incur costs in delivering traffic to ISPs, and it may be that in some instances those costs exceed the rate

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<sup>62</sup> Additionally, \$0.0007 is the rate that most ILECs charge to terminate traffic pursuant to the so-called "mirroring rule" adopted by the FCC. See *ISP Remand Order* at ¶ 92. Under the mirroring rule, the rate caps established under the *ISP Remand Order* only apply to ISP-bound traffic if an ILEC offers to exchange all section 251(b)(5) traffic at the same rate to all other carriers. MetroPCS believes that \$0.0007 is the current prevailing rate that governs the bulk of traffic that is terminated by carriers in the State of California. The prevalence of the \$0.0007 rate indicates that North County should receive no higher a rate than \$0.0007/MOU.

<sup>63</sup> *Id.* at ¶ 2.

<sup>64</sup> *Id.* at ¶¶ 20-21.

<sup>65</sup> *ISP Remand Order* at ¶ 74. When terminating carriers get paid for deliberately unbalanced traffic of this nature, the result is "market distortions" which "disconnect costs from end-user market decisions" and "distorts competition by subsidizing one type of service at the expense of others." *Id.* at para. 5. The Commission has concluded that "some carriers costs may be higher; some are probably lower" than the rate caps set forth in the *ISP Remand Order* for information services traffic. *Id.* at para. 7.

caps we adopt here.”<sup>66</sup> The FCC concluded, nonetheless, that “[t]o the extent a LEC’s costs of transporting and terminating this traffic exceed the applicable rate caps, however, it may recover those amounts from its end users.”<sup>67</sup> This Commission should reach the same result and make clear at the outset that under no circumstances will North County be allowed to collect more than \$0.0007/MOU.

#### **IV. THE COMMISSION MUST AFFIRMATIVELY DECLARE THAT ANY RATE IT SETS WILL ONLY APPLY PROSPECTIVELY**

North County presents its Application to the Commission with ongoing disputes with MetroPCS and several other carriers hanging in the background.<sup>68</sup> In the FCC’s *Order on Review*, which currently is on appeal before the D.C. Circuit, North County seeks payment in connection with traffic terminated many years in the past. North County’s federal and state litigation in California seeks payment in arrears as well. North County has failed to abandon these collateral actions despite the fact that it now has come to this Commission to ascertain an appropriate rate. Under this combination of circumstances, North County’s thinly-veiled intentions are obvious – if it can convince this Commission to set a rate for CMRS traffic, North County will seek to have this rate applied retroactively to the traffic for which it claims it is owed compensation by MetroPCS and others. The Commission should nip this gambit in the bud.

The state statute authorizing the Commission to adopt general rates states that it may adopt rates that are “thereafter observed and in force.”<sup>69</sup> Thus, by the plain language of the statute, and by that statute’s interpretation by the California Supreme Court, the Commission

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<sup>66</sup> *Id.* at ¶ 80.

<sup>67</sup> *Id.*

<sup>68</sup> In addition to its actions against MetroPCS, North County has also filed suit in state and federal courts in California, Arizona and Oregon.

<sup>69</sup> CAL. PUB. UTIL. CODE § 728.

may only adopt rates that apply to the future termination of CMRS traffic.<sup>70</sup> The ban on retroactive ratemaking has been reinforced in decisions by the California Supreme Court which has held that “fixing of a rate is prospective in its application” and that “the commission is given power to prescribe rates prospectively only.”<sup>71</sup> Indeed, the prohibition on retroactive application of rates is so severe, that “the commission [can] not, even on grounds of unreasonableness, require refunds of charges fixed by formal finding which had become final.”<sup>72</sup>

Given the strict nature of the ban on retroactive ratemaking, the Commission should preempt any future attempts by North County to apply any approved rate to CMRS traffic terminated in the past. Although any arguments North County might make for a right to past-payments would have little merit, North County should be preemptively foreclosed from taking this path. The California Supreme Court has “recognized that there may be policy arguments for giving power to the commission to order refunds retroactively where rates are found to be unreasonable or to prevent unjust enrichment,” but has said “that such arguments should be addressed to the Legislature, from whence the commission's authority derives, rather than to this court.”<sup>73</sup> North County has presented no evidence of unjust or unreasonable conduct that would support retroactive relief.<sup>74</sup> As an aid to any other decisionmaker that may be asked to grant

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<sup>70</sup> The California Supreme Court has found that “the Legislature has instructed the commission that after a hearing it is to make its order fixing rates to be in force *thereafter*” and that the Commission’s power “did not extend to rates previously in force.” *Pacific Tel. & Tel. Co. v. Public Utilities Com.*, 62 Cal. 2d 634, 650-51 (Cal. 1965).

