

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)
)
Developing a Unified Intercarrier) CC Docket 01-92
Compensation Regime)
)

COMMENTS OF THE VON COALITION

The Voice on the Net Coalition (“VON Coalition”), the nation’s leading advocacy organization promoting policies that facilitate access to Internet Protocol (“IP”)-enabled services, files these comments in response to the Commission’s recent Public Notice in the above-captioned proceeding to urge the Commission to avoid costly and burdensome “solutions” to the so-called phantom traffic issues raised by the Missoula Plan supporters and, instead, directly move to adopt comprehensive compensation reform.¹ The action encouraged by the Missoula Plan supporters might provide the appearance of solving the problem, but the related “fallout,” however, will have significant negative repercussions and will merely exacerbate the market distorting effects of the current regime. The Commission should “exorcise” this phantom traffic issue once and for all by establishing a

¹ See *Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Process*, Public Notice, DA 06-2294 (rel. Nov. 8, 2006).

new intercarrier compensation regime that fosters competition and innovation to the benefit of consumers nationwide.

The VON Coalition urges the Commission to consider two questions before it adopts any new rules related to phantom traffic:

- (1) Have proponents of additional regulation adequately demonstrated a quantifiable problem that cannot be addressed through vigilant enforcement of current rules?
and
- (2) If so, does the cost of the problem and its solution outweigh the additional costs and burdens that will flow to customers and competitors as a result of the solutions?

I. Phantom Traffic “Solutions” Confirm the Failures of the Current Compensation Structure and the Need for Comprehensive Reform

The Commission need not adopt new, costly, and cumbersome rules to address piecemeal issues such as phantom traffic where Commission enforcement of current rules and adoption of comprehensive reform provide far more rational solutions.²

There are two distinct issues that the Missoula Supporters seek to resolve with their phantom traffic proposals. The first issue involves the scope and details of calling party information that is generated and exchanged. As discussed in detail in Section II.B below, the FCC’s

² The Commission has taken a strong view against piecemeal decisions that might “stymie comprehensive reform.” For example, in rejecting a recent 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*, Memorandum Opinion and Order, 20 FCC Rcd 9361 (2005).

current rules already address this concern. Specifically, carriers that utilize SS7 signaling *already* are required to transmit the calling party number associated with an interstate call to interconnecting carriers.³

The second issue is that Missoula supporters seek to establish an appropriate compensation structure for traffic that does not meet the billing requirements of terminating LECs. Proponents of additional regulatory burdens seek to impose backward-looking obligations and high access rates on competitors in the guise of “phantom traffic” solutions for two underlying reasons: (1) the current compensation structure does not reflect current technological and market realities; and (2) some are seeking to remedy deficiencies in their own billing systems. Thus, should the Commission determine that it must amend its current rules and delay comprehensive reform, it should adopt forward-looking rules that will enable the transition to a unified compensation rate. Any new rules should not lose sight of the failures of the current system, and focus on consumer benefits, encouraging innovation, and competition. A rush to judgment on the phantom traffic issues, without proper consideration of the interest of consumers and the repercussions of the reforms on competition and innovation, would be a dramatic departure from the Commission’s stated goals for compensation reform. As the Commission noted in

³ 47 C.F.R. §64.1601(a).

the *Intercarrier Compensation NPRM*, its decisions regarding compensation should encourage network efficiency and investment and the development of efficient competition.⁴ Further, as stated in the *Intercarrier Compensation Further Notice*:

[A]ny 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. In addition, we favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences.⁵

The VON Coalition believes that consumers stand to benefit when the Commission gives proper consideration to the impact of piecemeal decisions on the incentives of all parties to embrace comprehensive reform; avoids imposing costly “band-aid” fixes (costs which ultimately are borne by consumers) to resolve temporarily issues created by the existing economically irrational compensation scheme; and remains mindful of the impact of its decisions on

⁴ See *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9612 (2001).

⁵ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 ¶ 33 (2005) (“*Intercarrier Compensation Further Notice*”).

consumers and ensures that its actions on these issues do not deter new investment in IP-enabled networks, applications, and services.

