Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
WESTERN TELECOMMUNICATIONS ALLIANCE;
EASTERN RURAL TELECOM ASSOCIATION;
THE RURAL ALLIANCE; and
THE RURAL BROADBAND ALLIANCE

April 1, 2011

TABLE OF CONTENTS

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I. INTRODUCTION AND SUMMARY

The Commission's *NPRM*[1] in the above-captioned proceeding requests comment on proposed rules intended to curb arbitrage opportunities in the intercarrier compensation (ICC)

[1] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*NPRM*).

system and thereby reduce inefficiencies and wasteful use of resources. Specifically, the Commission seeks comment on whether switched traffic generated by or terminating to interconnected Voice over Internet Protocol (VoIP) services is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic; proposed revisions to the Commission's call signaling rules to reduce phantom traffic; and a proposal to amend the Commission's access charge rules to address access stimulation and help ensure rates remain just and reasonable as required by section 201(b) of the Communications Act of 1934, as amended (the Act).

In these comments, NECA, NTCA, OPASTCO, WTA, ERTA, the Rural Alliance, and the Rural Broadband Alliance (the Associations)[2] urge the Commission to:

- Confirm that under existing law, traffic originating from or terminating to interconnected VoIP services is subject to the same intercarrier compensation rates – including access charge obligations – as any other traffic originating from or terminating to the public switched telephone network (PSTN);

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[2] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. The Rural Alliance is a group that has been sponsored by over 300 rural telephone companies organized to advocate for effective Universal Service and Intercarrier Compensation reform that will benefit rural consumers and the companies that serve them. The Rural Broadband Alliance is a coalition of more than two hundred rural incumbent local exchange carriers formed to advance sensible, evidence-based policies for the deployment and adoption of broadband services for all of the nation's citizens including consumers and businesses residing in rural, insular and high cost-to-serve areas of the nation.

- Adopt rule revisions applying call signaling requirements, including mechanisms adequate to avoid fraud and ensure compliance with such requirements, to all forms of traffic originating or terminating on the PSTN and to all interconnected service providers, regardless of jurisdiction or technology;

- Adopt reasonable rules to address access rate development and allowed levels of earnings in access stimulation situations; and

- Make clear interconnecting carriers must pay applicable charges for traffic terminating on RLEC networks.

There is strong support for *immediate* action on the proposals identified in Section XV of the *NPRM*. Indeed, many would say such action is long overdue. The current, ongoing regulatory uncertainty surrounding these issues has led to increasing numbers of billing disputes, complaints, litigation, and inefficient use of scarce resources among carriers and regulatory bodies, all of which could be better devoted to deploying, upgrading and operating universal broadband networks. Moreover, such arbitrage has led to increasing demands on the Universal Service Fund (USF), as carriers who are unable to recover ICC revenues due for traffic traversing their networks may need to rely more heavily on USF for recovery of network costs, given the statutory mandate to keep end user rates reasonably comparable. By taking immediate action to address these issues, the Commission would not only stabilize the existing ICC system prior to its reform, but also reduce future pressure on the USF and inject a degree of stability into the market heretofore lacking. This stability would give the Commission and industry the time and resources to focus on the task of reforming the current USF and ICC systems for the long term.

II. THE COMMISSION MUST CONFIRM INTERCONNECTED VOIP TRAFFIC IS CURRENTLY SUBJECT TO THE SAME COMPENSATION RATES AS OTHER TRAFFIC TERMINATING ON THE PSTN.

Over the past ten years the Commission has sought comment in no less than four proceedings on suitable intercarrier compensation obligations for IP-enabled traffic.[3] Although the Commission has imposed numerous other telecommunications carrier-type obligations on interconnected VoIP providers,[4] to the point where it is unclear what rationale exists for distinguishing them from telecommunications carriers, it has steadfastly declined to address intercarrier compensation obligations associated with VoIP traffic terminating on the PSTN. The resulting ongoing regulatory uncertainty has generated uneconomic arbitrage and caused increasing numbers of billing disputes, complaints and litigation, and has hampered "both new entrants and established incumbents seeking to offer VoIP products and services."[5] Such uncertainty is unfortunate and easily avoidable, because regardless of how one classifies interconnected VoIP providers (as carriers or "enhanced service providers"), the traffic they receive and generate was *never* intended under Commission rules to be categorically exempt from ICC rules. Rather, as explained herein, the only question applicable under long-standing

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[3] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*2004 IP-Enabled NPRM*); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No. 03-109, *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Numbering Resource Optimization*, CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2009) (*2008 Further Notice*).

[4] *See infra* notes 17-19 and accompanying text.

[5] *NPRM* ¶ 611.

Commission precedent is *what* intercarrier compensation rate is due based upon the nature of the call and the services and facilities used.

The *NPRM* requests comment on various options for treatment of VoIP calls, including immediate adoption of a bill-and-keep regime for VoIP traffic, an immediate obligation to pay a VoIP-specific ICC rate, an obligation for VoIP traffic to pay ICC as part of a future glide path that gradually transitions away from the current ICC system, or the immediate obligation for VoIP traffic to pay existing ICC rates.[6]

The Associations believe it is long past time for the Commission to confirm that under existing law, interconnected VoIP traffic is currently subject to the same intercarrier compensation rules – including the same access charge obligations – as any other voice traffic originating on or terminating to the PSTN. All other alternatives would merely generate additional arbitrage activity and would be entirely inconsistent with the true scope of the so-called "Enhanced Service Provider (ESP) exemption" that providers have used for years to dodge charges legally due.

Indeed, if the Commission were to find now that VoIP traffic should be subject to a very low or "zero" rate, it might as well cease all further ICC reform activity – at that point, the Commission would have effectively ceded the ICC reform field to the arbitrageurs. Specifically, in the wake of any such ruling, nearly every minute of traffic on the PSTN would undoubtedly be asserted as "VoIP," and thus claimed as subject to the lower (or zeroed-out) rates. Even if such

[6] *Id.* ¶¶ 615-618. The Commission also seeks comment on various alternative approaches, including AT&T's suggestion allowing terminating interstate and intrastate access charges to be assessed on both PSTN-to-IP and IP-to-PSTN traffic where a LEC's intrastate terminating per-minute access rates are equal to or less than its interstate terminating per minute access rates. *See, e.g., id.* ¶ 619, *citing* Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption," WC Docket No. 08-152 (filed July 17, 2008) at 5 (*AT&T ESP Petition*).

claims were proven to be untrue, the resulting turmoil, disputes, delay, and litigation from such claims would only tie the ICC system up in greater knots than it already is today.[7] Such "reform" would also accelerate the already painful amount of pressure on the USF, as carriers would need to look to the USF for greater cost recovery given the statute's mandate for reasonable comparability in services and rates. The only sensible path forward – one that is consistent with law, based upon sound policy, and ensures that "reform" does not spiral out of the Commission's control – is to subject VoIP traffic to the same intercarrier compensation rules as all other traffic, pending a more comprehensive reform effort *that is under the Commission's – and not the arbitrageurs' – control*.

A. Continuing Regulatory Uncertainty over the Treatment of Interconnected VoIP Threatens to Undermine Universal Service.

Regulatory uncertainty surrounding the intercarrier compensation obligations of providers terminating millions of VoIP calls on the PSTN has generated an ever-increasing number of disputes in which VoIP service providers refuse to pay legally-billed access charges, ignore multiple requests for payment, unilaterally decide to pay below-tariff rates on a "take it or leave it" basis, or pay nothing at all.[8] Even large carriers, including Verizon, have started

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[7] Ambiguities in classification and routing obligations, together with the complications associated with enforcing such obligations, appear to be leading some carriers and "least cost routers" to ignore fundamental transmission and traffic exchange obligations, with the result that some calls go uncompleted. *See, e.g.,* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed Mar. 11, 2011). This provides yet another indication of what happens when industry participants perceive regulatory ambiguity, or reluctance on the part of regulators to enforce clear rules. Thus, Commission action confirming the obligation of all providers to pay applicable ICC rates, regardless of technology used to originate a call, may well be needed to maintain network reliability as well.

