Decision **PROPOSED DECISION OF ALJ SULLIVAN** (Mailed 5/4/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of North County Communications Corporation of California (U5631C) for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic Originated by CMRS Carriers.	Application 10-01-003 (Filed January 6, 2010)

DECISION DISMISSING APPLICATION WITHOUT PREJUDICE DUE TO PENDANCY OF FEDERAL PROCEEDINGS

1. Summary

This decision dismisses Application 10-01-003 without prejudice. This is the most appropriate course of action at this time because of two factors: 1) the decision of the Federal Communications Commission, that has led to this application, is currently under appeal before the United States Court of Appeal for the District of Columbia (D.C. Circuit), and 2) the Federal Communications Commission has not indicated that it would use the results of this Commission's deliberations in resolving the dispute between North County Communications Corporation of California and MetroPCS California, LLC.

Following a decision by the D.C. Circuit and a commitment by the Federal Communications Commission to the use of a rate determined reasonable by this Commission, North County Communications Corporation of California may reapply for resolution of this matter.

Since the Commission has decided to dismiss the application without prejudice at this time, the Commission will not address the merits of the application. Furthermore, the Commission will not address at this time the motions claiming that the Commission lacks jurisdiction because the dismissal of the application renders these arguments moot. Parties may, however, refile these motions for dismissal or renew their arguments if and when this matter comes before the Commission again.

2. Background

The instant application of North County Communications Corporation of California ("North County")[1] comes before this Commission after 3.5 years of proceedings before the Federal Communications Commission ("FCC").

Since the nature of this dispute is complex and shaped by federal telecommunications policies, a brief review is in order before detailing the complex procedural background that has brought us to this point.

In 2005, the FCC pre-empted state Commissions from pricing interconnection services between a wireless carrier and a local exchange carrier ("LEC") through tariffs, stating:

> Going forward [from February 17, 2005], however, we amend our rules to make clear our preference for contractual arrangements by prohibiting LECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff. In addition, we amend our rules to clarify that an incumbent LEC may request interconnection from a

[1] Application of North County Communications Corporation of California (U5631) for Approval of Default for Termination of Intrastate, IntraMTA Traffic Originated by CMRS [Commercial Mobile Radio Service, i.e. wireless service] Carriers ("Application").

> CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act.[2]

In the *T-Mobile Order,* the FCC set firm procedures for resolving disputes between wireless carriers and incumbent LECs concerning compensation for interconnection services:

> In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend section 20.11 of our rules to clarify that an **incumbent LEC** may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act. A CMRS provider receiving such a request must negotiate in good faith and must, if requested, submit to arbitration by the state commission. In recognition that the establishment of interconnection arrangements may take more than 160 days, we also establish interim compensation requirements under section 20.11 consistent with those already provided in section 51.715 of the Commission's rules. Interim compensation requirements are necessary for all the reasons the Commission articulated in Local Competition First Report and Order.[3]

Under the FCC's nomenclature, North County is not an incumbent LEC; rather, it is a non-incumbent or competitive local exchange company. As the emphasis in the above quotation makes clear, the FCC has only set a procedure for resolving interconnection disputes between wireless carriers and incumbent LECs. The FCC has not taken action concerning disputes between wireless

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[2] *T-Mobile et al, Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order (T-Mobile Order),* 20 FCC Rcd. 4855 (2005) at ¶9.

[3] *Id.* at ¶16, emphasis added, footnote omitted.

carriers and non-incumbent LECs, which is the very situation that confronts us in this proceeding.

In summary, the regulatory issues concerning the interconnection of wireless carriers and LECs are shaped by FCC action that has pre-empted the states from setting tariffs on interconnection services, but the FCC has not set a clear path for resolving interconnection disputes between wireless carriers and non-incumbent LECs like North County.

