



April 17, 2006

VIA ELECTRONIC FILING

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Written *Ex Parte*; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

Core Communications, Inc.; DCI Voice Solutions, LLC; and Xspedius Communications, LLC (“Joint Commenters”) file this written *ex parte* to address various issues associated with so-called phantom traffic and wireless traffic termination. At the outset, the Joint Commenters submit that the disparate intercarrier compensation rates that exist today as a result of legacy regulatory classifications are the primary drivers of phantom traffic and wireless termination issues. The best way to resolve those issues is for the Commission to unify intercarrier compensation rates and rate structures for all types of traffic as quickly as possible. In so doing, action by the Commission should promote facilities deployment by enabling reasonable cost recovery and by ensuring that transport and termination rates established by the Commission are technology, carrier, and traffic neutral. Any other result will only perpetuate regulatory arbitrage through which carriers are heavily incented to maximize the termination rates they collect and minimize the termination rates they receive pay.

I. Modifications To The Midsize Carrier Coalition And USTelecom’s Proposed Rules Are Necessary To Achieve The Stated Goals

At present, two primary sets of draft phantom traffic regulations are before the Commission, one supported by the Midsize Carrier Coalition (composed of CenturyTel, Iowa Telecom, Consolidated Communications, Fairpoint Communications, TDS Telecommunications, and Valor Telecom) and a second supported by USTelecom. As described below, the Joint Commenters submit that any phantom traffic regulations adopted by the Commission should be minimally regulatory and narrowly tailored to maximize their effectiveness. In addition to the narrative provided herein, the Joint Comments have attached hereto a redline version of the Midsize Carrier Coalition’s proposal (which is largely similar to the USTelecom’s proposal).

A. New Enforcement Rules Are Unnecessary

Foremost, the Commission should enforce any phantom traffic regulations through its existing enforcement procedures, rather than through new procedures. Both the Midsize Carrier Coalition and USTelecom propose new enforcement procedures, but offer no justification as to why new procedures are necessary. The Commission has well-established informal, formal, and accelerated complaint procedures for private causes of action and the ability to conduct investigations and audits on its own motion or at the request of third parties. There is simply no need to add an additional layer of enforcement procedures to the Commission's regulations.

B. Definitions Must Be Precise And Consistent

The Commission should avoid adopting new definitions for terms already contained in the Commission's regulations. Instead, the Commission should utilize its existing regulations to the extent practicable to avoid needless disputes as to whether it intended to use different definitions for the same terms. For example, the terms "Calling Party Number" and "Charge Number" are defined in Section 64.1600 of the Commission's regulations. Without explanation, however, both the Midsize Carrier Coalition and USTelecom have proposed alternative definitions, suggesting that a different meaning in Part 51 is needed from the existing definition in Part 64. Such ambiguity can lead only to unnecessary future disputes about the Commission's intention. Rather than have industry terms defined in multiple ways, the Commission should use terms as consistently as possible.

Separately, other terms, such as Automatic Number Identification ("ANI"), go undefined in the Midsize Carrier Coalition and US Telecom proposals, even though the definition of this term needs to be modified in order to meet the stated goal of identifying traffic through data in the signaling stream. At present, 64.1600(b) of the Commission's rules defines ANI as the "delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users." 47 C.F.R. § 64.1600(b). At least with regard to phantom traffic, this definition needs to be expanded to note that ANI is passed over multi-frequency (as opposed to SS7) trunks and that ANI information must be passed along to other carriers as well as to end users.

The definition of Jurisdictional Information Parameter ("JIP") should be excised of editorial comments regarding what happens when the JIP is "properly populated" or that it "helps" but "is not necessarily determinative of" the call origination point. Also, a definition of the term "technically feasible" should be included in any phantom traffic regulations, and such definition should be consistent with that used elsewhere in Part 51 of the Commission's rules.

Finally, there is simply no need to expand the definition of "telecommunications provider" to anyone who "assigns to customers telephone numbers." Rather, the Commission should maintain its existing definition from Section 51.5 of its Rules. 47 C.F.R. § 51.5. If the Commission wishes to classify VoIP providers as telecommunications carriers, it should do so

affirmatively, rather than through modifying the definition of telecommunications carrier for the ostensible purpose of identifying “phantom traffic.”