[8] *E.g.,* Letter from Tamar E, Finn, on behalf of Paetec and Pac-West, to Marlene H. Dortch, FCC, WC Docket Nos. 01-92, 07-135 (filed Jan. 27, 2011); Complaint, *Bright House Networks Information Services v. Verizon Florida, LLC and MCI Communications Services, Inc.*, No. 110056 (Fl. PSC. Feb. 22, 2011) Bright House Networks Information Services filed a complaint Feb. 22, 2011 in Florida alleging Verizon failed to pay intrastate access

refusing to pay legally-imposed tariffed access charges, claiming (often on the basis of two wrongfully-decided lower court opinions[9]) that IP-originated or IP-terminated traffic is not subject to switched access tariffs or related charges.[10]

Small carriers have little ability to engage in ongoing legal battles with much larger service providers over access billing disputes. In cases where local exchange carriers (LECs) have filed complaints with state regulatory commissions or in federal courts, the results have been inconsistent. While some courts have been led to absolve VoIP providers of any obligation to pay tariffed charges for interexchange traffic terminated on the PSTN,[11] other decision makers have reached the opposite, common-sense result that IP-originated traffic terminating on the PSTN uses the network in the same ways as traffic generated using any other technology, and

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charges.); *See also* Letter from Joe Douglas, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (filed May 15, 2009); Letter from Colin Sandy, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (filed July 9, 2009); CommPartners' Voluntary Petitions for Relief Under Chapter 11 of the Bankruptcy Code (Bankr. D. Nev. June 13, 2010); Complaint, *PAETEC v. Global NAPs*, No. 09-01504 (D. DC. Aug. 10, 2009).

[9] *E.g.*, Letter from Donna Donahue, Verizon, to Janet Brammer, Siegecom (Feb. 16, 2011) (*Verizon Re-Rating ICC Charges Letter*), *citing PAETEC v. CommPartners, LLC*, No. 08-0397, slip. op. (D.D.C. Feb. 18, 2010) (district court ruled VoIP traffic undergoes a net protocol conversion from IP to TDM and is an information service, and access tariffs do not apply to information services.); *Manhattan Telecommunications v. Global NAPs*, Findings of Fact and Conclusions of Law, No. 08-cv-3829, 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010) (district court determined switched access charges did not apply to VoIP traffic, but LEC was entitled to receive reasonable value under the equitable theory of unjust enrichment.)

[10] Verizon has informed LECs involved in these disputes it has "re-rated" ICC charges to $0.0007 per minute of use, and suggests it is willing to negotiate reciprocal compensation agreements to cover compensation for IP-enabled traffic going forward. *Verizon Re-Rating ICC Charges Letter*. *See also*, Letter from John Kuykendall, on behalf of Knology, to Marlene Dortch, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 (filed Mar. 9, 2011).

[11] *E.g, Southwestern Bell, et al. v. Vartec, et al.*, No. 4:04-CV-1303, Memorandum & Order (E.D.M.O. Aug. 23, 2005) (dismissed complaint for non-payment of access charges).

should therefore pay the same ICC rates.[12] Other courts and agencies faced with the issue seem to have thrown up their hands in frustration, however, and have stayed cases pending action by the Commission or have otherwise declined to take action.[13]

Even as it considers comprehensive reform, the Commission should take control of its reform efforts and regulatory structures, rather than permitting private parties to dictate their unilateral interpretations and implementation of what ICC reform should look like. The Commission must act immediately to resolve ICC-related issues associated with interconnected VoIP traffic. Otherwise, complaints and cases will continue to multiply, carriers of all kinds will suffer increasingly greater revenue losses, rates for access services will continue to increase (encouraging even more arbitrage), and future demands on the USF will explode – with the effects being to hinder fair competition and unfairly burden customers who continue to pay legally-billed charges (at higher rates) and bear the ultimate costs of USF contributions.

B. The Commission Should Resolve these Problems by Confirming Existing ICC Rates Currently Apply to VoIP in the Same Manner as Other Traffic.

In commencing its IP-Enabled Services proceeding in 2004, the Commission stated:

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[12] *E.g.*, *Central Telephone Co. of Virginia v. Sprint*, No. 3:09cv720, Memorandum Opinion (E.D.V.A. Mar. 2, 2011) (finding Sprint in violation of its ICA with Century Link after determining "voice calls that are transmitted in whole or in part, via the public Internet or a private IP network shall be compensated in the same manner as voice traffic."); *Sprint v. Iowa Telecommunications Services*, No. FCU-2010-0001, Order Denying Motion to Stop Payment Deadline (Iowa Util. Bd Mar. 4, 2011) (Iowa Utilities Board ruled Sprint must pay all access charges due by March 6, 2011; had previously found Sprint's disputed *telephone* traffic is subject to access charges); *Palmerton Telephone Co. v. Global NAPs*, Docket C-2009-2093336, Opinion and Order (PA PUC Mar. 16, 2010) (PUC Chairman overturned initial ruling that interconnected VoIP was information service to require GNAPs to pay access charges since it "is a telecommunications carrier providing telecommunications services"); *Global NAPS, Inc. v. PUC of the State of California*, 624 F.3d 1225 (9th Cir. 2010) (affirming order for GNAPS to pay over one million dollars in traffic termination charges to Cox; GNAPS had breached the carriers' ICA).

[13] *E.g., 3Rivers, et al. v. CommPartners*, No. 08-68-M-DWM, Order (D. Mont. June 12, 2009).

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[14]

Interconnected VoIP calls placed to customers on the PSTN arrive on the PSTN in the same manner and use the same facilities as traditional voice calls. Likewise, when a call is placed to an interconnected VoIP customer by a PSTN telephone customer, there is no difference in terms of how the call is routed to the VoIP customer over the PSTN. In fact, in both cases, the VoIP provider even assigns a telephone number to the VoIP customer, thereby confirming that it has procured a connection to (and an effective presence) on the PSTN regardless of what technology the VoIP provider might then use to route the call on its own network (if one exists at all) to and from its customer. Given the call routing on the PSTN is the same and that the VoIP customer has sought and obtained a presence on and connection to the PSTN, there should be little doubt regarding application of the same ICC obligations for such traffic. Yet VoIP providers continue to advance various theories as to why their traffic is "special." None are persuasive.

For example, VoIP providers often claim their services are entitled to differing treatment simply because their calls originate using IP technology.[15] Since, from the PSTN perspective, such calls originate or terminate and connect to other stations on the PSTN in exactly the same manner as non-IP calls, there is no logical basis for exempting them from applicable intercarrier compensation mechanisms simply on the basis that different technology is used by the VoIP

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[14] *2004 IP-Enabled NPRM*¸ 19 FCC Rcd 4863 (2004), ¶ 61.

[15] *See, e.g.,* Complaint at 5-6, *Calaveras Telephone Company, et al. v, CommPartners, LLC*, No. 10-01-016 (Cal. PUC Jan. 15, 2010); Request for Expedited Declaratory Ruling, Appendix B, *Blue Ridge Telephone Company, et al. v. Global NAPs, Inc.*, No. 21905-U (GA PSC Nov. 16, 2005).

provider to route the call to or from the customer. There are no such exemptions for calls that are carried over different transport mediums such as copper, fiber, coaxial cable or microwave. Neither are there exemptions for traffic routed by different switch technology types such as analog, digital, or even softswitch. There is similarly no justification for an exemption based on IP transmission technology.

More elaborately, some VoIP providers claim that IP technology enables them to provide services with new and different capabilities, involving a mix of traditional voice communications and interaction with stored information on the Internet. They argue these (largely potential) uses of IP technology require different regulatory treatment for interconnected VoIP services.[16] In considering whether to impose various carrier-type obligations on VoIP providers, however, the Commission has consistently determined that interconnected VoIP services should be subject to the same public interest obligations as traditional providers.[17] Indeed, the Commission has gone

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[16] *E.g.*, Feature Group IP Petition for Forbearance, WC Docket No. 07-256 (filed Oct. 23, 2007) at 46.

[17] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005), ¶ 42; *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Portability*, CC Docket No. 95-116, *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues Final Regulatory Flexibility Analysis Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order, Declaratory Ruling, Order on Remand and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007), ¶ 28; *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006), ¶¶ 36, 53, 55 (*Interim USF Order*); *See IP-Enabled Services*, WC Docket No. 04-36, *E911 Requirements for*

so far as to find interconnected VoIP services to be virtually indistinguishable from traditional telephone services from a consumer's perspective.[18] Insofar as interconnected VoIP service providers offer services that directly compete with traditional circuit-switched telephony services and are "like" such services from the end-user's perspective, there appears to be no rational basis for the Commission to treat them differently for regulatory purposes.[19]

Similarly, the fact interconnected VoIP calls may originate in one format (IP) and terminate in another format does not provide any basis for claiming such services qualify as information services under the "protocol conversion" rule.[20] In fact, all modern

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IP-Enabled Service Providers, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005), Statement of Kevin J. Martin.

