

Mountain Communications, Inc.
DC Court of Appeals Case 02-1255
Revised Facts
as of Feb 11, 2004

What's New –

On January 16, 2004, speaking of the FCC's order as a result of Mountain's complaint against Qwest, the court stated: "We rather easily conclude that the Commission's decision on this issue is arbitrary and capricious." The court concluded that "the Commission's order is vacated in part and the case is remanded."

In layman's terms – **WE WON!**

Not only did we win, but also this decision is a major multi-million \$\$ victory for all wireless carriers because, left as written, the FCC's Mountain order would have required ALL wireless carriers to pay for facilities or transport of local call traffic that originates outside the LEC's landline local exchange areas.

The court recognized and upheld the fact that we are all permitted a single point of interconnection (POI) with our LEC, and the LECs must provide interconnection facilities with other carriers at any technically feasible point within the LECs network, and it would violate 47 C.F.R § 51.703(b) to charge another carrier for traffic originating on the LECs network.

The court ruled, "the commission has, as Mountain has claimed, changed direction without explanation, indeed without even acknowledging the change" with respect to the FCC's earlier decision in the *TSR* case.

Unfortunately, the court did not fully resolve the issue of LEC charges for *transit traffic*. But, the opinion of the court was quite clear when speaking about the FCC's Mountain order. "It [the FCC] did not explain why it rejected Mountain's contention that the originating carrier should be charged for all the costs. In any event, by indicating that Mountain could charge the originating carrier, it suggested that Mountain was essentially correct in claiming that the originating carrier should bear *all* the transport costs.

Qwest still maintains that it should not charge the originating carrier for the delivery of paging calls originated by a customer of an entirely different network. Qwest wants to charge us the cost to deliver the '*transit traffic*,' but has never explained why it simply can't charge the originating carrier for these costs. The law of the land has always been to charge for the origination, pay for the termination. We all know that when we dial a 1+ number, it is to call a number that is outside our LEC's network or LCA, and that we expect a bill for dialing that number. Why is that? – Because the LEC must pay the terminating carrier to finish the call, and the transit LEC incurs cost to handle the call. The Court of Appeals opinion, while not directly ordering the FCC to revise their

unsupported policy on transit traffic sidestepped the issue by referring to oral arguments on November 18th, “Qwest’s counsel obviated any need for us to decide this issue by indication that Qwest would provide Mountain with the information necessary so that Mountain could charge the originating carrier for reimbursement.” It will be interesting to see exactly how Qwest fulfills this promise, because there does not appear to be a technically viable way for Qwest to furnish originating carrier information under these circumstances.

Well, much more could be said about *transit traffic*. I do not believe in it, I will never accept it and it is just another case of telephone company BS.

Help us get the word out to all small carriers and to the media. This decision is very important to everyone’s interconnect agreement.

Who Is Mountain Communications, Inc.?

Mountain Communications, Inc. (Mountain) is a small UHF PCP regional paging carrier located in Southern Colorado. In 1989 Mountain entered into paging, serving Pueblo, Walsenburg, Trinidad, La Junta and Colorado Springs. They made agreements with other small carriers to provide coverage on the same channel in northern and western Colorado, Wyoming, Montana and Utah.

What Happened?

As with any small paging business, Mountain bought a terminal, installed it in Pueblo, obtained a few Pueblo Type 1 DID lines and a handful of numbers from US West Communications (USWC). USWC treated them as a small business account, refusing to negotiate a carrier agreement, because Mountain was not an RCC. USWC began charging Mountain for the facilities and numbers to terminate the calls. As business grew, Mountain added additional Pueblo trunks, more numbers; then added trunks and numbers from Walsenburg, La Junta and Colorado Springs. Mountains’ single point of interconnection (POI) for the Southern Colorado LATA was in Pueblo. USWC began charging Mountain for the additional facilities to terminate, the mileage from the FX locations, and for the local numbers from each of the Local Calling Areas (LCA), all contained within the LATA.

What did Mountain do?