2.1. Procedural History in the Federal Jurisdiction

The facts leading to the dispute are fairly simple. As part of its business, North County terminates calls to "chat rooms," where callers can talk to one another. Some of this traffic comes from MetroPCS California, LLC ("MetroPCS"). North County desires compensation from MetroPCS for handling this traffic.

In a typical situation between a wireless carrier and a LEC, an interconnection agreement determines what is owed. In the situation before us, however, there is no interconnection agreement between MetroPCS and North County.

Despite the absence of an interconnection agreement, North County began billing MetroPCS for the termination of calls sometime in 2003. MetroPCS has not paid North County any money. MetroPCS claims that a "bill and keep" arrangement exists by default, whereby neither party pays the other for traffic

termination. Between August 2005 and June 2006, MetroPCS and North County attempted unsuccessfully to negotiate an interconnection agreement [4]

On August 24, 2006, North County filed a complaint against MetroPCS before the FCC pursuant to section 208 of the Communications Act of 1934.[5]

On March 30, 2009, the FCC's Enforcement Bureau released the *Bureau Merits Order* that, among other things, directed North County to come to this Commission for the determination of a reasonable rate as compensation for the termination of calls received from MetroPCS.

The *Bureau Merits Order*, however, did not commit the FCC to finding that MetroPCS had any liability to pay anything to North County. Specifically, the *Bureau Merits Order* states:

> We make no determinations at this time as to whether rule 20.11 imposes obligations to pay compensation in the absence of an agreement, and if so, on what terms, or alternatively, whether the obligation under rule 20.11 is a mandate that the parties must enter into an agreement to a reasonable rate of mutual compensation. In either case, we find that resolution of the rule 20.11 claim depends first on the establishment of a reasonable rate. We note, however, that due to the language of rule 20.11, claims regarding the non-payment of an established interconnection rate would not run afoul of our "collection action" prohibition.[6]

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[4] *North County Communications Corp. v. MetroPCS California, LLC,* Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bur. rel. Mar. 30, 2009) ("*Bureau Merits Order*") at ¶6.

[5] Second Amended Complaint, File No. EB-06-MD-007 (filed August 24, 2006) ("Complaint").

[6] *Bureau Merits Order*, ¶15, note 55.

North County filed an Application for Review of the *Bureau Merits Order* before the full FCC, which resulted in *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, 24 FCC Rcd 14036 (2009) ("*MetroPCS Review Order*"), which was issued by the FCC on November 19, 2009. This order left unchanged the referral of North County to this Commission for a determination of a "reasonable rate" for call termination. The FCC also placed the complaint of North County in abeyance "pending the California PUC's determination of a reasonable rate for North County's termination of MetroPCS's intrastate traffic."[7]

Although the *MetroPCS Review Order* did not address the issue of whether MetroPCS was liable to North County for any payment, it stated that:

> We note that the purpose of converting North County's claim back into a formal complaint would not be to review the propriety of the termination rate prescribed by the California PUC. Such a review, if any, of the California PUC's rate prescription would proceed according to whatever mechanism is provided by applicable California law. The purpose of any conversion of North County's claim back into a formal complaint would, instead, be limited to determining whether, despite the application of the termination rate prescribed by California law, MetroPCS has still failed to pay North County "reasonable compensation" under rule 20.11. Such a dispute could arise from a myriad of factors, including but not limited to a continuing disagreement between the parties about whether and to what extent (i) North County's recovery should be limited by the statute of limitations, or

[7] *Id.* at ¶30.

> (ii) North County is entitled to an award of prejudgment interest.[8]

The *MetroPCS Review Order* also makes clear that the FCC continues to maintain that it has jurisdiction in this policy area:

> Contrary to the parties' contention, the Enforcement Bureau did not hold that only a state commission has jurisdiction to determine what constitutes "reasonable compensation" under section 20.11 of the Commission's rules. *See, e.g.,* North County AFR at 1, 6, MetroPCS AFR at 3, 5. Thus, by affirming the *Bureau Merits Order*, we do not hold that the Commission lacks such jurisdiction. Rather, we merely affirm the Bureau's finding that the state commission, in this instance, is the more appropriate forum.[9]

Read in its entirety, the *MetroPCS Review Order* indicates that the FCC will not review any "reasonable rate" determination reached by this Commission, but leaves unchanged the *Bureau Merits Order's* reservation to the FCC of the right to determine whether MetroPCS has any liability at all towards North County for call termination, or whether the FCC will use the rate set by this Commission in any way.