[18] *E.g., IP Enabled Services*, WC Docket No. 04-36, Report & Order, 24 FCC Rcd 6039 (2009), ¶ 12 ("interconnected VoIP service is functionally indistinguishable from traditional telephone service."); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket No. 96-115)*, IP-Enabled Services*, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007), ¶ 56 ("the services of a wireline carrier, a wireless carrier, or an interconnected VoIP provider, . . . from the perspective of a customer making an ordinary telephone call, are virtually indistinguishable."); *See also, Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007), ¶ 18 ("interconnected VoIP providers offer a service that is almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers.").

[19] The Commission has held that the question of whether one service is "like" another service for regulatory purposes significantly depends on customer perception. *See, e.g., American Tel. & Tel. Co. (DDS),* Final Decision & Order, 62 FCC 2d 774 (1977), ¶ 75a. On appeal, the court of appeals affirmed, rejecting the argument that differences in technology should control. *American Broadcasting Cos. v. FCC*, 663 F.2d 133, 139, n.9 (D.C. Cir. 1980). A finding that two services are "like" one another based on customer perception would appear to preclude arguments that one is entitled to differential regulatory treatment. *See, e.g., The Offshore Tel. Co. v. South Central Bell*, Memorandum Opinion & Order, 2 FCC Rcd 4546 (1987), ¶ 32, *citing American Trucking Associations, Inc. v. FCC,* 377 F.2d 121, 130 (D.C. Cir. 1966), *cert. denied* 386 U.S. 943 (1967) ("The statutory prohibition against unjust discrimination extends to different treatment for like services under like circumstances … .").

[20] *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); And Policy and Rules Concerning Rates for Competitive Common Phase II Carrier*

telecommunications services require various forms of protocol conversions to transport voice calls across and between networks (e.g., wireless to wireline, analog to digital), yet such services are still deemed telecommunications services.[21]

Rather than conclude interconnected VoIP services should be classified as telecommunications services under the Act, the Commission asks whether it might address intercarrier compensation obligations simply by clarifying that the ESP exemption does not apply to interconnected VoIP traffic.[22] Although the Associations believe in the first instance that there are substantial grounds as described above to find that interconnected VoIP services are tantamount in all material respects to, and should be classified as, telecommunications services, there is substantial justification as discussed above for the Commission to confirm on other grounds that interconnected VoIP traffic is subject to applicable intercarrier compensation obligations, including access charges, without addressing either the classification of VoIP services or the scope of the ESP exemption.

If, however, the Commission declines to take either of these reasonable and well-supported steps, it should at a minimum re-affirm the very narrow scope of the ESP exemption – and, in particular, confirm the ESP exemption does not offer absolute immunity from access charges and other intercarrier compensation obligations.

Service and Facilities Authorizations Thereof Communications Protocols under Sections 64.702 of the Commission's Rules and Regulations, CC Docket No. 85–229, Report and Order, 2 FCC Rcd 3072 (1987), ¶ 70, aff'd, *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, Order on Reconsideration, 12 FCC Rcd 2297 (1997), ¶ 2.

[21] Interconnected VoIP services, such as those provided by cable TV or "over the top" VoIP providers, are primarily (if not solely) configured to permit end users to place ordinary voice calls from one telephone instrument to another, and generally employ the same consumer premises equipment (CPE) as traditional circuit-switched services.

[22] *NPRM* ¶ 618.

By way of background, the Commission created the ESP exemption in the early 1980's to allow providers of computer-based information services to obtain local business dial-up access connections without paying per-minute access charges.[23] As such, the exemption was intended to apply *only* to calls placed by customers of the ESP for access to information services, not to voice telephone services that originate in IP format and terminate on the PSTN.[24] By clarifying the ESP exemption does not apply to such traffic, it may therefore be possible for the Commission to resolve the access charge question without needing to address whether VoIP providers should be classified as telecommunications carriers.

C. Other Approaches Singling Out VoIP for Discriminatory Treatment Will Only Encourage Further Uneconomic Arbitrage.

The *NPRM* discusses the importance of employing a "technology neutral" approach to reforming current universal service mechanisms. The same principle should apply in determining ICC obligations for interconnected VoIP providers.[25] Providers of interconnected VoIP services (and the carriers serving them) should not enjoy preferential treatment simply because their voice traffic originates using a different technology. For example, a mandatory bill and keep regime for VoIP traffic would clearly be discriminatory – it would treat certain traffic

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[23] *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Memorandum Opinion and Reconsideration Order, 97 FCC 2d 682 (1983), ¶ 83, *NARUC v. FCC*, 737 F.2d 1095, 1136-1137 (D.C. Cir. 1984).

[24] As the Ninth Circuit Court of Appeals found, claims the ESP exemption applies to VoIP traffic "misread[] applicable law. . . . the only relevant exemption from the access charge regime under Federal law is for ISP-bound traffic rather than ISP-originated traffic." *See Cox California Telecom*, LLC *v. GNAPS*, Case 06-04-026, Opinion Granting Complainant's Motion for Summary Judgment, at 5 (Cal. PUC Jan. 11, 2007), aff'd, sub. nom *Global NAPS, Inc. v. PUC of the State of California*, 624 F.3d 1225 (9th Cir. 2010). *See also Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, 12 FCC Rcd 15982 (1997), ¶ 343.

[25] *E.g., NPRM* ¶¶ 93, 114, 160, 620.

differently based merely upon whether the call originated on a specific kind of technological platform, even though the call uses the PSTN in the same manner as any other call.[26] The type of access or transport facility by which a call accesses the PSTN does not currently determine the access charges for that call, nor should it according to Commission policies favoring technological neutrality.

In fact, all of the various "alternative" approaches described in the *NPRM* for singling out VoIP traffic (establishment of VoIP-specific rates, assessing VoIP traffic at ICC rates equal to interstate access charges, reciprocal compensation charges, or some other fixed rate, such as $0.0007) [27] rest on a policy of technological discrimination, and will only prolong existing uneconomic arbitrage problems and encourage new forms of economic gamesmanship. Since there is no way for terminating carriers to distinguish "IP-originated" traffic from other types of traffic terminating on their networks, rules allowing special rates for VoIP traffic will encourage providers to assert virtually all their traffic qualifies, which in turn will multiply the number of billing disputes, effectively rendering moot any further efforts by the Commission to implement an organized and comprehensive set of ICC reforms.

In short, treating a minute of VoIP traffic differently from any other minute of traffic traversing the PSTN will take control of ICC reform entirely out of the Commission's hands and leave it instead at the whim of providers who will self-declare traffic as VoIP and dare others to prove the contrary. The Commission should avoid such a result and retain control of its reform

[26] Mandatory bill-and-keep raises significant legal issues as well. For example, section 252(d)(2)(B)(ii) of the 1996 Act prohibits the Commission from engaging in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls. This would necessarily include a rate of zero. A prescribed rate of zero also would appear to constitute an unlawful "taking" of property.

[27] *NPRM* ¶ 616.

initiatives by moving toward unification of rates for *all* traffic – including VoIP traffic – at a pace to be determined by policymakers rather than arbitrageurs.[28]

Moving VoIP traffic to "bill-and-keep" arrangements raises additional concerns. Voluntary bill-and-keep arrangements may be suitable for networks that exchange approximately equal amounts of traffic.[29] When traffic is not "in-balance," a rule requiring carriers to provide free termination services to VoIP providers would give these providers a larger competitive advantage over other types of carriers and providers who are required to pay ICC charges, while also forcing those carriers to subsidize the costs VoIP providers impose on the network. Considering the Commission's interest in "market-driven" solutions, mandating a price of zero for a service hardly seems consistent.[30] Mandatory bill-and-keep arrangements also create perverse incentives for carriers to originate additional traffic, and may also encourage terminating providers to seek new ways to avoid such calls.[31]

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[28] Of course, if the Commission's comprehensive ICC reform measures provide as an initial measure for *all* access traffic to be subject to unified rates that are equal to, say, applicable interstate access rates, it would be appropriate to subject VoIP traffic to the applicable interstate access rates as well. *See, e.g.*, Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attachment 2 (filed July 17, 2008) (proposing the Commission adopt an interim regime under which terminating LECs charge interstate access and reciprocal compensation for VoIP traffic, as well as intrastate access for such traffic if those charges are at or below the level of the carrier's interstate access rates).

