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May 23, 2008

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket Nos. 04-36, IP-Enabled services; 01-92, Developing a Unified Intercarrier
Compensation Regime

Dear Ms. Dortch:

On May 22, 2008 Linda Burton, Cindy Huber and David Baker (all of Sierra Telephone Company); Dave Clark of Kerman Telephone Company; Bill Harder of Volcano Telephone Company; Colin Sandy of NECA; and the undersigned met with John Hunter; Chris Moore; Scott Bergmann; Amy Bender; and Scott Deutchman.

We discussed access arbitrage by interconnected VoIP providers, particularly as experienced by rural telephone companies in the State of California and other small rural carriers across the country. We asked the Commission to immediately confirm interexchange traffic is subject to access charges regardless of technology used to originate calls and interconnected providers are financially responsible for paying access charges for interexchange traffic they place on the Public Switched Telephone Network. Also, we urged the Commission to grant NECA's signaling petition, requiring signaling of the CPN of the calling party, not an intermediate gateway or platform.

The attached material was used in each of these meetings. Questions regarding the meetings or NECA views on this subject may be directed to me.

Sincerely,

A handwritten signature in black ink that reads "Joe A. Douglas". The signature is written in a cursive, flowing style.

Attachment

Cc: Amy Bender
Scott Bergmann
Scott Deutchman
John Hunter
Chris Moore



Access Arbitrage by Interconnected VoIP Providers: The Case in California

WC Docket Nos. 04-36, 01-92
National Exchange Carrier Association, Inc.;
Foresthill Telephone Co.; Kerman Telephone Co.; Sierra
Telephone Co.; Volcano Telephone Co.
May 22, 2008



Interconnected VoIP Providers Not Paying for Use of Rural Networks

- Interconnected VoIP providers are terminating traffic on the PSTN at a growing rate
- These providers refuse to pay for network use, claiming it is exempt VoIP traffic
- Ten California companies surveyed show growing trend of non-payment
- California mirrors growing trend across many states
- Rapid VoIP growth will likely continue nationally. VoIP revenue has grown from \$25 million in 2003 to \$5 billion in 2007 and projected to be \$11 billion by 2011.

TIA 2008 Market Review and Forecast, p. 91.

Monthly "VoIP" access revenue losses in California growing rapidly

**Disputed "VoIP" Charges for Traffic Sent
by One Carrier to 10 California Companies**

\$45,000
\$40,000
\$35,000
\$30,000
\$25,000
\$20,000
\$15,000
\$10,000
\$5,000
\$-

Jan 2006 - March 2008

These are switched voice telephone calls

- Traffic is being sent by carrier who is registered as a CLEC in California
- Traffic represents switched voice telephone calls
- CPN indicates the calls are interexchange calls
- Data in this presentation reflects a single carrier whose identity can be confirmed – other providers may be sending traffic that can not be identified.

Rural universal service at risk

- By the end of 2008, these 10 rural California ILECs expect over \$1 million in lost access revenue if trend continues
- Maintaining and improving rural networks requires sustained revenue streams, including payments from other carriers terminating traffic on it
- The ICC revenue stream, on average, represents about 29% of total operating revenue for small rural carriers; reduced access revenue due to arbitrage puts pressure on consumer rates and USF
- Regulatory uncertainty puts competitive pressure on other providers to claim they are exempt from access charges
- Allowing companies that provide IP-originated voice service to evade access charges would have a negative impact on future telecom infrastructure investments and slow the deployment of broadband in rural areas.

In addition, CPN sent may not be accurate

- Almost all calls from one provider appear to originate from only two or three telephone numbers (CPN)
- May be substituting a gateway number or arbitrary number for the true CPN
- FCC has clarified this practice is illegal for Pre-Paid Calling Cards
- Consumers expect accurate Caller ID information to appear on their phones
- Law enforcement and emergency 911 workers require accurate CPN end-to-end.

Immediate FCC action is needed

- Confirm that interexchange traffic is subject to access regardless of technology used to originate the calls
- Confirm interconnected providers are financially responsible for paying access charges for interexchange traffic they place on the PSTN
- Grant NECA's call signaling petition, requiring signaling of the CPN of the person placing the call, not an intermediate gateway or platform.

Appendix

- Company Profiles
- Sample CommPartners Letters
- California Company Territory Map

Company Profiles

- ***Foresthill Telephone Company***

- Foresthill Telephone Company is located in Foresthill, northeast of Sacramento and east of Auburn. Foresthill is a small gold mining town with buildings dating back to the mid 1800's. The company is family owned and operated, providing service to a mountainous region of about 250 square miles.

