

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Developing a Unified Intercarrier) CC Docket No. 01-92
Compensation Regime)

REPLY COMMENTS OF MINNESOTA INDEPENDENT COALITION

The following Reply Comments are submitted by the Minnesota Independent Coalition (“MIC”)¹ in response to the Commission’s November 8, 2006 Public Notice.² The Comments filed December 7, 2006 demonstrate that the phantom traffic interim process and procedure contained in the written ex parte filed November 6, 2006 by the Supporters of the Missoula Plan (the “Interim Plan”) are appropriate and represent a sound step in the overall process of reformation of intercarrier compensation.

The December 7, 2006 Comments demonstrate the importance of determining which parties are best positioned to perform functions needed to operation of the Public Switched Telecommunications Network (“PSTN”) and matching the obligations to perform needed functions to those carriers. In addition, the Commission should take the necessary steps to enable such carriers to obtain necessary information and reimbursement of their costs, without enabling carriers to take advantage of unique positions within the PSTN.

¹ The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers (“ILECs”) providing local exchange service to primarily rural areas in Minnesota. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per exchange is approximately 1,100, with half having less than 600 access lines.

² Public Notice Released November 8, 2006, DA 06-2294.

1. VoIP Traffic. A number of comments address the topic of Voice Over Internet Protocol (“VoIP”) traffic.³ These comments demonstrate both the quickly growing significance of VoIP traffic and the need for a workable solution that substantially reduces the differences in treatment between traditional circuit switched traffic and VoIP traffic. In addition, the Commission should take action (while that solution is being formulated) to prevent, to the extent reasonably possible, a widening of the gap between traditional and VoIP traffic during that time interval. The Interim Plan provides such a solution, even though the Interim Plan does not fully resolve all VoIP-related issues.

Within the constraints of current regulatory classifications, the Interim Plan correctly makes the carrier that provides access to the PSTN (the “Serving Carrier”) to a VoIP service provider responsible for payment of intercarrier compensation to subsequent intermediate and terminating carriers. Such responsibility is appropriate because the Serving Carrier is in a position in which it can, with appropriate clarifications of its contractual and tariff-based authority, establish reasonable arrangements with VoIP service providers. Specifically, the Commission should authorize Serving Carriers to: (i) require VoIP service providers to provide information that is needed to identify the location and/or telephone numbers of the calling party; (ii) require VoIP service providers to reimburse the Serving Carrier for the intercarrier compensation due and owing to intermediate and terminating carriers; and (iii) take steps to enforce the delivery of such information and reimbursement, including the termination of service to VoIP service providers that fail to do so.

³ E.g., Century Tel. Inc., Summary, p. ii, and pp. 6-9; Rural Independent Competitive Alliance, p. 4; John Staurulakis, Inc., pp. 7-8; and Qwest, pp. 3, 17-18.

2. Transit Providers. Several parties commented on the proposed role for Transit Providers under the Interim Plan.⁴ In addressing the appropriate role of Transit Providers, it is essential to recognize their unique position within the PSTN and the economies of scope and scale that are attendant to that position with respect to indirect interconnection. In general, the same economies of scope and scale that make indirect interconnection viable also enable the Transit Service providers to perform related functions, such as the generation and distribution of traffic records, more economically than either the originating carriers or terminating carrier could do through a series of one-to-one arrangements. Comments that deny or ignore that fact should be rejected.

For example, some parties have argued that Transit Service providers should have no obligations and that originating and terminating carriers are fully capable of resolving all compensation and related logistical issues (*e.g.*, records) on their own and should be required to do so.⁵ While a series of one-to one arrangements could theoretically be assembled, the cost of doing so and the practical barriers to doing so will prevent successful completion of that approach. Specifically, if one-to-one arrangements were economical and feasible, there would be no call for indirect interconnection. Transit Service providers have the scope and scale to take steps one time that will serve much the same purpose as a substantial number of individual and repetitious steps by individual subtending terminating carriers and individual serving providers. Further, the small quantities of traffic involved between any individual terminating carriers and any individual originating carrier may preclude completion of such arrangements. Instead, the Transit Service providers should be required to fulfill that function.