[29] *E.g.*, NECA Reply Comments, CC Docket No. 01-92 (filed Nov. 1, 2002) at 2-3; NECA Comments, CC Docket No. 01-92 (filed Aug. 21, 2011) at 7-8; NECA Reply Comment, CC Docket No. 01-92 (filed Nov. 5, 2001) at 13.

[30] To the extent the FCC believes there to be implicit subsidies in current access rates, these should be addressed by a robust mechanism to migrate those into explicit subsidies and have the prices reflect the underlying costs, not by haphazardly prescribing zero or below-cost rates. There is clearly *some* cost for origination or termination – the Commission cannot reasonably mandate a zero rate for particular forms of traffic with no regard whatsoever for the costs incurred.

[31] AT&T has suggested, for example, that carriers forced to terminate calls for free (or at uneconomically-low rates) may reduce capacity on incoming trunks, thereby increasing the

Prescribing zero or uneconomically low rates for switched services could also artificially extend demand for maintaining switched services (and could require added investments), while adversely affecting demand for flat-rated, dedicated transport services, contrary to the Commission's goal of promoting conversions to IP networks. If switched transport is "free" or nearly-free, why buy dedicated transport on the same route? For a Commission interested in market-driven policies, such a measure smacks of market distortion. And application of existing ICC rules on a prospective-only basis (as part of a future "glide path") ignores the fact these providers have utilized exchange carrier networks to terminate VoIP calls for many years, and are required by law to pay for such access at the tariffed rate.

Rather than dictate market terms and create new forms of uneconomic arbitrage, the Commission should simply and promptly confirm that VoIP traffic terminating on the PSTN is subject to the same ICC obligations as any other form of traffic.

III. THE COMMISSION SHOULD AMEND ITS CALL SIGNALING RULES TO MITIGATE PHANTOM TRAFFIC AND, AT THE SAME TIME, ADOPT EFFECTIVE ENFORCEMENT MECHANISMS AND RESOLVE RELATED CONTROVERSIES.

The Commission proposes to amend its call signaling rules "to help ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the originating provider for the call."[32] Specifically, the *NPRM* proposes to:

- Amend the Commission's call signaling rules to facilitate the transfer of information necessary to assist in determining the appropriate service provider to bill for all calls sent to the terminating service provider, particularly in cases where traffic is delivered through

incidence of call blocking. AT&T Comments, CC Docket No. 01-92 (filed Aug. 21, 2001) at 31-32.

[32] *NPRM* ¶ 620. The Commission reiterates this point by noting its proposal is "intended to facilitate the transfer of information to terminating service providers, and to improve their ability to identify providers from whom they receive traffic, without imposing unduly burdensome costs."

indirect interconnection arrangements. The Commission indicates these rules are intended "to remain applicable as providers migrate toward IP networks."[33]

- Require the calling party's telephone number (CPN) be provided by the originating service provider and to prohibit the stripping or altering of call signaling information.[34]

- Extend call signaling requirements to all traffic originating or terminating on the PSTN, including, but not limited to, jurisdictionally intrastate traffic and traffic transmitted using Internet protocols.[35]

- Clarify, consistent with industry practice, that populating the SS7 Charge Number (CN) field with information other than the charge number to be billed for a call is prohibited, and to prohibit altering or stripping signaling information in the CN as well as CPN fields.[36]

The *NPRM* seeks comment on whether the proposed rules will be flexible enough to address current and future network technologies, and whether additional measures are necessary to help ensure proper functioning of the intercarrier compensation system during the transition to all-IP networks.

The Associations agree the Commission should immediately adopt rule revisions that apply call signaling requirements to all forms of traffic originating or terminating on the PSTN and to all interconnected voice service providers, regardless of jurisdiction or technology. However, the proposed rule amendments described in the *NPRM* do not completely address the issues raised in proceedings over the years, nor do they address significant concerns associated with the continuous evolution of networks over time. The proposed rule amendments in the *NPRM* may therefore fail to accomplish the Commission's objectives in this proceeding.

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[33] *Id.* ¶ 625.

[34] *Id.* ¶ 626.

[35] *Id.* ¶ 629.

[36] *Id*. ¶¶ 630-631.

The Associations accordingly urge the Commission to adopt several additional changes and clarifications as discussed below. Specifically, in addition to the proposals in the *NPRM*, the Commission should: (1) include a requirement that providers transmit in signaling information and/or billing records, as applicable, Carrier Identification Codes (CIC)[37] or Operating Company Number (OCN) codes in addition to the CPN, CN, and Location Routing Number (LRN); (2) clarify that providers may not substitute a number of a calling "platform" or "gateway" for the CPN or CN associated with the originating caller; (3) confirm that, in the absence of more accurate information or a governing agreement, terminating carriers may rely on the originating and terminating numbers of a call to determine jurisdiction for billing purposes; and (4) allow terminating carriers to charge their highest terminating rate to the service provider delivering unidentified traffic onto their networks.[38]

A. The Commission Should Adopt Clear Call Signaling Rules, But With Certain Modifications to Meet the Commission's Stated Objectives.

The Associations have long supported adoption of clear and enforceable call signaling rules as a reasonable solution to current intercarrier billing problems. A sizable portion of traffic now terminating on rural local exchange carrier (RLEC) networks is either not being billed or being billed incorrect rates due to missing or inaccurate signaling and billing information and regulatory arbitrage. In fact, RLECs have been raising concerns about such "phantom traffic"

[37] The SS7 Carrier Identification Parameter (CIP) transports this information in the signaling stream.

[38] If all rates are unified, carriers will have to be properly motivated to provide the call detail information necessary for proper billing. A "penalty rate" or surcharge of 50% (or more) on the single unified rate might provide adequate incentive.

since 2004,[39] and the Commission has conducted no less than four proceedings to collect comments and information on related issues.[40]

In January 2008, NECA filed a Petition for an Interim Order which asked the Commission to extend call signaling requirements to all interconnected voice service providers and to all types of voice traffic terminating on the PSTN, regardless of jurisdiction or the technology used at the point of call origination.[41] The Petition also asked the Commission to resolve a number of other issues relating to phantom traffic and call signaling.[42]

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[39] *See, e.g.*, Letter from Karen Brinkman, Latham & Watkins, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (July 1, 2005), attaching presentation entitled "Phantom Traffic: Problem and Solutions", Balhoff & Rowe, May, 2005. NECA hosted an industry-wide conference on phantom traffic in April 2004 in Washington, D.C.

[40] Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010) (*NBP*); *2008 Further Notice*, 24 FCC Rcd 6475 (2009); *Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 13179 (2006); *Developing a Unified Intercarrier Compensation* Regime, WC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005).

[41] NECA Petition for Interim Order, CC Docket No. 01-92 (filed Jan. 22, 2008). Many parties filed in support of NECA's petition. *E.g.*, Letter from Paul Cooper, Rural Alliance, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 8, 2008); Letter from Stuart Polikoff, OPASTCO, and Derrick B. Owens, WTA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 15, 2008); Letter from Daniel Mitchell, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Apr. 9, 2008); Letter from Geoffrey A. Feiss, Montana Telecommunications Association, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 11, 2008); Letter from Robert F. West, CoBank, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Apr. 28, 2008); Letter from Paul Cooper, Fred Williamson and Associates, Inc., to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Mar. 5, 2008); Letter from Albert H. Kramer, American Public Communications Council, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Apr. 2, 2008); Letter from Mary J. Sisak, Blooston, Mordkofsky, Dickens, Duffy, Prendergast, LLP, on behalf of South Dakota Telecommunications Association, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Apr. 15, 2008).

[42] *E.g.*, confirmation that the CPN transmitted in call signaling streams must reflect the true 10-digit telephone number of the individual end-user customer originating the call, or in the case of the CN the "bill to" number, and not a number associated with intermediate switches, gateways, or "platforms;" and confirmation that, absent mutual agreement on traffic factors or the provision of information that can be used to determine with reasonable accuracy the actual origination point of a call (*e.g.*, cell site identification data), terminating carriers may use as a

Shortly afterwards, USTelecom submitted a similar proposal to address unbillable traffic on the PSTN.[43] Like NECA, USTelecom asked the Commission to extend its call signaling rules to all traffic originating on or terminating to the PSTN, including intrastate traffic, traffic from non-common carriers, and traffic using any new technologies.[44] Support for immediate Commission action on call signaling rules continues to the present day, as evidenced by over 33 ex partes filed in the past year alone.[45]

Thus, the Associations are pleased the Commission proposes to revise section 64.1601(a) of its rules to make clear all telecommunications providers, including providers of interconnected VoIP services, must transmit CPN data in the signaling stream, and also CN data for any call where the CN differs from the CPN.[46] The Commission further proposes to require all intermediate telecommunications providers in the call path to pass, unaltered, all signaling information identifying the telephone number of the calling party and the charge number of the financially responsible party, if different, to subsequent providers in the call path.[47] While extending CPN requirements to all providers is a welcome step, the proposed rule does not

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default the originating and terminating telephone numbers associated with a call to determine jurisdiction for billing purposes.