On January 7, 2010, MetroPCS applied for judicial review of the *MetroPCS Review Order* before the D.C. Circuit.[10] Final Briefs are due July 1, 2010.[11]

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[8] *Id.* at ¶24.

[9] *Id.* at ¶12 note 46, footnotes omitted.

[10] MetroPCS Cal., LLC v. Federal Commc'ns Comm'n and United States of America, Case No. 10-1003, D.C. Cir., filed January 7, 2010 ("MetroPCS v. FCC"); North County Communications Corp. v. MetroPCS California, LLC, Order on Review, File No. EB-06-MD-008, 09-100 (2009) ("Order on Review").

[11] See Motion of MetroPCS California, LLC's (U3079C) Motion for Official Notice of Facts, March 24, 2010, Attachment 1.

2.2. Procedural Background before the California Commission

On January 6, 2010, the day before the filing of the appeal of the *MetroPCS Review Order* by MetroPCS in the D.C. Circuit, North County filed the instant application before this Commission.

In response, on February 8, 2010 MetroPCS filed a motion to dismiss North County's Application or, in the alternative, to hold the proceeding in abeyance.[12] In addition, MetroPCS also filed a protest of North County's Application.[13]

On February 8, 2010, AT&T,[14] Cricket Communications, Inc. (U3076C), CTIA - The Wireless Association®, Sprint Spectrum L.P. (as agent for Wireless Co, L.P. (U3062C) and Sprint Telephony PCS, L.P. (U3064C), and for Nextel of California, Inc. (U3066C)), T-Mobile West Corporation d/b/a T-Mobile, and Verizon Wireless[15] (collectively, the "Wireless Coalition") filed a motion to

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[12] Motion to Dismiss North County's Application or in the Alternative Motion to Hold the Proceeding in Abeyance ("MetroPCS Motion").

[13] Protest of North County Communications Corporation Application ("MetroPCS Protest").

[14] Here, AT&T collectively means New Cingular Wireless PCS, LLC (U3060C), Cagal Cellular Communications Corporation (U3021C), Santa Barbara Cellular Systems, Ltd. (U3015C), and Visalia Cellular Telephone Company (U3014C).

[15] The following entities are doing business as Verizon Wireless in California: Cellco Partnership (U3001C), California RSA No. 4 Limited Partnership (U3038C), Fresno MSA Limited Partnership (U3005C), GTE Mobilnet of California Limited Partnership (U3002C), GTE Mobilnet of Santa Barbara Limited Partnership (U3011C), Los Angeles SMSA Limited Partnership (U3003C), Modoc RSA Limited Partnership (U3032C), Sacramento Valley Limited Partnership (U3004C), and Verizon Wireless (VAW) LLC (U3029C).

dismiss the Application.[16] The Wireless Coalition also simultaneously filed a motion to hold the proceeding in abeyance[17]and a protest to the Application.[18]

On February 18, 2010, North County filed a reply to the protests.[19]

On February 23, North County filed a single response to all the motions.[20]

On March 5, 2010, MetroPCS[21] and the Wireless Coalition[22] each replied to the North County Response.

On March 24, 2010, MetroPCS filed a Motion for Official Notice of Facts requesting that the Commission take official notice of an Order of the United States Court of Appeals for the District of Columbia Circuit[23] setting forth a

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[16] Motion to Dismiss North County Communications Corp.'s Application ("Wireless Coalition's Motion to Dismiss").

