

TESTIMONY OF ANGELA SIMPSON ON BEHALF OF THE VON COALITION
Before the
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
U.S. SENATE

HEARING ON PHANTOM TRAFFIC
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Thank you, Chairman Inouye, Vice Chairman Stevens, and distinguished members of the Committee. My name is Angela Simpson. I am Director of Government Affairs at Covad Communications and President of the Voice on The Net or VON Coalition¹ – the voice for the VoIP industry. On behalf of the VON Coalition, I thank the Committee for the opportunity to appear before you today to discuss the so-called phantom traffic issue.

I am proud to be here representing a group of high tech innovators who are helping to usher in a new world of communication opportunity. We believe VoIP can be a force for increased competition, a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. In fact, with the right policies, VoIP competition can save consumers an astounding \$111 billion over the next five years – putting real money back into consumers' pockets through the power of competition at a time when families really need it.² And by harnessing VoIP as a broadband driver, just a 7% increase in broadband adoption could create an estimated 2.4 million new jobs.³ Indeed, as the nation faces economic challenges, VoIP is now projected to be the number one job creator of any industry in the country.⁴

¹ 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 AT&T, BT Americas, CallSmart, Cisco, CommPartners, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, 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. For more information, see <http://www.von.org>.

² Micra report (available online at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf) found that VoIP competition can save consumers \$111 billion over the next five years.

³ Just a 7% increase in broadband adoption could result in an additional 2.4 million jobs per year created. See http://www.connectednation.com/documents/2008_02_21_TheEconomicImpactofStimulatingBroadbandNationally_AConnectedNationReport_001.pdf.

⁴ The industry leading the way in terms of employment growth over the next few years will be Voice Over Internet Protocol providers (VoIP), according to economic research firm IBISWorld, with average annualized jobs growth of around 19.4% through 2012. See <http://www.ibisworld.com/pressrelease/pressrelease.aspx?prid=116>.

But the promise and potential that I outlined above are at risk if rules meant for the last century's telephone network are arbitrarily imposed on to the Internet. This would not only stall and stifle these vast consumer and small business benefits, but it runs counter to the course the Committee has charted over the years to promote competition, investment, and innovation.

"Phantom traffic" is a somewhat sinister-sounding phrase used by some incumbent phone companies to refer to communications traffic that does not conform to the billing methodologies used by those terminating LECs. In essence, such traffic "confuses" the terminating carrier's systems because, in some instances, the traffic does not contain information that the legacy carrier's system utilizes to determine the traffic's regulatory classification for compensation purposes. Some read fraudulent motives into phantom traffic by suggesting that the originators affirmatively alter or remove the information necessary for intercarrier compensation billing purposes in order to make traffic appear to be the type of traffic that is assessed lower termination fees. But it is inaccurate and simplistic to view "phantom traffic" as fraud or theft. There are other, innocent and valid reasons for the "phantom traffic" phenomenon.

Namely, the current compensation scheme does not reflect the technological realities of today's communications market. Many new technologies, like some VoIP services, have no business reason to track such information in the traditional way that the ILECs would prefer. And to do so would require extensive network modifications simply to generate artificial information. For example, many innovative Internet based communication services and technologies are not tied inextricably to North American Numbering Plan ("NANP") numbers, which are the foundation of many intercarrier compensation calculations. In other instances, the consumer is simply utilizing the full range of features of a technology, whether IP-enabled or wireless, such as using a communications device to originate calls from locations unrelated to the calling party number.

While VoIP technologies may not be the primary cause of so-called phantom traffic problems, some of the proposed “solutions” put forth have the very real potential to stall the vast emerging benefits and limit consumer choices in the future. For these reasons, the VON Coalition respectfully urges the Committee to carefully consider two key principles before it advances any legislation related to phantom traffic that might forestall these vast consumer benefits:

- First, to help accelerate the transition to a nationwide broadband network, we believe regulators should adopt rules that create technologically neutral incentives rather than disincentives for exchanging traffic between Internet networks and the legacy phone network. This means strengthening and reforming interconnection and intercarrier compensation policies as a whole.
- Second, rather than automatically applying yesterday’s rules to tomorrow’s technologies, we encourage the Committee to support a practical, forward-looking approach that empowers consumers, extends VoIP driven benefits, and boosts productivity in the economy. Extreme caution should be taken to not unduly impede the FCC’s comprehensive intercarrier compensation reform efforts currently underway and to avoid the serious unintended negative consequences that could arise by virtue of a reflexive “band-aid” fix to the “phantom traffic” issue.