- ***Kerman Telephone Company***

- Kerman Telephone Company was incorporated in 1911 and purchased by its current owners, the Sebastian Family, in 1946. Over the years, Bill and Katey Sebastian have built a state-of-the-art telephone network, fulfilling the mandate of universal service and providing the highest quality service to their customers. Today, Kerman telephone Company serves an estimated 4,900 customers over 175 square miles in western Fresno County. The company has approximately 70 full and part time employees and is the third largest employer in the Kerman area. Kerman continues to provide state-of-the-art communication services, such as DSL, to a diverse population spanning low-income agricultural customers to suburban commuters into Fresno. Kerman can offer broadband services to 100% of its customers through traditional DSL, fiber-to-the-home, or wireless serving options.

Company Profiles

- ***Sierra Telephone***

- Sierra Telephone has been providing service to customers in eastern Madera and Mariposa Counties since 1895. A 100% digital, fiber optic network and "self-healing" fiber ring provide reliable, secure service of the highest quality. Sierra Telephone serves an 870 square mile area with approximately 21,000 customers and makes broadband access available to 99% of its customers.

- ***Volcano Telephone Company***

- Volcano Telephone Company's service area is Amador County, an area of 416 square miles from the beginning of the foothills to the peaks of the Sierra. The company offers both analog and digital services for residential, business, educational institutions, and government agencies. Volcano has installed approximately 150 miles of fiber optic cable in Amador and Calaveras Counties to keep pace with the demands for enhanced services, quality and bandwidth availability to supplement copper line cabling. Volcano has deployed DSL which is available in approximately 99% of its service territory. Currently, about 35% of customers subscribe to the service and penetration is growing at nearly 1% per month.



THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

January 29, 2008

Kerman Telephone Company
Attn: Cheryl White
811 S Madera Ave
Kerman, CA 93630

Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079
F: 702.365.8647

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 call detail records and customer certifications, it appears that 90% of the originated traffic was initiated as an Internet protocol ("IP") stream, with 10% as traditional circuit-switched ("TDM"). This traffic is better known as voice over Internet protocol ("VoIP"). Per 47 CFR § 64.702, traffic that undergoes a protocol conversion is considered enhanced services and does not fall under Title II of the Communications Act. CommPartners' VoIP-originated traffic is converted to time division multiplexing format before termination to your company's end users. This VoIP traffic is, therefore, considered enhanced services.¹ Because access charges only apply to traffic regulated by Title II and not to enhanced service traffic, your company is not entitled to collect access charges on CommPartners' VoIP traffic. CommPartners will pay switched access charges per your company's switched access tariffs on the 10% circuit-switched calls.

CommPartners understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket² and the *Intercarrier Compensation Reform* docket³. In the *AT&T Declaratory Ruling*⁴, the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying access charges 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 will likely be addressed as part of the *Intercarrier Compensation Reform* docket, whether the Missoula Plan is finally adopted, or another plan is chosen. After these proceedings are completed and their results become final and non-appealable, CommPartners will comply with any federal or state requirements to pay switched access charges on VoIP traffic. Until that time, however, CommPartners refuses to pay access charges on any of its IP-originated traffic terminated by your company.

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

¹ *Vonage v. Minnesota PUC*, 290 F. Supp. 2d 993, 999 (D. Minn.), aff'd, 394 F. 3d 568 (8th Cir. 2004) (VoIP-originated traffic that terminates on PSTN undergoes net protocol conversion and is enhanced under Section 64.702 of Commission's rules); *Access Charge Reform*, 12 FCC Rcd. 15982, 16131-16135 (1997) (exemption applies to originating and terminating traffic), aff'd *Southwestern Bell Telephone Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

² *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).

³ *In the Matter of Access Charge Reform, Notice of Proposed Rulemaking*, CC Docket No. 96-488.

⁴ *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*").



THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

Kristopher E. Twomey
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CommPartners
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Las Vegas, NV 89129
P: 702.367.8647 ext. 1079
F: 702.365.8647

December 20, 2006

Foresthill Telephone Co
Po Box 1189
Foresthill, CA 95631

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* docket¹ and the *Intercarrier Compensation reform* docket². 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,

A handwritten signature in black ink, appearing to read "Kristopher E. Twomey". The signature is fluid and cursive, written over a horizontal line.

