

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Petition of AT&T for Interim Declaratory ) WC Docket No. 08-152  
Ruling and Limited Waivers )

**Comments of Frontier Communications**

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Date: August 21, 2008

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Federal Communications Commission  
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<b>In the Matter of</b>	)	
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<b>Petition of AT&amp;T for Interim Declaratory Ruling and Limited Waivers</b>	)	<b>WC Docket No. 08-152</b>
	)	

**Comments of Frontier Communications**

Frontier Communications (“Frontier”)<sup>1</sup> hereby submits its comments on AT&T’s petition for interim declaratory ruling and limited waivers in the above captioned matter pursuant to the Commission’s July 24, 2008 Public Notice.<sup>2</sup> While Frontier agrees that the current intercarrier compensation regime is broken, Frontier disagrees with AT&T’s position that the Missoula Plan is a solution that the Commission could or should use as a blueprint for comprehensive reform.<sup>3</sup> That plan is moribund primarily, in Frontier’s view, because of its windfall to interexchange carriers that would be funded in large part by rural subscribers.<sup>4</sup> The Missoula Plan should be laid to rest with dignity. Other plans have been filed that would have far less of a negative impact on rural subscribers and Universal Service,<sup>5</sup> but it is not clear that the Commission is prepared at this time to adopt comprehensive reforms.

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<sup>1</sup> Frontier is a mid-size holding company with incumbent local exchange carrier (ILEC) operations in 24 states. As an ILEC, Frontier operates in one of the most competitive (both residential and business) urban markets in the country (Rochester, NY), but the balance of its ILEC operations are located in several small, high cost rural markets throughout the United States. In most of its ILEC markets, Frontier operates under federal price cap regulation, but operates under NECA Average Schedules in some of its smallest rural markets; on an intrastate basis, Frontier mostly operates under a mix of traditional rate-base, rate-of-return regulation and alternative forms of regulation.

<sup>2</sup> Public Notice, Petition of AT&T for Interim Declaratory Ruling and Limited Waivers – Pleading Cycle Established, DA 08-1725 (July 24, 2008).

<sup>3</sup> AT&T July 17, 2008 letter to Chairman Martin, p. 4.

<sup>4</sup> See Frontier Comments on Missoula Plan, CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, filed Oct 25, 2006.

<sup>5</sup> For example, Embarq recently filed a petition to allow it to equalize its interstate and intrastate access charges on a revenue-neutral basis. Public Notice, Petition for Waiver of Embarq Pleading Cycle Established, WC Docket No. 08-160, DA 08-1846 (Aug. 5, 2008).

The Missoula Plan and this current proposal have a common result, which is the erosion of telecommunications in rural communities. There is one key element of these plans that makes them problematic for Rural ILECs to sustain a network that supports advanced services. They are unduly and unfairly burdensome to rural consumers. These proposals disrupt the affordability of service for rural consumers by making burdensome local rate increases (larger SLCs) the source of the access replacement revenues. By having carriers relieved of the responsibility of making fair contribution towards network costs, the present proposals effectively take support from rural price cap companies' customers in order to grant IXCs lower terminating access rates and provide them with an increased profit windfall. The most prudent step towards intercarrier compensation reform is to address the proposed modifications in a manner that assures regulatory and financial parity in their application.

The Commission could and should take a number of interim steps toward reform, starting with:

- (1) maintaining jurisdiction over ISP-bound (dial-up) traffic and further recognizing that termination of ISP-bound traffic costs far less than termination of Plain Old Telephone Service (POTS) traffic;<sup>6</sup>
- (2) taking steps to curtail phantom traffic; and
- (3) solidifying and clarifying the rules for origination and termination of interexchange Voice over Internet Protocol (VoIP) traffic by making it clear that VoIP traffic is subject to reciprocal compensation if truly local and to both intrastate and interstate access charges if interexchange when the traffic can be accurately jurisdictionalized, and subject to interstate access charges when it cannot be accurately jurisdictionalized.

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<sup>6</sup> This step will also fulfill the Commission's mandamus responsibility in the case of *In re Core Communications*, requiring the Commission to respond to the Court's remand of the Commission's assertion of jurisdiction over ISP-bound traffic by November 5, 2008.