C. Obligations To Identify Traffic Must Apply Equally To All Signaling Protocols

The Joint Commenters agree that all carriers should transmit the signaling information that they receive to subsequent carriers in the call path and to the ultimate end users. The rules should reflect this general obligation and recognize that ANI transmittal is appropriate when multi-frequency trunks are in place and that CPN and/or CN is appropriate when SS7 trunks are in place.

Intermediate carriers should be required to transmit no more and no less than the signaling information that they receive from N-1 carriers to the N+1 carrier in any call path. If an intermediate carrier does not receive a signaling parameter, it simply cannot transmit that data to other carriers.

Any carrier claiming that it is not technically feasible to pass signaling information received to an N+1 carrier or to the ultimate end user should have the burden of proving so before the Commission. In the interconnection context, carriers claiming that a requested form of interconnection is not technically feasible bear the burden of proof, 47 C.F.R. § 51.305(e), and this same obligation should apply in the signaling context.

Finally, the “procedures” related addressing technical feasibility issues are over-regulatory. The Commission’s existing enforcement powers and regulations encompass the rule modifications suggested by the Midsize Carrier Coalition and USTelecom. It will be up to the Commission to determine how aggressively it wishes to pursue enforcement matters, and merely including new rules applicable to carriers will not necessarily increase the rigor of Commission enforcement.

II. The Commission Should Clarify The Intercarrier Compensation Obligations Between CLECs and Wireless Providers

The Joint Commenters submit that the Commission should establish the state commission set rate for local traffic termination as the default rate for intraMTA traffic termination. Parties could agree voluntarily to alternative termination arrangements, but a safe harbor rate is necessary to ensure reasonable network cost recovery and to minimize the transactions costs of doing so. The Commission successfully has employed this type of approach in the interstate access charge context for competitive local exchange carriers (“LECs”), and a similar approach would be successful for intraMTA wireless traffic termination.

In its 2005 *T-Mobile* decision,¹ the Commission effectively eliminated the ability all local exchange carriers (“LECs”) to assess termination charges on intraMTA wireless traffic. In so doing, the Commission empowered **incumbent** LECs to force wireless providers to arbitrate interconnection agreements pursuant to Sections 251 and 252 of the Act, but made no similar allowance for **competitive** LECs. As a result, competitive LECs have no leverage to bring wireless providers into negotiated agreements.

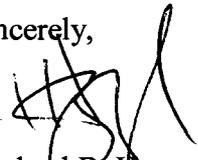
Xspedius, for one, has taken the view in negotiations that the state commission set rate for local traffic under Section 251(b)(5) is a reasonable rate for terminating intraMTA wireless traffic. This is the same rate Xspedius charges LECs for local traffic termination, and since the termination function is the same regardless as to whether Xspedius is terminating a local POTs call or a wireless call, the same rate should apply.

With the largest wireless providers (*e.g.*, Cingular, T-Mobile, and VerizonWireless), Xspedius has had substantial success with this approach. With smaller wireless carriers, most notably MetroPCS, Xspedius has been unable to come to terms on a rate, and as a result, Xspedius has been effectively forced to provide free termination services to MetroPCS.

MetroPCS provides flat-rated wireless service for a monthly fee. Predictably, MetroPCS customers generate a tremendous amount of outgoing, mobile-to-land calls, which place substantial costs on other carriers’ networks. The unique nature of MetroPCS’s flat-rated calling plan creates a powerful incentive for MetroPCS to delay or otherwise slow roll interconnection negotiations while traffic continues to flow. The longer MetroPCS can get free termination, the better for MetroPCS, and under *T-Mobile*, competitive LECs have little if any recourse, other than taking self-help action, such as blocking.

The Commission’s stated policy is to have traffic flow freely to satisfy consumer demand. The Joint Commenters agree with this policy, but the Commission needs to take action to ensure that carriers are reasonably compensated for the use of their networks by others, including wireless providers. Towards that end, the Commission should establish the relevant state commission local termination rate as a safe harbor rate for intraMTA wireless traffic termination.

