

**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
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (VON Coalition)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released in the above-referenced proceedings.² The VON Coalition commends the Commission

¹ The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. VON Coalition members include AT&T, Broadvox, BT, Google, iBasis, Microsoft, Skype, T-Mobile, Vonage, and Yahoo.

² *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket Nos. 07-135, 05-337, CC Docket Nos. 01-92, 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“*NPRM and FNPRM*”).

for taking much-needed steps to provide a framework for intercarrier compensation for VoIP³ that recognizes the increasing movement by customers away from the analog PSTN and that can function effectively during the transition to all-IP networks. To that end, the VON Coalition urges the Commission to immediately adopt a bill-and-keep regime for interconnected VoIP traffic.⁴ Bill-and-keep is vastly superior to other options under consideration, as it will hasten construction of broadband networks, promote competition, protect consumers and safeguard technological innovation. In addition, the Commission finally should confirm the classification of interconnected VoIP as an interstate information service.⁵

DISCUSSION

For more than a decade the Commission has grappled with an intercarrier compensation regime that has failed to keep pace with the epic changes that have taken place in the telecommunications industry. These changes, include, most notably, the increasing use of broadband, wireless, and VoIP services, as well as the emergence of email and text messaging -- all of which have disrupted the old telephone carrier business models that relied heavily on intercarrier compensation on switched traffic as a major revenue source. In addition, these new services and applications all ignore the traditional regulatory-created boundaries of local, long distance, intrastate, interstate, and even international services to the benefit of consumers who enjoy more, better, simpler, and cheaper communications options.

³ *Id.* ¶ 608.

⁴ *Id.* ¶ 615. Under a bill-and-keep methodology carriers would not impose charges on other service providers for originating or terminating traffic, but would recover network costs from their own end users, similar to how wireless providers operate today. *Id.* ¶ 530.

⁵ *Id.* ¶ 73.

The adoption today of a bill-and-keep regime by the Commission will best facilitate and encourage the transition from circuit-switched to IP networks.⁶ The current intercarrier compensation system was designed for a time when network traffic was defined by now-outdated jurisdictional and technological differences such as local and long distance, wireline, wireless, interstate and intrastate, LATAs, circuits, calls, minutes, LECs, and IXCs. The different types of traffic and the Commission's policy of promoting universal service through implicit and explicit subsidies in carrier access charges has created an irrational system and led to seemingly endless disputes between originating and terminating local carriers and the CLECs who carry IP voice traffic on behalf of VoIP providers and their customers, among others.⁷

The identical nature of all IP traffic, and the relative burden such traffic imposes on the carrier networks, demands an intercarrier compensation regime that treats all traffic equally.⁸ IP products, services, and applications use open and common protocols on digital packet-switched networks on which traffic is not distance-sensitive or identified by application, location, or device. Costs incurred for originating, terminating or exchanging IP traffic do not depend on distance, time, or the e.164 number that might be associated with the VoIP service. IP-based applications, products, and services enable subscribers to utilize multiple features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously. In addition, IP technology enables the

⁶ The VON Coalition asserts that bill-and-keep should apply to all communications traffic that originates or terminates on the PSTN, including all forms of IP traffic, whether facilities-based, fixed, or nomadic. *See NPRM and FNPRM* ¶ 612.

⁷ *See generally*, Global NAPs, Inc. Petition for Declaratory Ruling, WC Docket 10-80 (filed March 5, 2010); *PaeTec Communications, Inc. v. Comm Partners, LLC*, 08-CV-0397-JR (D.D.C. Feb. 18, 2010); Order, *Sprint Communications Company L.P. v. Iowa Telecommunications Services, Inc.*, Iowa Utilities Board Docket No. FCU-2010-001 (Feb. 4, 2011).

