



December 22, 2005

EX PARTE NOTICE
Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92
and Addressing the Issue of “Phantom Traffic”

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) responds to four recent *ex parte* filings by certain incumbent local exchange carriers (“ILECs”) proposing solutions to the “phantom traffic” issue: proposals submitted by USTelecom (“USTelecom Proposal”)¹ and the Midsize Carrier Coalition (“Midsize Carrier Proposal”),² Verizon’s phantom traffic white paper (“Verizon White Paper”)³ and Verizon’s recent response to the Midsize Carrier Proposal (“Verizon Response”).⁴

These filings make clear that the disputes that have arisen over phantom traffic are only a symptom of the more fundamental problems affecting the existing discriminatory and inefficient intercarrier compensation regime. As CTIA – The Wireless Association®

¹ See A USTelecom Proposal for Commission Action on Phantom Traffic (Nov. 2005) (“USTelecom Proposal”) (attached to letter from Jeffrey S. Lanning, Assoc. Gen. Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Nov. 10, 2005)).

² See Proposed Rules For Proper Identification and Routing of Telecommunications Traffic (Dec. 5, 2005) (“Midsize Carrier Proposal”) (attached to letter from Karen Brinkmann, Counsel, Midsize Carrier Coalition, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Dec. 5, 2005)).

³ Verizon’s Proposed Regulatory Action to Address Phantom Traffic (May 23, 2005) (“Verizon White Paper”) (attached to letter from Donna Epps, Vice Pres., Fed. Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Dec. 20, 2005)).

⁴ Letter from Donna Epps, Vice Pres., Fed. Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Dec. 20, 2005) (“Verizon Response”).

("CTIA") correctly pointed out in its recent *ex parte* filing, the phantom traffic issue is best resolved by the implementation of a bill-and-keep compensation mechanism, or, as a second-best solution, unified intercarrier compensation rates, on all calls.⁵ If all traffic, irrespective of its jurisdiction, distance or originating or transiting carrier, were terminated on a bill-and-keep basis, the phantom traffic issue, and other intercarrier compensation-related disputes, would disappear.

Nevertheless, if the Commission prefers to attempt to resolve the phantom traffic issue independently of other intercarrier compensation issues, it must recognize that any targeted resolution realistically can be only an interim solution that may be mooted by overall intercarrier compensation reform. The Commission should not impose a phantom traffic remedy that predetermines any aspect of the pending overall intercarrier compensation proceeding or that requires extensive investment or the expenditure of substantial resources that in the longer term are unnecessary.

The specific proposals to resolve the phantom traffic submitted to date also demonstrate that a piecemeal approach will not entirely resolve the issue. Although T-Mobile can accept some of the individual elements of the USTelecom Proposal and the Midsize Carrier Proposal, they do not fully acknowledge that the technical inability of terminating rural local exchange carriers ("RLECs") to receive telephone number information and their failures to negotiate traffic exchange arrangements with wireless carriers are a significant part of the problem.

Specifically, much of what RLECs characterize as phantom traffic is attributable to RLECs' inability to read essential call information that is sent by originating carriers using Signaling System 7 ("SS7") because many of them do not have SS7 capabilities. Thus, imposing new call origination information requirements will have a minimal impact if RLECs do not become SS7-capable. Moreover, as discussed below, terminating RLECs' purported difficulties in identifying the jurisdiction of wireless calls also stem from their own failure to request wireless carriers to negotiate traffic exchange agreements incorporating traffic allocation factors.

With those caveats, T-Mobile can support aspects of the USTelecom and Midsize Carrier Proposals with the modifications discussed below.

USTelecom Proposal:

1. USTelecom states that phantom traffic is not:
 - Traffic containing correct information yet carriers dispute appropriate rate based on differing interpretations of existing FCC rules.

⁵ Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Nov. 10, 2005).