[43] Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008).

[44] *Id.*, Attachment, at 6-7.

[45] *E.g*, Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 1, 2011); Letter from Jeffrey S Lanning, CenturyLink, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Jan. 28, 2011); Letter from Joshua Seidemann, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Jan. 27, 2011); Letter from Michael D. Saperstein, Jr., Frontier, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Dec. 21, 2010).

[46] Entities who are not SS7 capable and use MF signaling are required to transmit CPN, and CN if it differs from CPN, in the ANI field.

[47] *NPRM*, Appendix B, Proposed Call Signaling Rules; *NPRM* ¶ 620. (Proposal is "intended to facilitate the transfer of information to terminating service providers, and to improve their ability to identify providers from whom they receive traffic, without imposing unduly burdensome costs.")

completely address all issues associated with phantom traffic, and as a result will not accomplish the objectives the Commission has delineated in the *NPRM*.

1. Passage of CPN or CN is a necessary and appropriate requirement, but such information alone will not enable identification of the service provider responsible for the call.

A large part of the phantom traffic problem is caused by missing information that would allow terminating carriers to identify the appropriate service provider to bill. Indeed, the Commission acknowledges this by stating its purpose for amending the call signaling rules is "to help ensure that service providers receive sufficient information associated with each call terminated on their networks *to identify the originating provider for the call*."[48] However, CPN data alone does not allow identification of the financially responsible service provider for the call. Other information, such as CIC or OCN data, must be transmitted as well (in either signaling information or within billing records) to permit the terminating carrier to identify the service provider to bill.[49] Thus, the population of CIC or OCN information is essential to allow the terminating carrier to identify the service provider financially responsible for each call and to render a correct bill. Moreover, as discussed below, LRN and Jurisdictional Information Parameter (JIP) data should be required in the billing records wherever technically feasible – with technical infeasibility being a very narrow "carve-out" (rather than a categorical exclusion) for only those who can demonstrate it.

In cases where a carrier acts as a wholesale transport provider for a retail voice service provider, the Commission has made clear that carrier is financially responsible for the traffic and

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[48] *Id.* ¶ 620.

[49] *NPRM* ¶ 950 (explaining CIC and OCN).

should be required to send its CIC or OCN code for billing purposes.[50] The Commission should therefore mandate that the originating service provider or the wholesale transport provider, as applicable, must populate (or maintain) the appropriate CIC or OCN in the appropriate SS7 parameter or billing record, as applicable.[51] In requiring transmission of CIC or OCN codes, the Commission should reaffirm that the carrier associated with these transmitted codes is solely responsible for payment of associated ICC obligations.

Finally, the Commission should proceed with caution in adopting its proposal to accommodate situations where industry standards "permit, or even require, some alteration in signaling information by an intermediate service provider."[52] While the NPRM asserts this specifically applies only to "a few very limited exceptions . . . identified in the record," it is unclear beyond the one example provided in the NPRM – relating to forwarded calls – what precisely these exceptions are as the decade-long record of this proceeding is voluminous.

The Associations understand and appreciate the need to ensure that the rules do not interfere with industry standards governing signaling, but at the same time, it is all too often the case in regulatory arenas that a party seeking to defend an act or omission twists a phrase such as "permitted by" to mean "not expressly prohibited by." In the present case, the "permitted" language could easily become an exception that swallows the rule. To avoid such circumstances and the prospect of lingering uncertainty in this area, the Commission should therefore amend

[50] *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007) (*Time Warner Order*).

[51] If the CIC is not populated in the SS7 message or billing records, the OCN should then be populated in the billing records to indicate that the call was not carried by an IXC but was instead transmitted by a local exchange carrier or a wireless carrier.

[52] *NPRM* ¶ 633.

the proposed rule either to limit the exceptions to circumstances where alterations in signaling information is required by industry standards and/or Commission rule, or to define with specificity those "limited exceptions" where alterations in signaling information is required or permitted.

2. *The Commission should clarify that providers may not substitute a number of a calling "platform" or "gateway" for the CPN or CN associated with the originating caller.*

Merely requiring the passage of accurate CPN or CN is insufficient for other reasons as well. Specifically, NECA's petition pointed out that providers frequently attempt to disguise the true CPN of a call by replacing it with a number associated with intermediate switches or "platforms." These actions often appear intended to make calls appear either "interstate" or "local" to be billed at a lower ICC rate. In response to similar problems involving pre-paid calling cards, the Commission clarified in its *2006 Pre-Paid Calling Card Order*[53] that providers may no longer populate the CN parameter with the number of the calling card platform.[54] Providers of other interconnected voice services that use platforms or gateways to manage calls, however, continue to mislabel calls in this manner. The Commission should therefore clarify, consistent with its *Prepaid Calling Card Services Order* and its long-standing "end-to-end" analysis of the jurisdiction of any call,[55] that all providers subject to the Commission's call signaling rules must

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[53] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) (*2006 Pre-Paid Calling Card Order*).

[54] *Id.* ¶ 34.

[55] *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, WC Docket No. 03-133*, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826 (2005), ¶ 5, *citing Teleconnect Co. v. Bell Tel. Co. of Pennsylvania*, File No. E-88-83, *et al.*, Memorandum Opinion and Order, 10 FCC Rcd 1626 (1995), ¶¶ 12-14; *Time Machine, Inc. Request for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Accesss Debit Card Telecommunications Service*, Memorandum Opinion and Order, 11 FCC Rcd at 1186 (1995), ¶

provide, as part of the call signaling stream, the ***true number*** of the originating caller and not any numbers associated with intermediate platforms or gateways.[56] Similarly, the Commission should confirm that providers may not substitute intermediate platform or gateway numbers for the CN.

The proposed rule also includes language indicating providers need only include call signaling information "where such transmission is feasible with network technology deployed at the time a call is originated." It appears unlikely there are many situations where providers do not have the technical capability to transmit call signaling information as part of the call stream. If the Commission nevertheless decides to include this exception, it must make clear it will be construed narrowly, and in lieu of a categorical exclusion or exemption, should require an individual showing that the passage of such information is not feasible. For example, it would be highly unlikely any provider utilizing IP technology to originate calls would be able to claim legitimately that transmission of CPN signaling or other necessary billing data, such as the CIC or OCN, is "infeasible."[57]

The Commission recently proposed new rules to implement the provisions of the 2009 Truth in Caller ID Act, which makes it illegal to knowingly transmit misleading or inaccurate caller ID information in connection with any telecommunications service or IP-enabled voice

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29; *Southwestern Bell Telephone Company Transmittal Nos. 1537 and 1560 Revisions to Tariff F.C.C. No. 68*, CC Docket No. 88-180, Order Designating Issues for Investigation, 3 FCC Rcd 2339 (1988), ¶ 28; *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004), ¶ 21.

[56] The Truth in Caller ID Act mandates this result.

[57] IP-based networks are technically capable of transmitting both CPN and CIC information. Because there does not appear to be any technical barrier for IP-enabled service providers to send both the CPN and the CIC or OCN codes, the Associations urge the Commission not to hesitate in extending such call signaling requirements to all voice service providers using IP technology.

service with the intent to defraud, cause harm, or wrongly obtain anything of value.[58] These rules will apply equally to any telecommunications service or IP-enabled voice service,[59] and to individuals as well as partnerships, corporations, associations, and public or private organizations.[60]

CPN data provides the basis for virtually all displays of "Caller ID" information. Thus, if carriers or service providers strip off or alter the CPN data in an effort to avoid being billed the appropriate intercarrier compensation rate, it would appear they are knowingly causing caller identification services to transmit misleading or inaccurate caller identification information with the intent to commit fraud and/or "wrongly obtain something of value." Possibly, the Commission's proposal to add a new section 64.1604 (caller identification information) to its rules to implement the Truth in Caller ID Act may further reduce phantom traffic problems. The

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[58] *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Notice of Proposed Rulemaking, FCC 11-41 (rel. Mar. 9, 2011). The Associations support Commission action to deal with Caller ID "spoofing" and other abuses of call signaling data. Since accurate CPN data provides a large part of the solution to both caller ID and phantom traffic problems, the Associations encourage the Commission to ensure its efforts in both areas are consistent and that rules apply as broadly as possible to all voice service providers.