We are concerned that a “shoot then aim” approach to solving the so-called phantom traffic issue could have the unintended effect of stifling innovation and stalling investment in this still nascent IP-enabled communications industry. Those who advocate for quick action on the narrow issue of phantom traffic might create the appearance of solving a problem, but the related fallout is likely to have significant and unintended negative repercussions. For example, a band-aid fix imposed on VoIP services is likely not to adequately solve the problem experienced by the LECs, and will disproportionately harm VoIP providers and their

consumers. A better approach is for policy experts at the FCC and industry stakeholders to eliminate this phantom traffic issue once and for all by establishing a new intercarrier compensation regime that fosters fair competition and innovation to the benefit of consumers and small businesses nationwide. The FCC has the tools and the appropriate authority to develop the balanced, pro-competitive, and forward-looking policies that are needed here. Indeed, the FCC opened such proceeding in 2001, but has yet to act partly because they are overwhelmed by a tidal wave of petitions seeking to eliminate statutory interconnection obligations.

I. Proposed Phantom Traffic “Solutions” Confirm the Failures of the Current Compensation Structure

Many proposed solutions to the “phantom traffic” phenomenon tend to inextricably tie together the signaling issue and the compensation issue. This is neither necessary nor advisable, especially if Congress or the FCC is contemplating an interim solution. A combination of vigilant FCC enforcement of its current rules, potentially minor changes in signaling requirements, and completion of broader FCC policymaking provide far more rational solutions.⁵

There are two distinct issues that proponents of phantom traffic solutions seek to resolve. The first issue involves the information about a call that is generated and exchanged. The FCC’s rules already address this concern, but they need to be enforced.⁶ Vigorous FCC enforcement of its existing rules can go a long way towards solving the phantom traffic problem. It is also important to note that certain ILECs themselves bear part of the blame for the phantom traffic issue where they have not updated their networks to accommodate Signaling System 7 (“SS7”) technology. But before such ILECs seek to

⁵ 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).

⁶ Specifically, carriers that utilize SS7 signaling **already** are required to transmit the calling party number associated with an interstate call to interconnecting carriers. 47 C.F.R. §64.1601(a).

impose burdensome new technical and regulatory requirements on the entire VoIP industry, they should be required to make the necessary upgrades to their own networks to be able to handle “necessary” signaling information prior to suggesting that other intermediate carriers assume any additional burdens.

Current signaling requirements could potentially be fine-tuned to further address the situation to the extent such actions are technically, operationally, and economically feasible for all, to the extent that they are necessary for an interim solution to be effective, and in a manner that spreads the burden equitably between all entities in the transmission chain. To this end, the VON Coalition could support a requirement that, where technically and operationally feasible with the network technology deployed at the time the call was originated, the originating providers transmit the telephone number received from or assigned to the calling party. For PSTN connected services, all providers in the communications stream pass currently generated call identifying information without modification. This requirement would not apply where no telephone number is assigned to the calling party. Importantly, however, the VON Coalition does not support any new obligations to generate call identifying information where such information does not generate organically.

The second issue involves the compensation structure for traffic that does not meet the billing requirements of legacy terminating phone companies. Proponents of additional regulatory burdens seek to impose backward-looking obligations and high access rates on new entrants and new technologies in the guise of “phantom traffic” solutions for two underlying reasons. First, the current compensation structure does not reflect current technological and market realities and disproportionately benefits legacy terminating LECs. And second, some are seeking to remedy deficiencies in their own networks and billing systems at the expense of others. Comprehensive intercarrier compensation reform is one of the fundamental policy issues currently being considered by the FCC.