⁸ *See generally* Dale N. Hatfield, Bridger M. Mitchell, & Padmanabahn Spinagesh, *Emerging Network Technologies*, 2 HANDBOOK OF TELECOMMUNICATIONS ECONOMICS: TECHNOLOGY EVOLUTION AND THE INTERNET 29 (2005).

routing of calls seamlessly to and from a wide variety of devices, including mobile, some of which may be nomadic and some of which may be fixed, but all changeable at the user's discretion. These features do not fit within traditional legacy telephone regulatory treatment nor an intercarrier compensation regime based on the location of the originating and terminating endpoints. Bill-and-keep eliminates the disparate treatment of intercarrier traffic thereby treating all traffic equally.⁹ Additionally, a bill-and-keep regime for all traffic eliminates the phantom traffic and traffic pumping issues the Commission is attempting resolve in this proceeding.¹⁰

If the Commission were to impose an obsolete access charge regime¹¹ on interconnected VoIP providers, the results would be anti-consumer, anti-innovation, and anti-investment for IP-enabled voice services. VoIP providers would, for the first time, be subject to the highest regulated rates for switched traffic. VoIP providers, who must also recover their costs, would be forced to pass through these rate increases to their end users. Rates for innovative IP-enabled voice applications would go up, and innovation in and development of new IP-enabled voice applications would be curtailed. Providers would be saddled with inefficient costs that could artificially limit their availability and burden consumers with above-cost charges. Legacy access charges for VoIP are barriers for entry into the voice market that stifle competition, thereby harming consumers and the public interest. Also, interconnected VoIP providers offering products integrated into websites would be left with a three-pronged "Morton's Fork" choice: (1)

⁹ See Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime*, OPP Working Paper Series No. 33, ¶ 80 (2000), available at http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp33.pdf (last visited Mar. 17, 2011) ("DeGraba").

¹⁰ *NPRM and FNPRM*, FCC 11-13, at ¶¶ 620-34.

¹¹ Letter from CenturyLink, Frontier, Qwest, and Windstream to Chairman Genachowski, GN Docket No. 09-51; WC Docket Nos. 07-135, 05-337, 04-36; CC Docket Nos. 99-68, 01-92, Jan. 18, 2011.

eliminate voice communication from web sites; (2) begin charging customers for access to these applications and web sites (which is often a recipe for web site failure); or (3) develop specific technology to prevent rural Americans (and others living in areas with high access rates) from accessing these innovative technologies or communicating with their online counterparts. Each of these outcomes nullifies the continued development of the Internet and other interactive computer services.¹²

Applying access charges to interconnected VoIP service providers will also impede broadband adoption in stark contrast to the goals announced by the Commission in the National Broadband Plan.¹³ The availability of VoIP and IP-enabled products provides consumers with the applications, content, and services needed to spur broadband deployment as a result of consumer demand. Under a bill-and-keep regime, the removal of non-economic costs provides customers with the opportunity to make rational economic choices because any decision to adopt broadband would be based solely on the efficiencies of the networks and operations as well as the quality of service provided.¹⁴ The superior efficiency and quality of service that broadband provides would be highlighted under a bill-and-keep system, increasing demand for broadband.

The Commission should adopt bill-and-keep for interconnected VoIP traffic today and avoid interim solutions. The VON Coalition is concerned that comprehensive reform efforts will be delayed and ultimately may fail if the Commission adopts interim decisions that negatively affect VoIP consumers and the VoIP industry. The appropriate compensation rate for VoIP traffic is inextricably intertwined with the comprehensive intercarrier compensation reform issues under consideration by the Commission. The Commission must be wary of carving out IP-

¹² 47 U.S.C. § 230(b)(1) (2006).

¹³ National Broadband Plan at 142,

¹⁴ See DeGraba at ¶ 80.

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 VoIP products, applications, and services which have been significant drivers of broadband adoption. Such a result only would serve to exacerbate problems created by the un-economic compensation structure, rather than resolving those problems.