[17] Motion to Hold North County Communication Corp.'s Application in Abeyance Pending Final Resolution of the Complaint Proceeding at the Federal Communications Commission ("Wireless Coalition's Motion to Hold in Abeyance").

[18] Protest to North County Communications Corp.'s Application ("Wireless Coalition's Protest").

[19] Reply to Protests.

[20] Response to Protestants' Motions to Dismiss and Hold Proceedings in Abeyance ("North County Response").

[21] Reply to the Response of North County Communications Corporation to Protestants' Motions to Dismiss and Hold Proceedings in Abeyance ("MetroPCS Reply to North County Response").

[22] The Wireless Coalition filed two replies to the North County Response. One reply was titled Reply to North County Communications Corp.'s Response to Motion to Hold Application in Abeyance Pending Final Resolution of the Complaint Proceeding at the Federal Communications Commission ("Wireless Reply to North County's Argument Against Abeyance"). The second reply was titled Reply to Response of North County Communications Corp. to Protestants' Motion to Dismiss ("Wireless Reply to North County Argument Against Dismissal").

[23] *MetroPCS California, LLC v FCC, et al.*, Order, No 10-1003, filed March 15, 2010 (D.C. Circuit).

briefing schedule for MetroPCS' Petition for Review in *MetroPCS California v. FCC*.[24]

3. Should the California Commission Proceed with the Application?

At this time, the Commission will only address the question of whether to proceed with consideration of the application of North County.

3.1. Positions of Parties on the Issue of Whether to Proceed with Consideration of the Application of North County at this Time

The motions of MetroPCS and the Wireless Coalition argue against proceeding with a consideration of the North County application at this time.

MetroPCS argues that if this Commission does not dismiss North County's Application, then:

> … it should hold the proceeding in abeyance pending (a) the resolution of MetroPCS' Petition for Review of the FCC decisions that currently is before the United States Court of Appeals for the District of Columbia (the "MetroPCS Petition for Review") and (b) FCC action in the traffic pumping proceeding.[25]

MetroPCS argues that "In other similar circumstances, the Commission has found it appropriate to delay the resolution of proceedings pending the outcome of parallel federal cases where such 'uncertainty' exists."[26] In particular,

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[24] *MetroPCS v. FCC*, MetroPCS Petition for Review, filed January 7, 2010.

[25] MetroPCS Motion at 25. The traffic pumping proceeding to which MetroPCS refers is *Establishing Just and Reasonable Rates for Local Exchange Carriers, Notice of Proposed Rulemaking*, FCC 07-176, ¶1 WC Docket No. 07-135, rel. October 2, 2007 ("*Traffic Pumping NPRM*").

[26] *Id*.

MetroPCS states that "[i]n its D.C. Circuit appeal, MetroPCS will assert that the FCC committed reversible error by abdicating its responsibility to set an appropriate rate for North County and will ask the Court to remand the proceeding to the FCC with instructions to set a rate."[27] MetroPCS also cites the FCC's *Traffic Pumping NPRM,* which addresses asymmetric traffic flows. MetroPCS notes that if its proposal in that proceeding is granted, "this Commission will have performed a useless act by devoting its time, attention and resources to setting a compensation rate for North County."[28]

The Wireless Coalition argues in its Motion to Hold in Abeyance that:

> Although the FCC's recent decision in that matter deferred the issue of what constitutes reasonable compensation to this Commission, it retained for itself any decisions regarding the key threshold liability issues which, from a prudential standpoint, should be resolved before any resources are expended to set a hypothetical rate.[29]

The Wireless Coalition, like MetroPCS, also cites the MetroPCS Petition for Review as a source of uncertainty.[30] The Wireless Coalition argues that:

> … in order to conserve the valuable resources of this Commission and all interested parties, while also preserving the rights of all parties, and to otherwise avoid potentially inconsistent rulings and jurisdictional conflicts, the Application should be held in abeyance until the federal case

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[27] *Id*.

