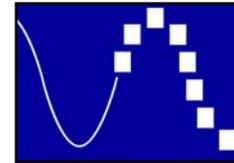


October 26, 2007



The VON Coalition

Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92

Dear Chairman Martin:

The Voice on the Net Coalition (“VON Coalition”) files this *ex parte* in response to the October 16, 2007 filing by NECA.<sup>1</sup> In its filing, NECA urges the Commission to clarify that access charges apply under current rules to interconnected, interexchange voice calls irrespective of the technology used to provide the service. The VON Coalition respectfully disagrees. For over 20 years, the Commission has supported pro-growth, pro-consumer, pro-innovation policies that have ensured that Internet communications are not subject to the broken access charge regime. We urge the Commission to continue these policies while it finalizes and implements comprehensive reform of the current inter-carrier compensation regime.

NECA proposes imposing economically irrational per-minute fees designed for the legacy PSTN on innovative VoIP providers and their customers. Granting this request, in whole or in part, would fundamentally alter the economic relationship between information and telecommunications service providers by imposing access charges on providers that, heretofore, have purchased telecommunications services as end-users and have built successful business models doing so. Such a drastic change would result in artificially higher prices being imposed on broadband originated traffic and broadband consumers which would negatively impact broadband deployment overall.

NECA’s argument that Laurel Highland Telephone Company (LHTC) “receives no compensation” for VoIP originated traffic is misleading. All network providers, even Laurel Highland, are compensated for the use of their network. VoIP carriers do not get a free ride. Pursuant to FCC rules and policy, enhanced service providers (“ESPs”), including Voice over Internet Protocol (“VoIP”) providers, have always gained access to the telephone network by purchasing tariffed business services because per-minute access charges would not reflect the economic value of the service. Moreover, NECA’s myopic focus on compensation for calls terminated by

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<sup>1</sup> Letter from Joe A. Douglas, Vice President, Government Relations, NECA to Ms. Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (October 16, 2007) (“NECA October 16, 2007 *Ex Parte*”).

NECA members blinds it to the important policy goals served by ensuring that calls from and to VoIP subscribers not result in the imposition of per-minute access charges.

This ESP policy -- essential to the proliferation of the Internet in the 1990s, and even more important to growth of the broadband Internet now -- has proven to be fair, reasonable, and a tremendous success.<sup>2</sup> This forward-thinking policy allowed Internet Service Providers to offer flat rates for unlimited use, which encouraged consumer demand and broadband buildout. Continued ESP access to the PSTN without the imposition of access charges is more likely to continue fostering broadband growth and adoption to the benefit of consumers. However, applying a crippled economic regime of access charges to the market for innovative services means that consumers and business users could miss out on the transformative services, increased choices, and lower prices that VoIP can deliver. There simply is no need for such a rate-raising, growth-sapping, innovation-reducing policy change.

Moreover, the issues raised by NECA are inextricably tied to issues in the pending IP-enabled services,<sup>3</sup> intercarrier compensation,<sup>4</sup> and Universal Service dockets.<sup>5</sup> The Commission should not single out rate raising actions for broadband users for special consideration among the many compensation issues currently pending. Such action would be inefficient and potentially thwart more comprehensive reform. The Commission's comprehensive intercarrier compensation reform efforts will likely be delayed and ultimately may fail if the Commission adopts piece-part decisions that negatively and disproportionately affect one segment of the industry without appropriate consideration of the impact on all industry segments, consumers, and the Commission's overall policy objectives.<sup>6</sup> A piecemeal approach might temporarily appease some, but it would negatively affect many others, including broadband consumers. Such a result also would serve to exacerbate problems created by the uneconomic compensation structure. Even more, premature action on any IP-enabled services issues could unnecessarily prejudice the outcome of the economic issues in the *IP-Enabled Services*, *Inter-carrier Compensation*, and *Universal Service* proceedings.

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<sup>2</sup> *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC 2d 682 (1983). ESPs access the PSTN by buying tariffed business services rather than paying per-minute access charges.

<sup>3</sup> See *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

<sup>4</sup> See *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) ("*Inter-carrier Compensation NPRM*").

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 3248 (2002).

<sup>6</sup> The Commission has taken a strong view against piecemeal decisions that might "stymie comprehensive reform." For example, when rejecting a recent SBC forbearance petition, the Commission was concerned that "such relief would . . . require us to prejudge important issues pending in broader rulemakings and otherwise distort the Commission's deliberative process." *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Memorandum Opinion and Order, 20 FCC Rcd 9361 (2005).