- Traffic without correct signaling because of limitations of the network technology in use.⁶

Those exclusions are appropriate, but they should be expanded to clarify that phantom traffic should not encompass situations where carriers dispute the proper termination rate because they have no traffic exchange agreement establishing jurisdictional allocation factors. In many cases, disputes arise as to the jurisdiction of calls because the terminating RLEC has not requested the originating wireless carrier to negotiate a traffic exchange agreement, as authorized by the *T-Mobile Order* (discussed below)⁷ and thus has no agreed-upon jurisdictional factor to allocate the traffic exchanged between them. A terminating RLEC's failure to seek a traffic exchange agreement with an originating wireless carrier cannot convert the resulting jurisdictional ambiguity of a call from a wireless end user into phantom traffic.

2. T-Mobile agrees that the originating carrier should transmit: (a) the Calling Party Number ("CPN") parameter, if using SS7 (or the Charge Number ("CN") parameter when it is not the same as the number to be displayed in Caller ID or if CPN is not required pursuant to 47 C.F.R. § 64.1601(d)); or (b) the Automatic Number Identification ("ANI") parameter, if using multi-frequency ("MF") signaling. T-Mobile today transmits all required call origination information.

3. T-Mobile agrees that the tandem transit provider, or any service provider in the call transmission chain, should be required to pass along all call origination information received from the originating carrier, or subsequent carrier in the chain, without alteration. As proposed by the Midsize Carriers, tandem providers should provide proper EMI records to terminating carriers (discussed below).

4. T-Mobile agrees that the "N-1" carrier should route the call using the Local Exchange Routing Guide ("LERG").⁸ T-Mobile's support for this requirement, however, is conditioned on the clarifications that the routing and rating points for any wireless call may be different, consistent with the Sprint Petition,⁹ and that "N-1" carrier is defined as "the last carrier in the chain with a retail relationship with the caller."

⁶ USTelecom Proposal at 2.

⁷ *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*").

⁸ *See also* Verizon White Paper at 19.

⁹ Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, CC Dkt. No. 01-92 (May 9, 2002) ("*Sprint Petition*").

5. USTelecom proposes that

The Commission should expand the *T-Mobile* decision ... and provide all carriers exchanging local traffic the ability to invoke the 251/252 negotiation/arbitration process with one another.¹⁰

Any such expansion of the *T-Mobile Order* must be carefully crafted. T-Mobile would oppose any expansion of wireless carriers' obligations to negotiate traffic exchange agreements to cover carriers other than ILECs.

- a. Moreover, the Commission should promptly resolve all pending petitions to clarify or reconsider the *T-Mobile Order*, especially clarifying that ILECs' right to request wireless carriers to negotiate extends only to traffic exchange arrangements, and not to direct interconnection agreements.
- b. T-Mobile also notes that RLECs generally have not utilized the *T-Mobile Order's* authorization to secure traffic exchange agreements with wireless carriers. RLECs should use the remedies already available before seeking additional ones. Phantom traffic disputes should be resolved through bilateral negotiations, as contemplated by the *T-Mobile Order*, not by Commission fiat.
- c. It is also likely that RLECs incorrectly consider the rate disputes resulting from the lack of traffic exchange agreements to be part of the phantom traffic issue, underscoring the need to clarify the definition of phantom traffic and for RLECs to undertake the negotiations encouraged by the *T-Mobile Order*.

Midsized Carrier Proposal:

1. The Midsized Carriers define phantom traffic as

telecommunications traffic that cannot properly be billed because it is mislabeled, unlabeled or improperly routed with the result that the originating or transiting carrier is unknown or the proper jurisdictional nature of the traffic ... cannot be identified.¹¹

This definition is appropriate, but it would be useful to emphasize that the inability to identify the jurisdiction of a call does not necessarily mean that it is phantom traffic. Phantom traffic should be defined to apply *only* when the inability to identify the

¹⁰ USTelecom Proposal at 8.

¹¹ Midsized Carrier Proposal at 1.

originating carrier or jurisdiction of a call is caused by mislabeling, failure to label at all or improper routing by the originating or subsequent carrier.

