Independent Telephone and Telecommunications Alliance

Phantom Traffic Pole Attachments

Developing a Unified Intercarrier Compensation Regime
CC Docket No. 01-92

Petition of the United States Telecom Association for Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures, RM-11293

Petition for Rulemaking of Fibertech Networks, LLC, RM-11303

February 2007

Mid-size companies support constructive approaches

- ITTA urges prompt adoption of Missoula Plan “proposed interim process” proposal filed November 6, 2006, as generally consistent with mid-size carrier proposals

Mid-size companies actively propose viable solutions

- Comments in Intercarrier Compensation docket
- Multiple *ex parte* presentations and meetings with Commissioners' offices and Bureau
- Proposal filed December 2005
  - Specific rules
  - Jurisdictional basis
  - Industry has had ample time to comment on a variety of proposals, including that of the mid-size carriers

Mid-size carriers have worked toward industry consensus

- Modified proposal filed March 2006 based on further industry discussions
- Efforts intended to support prompt and focused Commission action

Prompt FCC action encouraged

- There is widespread support in the industry for action on phantom traffic
- The FCC should quickly adopt Federal rules to:
  - Reduce anti-competitive arbitrage
  - Enable capture of revenues supporting networks
  - Safeguard consumers
  - Establish a basis for comprehensive ICC reform
    - *Affirms principle that users of the network should pay for the network*

Phantom traffic causes variety of losses for rural carriers

- Increased phantom traffic leads to loss of compensation
- Management and billing resources are diverted from primary purposes to address phantom traffic
- Frequent billing disputes with transiting and originating carriers

Carriers compelled to dedicate resources to phantom traffic

- Many rural carriers direct time and resources to traffic analyses and phantom traffic studies to determine the amount of traffic that is terminated without sufficient information
- any arbitrage increase minutes without increased revenue
- trunks carry more traffic, but without corresponding revenue to maintain and upgrade trunks
- paying callers get blocked and suffer deteriorating quality

Forensic costs compound underlying lack of compensation

- Rural carriers are compelled to allocate resources to consultants, attorneys, collection agents to recover compensation masked by phantom traffic
- Lack of enforcement mechanisms and the high cost of pursuing billables can discourage efforts

Phantom Traffic Conclusion

- Phantom traffic will continue to increase absent specific rules to resolve the problem
- The FCC has the jurisdiction, the record, and specific proposals to enact rules to resolve phantom traffic now
- The Commission should move quickly to enact clear and enforceable labeling and routing rules

Phantom Traffic Conclusion

- Greater accountability for use of the network is needed in order to protect consumers and ensure network viability longer term
- Missoula Plan “proposed interim process” provides industry-supported template for action

Putting an End to Pole Attachment Rate Discrimination

- Section 224(b)(1) of the Communications Act requires the Commission to ensure all providers of telecommunications services have access to pole attachments on rates, terms and conditions that are just and reasonable.

- The FCC's current rules fail to recognize the ILECs' right under the statute to be free from unreasonably discriminatory pole attachment rates

- The Commission should clarify that as providers of telecommunications services, ILECs are entitled to just and reasonable pole attachment rates

Amendment of Pole Attachment Complaint Procedures

- Current FCC rules limit the Commission's ability to provide an appropriate remedy in response to ILEC complaints of unjust and unreasonable discrimination, by denying ILECs standing to bring a complaint

- States are often unwilling to adjudicate such disputes, leaving ILECs without any recourse when utilities unreasonably raise rates and discriminate against ILECs

- The Commission should amend Rule 1.1404 to permit ILECs to bring complaints of unjust or unreasonable pole attachment rates, terms or conditions

Clarification of Default Rates Applicable to ILECs

- The Commission should clarify that the formula set forth in Section 1.1409(e)(2) of the Rules is the correct formula for computing pole attachment default rates for "any telecommunications carrier" – including an ILEC
- The Commission should also should consider whether the discriminatory treatment between telecommunications carriers and non-telecommunications carriers (such as cable operators) offering comparable services violates Section 224(b)(1) of the Act

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