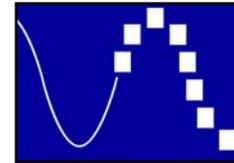


March 27, 2006



The VON Coalition

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

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; SBC's and VarTec's Petitions For Declaratory Ruling Regarding the Application of Access Charges To IP-Transported Calls, WC Docket No. 05-276; Frontier Telephone Petition for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls, WC Docket No. 05-276; Grande Communications' Petition For Declaratory Ruling Regarding Intercarrier Compensation For IP-Originated Calls, WC Docket No. 05-283

Dear Chairman Martin:

The Voice on the Net Coalition ("VON Coalition") files this *ex parte* in the above-captioned proceedings where the Commission is considering intercarrier compensation for various types of Internet Protocol ("IP")-enabled services. The issues raised in these proceedings are inextricably tied to issues in the pending IP-enabled services,¹ intercarrier compensation,² and Universal Service dockets.³ The Commission should not carve out IP-enabled services for special consideration among the many compensation issues currently pending. The VON Coalition instead urges the Commission to reach decisions on IP-related issues as part of an omnibus order that proactively fosters a regulatory environment that encourages IP-enabled services and the related benefits enjoyed by consumers, businesses, and government.

A key to the proliferation of Internet use in the 1990s was the Commission's decision to exempt traffic between enhanced service providers ("ESPs") and the PSTN from per-minute access charges.⁴ This forward-thinking policy allowed Internet Service Providers to offer flat rates for unlimited use, rather than per-minute billing. 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. Some of the petitions before the Commission would impose

1 See *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

2 See *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) ("*Intercarrier Compensation NPRM*").

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

4 *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.

economically irrational per-minute fees designed for the legacy PSTN on innovative Voice over IP ("VoIP") providers and their customers. Granting these petitions, 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 consumers and would negatively impact broadband deployment overall.

The VON Coalition is concerned that the Commission's comprehensive intercarrier compensation reform efforts will be delayed and ultimately may fail if the Commission adopts piecemeal 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.⁵ For example, the VON Coalition agrees with CTIA's call for caution in attempting to resolve service-specific issues such as so-called "phantom traffic." As stated by CTIA: "it makes little sense . . . to require carriers to make costly investment to enable last generation equipment to make jurisdictional distinctions between categories of traffic while the FCC is rightly considering whether to eliminate all such jurisdictional distinctions."⁶ A piecemeal approach might temporarily appease some, but it would negatively affect many others, including consumers.⁷ 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 *IP-Enabled Services*, *Inter-carrier Compensation*, and the *Universal Service* proceedings.

⁵ 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).

⁶ Letter from Paul Garnett, CTIA-The Wireless Association to Marlene H. Dortch, Secretary, FCC, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 at pp. 3-4 (Jan. 13, 2006). To this end, the VON Coalition supports the proposal made by US Telecom to resolve phantom traffic issues, acknowledging that IP-originated calls may not include a NANP calling number. US Telecom Ex Parte, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (Nov. 10, 2005) ("Every originating provider must transmit in its signaling, where possible with its network technology deployed at the time the call was originated, the telephone number assigned to the calling party.") (emphasis added).

⁷ Even SBC (now AT&T) has acknowledged the problems of piecemeal decisionmaking. Letter from James C. Smith, Sr. Vice President, SBC, to Chairman Michael Powell, FCC, *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (Feb. 3, 2005) (attempts to "jump out ahead of the Commission on intercarrier compensation reform by obtaining a quick, self-serving fix on *one* intercarrier compensation issue without the slightest regard for how such piecemeal relief would complicate resolution of all the *other* issues to which this one issue is inextricably tied.").

Substantively, the requests in the above-captioned petitions do not adequately assess resulting implementation costs and related problems. The petitions fail to recognize the technological changes that may be responsible for the difficulties they seek to address. In the case of VoIP, technological advancements have made the compensation system, which is fundamentally tied to the North American Numbering Plan ("NANP"), increasingly obsolete.⁸ The Commission should not force IP-service providers to invest in new technology by attempting to shoehorn VoIP into the outdated access charge regime. To do so will have the effect of imposing extraordinary costs on new technologies and the consumers who would otherwise benefit from them.

Instead, the Commission should support continued investment in IP-enabled networks, applications, and services by focusing on overall, complete reform. 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 Coalition members try to maximize the efficiency of IP-based technology and facilitate innovative and sophisticated enhanced features and services. 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.⁹ Given the synergies between the goals of the Bush Administration,¹⁰ the Commission's stated objectives,

⁸ For example, calls originating in IP format are not necessarily associated with a NANP number and, oftentimes, even VoIP calls associated with NANP numbers do not have the geographic relevance they once did. These circumstances can lead to terminating provider claims that it is not receiving signaling parameters sufficient to impose access charges.

⁹ *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.")

¹⁰ 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.

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and the technological promise of VoIP, avoiding imposition of the economically irrational access charge regime on VoIP services is the obvious choice.

While the VON Coalition opposes piecemeal resolution of intercarrier compensation issues, it urges the Commission to complete its omnibus intercarrier compensation reform proceeding. 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 Deborah Taylor Tate
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein

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 Acceris, AccessLine, BMX, BT Americas, CallSmart, Cisco, Convedia, Covad, EarthLink, iBasis, Intel, Intrado, Microsoft, MobilePro, Multi-Link, New Global Telecom, Openwave, Pandora Networks, PointOne, Pulver.com, Skype, Switch Business Solutions, T-Mobile USA, USA Datanet, VocalData and Veraz Networks, 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. More information about the VON Coalition can be obtained at the following website: <http://www.von.org>