⁴ Rural Independent Competitive Alliance, pp. 2-4; John Staurulakis, Inc., pp. 3-6, 8; Integra; pp. 5-7; Qwest, pp. 2, 8-11, 13, 36.

⁵ *E.g.*, Qwest, pp. 2, 3, 11.

Transit Service providers should be allowed to recovery the costs of doing so, but they should not be enabled to set prices for doing so without constraints, which would enable them to leverage their unique position within the PSTN and extract prices far higher than their costs. Further, Transit Service providers should not be allowed to recover their costs more than once. For example, Transit Service providers within expanded local calling areas that involve multiple Carriers and that were established by state commissions typically have rates that already compensate them for the costs of providing transit services between other Carriers. These Transit Service providers should not be allowed to impose charges on ILECs for costs already recovered. State Commissions are best situated to make determinations as to whether Tandem providers are or are not already being compensated for providing transit services.

Similarly, arguments that terminating carriers can feasibly use other sources of information to identify and track originating carriers lack factual support.⁶ Again, there is a very significant distinction between what can be done in theory and without regard to cost, and what can be implemented in a reasonable time frame and at a reasonable cost. The Commission should reject such unsupported and imaginary solutions in favor of practical solutions.

3. *Prejudgment of Issues.* Some parties have asserted that the Interim Plan inappropriately prejudices issues that should be reserved for the final decisions regarding intercarrier compensation.⁷ Based at least in part on that assertion, they urge that the Commission take no action on the Interim Plan.⁸ These suggestions should be rejected.

Review shows that many of these parties are the current beneficiaries of the status quo, with all of its faults and drawbacks. For example, some Transit Service providers argue that the cost of implementing the Interim Plan would be excessive. However, there is no substantial

⁶ Qwest, pp. 2, 3, 11.

⁷ Sprint Nextel, p. 1; Qwest, pp. 3, 17; National Cable & Telecommunications Association, p. 6.

⁸ Sprint Nextel, p. 15; Qwest, p. 2; National Cable & Telecommunications Association, p. 9.

support for these arguments. Transit Service providers should be allowed to recover their added costs, but the extremes of either taking no action or allowing Transit Service providers to impose uncontrolled prices are unsupported and should be rejected.

The Commission can avoid the result of prejudging the permanent outcome of issues relating to intercarrier compensation that are better left to its final decision on the Missoula Plan. The Commission can establish that distinction by simply stating that the steps taken with regard to the Interim Plan: (i) are interim only and will not preclude consideration of the full range of alternatives at the time the final decision is made; and (ii) do not change any specific requirements with regard to jurisdiction of traffic and the levels and/or applicability of intercarrier compensation requirements. Such basic distinctions certainly do not pose any unsolvable problem or dilemma, and do not justify taking no action when the benefits of action on the Interim Plan and the feasibility to taking action are demonstrated.

4. *The Interim Plan Would Not Burden the Commission.* Some parties have asserted the Interim Plan would greatly increase the number of disputes between carriers and, as a result, unreasonably burden the Commission and the enforcement division. Instead, these parties urge no action.⁹ These suggestions should be rejected for two reasons.

First, there is no reason to believe that the establishment of the Interim Plan would enhance disputes between carriers. To the contrary, the Interim Plan would establish solutions for a large variety of pending problems that may otherwise ripen into disputes. Second, the Commission can and should take the step of enlisting the state commissions as partners in the implementation of the Interim Plan and specifically authorize state commissions to resolve disputes between carriers and service providers. Some disputes may be dependent on local

⁹ Sprint Nextel, p. 15; Qwest, p. 2; National Cable & Telecommunications Association, p. 9.

circumstances that may reflect local practices and prior accommodation of state commission decisions, such as provisions for expanded local calling areas and local calling plans. To facilitate resolution of such disputes, the Commission should authorize State Commissions to resolve issues arising under the Interim Plan.

The MIC appreciates the opportunity to present Comments relating to the very significant issues of phantom traffic and the Commission's recognition that an interim solution to these issues is needed.

Dated: January 5, 2007

Respectfully submitted —

Minnesota Independent Coalition

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