II. Current Industry Standards and Commission Rules Are Sufficient to Ensure That Providers Generate and Deliver Call Identifying Information

A. The Record is Void of Alternative Solutions Focusing on the Terminating Carrier.

The VON Coalition is concerned that the Commission is considering expensive, backward-looking fixes to the phantom traffic issue, but the problem has not been adequately quantified and the costs and burdens of the proposed solutions have not been adequately examined. For example, proponents of additional regulatory burdens seek to impose additional regulatory costs on the advanced technologies that stand to save consumers billions of dollars, but ignore a more reasonable solution to their purported problems – adopting technology and equipment in their own networks that will better identify traffic and call details. For example, Carrier Management Systems Inc. (“CMSI”) offers one such solution called *Phantom Tracker*.[™] CMSI advertises the product as software that:

includes EAS, IntraLATA Toll, Common Toll, and feature group Phantom Usage reporting and detects call laundering on many different types of trunk groups. The software will help identify long distance traffic that has been terminated over trunks designated only for local traffic such as EAS groups. It also breaks calls down by LATA / MTA

jurisdiction so that Common Toll and IntraLATA toll groups can be monitored.⁶

The availability of solutions like *Phantom Tracker* readily confirms that proponents of additional regulatory burdens have options other than imposing outdated technical mandates and unnecessary costs on advanced technologies and consumers of IP services.

B. Current Commission Rules Require Transmission of Calling Party Information.

The Commission's rules already require carriers that utilize Signaling System 7 ("SS7") to transmit the calling party number associated with an interstate call to interconnecting carriers.⁷ Strict enforcement of this rule, rather than adoption of new rules, will ensure that all providers in the communications stream deliver information to intermediate and terminating providers that may be used to determine the jurisdiction of calls. Thus, the Phantom Traffic proposal is not needed.

The VON Coalition supports strict Commission enforcement of the requirement that, for traffic that interconnects with the PSTN, all originating and intermediate providers transmit without alteration,

⁶ See <http://www.nams.net/phantom-traffic.html>. The VON Coalition's reference to CMSI's solution is merely for instructional purposes. It is not intended to be an endorsement of the solution.

⁷ 47 C.F.R. §64.1601(a).

calling party number or charge number (“CPN” or “CN”) information for traffic where SS7 signaling is used and the passing of automatic number identification (“ANI”) information when multi-frequency (“MF”) signaling is used.

C. Advanced Technologies Should Not Be Burdened With Backward-Looking Signaling Requirements.

It is critical that the Commission consider the technical variations of networks and not try to retrofit new technologies into legacy network solutions. IP networks and the gateways that enable the transition between broadband communications and the PSTN are critical links for empowering consumers and driving economic benefits. By avoiding rules that create new obligations to generate call identifying information where such information does not generate organically due to technical parameters, the Commission will ensure continued investment in IP-enabled networks, and avoid backward-looking decisions that can stifle innovation, impede technology investment, and slow the transition to broadband communications. Ultimately, should the Commission determine it is necessary to adopt additional rules addressing the passing of call signaling information, it should make explicit that intermediate carriers have no obligation with respect to signaling information population except to pass on what the originating provider gives them in the required signaling parameters.

Most importantly, the Commission should never permit terminating carriers to resort to self-help in enforcing any of the Commission's call identifying rules. Some ILECs have suggested that both intermediate and terminating carriers should have the right to block "improperly labeled traffic." Because such action blatantly gives competitors the ability to discriminate and is customer affecting, the Commission should never tolerate or permit blocking of any calls under any circumstances. More specifically, no carrier should be permitted to discriminate on the basis of: (1) the classification of the requesting carrier;⁸ (2) the classification of the requesting carrier's customers; (3) the location of the requesting carrier's customers; (4) the geographic location of any of the end-users who are parties to the communication;⁹ or (5) the architecture or protocols of the requested carrier's network or equipment. Such protections will ensure that consumers will fully realize the benefits of innovative VoIP services without being harmed by inefficient and outdated legacy regulatory regimes.

⁸ The VON Coalition opposes the imposition of the current access regime to VoIP traffic, and recommends that the Commission permit existing arrangements to remain in place during any reform transition period. Current arrangements permit VoIP providers to originate and terminate traffic as a business end user, or through the use of local carriers, paying cost based rates based on reciprocal compensation, pursuant to Section 251(b)(5).

⁹ The VON Coalition opposes any origination charges that distinguish between local and toll traffic because such charges allow the originating provider to discriminate based on the geographic location of the end-users who are parties to the communication.

III. Adopting Interim Measures Could Undermine Broader Intercarrier Compensation Reform

Despite frequent conflation, there is a difference between identifying traffic and deciding which intercarrier compensation charge should apply. While the Missoula phantom traffic proposal represents itself as dealing with “industry standards for the creation and exchange of call information,” in reality, Appendix B seeks to impose a compensation rate on VoIP traffic that reflects a blend of intrastate and intrastate switched access and reciprocal compensation rates. Moreover, a major omission from the plan is the fact that carriers terminating calls to VoIP providers are not required to identify traffic and pay reciprocal compensation under this proposal, thus, such proposal would be in conflict with Section 251(b)(5) of the Act.¹⁰

As stated previously, the VON Coalition supports the requirement that, for PSTN connected services, all providers in the communications stream pass organically generated call identifying information without modification. However, imposing a blended compensation rate that includes some variation of per-minute access charges on the most innovative of IP calls is a burden on consumers, a deterrent to innovation and investment, and a backwards step away

¹⁰ 47 U.S.C. §251(b)(5) imposing a duty on carriers to “establish reciprocal compensation arrangements for the transport and termination of telecommunications.”

from the broadband world that the Missoula Plan drafters purport to support.