[28] *Id*. at 26.

[29] Wireless Coalition's Motion to Hold in Abeyance at 1-2.

[30] Wireless Coalition's Motion to Hold in Abeyance at 3.

> is finally resolved, at which time the issues will either be ripe for consideration or rendered moot.[31]

The Wireless Coalition argues further that holding the proceeding in abeyance will not prejudice either party.

In its response to the motions, North County argues that "the Commission, as the FCC has indicated, is the proper forum to decide the issue of what is the just and reasonable rate for North County's services, during the entire time period in question."[32]

North County, although conceding that the FCC "may take action to preempt state judicial enforcement of North County's implied contract claims, or may attempt to over-ride the Commission's rate determination, or may take some other action that moots this proceeding," argues that "no intent on the part of the FCC to do so can be inferred…"[33]

North County also argues against holding the proceeding in abeyance. North County contends that awaiting "pending federal appeals would seriously undermine [the Commission's] ability to carry out its responsibilities." North County further contends that waiting until the FCC decides the liability issue is not necessary because "North County may bring, and in fact has pending, implied contract causes of action in state court…"[34]

In reply, MetroPCS argues:

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[31] *Id.*

[32] North County Response to Motions at 7.

[33] *Id.* at 8.

[34] *Id.* at 14.

> North County fails to acknowledge that setting a rate prior to the resolution of MetroPCS v. FCC, and any determination by the FCC or any court of any liability by the wireless carriers to North County for intercarrier compensation, would be a complete waste of the Commission's time. It simply makes no sense for this Commission to devote precious resources to setting a rate prior to any determination that there is an implied contract or other legal obligation to which a rate must be applied.[35]

In particular, MetroPCS argues that a decision adopting a rate at this time would be "merely advisory."[36] More specifically, MetroPCS contends that:

> The requisite case or controversy is lacking in this instance. North County has alleged no wrongdoing in its Petition, and has pointed to no interim or final decision in any of the many forums it has visited that would create liability to pay the rate that North County asks this Commission to set.[37]

MetroPCS also contends that the controversy is not ripe for resolution at this time. MetroPCS argues:

> North County also fails to mention a fundamental threshold that it must get over to set a rate – there must be ripeness. Ripeness, in this context, means that the rate must <u>apply</u> to something. Here, however, the rate will apply to nothing, since absent a voluntary agreement no charges for terminating traffic may be applied.[38]

Regarding the prosecution of this application, MetroPCS summarizes its position as follows:

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[35] MetroPCS Reply to North County Response at 2-3.

[36] *Id.* at 4.

[37] *Id.* at 5.

[38] *Id.* at 15-16, footnotes omitted, emphasis in original.

> Further, this petition is the classic situation where holding the proceeding in abeyance would serve the public interest. There is uncertainty as to the lawfulness of the FCC's abdication of authority and a reversal by the Court of Appeals will completely abrogate this proceeding. Accordingly, the Commission should act in the interests of judicial economy and act to hold the proceedings in abeyance, should it not choose to simply dismiss North County's Application outright.[39]

In its reply, the Wireless Coalition raises arguments similar to those of MetroPCS. The Wireless Coalition states:

> The pending petition for review of the FCC NCC Order before the D.C. Circuit, and the parties' future proceedings before the FCC, will not just potentially affect the matters at issue before the Commission in this matter; they will directly and unequivocally determine the viability of the Application itself.[40]

The Wireless Coalition also contends that "the Commission (and all parties) could easily spend countless resources trying to establish 'reasonable compensation' in these circumstances only to have the Application rendered moot."[41] The Wireless Coalition then continues:

> The Commission will certainly recall the heavy price such proceedings can impose on all parties involved, including the Commission, when a new FCC decision obliges the Commission to change course in the middle of costing proceedings and start over again.[42]

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[39] *Id.* at 22.