Sincerely,



Michael B. Hazzard

Counsel for Core Communications, Inc.; DCI Voice Solutions, LLC; and Xspedius Communications, LLC

¹ *T-Mobile et al., Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005).*

Attachment

cc: Ian Dillner (hand delivery)
Scott Bergmann (hand delivery)
Jessica Rosenworcel (hand delivery)
Jay Atkinson (electronic mail)
Randy Clarke (electronic mail)
Nese Guendelsberger (electronic mail)
Joseph Levin (electronic mail)
Steve Morris (electronic mail)
Don Stockdale (electronic mail)

Proposed Rules

The Federal Communications Commission amends 47 C.F.R. parts ~~1~~ and 51 as follows:

~~PART 1—PRACTICE AND PROCEDURE~~

1. New Section 1.740 is added to read as follows:

§ 1.740 Complaints filed pursuant to § 51.902.

Notwithstanding the requirements of §§1.716–718, the following procedures shall apply to informal complaints alleging that a carrier has violated §§201 and 251 of the Act by failing properly to identify and route traffic as required in §51.902 of this chapter.

- (a) ~~Form of Complaint.~~ The complaint shall be in writing, and should contain: The complainant's name, address, telephone number, e-mail address, and designated agent under §1.47(h); a complete statement of the facts, including any documentation tending to show that the complainant received for termination telecommunications traffic not in compliance with any of the provisions of §51.902; the names of any carrier known to be in the call path, whether as the originating carrier or as an intermediate carrier, as defined in §51.901, and a statement whether such carrier cooperated with the complainant to obtain the information required in §51.902; a statement as to whether the complainant has sought and received or been denied the identifying information required in §51.902; and the specific relief sought.
- (b) ~~Procedure.~~ Upon receiving an informal complaint pursuant to this section, the Commission will investigate the complaint, including by requiring the submission of information by all telecommunications providers having information the Commission deems relevant. The Commission will complete its investigation and issue an order informing the complainant of its findings within 90 days of the date the complaint is filed, and order such remedy as may be appropriate, which may include ordering damages pursuant to Section 209, or imposition of a forfeiture pursuant to Section 501.
- (c) ~~Unsatisfied informal complaints.~~ In the event the complainant is not satisfied with the resolution of a complaint under this section within the 90-day period described in subsection (b), the complainant may file a formal complaint with the Commission in the form specified in §1.72. Such filing will be deemed to relate back to the filing date of the informal complaint filed under this section, so long as the informal complaint complied with the requirements of paragraph (a) of this section and provided that: The formal complaint makes reference to both the informal complaint number assigned to and the initial date of filing of the informal complaint filed under this section; is based on the same cause of action as the informal complaint filed under this section; and is filed within 45 days from the earlier of (i) the date an order resolving the informal complaint filed under this

~~section is mailed or delivered electronically to the complainant and (ii) the date on which the 90-day period described in subsection (b) expired. If no formal complaint is filed within the 45-day period, the complainant will be deemed to have abandoned its right to bring a formal complaint regarding the cause of action at issue.~~

PART 51 - INTERCONNECTION

2. New *Subpart J – Identification of Traffic by Carriers* is added to read as follows:

Subpart J – Identification of Traffic by Carriers

§ 51.900 Scope of Rules in This Subpart

This subpart applies to all traffic between two or more telecommunications carriers, including all telecommunications traffic identified in §§ 51.701(b)(1) and (2), ~~all exchange access traffic, all information access traffic, and all other traffic transmitted by telecommunications carriers as defined herein.~~

§ 51.901 Terms and Definitions Used in This Subpart.

- (a) Automatic Number Identification (ANI). A data field containing the calling party's subscriber line number, which is delivered by a local exchange carrier over multi-frequency trunks to any interconnecting carrier for billing or routing to an end user or to other telecommunications carriers.
- (b) Calling Party Number (CPN). Shall have the meaning contained in 47 C.F.R. § 64.1600(c). A call data field within the initial address message in the signaling, for example on a Signaling System 7 network, indicating the subscriber line number or directory number of the party originating the call.
- (bc) Carrier Identification Code (CIC). A field in EMI records indicating the identity of the interexchange carrier that routed an interexchange call.
- (ed) Charge Number (CN). Shall have the meaning contained in 47 C.F.R. § 64.1600(d). ~~The number associated with the party to whom a call is charged or billed. The CN field is a call data field within the initial address message in the signaling, for example on a Signaling System 7 network, that is populated if the CPN is not the "billed to" number.~~
- (de) Exchange Message Interface System (EMI). The industry standard for exchanging telecommunications message information for billable, non-billable, settlement and study records.
- (ef) Intermediate carrier. As used in this subpart, any carrier in the call path that is neither the originating carrier nor the terminating carrier. Intermediate carriers

include, but are not limited to, interexchange carriers, transiting carriers, and tandem switching carriers.