The VON Coalition is concerned that reform efforts will be delayed and ultimately may fail if the Commission adopts interim decisions that negatively affect one segment of the industry without appropriate consideration of the impact on all segments. The compensation structure proposed for IP-originated traffic by the Missoula Plan supporters is inextricably intertwined with the comprehensive intercarrier compensation reform issues under consideration by the Commission.¹¹ The Commission must be wary of carving out IP-enabled services for rate raising treatment among the many compensation issues currently pending. While such a piecemeal approach to addressing intercarrier compensation may temporarily provide a new revenue source for some terminating carriers, it would negatively affect many other segments of the industry and drive consumers away from the PSTN altogether. Such a result only would serve to exacerbate problems created by the un-economic compensation structure, rather than resolving those problems.

Just last year, five Rural ILECs and US Telecom wrote to Senator Inouye arguing that the Commission should not take interim steps to

¹¹ See generally *Inter-carrier Compensation Further Notice*.

clarify the correct compensation regime for VoIP because “[t]hese issues should be addressed comprehensively and not in a piecemeal fashion, as the FCC has previously recognized.”¹² They argued that to “act on an ad hoc basis on only one aspect of a much larger problem at this stage is totally unwarranted.” They asked for help in preventing the “FCC from taking any hasty, ill-timed, and ill-conceived action.”¹³

The VON Coalition likewise agrees that acting on an *ad hoc* basis on only one aspect of a much larger problem at this stage is totally unwarranted. Instead, it urges the Commission to focus attention on completing action on 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

¹² Eastern Rural Telecom Association, Independent Telephone and Telecommunications Alliance, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, United State Telecom Association, Western Telecommunications Alliance Letter to Senator Daniel K. Inouye (Feb. 3, 2005).

¹³ *Id.*

will likely increase, along with the very real risk of creating new problems while exacerbating others.

It makes little sense to require carriers to make costly investments to enable last generation equipment to make jurisdictional distinctions between categories of traffic while the Commission is rightly considering whether to eliminate all such jurisdictional distinctions.¹⁴ A piecemeal approach might temporarily appease some, but it would negatively affect many others, including consumers.¹⁵

The additional cost of implementing the solutions twice (once now, once when the comprehensive plan is adopted) versus the lack of information regarding the full scope of the problem, benefits gained, disincentives for comprehensive reform, plus the economic benefits

¹⁴ See 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 (filed 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 (filed 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).

¹⁵ SBC (now AT&T) has also acknowledged the problems of piece-part decision making. 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 (filed 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.”).

lost because of additional disincentives for deploying IP services created as a result of piecemeal reform, all weigh heavily against complicated short term band aids. It also flies in the face of the FCC's landmark *Vonage* decision that found that numbers are poor fit for geographic location identification. Once the Commission has adopted a unified rate structure, the originating and terminating endpoints of a call will be irrelevant, thus obviating the need for specific interim rules addressing the issue.

IV. Getting to the Right Intercarrier Compensation Regime

The current regime is, in a word, broken and the apparent catalyst behind the request for new phantom traffic rules is the very issue that should be driving the Commission to adopt comprehensive compensation reform: rapid technological changes in the communications industry have made virtually all current compensation and billing mechanisms obsolete. The Commission should focus its efforts on reforming the compensation structure to ensure that the above-cost access charge subsidy regime currently used to support outdated technology is not extended to next-generation IP technologies at the expense of innovation and ultimately, to the detriment of consumers.

As a first step, the Commission should establish a set of foundational principles to guide the development of a new, forward-looking intercarrier compensation regime. More specifically, the VON

Coalition believes that any economically sound regime, at a bare minimum, should (i) be competitively, technologically, and geographically neutral; (ii) establish rates that are unified and cost-based for all traffic connected to the PSTN, precluding origination charges, and (iii) encourage voluntary interconnection between service providers for the exchange of all traffic on the PSTN regardless of the originating or transmission technology.

We urge the Commission to reject calls to impose even part of the nearly universally recognized broken access charge regime to IP-enabled services and instead address issues pertaining to these services in a comprehensive manner through adoption of plan that establishes a unified compensation rate.

Respectfully submitted,

THE VON COALITION

____/s/ Staci L. Pies_____

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