2. T-Mobile agrees that all originating carriers must pass accurate call originating information without alteration. USTelecom's proposed rule provides more specificity as to when the CN, rather than the CPN, parameter is required and should probably be followed.¹² T-Mobile also supports the voluntary, but not the mandatory, population of the Jurisdiction Information Parameter ("JIP"), consistent with ATIS' opposition to mandatory JIP data.¹³ T-Mobile today voluntarily passes both CPN and JIP data. T-Mobile also agrees, however, with Verizon Wireless that, due to the nature of cellular technology, populating the JIP with the originating mobile switching center ("MSC") may not identify the jurisdiction of a wireless call.¹⁴

3. T-Mobile agrees that intermediate carriers should forward all call origination information that they receive without modification, and tandem transit providers should provide EMI records (also referred to as terminating access records) to terminating carriers identifying the carrier from which they received the call by means of either the Carrier Identification Code ("CIC") in the case of interexchange carriers ("IXCs") or the Operating Company Number ("OCN"). T-Mobile agrees with the recent Verizon Response to the Midsize Carrier Proposal recommending that recognized industry practices requiring intermediate carriers to modify call origination information (such as in the case of Call Forwarding) be continued.¹⁵

4. T-Mobile agrees that service providers should follow the LERG when establishing traffic routing arrangements, conditioned on the clarification that the routing and rating points for any wireless call may be different, as discussed above, as well as USTelecom's clarification that the N-1 carrier should have the responsibility to route the call using the LERG. The Commission also should clarify that routing by the LERG does not require the deployment of separate trunk groups for different types of traffic.

¹² See also Verizon Response at 3 (commenting, in response to Midsize Carrier Proposal, that any proposed rules regarding traffic labeling should recognize exceptions in Commission regulations to CPN signaling). The Verizon Response also notes that the ANI cannot always be transmitted using MF signaling and that any new rules should acknowledge the limitations of MF technology. *Id.* at 4.

¹³ See Alliance for Telecommunications Industry Solutions, Signaling System No. 7 (SS7) – Integrated Services Digital Network (ISDN) User Part (Revision of T1.113-1995), T1.113-2000 (August 2000), Section 2.1.10C.

¹⁴ Letter from L. Charles Keller, Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 (Sept. 13, 2005). Verizon is also correct that the CPN associated with a wireless customer's handset may not indicate the geographic location where a wireless call originates and thus cannot be relied upon to identify the jurisdiction of the call. These circumstances should be addressed by the use of agreed-upon traffic allocation factors. Verizon White Paper at 11-12, 17-18.

¹⁵ See Verizon Response at 3.

5. T-Mobile agrees that parties should be able to bring enforcement actions under Section 208 of the Communications Act and existing complaint procedures to remedy violations of any phantom traffic rules that are adopted, but does not support any new Commission enforcement mechanisms, as proposed by the Midsize Carriers. Moreover, Section 208 should provide the exclusive remedy for any alleged violations of new phantom traffic rules. The Commission should make it clear that terminating RLECs may not block incoming calls they identify as phantom traffic, and carriers should not be permitted to secure any remedies, including orders authorizing the blocking of purported phantom traffic, from state regulatory commissions.

All of these proposed rules must apply in both directions. Specifically, RLECs, too, should be required to pass along all specified call origination information. Many RLECs today do not pass this information along because they are not SS7-capable, and thereby routinely impose phantom traffic termination burdens on T-Mobile and other wireless carriers.

Finally, RLECs must continue to be required to follow the well-established intra-MTA rule. When RLECs route wireless intra-MTA traffic to IXCs for delivery to wireless carriers, this misrouting creates phantom traffic for the terminating carriers, depriving them of the ability to bill the originating carriers for reciprocal compensation. RLECs should route intra-MTA traffic as local.

Ms. Marlene H. Dortch

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In accordance with Section 1.1206 of the Commission's rules, this letter is filed with your office for inclusion in the public record of the above referenced proceeding. If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Sincerely,

/s/ Thomas J. Sugrue

Thomas J. Sugrue

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