[40] Wireless Reply to North County's Argument Against Abeyance at 2.

[41] *Id.* at 7.

[42] *Id.* at 8.

To illustrate this point, the Wireless Coalition then provides a series of citations to the Commission's experience in the unbundled network element proceeding:

> See e.g., D.99-11-050 (which finally set unbundled network element ("UNE") prices for then Pacific Bell Telephone Company after the Commission's multi-year efforts that resulted in the establishment of a TSLRIC pricing standard for UNEs (D.96-08-021) were modified to comply with the FCC's later edict on TELRIC pricing for UNEs (D.98-02-106)).[43]

3.2. Discussion: Consideration of the Application of North County is not Appropriate at this Time

The question before the Commission is whether to consider at this time the application of North County. On this question, we conclude that it is not prudent to commit Commission resources to a consideration of this application at this time. Furthermore, since statutory deadlines limit the time that the Commission can take to process a proceeding, it is not a preferred Commission policy to hold a proceeding "in abeyance" while awaiting the actions of courts or other regulatory agencies. Instead, we will dismiss the application of North County without prejudice.

On the question before us – whether to proceed at this time – the arguments of MetroPCS and the Wireless Coalition are convincing. First, it makes no sense to proceed with this matter while it is before the D.C. Circuit. Initially, both parties sought resolution of this entire matter by the FCC, and MetroPCS is appealing the FCC's decision to the D.C. Circuit. The decision of that court may lead to a resolution of this matter, and will likely shed light on the many jurisdictional issues that the parties have raised in the FCC proceeding and

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[43] *Id*. at 8, footnote 26.

in this proceeding, as well. Thus, awaiting the court decision may either resolve this matter or provide guidance that facilitates action by this Commission.

Second, we take to heart the Wireless Coalition's reminder to this Commission of the years of effort that the Commission and telecommunications companies spent in the unbundling proceedings of the 1990's that were rendered irrelevant by subsequent judicial and FCC actions, as well as by technological and market developments. It is incontrovertible that this Commission's efforts to cost and price call services were both complex and costly for all involved. In light of this experience and the current limitations on resources arising from California's budgetary constraints, it would certainly be unwise to proceed with a consideration of this application without a clear commitment from the FCC to use the results of California's regulatory efforts and a determination that MetroPCS is liable for payment to North County.

For these reasons, it is not prudent to proceed with consideration of this application until the resolution of the appeal to the D.C. Circuit and a determination of liability by the FCC. Since holding this proceeding in abeyance is not the preferred administrative practice at this Commission, it is reasonable to dismiss this application without prejudice. Following action by the D.C. Circuit Courts and the FCC, North County may refile its application. At that time, parties may renew their motions concerning jurisdictional issues, which we have not considered here. Since we dismiss this application, A.10-01-003 is closed.

4. Categorization and Need for Hearing

In Resolution ALJ 176-3247 dated January 21, 2010, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. Ultimately, no hearings were held in this matter.

5. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on May 18, 2010 by North County, and reply comments were filed on June 1 by MetroPCS and the Wireless Coalition.

North County argues that this order "misapplies the MetroPCS decision" and "ignores the FCC's prior ruling in the First Order and Report on CMRS Traffic [11 FCC Rcd. 15499] where the FCC specifically found that reciprocal compensation obligations do apply to CMRS providers within the intra-MTA areas."[44] North County further argues that this Commission must follow the FCC's order or risk an enforcement action.

In reply, MetroPCS argues that the FCC has not ordered this Commission to do anything. MetroPCS notes that the FCC's *Order on Review* states that the Commission "*may* employ whatever non-tariff procedural mechanism it deems appropriate under state law."[45] Concerning the issue of reciprocal compensation, MetroPCS argues that "the FCC *expressly rejected* Section 251(b)(5) as a basis for finding compensation to North County here. The [*Bureau Merits Order*] found that 'as a CMRS provider, MetroPCS is not subject to the obligations arising directly from Section 251(b)(5) itself … [a]ccordingly, we deny North County's claim … that MetroPCS is violating Section 251(b)(5) of the Act.'"[46] MetroPCS

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[44] North County Comments at 1.

