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May 2, 2007

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20005

Re: Intercarrier Compensation Reform, Docket Number 01-92
Notice of Ex Parte Presentation

Dear Ms. Dortch:

On May 1, 2007, NECA representatives Rick Askoff, Teresa Evert and the undersigned met with Al Lewis, Deena Shetler, Victoria Goldberg, Jay Atkinson, Chris Barnekov, and Lynne Engledow of the Commission. NECA presented concerns of small rural carriers in NECA's access tariff regarding circumstances resulting in access charge avoidance, including, among others, "phantom traffic."

NECA asked the Commission to resolve access avoidance issues soon, in order to sustain working intercarrier compensation systems, pending more comprehensive reform.

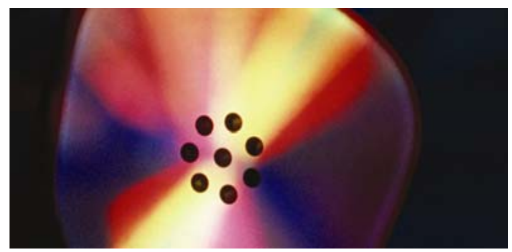
NECA also asked the Commission to promptly confirm that interconnected VoIP services offered in competition with traditional local and long distance telephony are also subject to access charges.

The attached material was used in the meeting.

Sincerely,

/s/ Joseph A. Douglas

The Effects of Phantom Traffic and Other "Access Avoidance" Schemes on Rural Carriers



Presentation to FCC Staff
May 1, 2007

Access Avoidance Problems

- Carriers are seeking ways to avoid payment of access charges on interexchange traffic. Examples include:
  - Sending traffic with missing or inaccurate call detail
  - Improper routing over local trunks
  - False or unverifiable “enhanced service” claims
  - Inaccurate (and unauditable) PIU factors
  - Refusals to order access service or negotiate interconnection agreements
  - Diversion of interexchange traffic via VNXX arrangements
  - NXX/NPA “spoofing” technology

Impacts Felt by Rural Carriers

- NECA 2007 studies reveal greater-than-expected reductions in billable minutes starting in 2006.
  - 2006-2007 tariff forecast: -1.45%
  - Latest estimate of 2006 -2007 demand: -5.79%
  - Latest estimate of December 2006 demand: -8.7%
  - 2006 Switched TS earnings (3/07 492 Report): 9.98%
    - Likely to decline further as pool estimates are trued-up

Reasons for Decline

- To some extent, decline in billable minutes simply reflects service substitution by customers. *E.g.*:
  - Increasing use of wireless phones for long-distance calling
  - Increasing migration to competitive providers in rural areas (especially cable VoIP services)
  - Increasing reliance on web-based marketing in place of traditional "800" services
- Such trends can represent fair economic competition and introduction of new, beneficial technology.
- But uneconomic arbitrage, phantom traffic and other access avoidance techniques require immediate FCC action to sustain working intercarrier compensation systems, pending more comprehensive reform.

Phantom Traffic

- Phantom traffic impacts, by definition, are difficult to quantify.
  - Estimates submitted to FCC indicate problem is substantial:
    - Raymond James estimate: $2 billion for industry overall
    - Balhoff & Rowe estimate: $600 million for rural carriers
    - Oregon & Washington Association estimates: 20% - 50% losses
    - Verizon estimates approximately 20% of its traffic is missing call detail or has plainly invalid data.

IP-Enabled Services

- Uncertainty over status of IP access charges is leading to brazen access avoidance scams.
  - False “enhanced service” claims by IP-in-the-middle providers
    - In 2005 SBC estimated more than $100 million in access revenues lost over 5 years (petition still pending).
  - Some IP carriers admit they terminate interstate calls but flatly refuse to pay access charges (sample letter attached).
  - IP Platform providers routinely offer services that allow end users to make interstate or international long distance calls by dialing local numbers.