Mountain attempted to get USWC to change the billing and to negotiate a carrier agreement, but USWC only changed the account from small business to large business status. After the rewrite of the Communications Act in 1996, discussions with Mountains’ attorney and USWC resulted in Mountains’ refusal to pay the unlawful charges for numbers, FX mileage and facilities charges to terminate the USWC calls to Mountains’ terminal. With the charges in dispute, USWC again refused to negotiate a carrier agreement and attempted disconnection of the unpaid facilities and collection of the account.

The result?

Mountain Communications, Inc. filed a formal complaint against Qwest (formally USWC) with the FCC. Mountain requested that Qwest follow the law as directed in the Communications Act. Mountain argued that it is a CMRS carrier and it should be billed as all interconnecting carriers have been billed. On

January 31, 2002 the FCC denied Mountains' complaint and issued a MO&O that not only damaged Mountain, but all the other CMRS carriers. Mountain filed for a review, and the FCC denied the review on July 23, 2002 by issuing an Order on Review.

On the denying of the complaint and review, Qwest again demanded payment on the disputed account and began disconnection proceedings. Other paging carriers reported that their LEC's were using the 'Mountain Order' as the basis to re-negotiate their agreements, increasing the costs for services being billed, or demanding payment on their disputed charges.

What is going on now?

Mountain Communications, Inc. is still without an agreement for its Type 1 facilities, numbers and FX mileage charges. Mountain advised Qwest that it was going to appeal the FCC's ruling in the DC Court of Appeals, and filed the case on April 15, 2003. Other CMRS providers realized the importance of this action and filed as Interveners in the case. They are: Allied National Paging Association, ARCH Wireless, Inc., AT&T Wireless Services, Inc., Sprint Spectrum, L.P., T-Mobile USA, Inc., and Western Wireless Corporation. Mountain and the Wireless Interveners have filed all the briefs, now we are awaiting oral arguments scheduled for November 18, 2003.

For what are we fighting? Why is it so important?

Mountain believes the USWC, now Qwest, and other ILECs have improperly charged Mountain and many other wireless carriers for facilities, numbers and termination costs; that they should not charge wireless carriers a transit traffic charge, and that the FCC has violated the Administrative Procedure Act by changing the rules without following the correct procedures.

Facilities Charges:

- Before - Any interconnecting carrier could obtain a single Point of Interconnection (POI) in each LATA or MTA.
 - Could obtain local numbers in each incumbent LEC (ILEC) local calling area (LCA) where they provide service.
 - AND the ILEC could not charge the competitive carrier for the costs to deliver its customers traffic to the competitive carriers single Point of Interconnection, even if the calls are carried from one LCA to another LCA.
- After - An interconnecting carrier can still obtain a single POI if they forfeit their right to obtain local numbers in the LCA, thereby resulting in no facility charges.
 - Or an interconnection carrier can avoid facility charges and obtain local telephone numbers in a LCA if it forfeits its right to establish a single POI with the installation of a CMRS switch in each LCA.

Transit Traffic Charges:

- Before - Any carrier can directly or indirectly connect to another carrier to deliver a call. When directly connected, the originating carrier is responsible for delivering its traffic to the termination carriers switch serving the called party, and it is prohibited from charging the terminating carrier for the delivery of the traffic. The originating carrier charges their originating customer. They pay the terminating carrier to deliver the call. With indirect interconnection, the originating carrier chooses to use the transit services of a third party. Same rules apply, charge the originator, pay for termination.
- After - Qwest and other ILECs wish to charge a percentage of the unlawful facilities charges to cover the costs of delivery of transit traffic to the called party. In effect they are charging the originating party and the terminating party for delivery of the call.

FCC Order would reverse the existing regulatory regime:

The FCC's wholesale reversal of its rules in an adjudicatory proceeding violates the Administrative Procedures Act. The Mountain order is inconsistent with the FCC's Staff contemporaneous interpretation of the FCC interconnection rules. The Virginia Order and TSR Order are in direct contradiction with the Mountain Order.

For further information, call David Balsick, 719-240-1554. I need your help!