- (fg) *Jurisdictional Information Parameter (JIP)*. A call data field within the initial address message in the signaling, for example on a Signaling System 7 network, indicating the originating switch. When properly populated, JIP can provide information that helps carriers identify the call origination point in the SS7 network. ~~JIP is not necessarily determinative of, and is not hereby made the predominant method for determining, call jurisdiction or the appropriate rate, if any, for termination of the call.~~
- (gh) *Operating Carrier Number (OCN)*. A field in EMI records indicating the identity of the originating carrier, except where a CIC is provided.
- (i) Technically feasible. As used in this subpart, technically feasible shall have a meaning consistent with that defined in §51.5.
- (h) *Telecommunications carrier or carrier*. As used in this subpart, any entity that is a telecommunications carrier as defined in §51.5, ~~and any other entity that assigns to customers telephone numbers obtained either directly or indirectly from the North American Numbering Plan Administrator or the Pooling Administrator.~~

§ 51.902 Obligation to Accurately Identify Traffic.

- (a) It shall be the duty of any originating carrier when transmitting traffic to another telecommunications carrier to ensure that the initial address message in the call signaling includes either ANI over multi-frequency trunks or CPN or CN over Signaling System 7 trunks, ~~both of the CPN or CN, and the JIP,~~ except where doing so is not technically infeasible.
- (b) It shall be the duty of any intermediate carrier when transmitting traffic to another carrier to transmit to such carrier, without modification or deletion, the ~~CPN, CN, JIP and any other signaling information~~ received from the previous carrier in the call path, except (i) where modification of such information is required by published industry standards and technical guidelines, or (ii) where transmitting such information is not technically infeasible.
- (c) If any carrier is unable to transmit ~~the CPN, CN, JIP, or any other signaling information~~ received from another carrier in accordance with this section because it employs a multifrequency interworking trunk, it shall be the duty of such carrier to transmit automatic number identification (ANI) information with such traffic, except where transmitting such information is not technically infeasible.
- (d) It shall be the duty of any intermediate carrier that performs a tandem-switching or transiting function, when transmitting traffic to a terminating carrier, to provide EMI records indicating the carrier from which the traffic was received, if the

terminating carrier requests in writing that such records be provided, and to cooperate with the terminating carrier to identify the originating point of such traffic.

- (e) A carrier may not be excused from compliance with any of the requirements of subsection (a), (b) or (c) unless such carrier on the grounds that such compliance proves to the Commission by clear and convincing evidence that such compliance is not technically feasible, would be “technically infeasible” unless the carrier complies with the procedures set forth herein:
- ~~i. Such carrier notifies the Commission in writing within 30 days after the effective date of these rules (or, in the case of a carrier that commences operation after the effective date of these rules, within 30 days after commencing operation) that such compliance is technically infeasible, including a statement describing in detail where and for what reason compliance is not possible within the carrier’s current network technology, and estimating the duration of such technical infeasibility, which the Commission will announce in a Public Notice;~~
 - ~~ii. Such carrier replies within fifteen business days to any objection by any other carrier to such notice, and serves all objecting carriers with a copy of the reply; and~~
 - ~~iii. Such carrier negotiates in good faith alternative information exchange arrangements with any objecting carrier upon request therefore. If such negotiations do not result in an agreement within 90 days from the date of an objecting carrier’s request the Commission may mediate the dispute.~~
 - ~~iv. In the event the Commission finds a carrier improperly claims compliance was “technically infeasible” or fails to negotiate in good faith an alternative arrangement as required herein, the Commission may impose forfeitures or award damages, as appropriate.~~

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