[59] *Id.* at 1, n.2. The Commission asks if it has authority to apply the proposed rules to all forms of traffic originating or terminating on the PSTN, i.e., whether intrastate calls fall within the Commission's jurisdiction for these purposes and whether the Commission has jurisdiction under Title I of the Act "to apply fundamental obligations to non-carriers that deliver traffic to the PSTN." The Commission has repeatedly used its authority under Title I of the Act, as well as more specific grants of statutory authority such as the 2009 Truth in Caller ID Act, to apply common carrier-type obligations to interconnected VoIP providers. The Commission has also separately found that Caller ID services are jurisdictionally mixed. *Rules and Policies Regarding Calling Number Identification Service- Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 11700 (1995), ¶¶ 62, 64, 85. Inasmuch as the interstate and intrastate components of call signaling services are largely inseparable, the Commission clearly has authority to apply call signaling rules to all forms of traffic and to all voice service providers regardless of the technology used to provide the service and regardless of the jurisdiction of the call.

[60] *Id.* ¶ 20.

Commission should assure that rules governing provision of call signaling data in this proceeding are consistent with those adopted in response to the Truth in Caller ID Act, and preferably be adopted at the same time.[61]

B. New Call Signaling Rules Must be Accompanied By Adequate Enforcement Mechanisms.

The Commission asks for comment on whether it should consider adopting any specific enforcement mechanism to ensure compliance with the proposed call signaling rules. While action to strengthen the Commission's call signaling rules will go a long way to addressing phantom traffic issues, without clear enforcement mechanisms they are a proverbial "paper tiger." The proposed call signaling rule amendments must be accompanied with rules and mechanisms that will assure compliance with call signaling, billing record, and intercarrier compensation obligations established by the Commission.

1. The Commission should permit terminating carriers to charge their highest terminating rate to the service provider delivering unidentified traffic onto their networks.

In 2008, the Commission proposed a rule requiring the last carrier sending traffic with incomplete billing data to assume responsibility for payment of ICC charges on such traffic, at the terminating carrier's highest terminating rate.[62]

> In the event that traffic does not contain the information required by our rules, or the provider delivering the traffic does not otherwise provide the required call information, for example by providing an industry-standard billing record, to the provider receiving it, we allow the terminating service provider to charge its highest terminating rate to the service provider delivering the traffic. To the extent that a provider acting simply as an intermediate provider (such as a transit

[61] The Truth in Caller ID Act requires the Commission to prescribe implementing regulations within six months of enactment of the law. Since new Caller ID rules must be implemented by June 20, 2011, the Commission may wish to consider adopting rules governing signaling in the same time frame.

[62] *2008 Further Notice*, 24 FCC Rcd 6475 (2009), ¶ 326.

> provider) becomes subject to a charge under this provision, that intermediate provider can charge the rate it was charged to the provider that delivered the improperly labeled traffic to it. This will ensure that providers are paid for terminating traffic in those instances, and gives financial incentives for upstream providers in the call path to ensure that the traffic includes proper information in the first instance.[63]

The Commission should adopt a similar rule in this proceeding. Allowing the terminating service provider to charge its highest terminating rate to the service provider delivering the unidentified traffic onto its network will give service providers strong financial incentives to ensure that they, and the providers whose traffic they carry, comply with the signaling, billing record, and intercarrier compensation obligations established by the Commission. Such a rule would also give tandem and transit providers – who are much better positioned to enforce call signaling and identification requirements against "upstream" providers in the call flows – an adequate incentive to help police these requirements and to pass along records (*i.e.*, the CIC, LRN, or JIP) that clearly identify the provider(s) involved in delivering the call to the tandem.

2. *The Commission should confirm that, in the absence of more accurate information or a governing agreement, terminating carriers may rely on the originating and terminating numbers of a call to determine jurisdiction for billing purposes.*

Disputes also regularly arise over the appropriate ICC rate to bill for calls that originate or terminate on consumer mobile devices. Mobile service providers often argue CPN data does not provide sufficient information to identify the actual location of the calling and/or called parties, and suggest using traffic studies or factors for billing purposes.[64] But RLECs often have

[63] *Id.*

[64] In a prior filing, NECA argued for the use of JIP information in the SS7 signal to identify call origination points, noting wireless carriers have objected arguing technical difficulties. NECA Petition for Interim Order, CC Docket No. 01-92 (filed Jan. 22, 2008) at 6. These issues are apparently being resolved by advances in technology. For example, Verizon Wireless now offers customers a feature called "City ID" which "is an enhanced mobile Caller ID service that

difficulty convincing Commercial Mobile Radio Service (CMRS) carriers even to negotiate interconnection agreements, let alone agree on reasonable billing factors. Moreover, it is nearly impossible for small companies to audit wireless carriers' traffic records to verify the accuracy of any billing factors once agreed upon.

NECA's 2008 petition accordingly asked the Commission to confirm that, absent mutual agreement on traffic factors or data on the actual origination point of the call, terminating carriers may use the originating and terminating telephone numbers associated with a call as a default proxy to determine jurisdiction for billing purposes. Indeed, this *NPRM* notes "[w]hen CPN is populated in the SS7 stream for a call by an originating service provider and passed, unaltered, along a call path potentially involving numerous service providers to a terminating service provider, the terminating provider can use the CPN information to help determine the applicable intercarrier compensation."[65]

This is consistent with the standard industry practice of using originating and terminating telephone numbers to determine jurisdiction of a call for billing purposes. Commission confirmation that the "telephone numbers rule" may apply as a default mechanism for mobile and other traffic would significantly help small companies achieve reasonable resolutions of these issues and reduce uncertainty, controversy and billing disputes.[66]

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displays the city and state information of each incoming call." (City ID, http://support.vzw.com/clc/faqs/Features%20and%20Optional%20Services/city_id.html)

[65] *NPRM* ¶ 628.

[66] For ported numbers, carriers will be able to provide LRN signaling parameter since it is required to route the call. If the originating end office populates the JIP, in the original call setup message, the Commission should require all subsequent carriers to pass the JIP ***as is*** to the terminating carrier. Similar to the rule under consideration for transport of the CPN in connection with the implementation of the Truth in Caller ID Act, intermediate carriers should not be allowed to delete, alter, or modify the JIP.

For these reasons, the Associations request the Commission's rule amendments include language codifying that where it is not possible to provide accurate information regarding the actual origination point of a call, or where providers cannot mutually agree on verifiable traffic factors, telephone companies may use the originating and terminating telephone numbers or originating and terminating exchange identification information provided in call signaling data to determine the applicable intercarrier compensation rate for billing purposes.

3. The Commission should take other steps to address misrouting and mislabeling of traffic.

The Notice also asks for comment on several proposals by USTelecom related to traffic routing, local number portability queries, and whether ILECs may avail themselves of the negotiation and arbitration provisions of section 251 and 252 of the Act to secure agreements with all interconnecting carriers.[67]

The Associations support a Commission declaration that misrouting of traffic or other actions intended to disguise the identity of the financially responsible provider or the originating jurisdiction of a call are "unreasonable practices" under section 201(a) of the Act. The number of interconnected service providers offering different versions of voice calling continues to expand, as has the number of carriers and "least-cost routers" involved in establishing call paths. Toll calls are being co-mingled with local calls and sent on non-access local interconnection trunks, which are engineered and intended for local traffic only. Often, the intent is to disguise the identity of the sending carrier and/or the jurisdiction of the call. This problem is particularly

[67] In its T-Mobile Order, the Commission made clear ILECs have the right to request interconnection agreements with CMRS carriers sending traffic to their networks for termination. The Order does not appear to cover CLECs or other interconnecting service providers. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *T-Mobile, et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 25 FCC Rcd 4855 (2005).

acute for small rural carriers. The Associations therefore agree the Commission should make clear the misrouting of traffic to disguise the financially responsible provider's identity or the originating jurisdiction of a call is an unreasonable practice under the Act and that parties injured by such actions are entitled to seek damages under sections 206-208 of the Act.