The VON Coalition believes that acting on an *ad hoc* basis and imposing uneconomic access charge type rates on VoIP traffic will stall any hope of a consensus solution to comprehensive intercarrier compensation reform. Instead, the VON Coalition urges the Commission to enable the exchange of VoIP traffic on a bill and keep basis and focus attention on completing action on its omnibus intercarrier compensation reform proceeding. Such an approach avoids imposing costly but temporary “band-aid” requirements on VoIP providers, 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 likely increase, along with the very real risk of creating new problems while exacerbating others.

It makes little sense to require VoIP providers and carriers to make costly investments to enable last generation equipment to make jurisdictional distinctions between categories of traffic, which would be required if the Commission were to allow the imposition of access charges for VoIP traffic, while the Commission is rightly considering whether to eliminate all such jurisdictional distinctions. A piecemeal, rate-raising approach might temporarily appease some,

but it would negatively affect the most innovative segment of the communications industry, and would certainly have a negative impact on consumers. 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 interim rules addressing the issue.

VoIP and other IP-enabled applications should be classified as information services. The Commission also asks in this proceeding whether it should classify interconnected VoIP as a telecommunications service or an information service.¹⁵ The VON Coalition recommends that the Commission now affirm that interconnected VoIP and other IP-enabled applications are information services as it moves to implement the goals of the National Broadband Plan. VoIP and other IP-enabled applications provide multiple capabilities that combine information provision and processing, computer interactivity, and voice-calling capabilities, which render such services as single integrated offerings. Users can “utilize multiple service features that access different websites or IP addresses during the same communication session and perform different types of communications simultaneously.”¹⁶ These features and functions are inseparable from the voice application that may appear to be most similar to a telephone service.

VoIP and other IP-enabled applications are either unregulated or properly classified as information services under the Telecommunications Act of 1996 (“1996 Act”). The 1996 Act creates a distinction between “telecommunications services” and “information services.” The first consists of pure transmission services offered to end users without change in form or

¹⁵ *NPRM and FNPRM* ¶ 73.

¹⁶ *In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Board*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 25 (2004).

content, and subject to common-carrier regulation.¹⁷ The second, in contrast, offers the ability, for example, to store, retrieve, utilize, and/or manipulate “information.”¹⁸ These applications take full advantage of the flexibility and efficiency of IP-based transmissions by enabling the user to manipulate, generate, store, transform, and make information services available to others.¹⁹

The Commission has further explained that the statutory definitions of telecommunications service and information service do not “rest[] on the particular types of facilities used.”²⁰ Each rests instead “on the function that is made available.”²¹ VoIP and other IP-enabled applications that originate or terminate in IP are intrinsically information services when traffic is exchanged between an IP network and the PSTN because the traffic must, of necessity, undergo a net protocol conversion from circuit-switched format to IP (or vice versa). The FCC has held that “both protocol conversion and protocol processing services are information services under the 1996 Act.”²²

In addition, the FCC has held that a service will be treated as a single, integrated information service, rather than as an information service with a separate telecommunications

¹⁷ § 153(43).

¹⁸ § 153(20).

¹⁹ The 1996 Act defines an “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications” *See id.*

²⁰ *In re Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, GN Docket No. 00-185; CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 35 (2002) (“2002 Declaratory Ruling and NPRM”).

²¹ *Id.*

²² *In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 104 (1996).

service component, when the telecommunications features are not “separated from the data processing capabilities of the service” but are instead “part and parcel of [the overall information] service and . . . integral to its other capabilities.”²³ Thus, interconnected VoIP and other IP-enabled applications fall squarely within the definition of an “information service” and are subject to exclusive federal jurisdiction unless otherwise specifically provided by Congress or the FCC.

CONCLUSION

The transition to IP networks and services is escalating, and all traffic eventually will be packet-switched, originating and terminating on broadband networks. The VON Coalition looks forward to working with the Commission to implement an intercarrier compensation system that will encourage all participants in the communications ecosystem to hasten that transition.

Respectfully submitted,

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²³ 2002 Declaratory Ruling and NPRM ¶¶ 36, 38.