Steps the Commission Should Take Soon

- Action on Phantom Traffic
  - Most access avoidance issues involve missing or inaccurate call detail.
  - New call signaling, reporting and certification requirements in various "Phantom Traffic" proposals (e.g., Missoula Plan interim solution) will help reduce but not eliminate billing problems.
  - The Commission has imposed similar requirements on prepaid calling card providers in its June 2006 *Prepaid Calling Card Order.*
  - Comment cycle on Missoula Plan's interim phantom traffic solution is now complete – the issues are ripe for decision.
  - Whatever rules the FCC prescribes must include *adequate enforcement mechanisms*.

Action on IP-Enabled Services

- FCC Policy: "[A]ny service provider that sends traffic to the PSTN should be subject to similar compensation obligations . . . ."
- The Commission has explicitly stated that interconnected VoIP calls are "virtually indistinguishable" from ordinary telephone calls from the customer's perspective. (CPNI Order, ¶ 56)
- There is no longer any credible basis for claiming interconnected VoIP services, whether fixed or nomadic, are anything but telecommunications services.
- The Commission has already required interconnected VoIP providers to offer E911 service, make USF contributions, and comply with CALEA and CPNI requirements. It has tentatively concluded they should pay regulatory fees.
- The FCC should promptly confirm that interconnected VoIP services offered in competition with traditional local and long distance telephony are also subject to access charges.

Availability of Self-Help Remedies

- Service cut-offs are disfavored by the Commission.
- Small carriers subtending access tandems have difficulty disconnecting non-payers
- Lawsuits and state PUC actions are proliferating.
    - But legal remedies are problematic given likelihood of primary jurisdiction references to FCC
- Prompt FCC resolution of issues is preferable to myriad court actions.

In summary:

- NECA pool participants are seeing unexpected and unprecedented declines in billable minutes of use.
  - Some of the decline is due to legitimate competition from other services.
  - Some is due to phantom traffic and other unfair "access avoidance" behaviors.
- It is difficult to quantify the exact role of competition vs. access avoidance, but the overall effect is significant.
- FCC can help solve the problem by taking action on Phantom Traffic and Interconnected VoIP soon.

Attachment

- Typical “Interstate Access Is Free” Letter

CommPartners™
THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

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March 27, 2007

Laurel Highland Telephone Company
Po Box 168
Stahlstown, PA 15687

Re: Disputed invoice(s). Please see attached

To Whom It May Concern:

We are in receipt of an invoice for the billing account number ("BAN") referenced above. Please be advised that the billed party, CommPartners, is disputing the invoice. Based on CommPartners records, it appears that 97.5% of the originated traffic is interstate in nature ("PIU"), with 2.5% as local ("PLU"). CommPartners has not delivered any circuit-switched telephone calls to your company during the time period referenced in the invoice. According to CommPartners customer detail records, every call originated by one of our end users and terminated by your company, was initiated as an Internet protocol ("IP") stream, i.e., voice over Internet protocol ("VoIP'). Because all the traffic listed on this invoice represents VoIP transmissions rather than circuit-switched telephone calls, your company is not entitled to collect access charges.

CommPartners understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket[1] and the *Intercarrier Compensation reform* docket[2]. In the *AT&T Declaratory Ruling*[3], the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying this to IP-originated calls. The Commission reserved the right to do so in the future, noting that its decision "in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding." This specific issue is also the subject of a number of other pending petitions at the Commission. After these proceedings are completed and their results become final and non-appealable, CommPartners will comply with any federal or state requirements to pay access charges. Until that time, however, CommPartners refuses to pay access charges on any interstate IP-originated traffic terminated by your company. As a compromise, CommPartners will agree to pay tariffed local termination rates to your company for the 2.5% PLU traffic.

Should there be any questions or additional information required, please do not hesitate to contact me at 702 367-8647 ext. 1079. Thank you.

Sincerely,

Kristopher E. Twomey
Regulatory Counsel

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[1] *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).
[2] *In the Matter of Access Charge Reform, Notice of Proposed Rulemaking*, CC Docket No. 96-488.
[3] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order*, WC Docket No. 02-361, FCC 04-97 (April 21, 2004) ("*AT&T Declaratory Ruling*").

NECA

For further information

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