The Associations also agree the Commission should extend the provisions of the T-Mobile order to all types of carriers, as an additional measure to address phantom traffic. As noted above, the T-Mobile Order provided ILECs with rights to request an interconnection agreement from CMRS providers, pursuant to section 252 of the Act, but this provision does not allow ILECs to request negotiations with other carriers, such as competitive local exchange carriers (CLECs). Small carriers often have difficulty convincing other carriers to negotiate interconnection agreements with them, particularly where those other carriers can easily terminate their traffic via a transit or tandem provider and thus have no direct contact with the terminating rural carrier at all. In such circumstances, sending carriers are increasingly arguing that because there is no interconnection agreement, they can pay the terminating rural carrier whatever rate they deem appropriate, if anything at all.[68] To give small carriers some legal authority to demand a negotiated interconnection agreement, the Commission should extend the T-Mobile Order to give ILECs the right to demand interconnection negotiations with all carriers.

IV. THE COMMISSION SHOULD PROMULGATE RULES REASONABLY TAILORED TO ADDRESS PROBLEMS WITH ACCESS STIMULATION.

The Commission seeks comment on proposals to limit or prevent carriers from engaging in access stimulation or "traffic pumping." The *NPRM* defines access stimulation as the practice

[68] *See, e.g.,* Letter from Joe Douglas, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (filed May 23, 2008), attaching Letters from Kristopher E. Twomey, CommPartners, to Foresthill Telephone and Kerman Telephone; Letter from Joe. A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Oct. 16, 2007), attaching letters from Kristopher E. Twomey, CommPartners, to 3Rivers Telephone.

of encouraging large volumes of terminating traffic to generate revenues from access rates based on lower demand levels.[69] Access stimulation schemes frequently involve free conference call services or "chat lines" that generate terminating traffic volumes far exceeding the demand levels on which tariff rates were originally set. These arrangements may involve an exchange of benefits, explicit or implicit, between the local terminating carrier and the entity that generates the large volumes of access traffic.

Under the proposed rules, LECs who enter into agreements with other entities (including affiliates) that result in net payments to that other entity over the course of the agreement are deemed to have entered into an "access revenue sharing" arrangement and must re-file their interstate switched access tariffs to reflect a lower rate consistent with their volume of traffic.[70] The Commission further proposes to clarify prospectively that "a rate-of-return carrier that shares revenue, or provides other compensation to an end-user customer, or directly provides the stimulating activity, and bundles those costs with access is engaging in an unreasonable practice that violates section 201(b) and the prudent expenditure standard."[71]

Although the Commission recognizes access stimulation is less likely in the NECA pooling context,[72] under the proposed rules a NECA tariff participant would lose eligibility to participate in the NECA tariffs 45 days after meeting the revenue sharing arrangement trigger. Such a carrier leaving the NECA tariff would have to file its own tariff(s) for interstate switched

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[69] *NPRM* ¶¶ 7, 36, 606, 635-636.

[70] *Id.* ¶ 659. Within 45 days of meeting the proposed trigger, a carrier would be required to file a new interstate exchange access tariff pursuant to section 61.38 "if the costs and demand arising from the new revenue sharing arrangement had not been reflected in its most recent tariff filing." In determining a reasonable rate, the carrier would not be permitted to include projected amounts paid to the entity stimulating traffic as a recoverable cost in its revenue requirement calculation, pursuant to section 61.38(b), absent Commission approval. *Id.* ¶ 663.

[71] *Id.* ¶ 661.

[72] *Id*. ¶ 648.

access pursuant to the rules set forth for carriers subject to section 61.38. CLECs meeting the trigger would be required to benchmark to the rate of the Bell Operating Company (BOC) in the state in which the CLEC operates, or the independent ILEC with the largest number of access lines in the state if there is no BOC in the state.[73] Finally, LECs that meet the revenue sharing trigger would be subject to limits on the "deemed lawful" nature of their tariffs.[74]

The Associations support rule amendments that require carriers to establish access rates that reasonably reflect actual demand volumes. At the same time, the Commission must take care to distinguish between situations where traffic levels are artificially inflated and situations where traffic increases as a result of legitimate and much-needed economic activity in rural areas. Carriers in all regions have an understandable interest in increasing their customer base, and in customers who take advantage of robust networks to originate and terminate revenue-producing calls. For example, if a call center "offshores" to a rural area – a key economic development opportunity (and incentive for broadband deployment) in areas often lacking in substantial new job growth[75] – the carrier serving such a call center should not be penalized. Moreover, the use of a revenue sharing trigger to deter traffic pumping is both imprecise and also represents an

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[73] The Commission also proposes to require LECs that meet the trigger to file tariffs on a notice period other than the statutory 7 or 15 days, thus denying the tariff filing "deemed lawful" treatment under section 204(a)(3) of the Act. *Id.* ¶ 666. If a LEC failed to comply with these tariffing requirements, the Commission proposes to disqualify the tariff from deemed lawful status based on noncompliance.

[74] *Id.*

[75] *See, e.g., Strengthening the Rural Economy - Strengthening Rural Infrastructure*, Executive Office of the President, Council of Economic Advisors (April 2010) at 28 ("There are several reasons that expanded broadband service is important for employment and income growth in rural areas. Most employment growth in the United States over the last several decades has been in the service sector, where jobs are particularly likely to benefit from broadband access. Broadband service may allow rural areas to compete for a range of service jobs, from call centers to software development.") (available at: http://www.whitehouse.gov/sites/default/files/Rural%20America%20final-v9.pdf).

unnecessary "belt and suspenders" approach to a problem that is, at bottom, related to pricing and traffic volumes. Because the LEC is the primary economic beneficiary of increased volumes, traffic pumping could occur without revenue sharing – and once volume-based pricing triggers are defined appropriately, the incentive and ability to engage in any kind of traffic pumping should be altogether eliminated, regardless of whether revenues are shared or not.

The Associations accordingly recommend that a combination of measures, including triggers primarily focused on minutes-of-use (MOU) volume thresholds rather than the existence of a revenue sharing agreement, will more precisely and effectively discourage traffic pumping arrangements without interfering with legitimate business arrangements or other situations causing reasonable variations in traffic volumes.

Use of a revenue sharing agreement as a "trigger" requiring tariff re-filing is vague and problematic, since as noted above there may be many arrangements between carriers and customers that might fall within the proposed definition and yet do not involve the type of traffic pumping arrangements at issue in this proceeding. For example, an RLEC may obtain long distance service for its own business activities from a long distance provider. In this case, the long distance company would pay access charges to the RLEC that would in turn pay toll charges to the long distance company. Yet, such payments would not in any way indicate tariff charges are inflated.

Similarly, the Commission should proceed with caution with respect to how cooperatives allocate and return capital to members. The *NPRM* appears to recognize such capital or patronage credit arrangements with cooperative members are not properly considered within the scope of "revenue sharing" covered by the proposed rule,[76] but the Commission should expressly

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[76] *NPRM* at 213, n.1027.

confirm this in any implementing order and in the rule as adopted to avoid any confusion or uncertainty going forward.

Moreover, this example highlights the ambiguity of a trigger based solely on a phrase such as "access revenue sharing." Rather than put itself and carriers in the position of having to guess what might be deemed to constitute impermissible "access revenue sharing" in the future, the Commission should use more clear-cut, volume-based MOU triggers that will stop short the opportunity for any arbitrage – *regardless of whether the LEC might also share revenue or not*. In this regard, a volume-based trigger is at once a more precise and also more far-reaching tool for deterring traffic pumping practices.

The *NPRM* points out that a number of parties have advanced proposals to deal with access stimulation problems that rely on MOU triggers either primarily or in conjunction with restrictions on revenue sharing agreements. In 2010, for example, USTelecom and five leading telecommunications companies proposed rules incorporating a MOU-per-line trigger set at the 99th percentile of NECA Band 8 carriers.[77] The USTelecom proposal did not incorporate rules governing access sharing arrangements, but did propose the Commission separately declare the assessment of access charges on traffic subject to certain revenue sharing arrangements to be an "unreasonable practice" under the Act.

In January 2011, NTCA, OPASTCO and WTA expressed general support for the USTelecom proposal, subject to several modifications.[78] Specifically, NTCA, OPASCTO and WTA suggested the monthly MOU threshold should be more consistent with that proposed by

[77] Letter from Glenn T. Reynolds, USTelecom, *et al.* to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed Oct. 8, 2010) at 4; Letter from Glenn T. Reynolds, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed Aug. 31, 2010).

[78] Letter from Joshua Seidemann, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Jan. 27, 2011) (*NTCA, OPASTCO, WTA Letter). See* Glenn T. Reynolds, USTelecom, *et al.* to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed Oct. 8, 2010).