<sup>71</sup> *Los Angeles v. Public Utilities Com.*, 7 Cal. 3d 331, 355-56 (Cal. 1972).

<sup>72</sup> *Id.* at 356.

<sup>73</sup> *Id.*

<sup>74</sup> The Enforcement Bureau of the FCC correctly noted that “a careful review of the record reveals no failure by MetroPCS to negotiate in good faith. The parties’ inability to reach either an interim or a final interconnection agreement stemmed not from any misconduct, but rather from an honest disagreement about what constitutes a reasonable termination rate under the specific facts and applicable law here.” *FCC Bureau Order* at ¶ 18, n. 64. The FCC thus made it clear that the failure to arrive at a negotiated rate did not violate any obligation that MetroPCS may have had to negotiate in good faith.

such relief, the Commission should make clear that any rate it sets is expressly intended to be prospective only.

## **V. SCOPING RECOMMENDATIONS**

### **A. Need for Hearing.**

MetroPCS submits that an evidentiary hearing will be necessary prior to the Commission acting on the North County Application.

### **B. Issues to Be Considered.**

- a. Whether this Commission has jurisdiction to determine a rate for the traffic at issue in this proceeding, and, if so, whether the Commission should exercise that jurisdiction based on the facts presented?
- b. Whether this Commission should hold this proceeding in abeyance pending MetroPCS' Appeal of the FCC's *Order on Review* to the United States Court of Appeals for the District of Columbia Circuit?
- c. Whether this Commission should hold the proceeding in abeyance pending the resolution of the FCC's traffic pumping proceeding?
- d. Whether this Commission should make a rate determination without any guidance from the FCC?
- e. Whether North County's one-way business model should affect its proposed rate for the termination of traffic at issue in this proceeding?
- f. What a reasonable rate should be for the termination of one-way traffic originated by CMRS carriers and terminated by a CLEC with a one-way traffic pumping business model?
- g. What is the business relationship between North County and the chat-line providers it serves and do these factors compel the conclusion that this is not a carrier/customer relationship that gives rise to compensation for call termination?
- h. Are North County's customers end-users to which terminating compensation would apply?
- i. What relationship North County's proposed rate has to its costs of providing termination service?

**C. Discovery.**

Discovery will be needed on all issues presented above.

**D. Proposed Schedule**

Application filed:	January 5, 2010
Protest(s) Filed Motion to Dismiss Filed Motion to Hold Application in Abeyance Filed	February 8, 2010
Responses to Motions	February 23, 2010
Replies to Responses	March 1, 2010
Initial PHC	March 15, 2010
Discovery Begins	March 16, 2010
Second PHC	June 14, 2010
Opening Testimony Served	September 13, 2010
Reply Testimony Served	October 13, 2010
Discovery Closes	November 1, 2010
Final PHC	November 8, 2010
Evidentiary Hearing	November 15-19, 2010
Opening Briefs Filed	December 6, 2010
Reply Briefs Filed	December 20, 2010
Proposed Decision (“PD”) Issued	January 2011
Comments on PD	February 2011
Reply Comments on PD	February 2011
Commission Decision	March 2011

**VI. INFORMATION REGARDING IDENTITIES OF PROTESTING PARTY  
(RULES 1.4 AND 2.6)**

In response to Commission Rules 1.4 and 2.6, the following party is protesting the North County Application (all communications and correspondence should be directed to counsel to MetroPCS, as set forth below):

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**VII. CONCLUSION**

For the foregoing reasons, the Commission should deny the North County Application and decline to set a rate for the one-way, chat-line traffic at issue in this proceeding. If the Commission decides to proceed, a going forward default bill-and-keep regime should be imposed. Alternatively, the Commission should compel North County to conduct a cost study and use it to set a reasonable, cost-based rate with an advance determination that under no circumstances will the approved rate be higher than \$0.0007/MOU when there is a traffic imbalance of more than 3:1 between the parties.

Respectfully submitted,

MetroPCS California, LLC



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February 8, 2010

## CERTIFICATE OF SERVICE

I, Andrew Morentz, hereby certify:

My business address is 875 15th Street, NW, Washington, DC 20005.

On this 8th day of February 2010, I caused a copy of the foregoing Protest to be served by U.S. First Class mail, postage prepaid, upon the following:

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♦ Service made by electronic mail.