[45] MetroPCS Reply at 2. citing *Order on Review* ¶1.

[46] *Id.* at 2.

brings attention to the analysis offered in the decision that cites to the *FCC's Bureau Order* and its conclusion that the FCC makes "no determination …[concerning] obligations to pay compensation in the absence of an agreement."[47] Furthermore, MetroPCS argues that this Commission will not be subject to FCC enforcement action because the FCC "did not *order* this Commission to do anything" and because this case is "completely distinguishable" from the case cited by North County.[48]

In reply, the Wireless Coalition argues that "the FCC and the Ninth Circuit have held in cases involving [North County] that Section 251(b)(5) does not 'explicitly address the type of arrangement necessary to trigger the payment of reciprocal compensation … when carriers exchange traffic without making prior arrangements with each other.'"[49]

The Wireless Coalition also argues that the FCC has not ordered the Commission to set a rate, and that North County's rights are not affected by the dismissal without prejudice.

We note that North County has failed to address the substance of our analysis. As MetroPCS has pointed out in June 1 reply, the FCC has provided no indication as to whether it will use a Commission-determined cost in resolving this matter. Thus, we have not misread the FCC's order.

Second, the question of whether the exchange of this traffic creates obligations for reciprocal compensation is, as MetroPCS and the Wireless Coalition point out, still undecided. Reciprocal obligations are generally

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[47] *Id.* at 3.

[48] *Id.* at 4.

resolved pursuant to the terms of an interconnection agreement, which is lacking in this situation.

Finally, North County errs in asserting that this Commission's failure to act invites an enforcement action by the FCC. As MetroPCS and the Wireless Coalition point out, the FCC has not ordered this Commission to do anything. In addition, the facts of this case are readily distinguishable from the facts in the case cited by North County, which set forth explicit order that the Hawaii PUC subsequently ignored. There is no order given to this Commission. Moreover, under § 252 of the Telecommunications Act, which guides state action pertaining to interconnection issues, any failure of a state to carry out its obligations results in FCC preemption, not an enforcement proceeding against the state. We note, however, that this Commission stands ready to act on any interconnection agreement filed with us pursuant to § 252 of the Telecommunications Act.

6. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. *North County Communications Corp. v. MetroPCS California, LLC*, Order on Review, 24 FCC Rcd 14036 (2009) (the *MetroPCS Review Order*) directed North County Communications to seek a determination from this Commission of a "reasonable rate" for the termination services it provides to MetroPCS California.

2. In the *MetroPCS Review Order*, the Federal Communications Commission reserved the right to determine whether MetroPCS has any liability at all

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[49] Wireless Coalition Reply at 3.

towards North County for call termination, and whether the FCC will use the associated compensation rate set by this Commission in any way.

3. On January 7, 2010, MetroPCS of California applied for judicial review of the *MetroPCS Review Order* before the D.C. Circuit. Final briefs are due July 1, 2010.

4. Determining the cost of terminating telephone calls can be both complex and resource intensive.

Conclusions of Law

1. The Federal Communications Commission has made no determination as to whether MetroPCS California is liable to North County Communications Corp. for services that North County provides in terminating certain calls from MetroPCS customers.

2. Because of the uncertainty arising from the appeal of the *MetroPCS Review Order* to the D.C. Circuit Court, and because the Federal Communications Commission has made no determination concerning whether MetroPCS California is liable to North County Communications Corp. for the cost of terminating certain calls, it would be imprudent for the Commission to consider this application at this time.

3. It is reasonable to dismiss this application without prejudice.

4. Application 10-01-003 should be closed.

5. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 10-01-003 is dismissed without prejudice.
2. Application 10-01-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.