AT&T and the Rural Independent Competitive Alliance (RICA) in a separate filing.[79] NTCA, OPASTCO and WTA also suggested assessment of traffic volumes should be made on a quarterly basis, rather than a monthly basis, to absorb legitimate changes in traffic volumes caused by periodic events.[80] The Associations also suggested a "working loop" should not be defined as a "physical connection" per the USTelecom proposal, since a single connection may transmit multiple simultaneous calls, thereby inadvertently triggering the threshold.[81]

The Rural Associations continue to believe that rules requiring LECs to re-file tariffs when a reasonable MOU/line/month trigger, calculated based on a quarterly average of traffic, is exceeded will be more than sufficient – and far more effective than a vague "revenue sharing" trigger – to deter providers from engaging in traffic pumping and will be a more accurate indicator of when access stimulation is actually occurring. Indeed, the existence of a revenue sharing agreement, in itself, has no necessary relationship to the cost of service or reasonableness of rates. In contrast, traffic volumes relate directly to demand calculations, which are an integral part of the rate setting process. An MOU-based trigger is therefore less likely to produce "false positives" (i.e., instances where tariff re-filings are required, but not warranted) and would negate the need to rely on the existence or non-existence of revenue sharing arrangements to determine when a carrier must re-file its tariff and/or exit the NECA pools.

Finally, as the *NPRM* notes, carriers participating in the NECA pools are less likely to engage in access pumping arrangements, but such arrangements are not necessarily precluded.[82]

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[79] Jointly with AT&T, RICA recommended a threshold of 1500 minute per line per month in 2008. Letter from David Cosson, Counsel to the Rural Independent Competitive Alliance, to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed Mar. 24, 2009).

[80] *NTCA, OPASTCO, WTA Letter* at 1.

[81] *Id.*

[82] *NPRM* ¶ 662.

In this regard, the Associations do not oppose requiring NECA pool carriers found to exceed reasonable MOU thresholds to exit the pool and file individual tariffs. Such carriers should, however, be given an opportunity to demonstrate compliance with Commission rules, for example, by showing that conditions causing applicable MOU thresholds to be exceeded no longer exist, or that arrangements found to cause unexpectedly high levels of traffic have been terminated.

V. IN PROMULGATING RULES TO DEAL WITH VOIP OBLIGATIONS, PHANTOM TRAFFIC AND ACCESS STIMULATION, THE COMMISSION MUST ALSO ADDRESS UNREASONABLE "SELF HELP" ACTIONS BY INTERCONNECTING CARRIERS.

Confirmation of VoIP obligations to pay existing ICC rates and adoption of rules designed to mitigate phantom traffic and unreasonable access charge rates will significantly assist RLECs in resolving many of the disputes currently threatening to disrupt existing ICC mechanisms. But even if the Commission were to take all the actions described in the *NPRM* in a manner consistent with the preceding discussion, disputes would likely persist as interconnecting carriers often simply ignore or refuse to pay legally-billed intercarrier compensation charges.

Increasingly, RLECs have experienced substantial difficulties collecting bills for access services, as interconnecting carriers pursue "self help" remedies to avoid paying charges. As noted above, carriers routinely assert their traffic is exempt from access charges based on specious claims the services at issue are "enhanced" or "information services." More recently, interconnecting carriers refuse to pay access bills – even plainly legitimate bills – based on assertions the LEC is engaged in traffic pumping arrangements.

Yet, unfortunately, the Commission has made clear it will not assist carriers in resolving situations involving refusals to pay.[83] While carriers theoretically have the option to discontinue service for non-payment of bills pursuant to provisions of their access tariffs, substantial uncertainty exists as to whether the Commission would view such actions as unlawful – and even then, from a practical perspective, it may be self-defeating to "turn off" a large IXC and leave one's own customers unable to place or receive calls carried via that long distance provider.

As a result, carriers seeking payment of bills are forced to pursue non-paying carriers in court, an expensive and time-consuming process. As noted above, such collection actions often result in inconsistent outcomes, or no outcome other than referral to the Commission.

The Commission can help resolve collection disputes by confirming it is not a violation of the Act to discontinue service for nonpayment of properly-billed access charges, provided carriers follow the relevant provisions in their tariffs, including notice of pending service termination.[84] Of course, as noted above, even such clarification may be of cold comfort and little help depending upon the nature of the dispute and the carrier(s) involved.

Thus, as an additional measure, the Commission should develop procedures that would resolve disputes more quickly, notwithstanding prior decisions finding carriers may not file complaints under section 208 for non-payment of access charges. For example, the Commission could establish special "fast track" dockets designed to resolve factual and legal disputes quickly,

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[83] In a recent enforcement action, for example, the Commission found that a carrier's failure to pay billed ICC charges, or its failure to file a "rate complaint" with the Commission, did not violate any provision of the Act, and therefore dismissed a complaint filed under section 208 against the non-paying carriers. *See All American Telephone Co., e-Pinnacle Communications, Inc., and ChaseCom, v. AT&T Corp.*, File No. EB-10-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 723 (2011).

[84] *E.g., Hollis Telephone, Inc., et al.*, No. 08-028, Order Addressing Petition for Authority to Block the Termination of Traffic from Global NAPs Inc. (NH PUC Nov. 10, 2009); *Termination of Services to GlobalNAPs for Nonpayment*, No. P-1141, Order Authorizing Disconnection (NCUC Nov. 13, 2007).

so carriers may pursue remedies in appropriate courts or before state agencies willing to entertain collection actions.

Among other benefits, such steps will help reduce administrative expenses for carriers and also reduce pressure on ICC rates, as timely and full payment of ICC charges will produce more stable revenues and reduce upward pressure on rates. A fast-track approach to resolving ICC payment disputes may reduce future pressure on USF demands as well. Finally, vigorous enforcement of ICC payment obligations will likely assist the Commission and the Universal Service Administrative Company in dealing with USF contribution disputes as well, since many of the issues associated with claims for exemption from ICC charges are similar to claims for exemption from USF contribution obligations.[85]

For all the above reasons, the Commission should consider as part of this proceeding mechanisms to assist carriers in obtaining payment of lawfully-billed ICC charges.

VI. CONCLUSION

The Commission should take immediate action on the proposals identified in Section XV of the *NPRM*. Specifically, the Commission should confirm that under existing law, interconnected VoIP traffic is currently subject to the same intercarrier compensation rules – including access charge obligations – as any other traffic originating or terminating on the PSTN. It should also promptly adopt rule revisions applying call signaling requirements to all forms of traffic originating or terminating on the PSTN and to all interconnected voice service providers,

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[85] *See, e.g., Universal Service Contribution Methodology*, WC Docket No. 06-122, *Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, Order, 25 FCC Rcd 3243 (2010); *Comments Sought on Masergy Communications Inc. Petition for Clarification, or in the Alternative, Application for Review*, WC Docket No. 06-122, Public Notice, 24 FCC Rcd 5333 (2009).

regardless of jurisdiction or technology. And the Commission should also adopt reasonable rules to prevent uneconomic traffic stimulation – although such rules should be designed to address the primary pricing concerns that give rise to such practices, rather than relying upon vague triggers that may do little to deter traffic pumping and may only instead sweep up numerous legitimate arrangements unrelated to these concerns.

Finally, the Commission should adopt rules and procedures that assure interconnecting carriers actually pay tariffed charges for legitimate traffic terminating on RLEC networks. These collective actions will stabilize the existing ICC system and give both the Commission and the industry time to focus on the task of reforming the current USF and ICC systems for the long term.

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Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.
By:

Richard A. Askoff
Linda A. Rushnak
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION
By: /s/ Jill Canfield
Jill Canfield
Director , Legal and Industry
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS
COMPANIES
By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
2020 K Street, NW, 7th Floor
Washington, DC 20006
(202) 659-5990

WESTERN TELECOMMUNICATIONS ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Attorney for Western Telecommunications Alliance
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830

EASTERN RURAL TELECOM ASSOCIATION
By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
5910 Clyde Rhyne Drive
Sanford, NC 27330
(919) 708-7404

THE RURAL ALLIANCE
By: /s/ Paul Cooper
Paul Cooper
Facilitator
5810 E. Skelly Drive
Suite 900
Tulsa, OK 74135

THE RURAL BROADBAND ALLIANCE
By: /s/ Sylvia Lesse
Sylvia Lesse
Its Attorney
Kraskin & Lesse
2154 Wisconsin Avenue N.W.
Washington, D.C. 20007
(202) 333-5273

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 1st day of April, 2011 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com