Kristopher E. Twomey
Regulatory Counsel

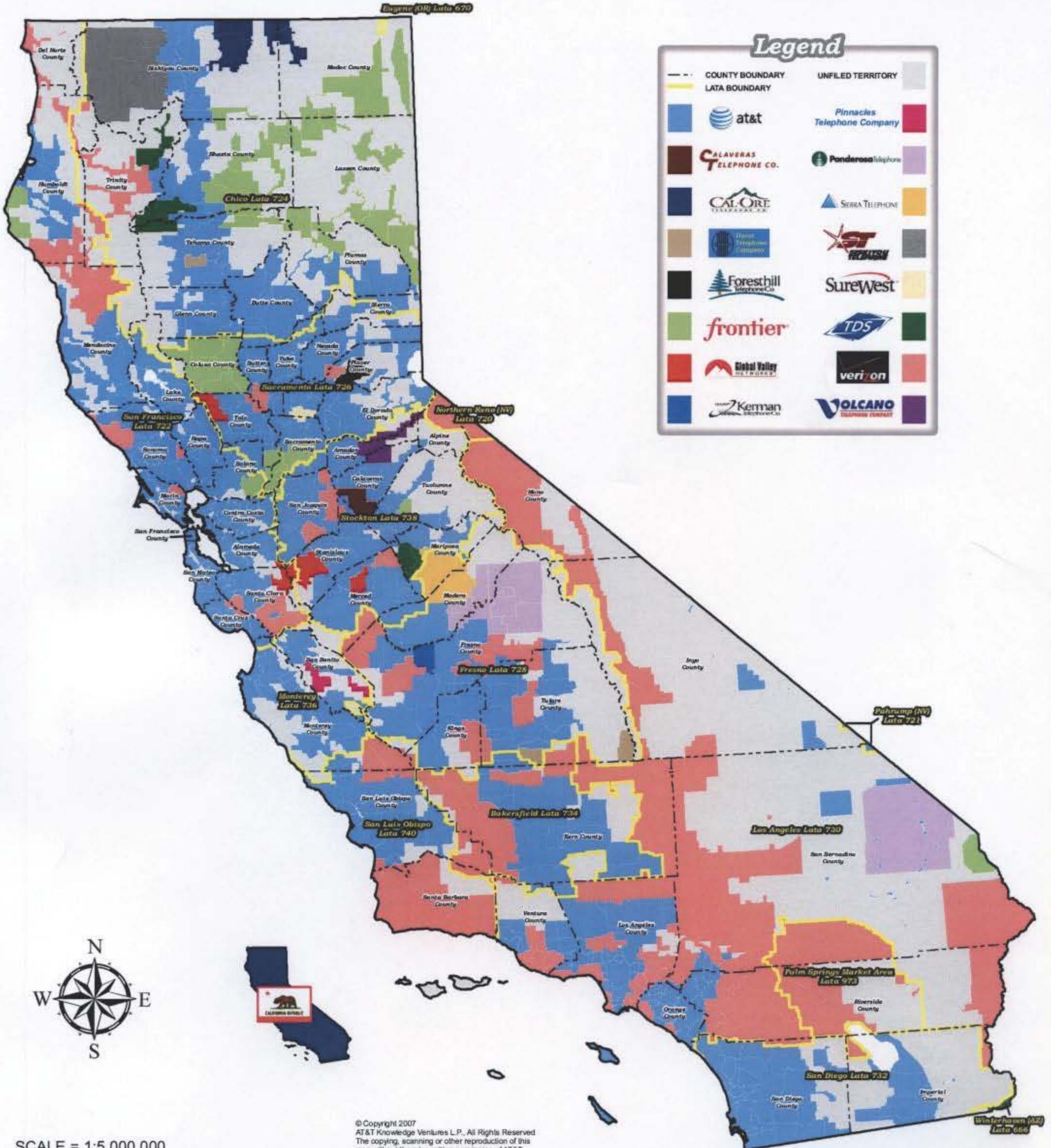
¹ *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).

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*").



