



Federal Communications Commission
Washington, D.C. 20554

July 14, 2005

Small Entity Compliance Guide

Reciprocal Compensation Arrangements Between Local Exchange Carriers and Commercial Mobile Radio Service Providers

DA 05-2002

CC Docket No. 01-92

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—to comply with the new rule/s adopted in the above-referenced FCC rulemaking docket/s. This Guide is not intended to replace the rule/s and, therefore, final authority rests solely with the rule/s. Although we have attempted to cover all parts of the rule/s that might be especially important to small entities, the coverage may not be exhaustive. As a result, in any civil or administrative action against a small entity for a violation of a rule or rules, the content of the Small Entity Compliance Guide may be considered only as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. This Guide may not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of this Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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Compliance Requirements

1. Objectives of the proceeding

The Commission has adopted rules applicable to non-access telecommunications traffic exchanged between wireless carriers and local exchange carriers, which ensure that intercarrier charges for the termination of non-access traffic may only be imposed pursuant to agreement between the carriers. The rules will also facilitate the ability of incumbent local exchange carriers to obtain such agreements if they desire them. *See Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket 01-92, Declaratory Ruling and Report and Order, FCC 05-42; 47 C.F.R. §§ 20.11(d), 20.11(e). The compliance requirements these rules impose are discussed below in sections 3 through 5 of the Compliance Guide.

2. Definitions

a. Local Exchange Carrier or “LEC”

The term “local exchange carrier” means any person that is engaged in the provision of telephone exchange service or exchange access. 47 U.S.C. § 153(26).

b. Incumbent Local Exchange Carrier or “ILEC”

The term “ILEC” means, with respect to a particular geographic area, the LEC that:

- (1) on February 8, 1996, provided telephone exchange service in such area;
- and**
- (2) on February 8, 1996, was a member of the National Exchange Carrier Association (NECA); **or** is a person or entity that, on or after February 8, 1996, became a successor or assign of a NECA member. 47 U.S.C. § 251(h)(1).

c. Commercial Mobile Radio Service provider or “CMRS provider”

The term “CMRS provider” means a provider of mobile service that is

- (1) provided for profit, interconnected with the public switched telephone network, and available to the public or a substantial portion of the public,
- or**
- (2) the functional equivalent of such a service. 47 C.F.R. § 20.3.

d. Non-access traffic

The term “non-access traffic” means any telecommunications traffic that is not subject to access charges. Such traffic includes telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area (MTA). 47 C.F.R. § 51.701(2). The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

3. Prohibition on imposing termination charges pursuant to tariff on or after April 29, 2005

Pursuant to new rules, LECs are prohibited from imposing charges pursuant to tariff on other carriers for the termination of non-access traffic unless the charges accrued prior to April 29, 2005. 47 C.F.R. § 20.11(d). For tariff charges that accrued prior to April 29, 2005, LECs are not prohibited from imposing them under federal telecommunications law. However, these charges may still be challenged under applicable state laws. For telecommunications subject to access charges, compensation may continue to be imposed pursuant to tariff.

4. ILEC right to obtain a compensation agreement through negotiation and arbitration

Under pre-existing rules and statutory provisions, CMRS providers could request interconnection with an ILEC, and require the ILEC to enter into a process of negotiation and, if necessary, arbitration to reach an agreement on interconnection and compensation terms. 47 U.S.C. §§ 251(c)(1), 252; 47 C.F.R. §§ 20.11, 51.301, 51.703. However, ILECs could not compel negotiation and arbitration with the CMRS provider. Under the new rule, ILECs may also request negotiation to establish an interconnection and compensation agreement. 47 C.F.R. § 20.11(e). If a CMRS provider receives such a request, both parties must negotiate the terms of interconnection and compensation in good faith in the same manner as if the request had been made by the CMRS provider under pre-existing rules. 47 C.F.R. § 51.301. Between the 135th and 160th day (inclusive) after the date on which the CMRS provider receives a request for interconnection, either party to the negotiation may seek arbitration by a state commission of any unresolved issues in the same manner and to the same extent as they would be entitled to do if the initial request for an agreement had been made by the CMRS provider. 47 U.S.C. § 252(b). In providing ILECs with the procedural right to request interconnection and initiate a negotiation and arbitration process, the Commission has not altered the substantive rights of either ILECs or CMRS providers to interconnection or intercarrier compensation. As a result, in arbitration, disputes over interconnection and intercarrier compensation terms should be resolved in the same fashion as they were prior to the new rule.

5. Interim Termination Charges During Negotiation and Arbitration

Once an ILEC has made a request to a CMRS provider for an interconnection and compensation agreement, the parties may impose intercarrier charges for the termination of non-access traffic at the same interim rates that would apply had the request been made by the CMRS provider, and under the same terms. 47 C.F.R. § 51.715. Such interim charges are subject to a “true-up” once final rates are established. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, Report and Order, 11 FCC Rcd 15499, 16031, para. 1067 (1996); 47 C.F.R. § 51.715(d). A “true-up” is an adjustment to past compensation that allows each carrier to receive the level of compensation it would have received during the interim period had the final rates been in effect during the interim arrangement. *Id.*

6. Web-links

- Declaratory Ruling and Report and Order, CC Docket 01-92, *Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-42A1.pdf
- 47 C.F.R. § 20.11
<http://wireless.fcc.gov/rules.html>