The VON Coalition instead urges the Commission to reach decisions on IP-related issues as part of an omnibus order addressing both intercarrier compensation and universal service reform that proactively and cohesively fosters a regulatory environment that encourages the deployment and availability of broadband and IP-enabled services and the related benefits enjoyed by consumers, businesses, and government.

When considering intercarrier compensation reform, the Commission should pay particular attention to the significant value to consumers and the economy added by IP-enabled networks. In contrast to POTS, IP voice is an application just like e-mail, streaming audio, streaming video, and web browsing. IP voice can be combined with other IP-based applications over IP-enabled networks, increasing the reliability and robustness of IP applications and services that ride over these next-generation networks. The benefits of IP-enabled services include cost savings for consumers, reduced operational costs for providers, advanced features unavailable with traditional circuit-switched telephony, increased competition, increased infrastructure investment, accelerated broadband deployment, improvements in emergency services, lower cost communications for rural and government users, increased access for persons with disabilities, and increased worker productivity.

VON agrees with the President Bush's assertions that if you want something to grow, you don't tax it.<sup>7</sup> Thus, the Commission should ensure that its actions do not deter investment in IP-based networks, applications, or services. As the Commission noted in the *Inter-carrier Compensation NPRM*, its decisions should encourage network efficiency and investment, the development of efficient competition, and sustainability of the Universal Service Fund.<sup>8</sup> Given the synergies between the goals of the Bush Administration,<sup>9</sup> the Commission's stated objectives, and the technological promise of VoIP, avoiding imposition of the economically irrational access charge regime on VoIP services is the obvious choice. It simply makes no sense, while Congress is working to prevent taxation of broadband services<sup>10</sup>, for the FCC to grant a backdoor request to raise rates on broadband users.

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<sup>7</sup> "If the goal is to spread broadband, it doesn't make sense to tax it while we're spreading it" [http://www.infoworld.com/article/04/06/24/HNbushbroadband\\_1.html](http://www.infoworld.com/article/04/06/24/HNbushbroadband_1.html) "Broadband technology must be affordable. In order to make sure it gets spread to all corners of the country, it must be affordable. We must not tax broadband access." [http://www.theregister.co.uk/2004/04/26/bush\\_says\\_nonettax/](http://www.theregister.co.uk/2004/04/26/bush_says_nonettax/)

<sup>8</sup> *Inter-carrier Compensation NPRM* at ¶133 ("any new intercarrier compensation approach must be competitively and technologically neutral. Given the rapid changes in telecommunications technology, it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers.")

<sup>9</sup> To help meet the President's commendable goal of making affordable broadband access available to all Americans by 2007, the Commission should refrain from taxing broadband innovations and applying the outdated access charge regime that serve only to drive up consumer costs for broadband enabled services.

<sup>10</sup> Congress is working to pass the Internet Tax Moratorium by November 1<sup>st</sup> 2007.

Thus, while the VON Coalition opposes piecemeal resolution of intercarrier compensation issues, it urges the Commission to complete comprehensive intercarrier compensation reform adopting an economically rational regime that sends accurate pricing signals to consumers and encourages that adoption of transformative broadband products and services. Such an approach avoids imposing costly but temporary “band-aid” requirements on ESPs, protects VoIP consumers from arbitrary price increases, and ensures that new investment in IP-enabled networks, applications, and services is not unnecessarily deterred. Until the Commission establishes a comprehensive compensation scheme that reflects a unified rate, self-help measures will increase and the very real risk of discrimination abounds.

Respectfully submitted,

**The VON Coalition**

cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert McDowell

**About the VON Coalition:**

The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over Internet. The coalition, which includes BT Americas, CallSmart, Cisco, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Intrado, Microsoft, New Global Telecom, PointOne, Pulver.com, Skype, T-Mobile USA, USA Datanet, and Yahoo! works to advance regulatory policies that enable Americans to take advantage of the full promise and potential of VoIP. The Coalition believes that with the right public policies, Internet based voice advances can make talking more affordable, businesses more productive, jobs more plentiful, the Internet more valuable, and Americans more safe and secure. Since its inception, the VON Coalition has promoted pragmatic policy choices for unleashing VoIP's potential. <http://www.von.org>