The so-called phantom traffic “solutions” not only won’t solve these fundamental policy challenges, but worse, they will delay the reform that is necessary to put all carriers on a level playing field. A rush to judgment on the phantom traffic issue, without proper consideration of the broader interests of consumers and small businesses would be a dramatic departure from the federal goals on compensation reform which include encouraging network efficiency and investment, and the development of efficient competition.⁷

II. Congress Should Proceed Cautiously to Avoid Negative Unintended Consequences of New Phantom Traffic Regulation

The VON Coalition cannot over-emphasize the need to proceed cautiously. There is a significant danger of negative unintended consequences of going too far too fast here. As an initial matter, we are concerned that proponents of one-off phantom traffic regulation have not adequately demonstrated a quantifiable problem that cannot be adequately addressed through vigilant enforcement of existing rules. Information regarding the true size and scope of the so-called phantom traffic problem, and tending to show that it is a significant problem that cannot be addressed by FCC enforcement, is a reasonable and necessary precondition for any additional regulatory requirements. There is also insufficient evidence that the long-term costs to consumers, service providers, and our economy from a new Internet regulatory scheme imposed to address any quantifiable phantom traffic problem – are outweighed by any short term benefit to incumbents. In addition to this fundamental cost-benefit analysis, the Committee should refrain from acting until the impacts of any such action on existing law (such as the Call Home Act), broadband deployment, and the Internet generally, are understood. There’s no need to conduct open-heart surgery to fix a paper cut.

⁷ See *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9612 (2001).

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 related to IP-enabled communications. That's why it's critical to consider the technical variations of networks and not try to retrofit new technologies into legacy network solutions. By avoiding rules that create new and onerous obligations to generate call identifying information where such information does not generate organically, policymakers can help 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.

Regardless of the path taken, the FCC should never permit terminating carriers to resort to "self-help." 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, policymakers should never tolerate or permit blocking of any IP traffic under any circumstances.

III. Getting to the Right Intercarrier Compensation Regime

Only a few years ago, five Rural ILECs and US Telecom wrote to this Committee arguing that the FCC should not take interim steps to 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."⁸ 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." And they asked for help in preventing the "FCC from taking any hasty, ill-timed, and ill-conceived action."⁹

⁸ 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).

⁹ *Id.*

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, especially when the *ad hoc* solution being proposed by the ILECs is likely to impose high per-minute access charges on VoIP providers. Such access charges would overcompensate ILECs because they do not remotely reflect the true costs of traffic exchange, while at the same time stifling consumer benefits of IP-enabled communications and slowing broadband adoption in the United States. Instead, we urge the Committee to encourage regulators to continue 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 broadband communication, protects VoIP consumers from arbitrary price increases, and ensures that new investment in IP-enabled networks, applications, and services is not unnecessarily deterred.

The current regime is, in a word, broken and the apparent catalyst behind the request for new phantom traffic solutions is the very issue that should be driving the FCC to adopt comprehensive compensation reform: rapid technological changes in the communications industry have made virtually all current compensation and billing mechanisms obsolete. Thus, to the extent this Committee acts, it should focus its initial efforts on quantifying the scope of the “phantom traffic” problem. The existence of a problem is a gating issue, and estimates as to the size and scope of the problem vary greatly. Congress should focus on doing no harm prior to mandating new regulatory constructs. The risks associated with retrofitting outdated technological and compensation regimes onto bold new communications tools vastly outweigh the financial rewards these ILECs seek.

IV. Conclusion

VoIP technology has benefited people all across America from cities to suburbs to exurbs. And it has been especially important for consumers living in rural America who are

just now beginning to enjoy the benefits of broadband and voice competition. Enabling Internet-based voice communication can help consumers (particularly rural consumers) to benefit from voice competition, encourage rural telecom companies to extend broadband infrastructure more affordably, allow remote businesses to transform the way they operate, and help rural communities to connect to a new world of remote job opportunities, resulting in rural economies becoming an engine for higher paying information age jobs.

However, imposing rules meant for yesterday's phone network on to tomorrow's digital age would adversely affect these vast consumer benefits. The VON Coalition in no way endorses fraudulent removal of call signaling information. Many legacy telephone companies, however, would use this fear as a means to burdensomely regulate the balance of innocent VoIP actors. We urge the Committee to take extreme caution in how it proceeds with this "phantom" problem.

Thank you very much. I am happy to answer questions.

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