California Communications Association Telephone Exchange Areas



Legend

--- COUNTY BOUNDARY	UNFILED TERRITORY
--- LATA BOUNDARY	
at&t	Pinnacles Telephone Company
CALAVERAS TELEPHONE CO.	Ponderosa Telephone
CAL-ORE	SIERRA TELEPHONE
Global Valley Networks	ST
Foresthill Telephone Co.	SureWest
frontier	TDS
Global Valley Networks	verizon
Kernan	VOLCANO



SCALE = 1:5,000,000

0 25 50 100 Miles

Map Projection
NAD 83 UTM Zone 10 Transverse Mercator

Map created 12/13/06

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MagicJack attacks

May 2, 2008 4:16 PM, By Sarah Reedy

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Six months into business, MagicJack is poised to take over the VoIP market

MagicJack founder, and inventor of its technology, Dan Borislow, doesn't like the term voice-over IP (VoIP). He thinks it has a negative connotation in an [industry prone to struggles](#). Why not call it what it is – really, really cheap phone service? With the largest network in the United States and growth on track to surpass market leaders Comcast and Vonage, MagicJack has arguably earned the right to call the service whatever it wants.

[MagicJack came onto the scene last September](#), launching a \$19.95 per year VoIP USB device that plugs directly into the PC or Mac and provides unlimited service over a broadband connection. Upon launch, the company sold about 50 a day. Today that number rests comfortably around 8,000 – a sales rate increase surpassing 25% week-over-week. Between January and March, the company exceeded the amount of phones sold in the entire four years of business for SunRocket, the now-defunct VoIP provider. MagicJack sold more than 200,000 units in March. Still, most sales have come in the last six weeks, since MagicJack launched an improved version of the device.

“How many people don't want to pay \$800 a year for a cell phone they don't use very much in their house anymore? To me, that is 100%,” Borislow said. “How many people are willing to spend \$20 a year to have the comfort of having a telephone in their house where half the time the cell phone doesn't work? That may be 95% of the people. So 100% of people don't want the phone anymore, and 95% of people might want us.”

The venture, funded entirely by Borislow and CEO Don Burns, owns its own next-generation voice network, including media gateways and session border controllers. The network, which took three and a half years to construct and acquire CLEC certifications for, now spans all 50 states. The company has interconnect agreements with all the Bell companies and 44 gateways along the edge of its network.

“As a VoIP company, we don't have to pay for access charges,” he said. “Telephone companies do have to pay access charges to terminate calls to our customers. That took us three and a half years to build. The network is very important, and it makes everything work for us.”

The technology also works anywhere in the world, allowing international travelers to call home for free. Weighing in at less than an ounce, the USB port is suited for MagicJack's travel-prone consumers. It is powered by a propriety Samsung memory chip, including 1.7 million lines of software code, what Borislow calls MagicJack's "secret sauce." It is the ease of use and price that get people interested, he said, and the quality of service that will keep them renewing year after year. "[With] Vonage and others, you have to take a box and hook it up to your Ethernet connection and a router and hope everything comes out okay after a 20-minute process," he said. "With Magic Jack, you just plug it in, and within a minute's time, you can pick any area code in the country, and you're good to go."

A scan of blogs will indicate that MagicJack did have several kinks to work out, a fact that Borislow willingly admits. Customer complaints centered on reliability issues and latency in the networks, complaints that have all but gone away, he said. "Every day that we are into this is 1% more as far as the life of the company," Borislow added. "Everyday is a day to get experience for customer service reps. We are going to improve every day."

Customer service starts with a list of frequently asked questions that Borislow said has eliminated 30% of customer concerns. The next step is a Web chat with service representatives. Right now there are no plans for a customer service number or call centers for technical issues. After all, the first question is always if the Internet connection is working. If the consumer is on a live chat session, that step can automatically be skipped, Borislow said.

Magic Jack is focusing on starting small, not only in size and service, but also in functionality. Considering they are selling everything they make, Borislow doesn't feel pressure to innovate right now. As sales volumes continue to increase, however, he plans to expand the device's capabilities into number porting and 911 services in which the device will take the form of a cell phone. Further down the product roadmap, MagicJack will evolve into a base station for a handset and a station for a femtocell.

"AT&T just announced that they are spending a half billion on [femtocells]. Little do they know what this little company has," Borislow said, adding that the timeline for the femtocell is the first quarter of next year, while the 911 services will be ready to go by the summer.

Borislow said that the production and marketing of MagicJack costs the company less than what they sell the product for, making this the first time a telephone company has made rather than lost money acquiring customers.

"Fortunately, Don and I both made a lot of money before," Borislow said. "This is six different patents, and we have five more pending. To me it is a matter of this being our second time around and proving we weren't a fluke the first time. Making money is the other motivation. For me, it is putting my signature on something I can be proud of for the next couple of years."

Find this article at:

<http://www.telephonyonline.com/voip/news/magicjack-attacks-0502/index.html>