**I. The Commission Should Affirm Its Jurisdiction Over ISP-Bound Traffic.**

Frontier believes that the Commission has been correct all along that ISP-bound (dial-up Internet) traffic is interstate or international traffic subject to Commission jurisdiction. Developments in technology since this issue was reviewed in the appellate court have established that a dial-up connection may be used for any kind of interstate or international communication, including but not limited to real-time voice communications through a connected computer, which is just another form of Customer Premises Equipment like a telephone. Customers also routinely use dial-up Internet connections for real-time text chatting, using any of a host of Instant Messaging services, with other Internet users anywhere in the world. It defies logic to assert that real-time interstate and international voice and data communications are intrastate in jurisdiction merely because the initial dial-up call is intrastate.

In order to retain jurisdiction, the Commission has a number of alternatives for legal arguments:

(1) The Commission could declare narrowband Internet access to be an information service, just as it has done with broadband Internet access, and preempt state regulation to the extent appropriate. There are no differences between narrowband and broadband access but speed and bandwidth, and such differences have no rational relationship to the jurisdiction of the service. As with broadband Internet access, the Commission is free to preempt the narrowband connection between the customer's premises and the Internet.

(2) The Commission could declare every minute of a dial-up connection except the first minute, during which the modem is negotiating a connection, to be interstate in jurisdiction. After the first minute traffic is flowing directly and seamlessly between the user's computer and the rest of the world. When the only traffic on the line is Internet Protocol traffic directly between the end user and any other computer on the worldwide Internet, that traffic is manifestly

interstate in jurisdiction. Whether these subsequent minutes of each call are viewed as part of an information service or as interstate or international POTS traffic that is inextricably intertwined with a small intrastate component, the result is the same. The Commission has jurisdiction over the traffic.

**II. The Commission Should Reduce the Interstate Rate for Termination of ISP-Bound Traffic and Decouple That Rate from Other Reciprocal Compensation.**

Given the Commission's jurisdiction over ISP-bound traffic, or at least over every minute but the first minute of each call, the Commission should continue to recognize that the cost of terminating ISP-bound traffic is far less than the cost of terminating POTS traffic over the length and breadth of a local exchange area. Carriers typically terminate ISP-bound traffic either by aggregating it and sending it to a remote location (in which case even the POTS portion of the call should be treated as interexchange), or by locating banks of equipment in or near the carrier's central office that answer dial-up Internet calls, negotiate bandwidth with the caller's modem, and send the traffic in Internet Protocol format directly over a pipe to the Internet or to an Internet Service Provider. In both cases the call termination is handled entirely and economically by Central Office Equipment, in stark contrast with POTS traffic that must be terminated over individual lines in an exchange area that may cover hundreds of square miles. Frontier urges the Commission to reexamine its current default rate of \$.0007 for termination of ISP-bound traffic with a view toward (1) reducing the rate; and (2) eliminating the requirement that the carrier taking advantage of the \$.0007 rate offer this rate for the termination of vastly more costly POTS traffic.<sup>7</sup>

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<sup>7</sup> Order on Remand and Report and Order, CC Docket No. 96-98, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, ¶189 (2001).

The reduction of the termination rate for ISP-bound traffic and its decoupling from reciprocal compensation as a whole are justified by the nature of the traffic. Internet access is manifestly an information service, and there is no reason to treat it the same as POTS traffic. It is unfair and unreasonable to require an Incumbent Local Exchange Carrier (ILEC) to offer to terminate POTS traffic at \$.0007 per minute as a condition of limiting CLECs to \$.0007 in their charges to the ILEC for the termination of ISP-Bound traffic. The tie between the \$.0007 rate and the POTS rate for intercarrier compensation creates a Catch-22 for the ILEC. The ILEC must either allow carriers like Core Communications to terminate vast quantities of dial-up Internet traffic and charge the ILEC reciprocal compensation rates far above the actual cost of terminating ISP-Bound traffic, or allow all other carriers to terminate POTS traffic on the ILEC's network at a rate below the actual cost of terminating POTS traffic. The Commission should eliminate this unfair choice, both branches of which produce arbitrary and unreasonable results.

**III. The Commission Should Immediately Take Steps to Reduce Phantom Traffic.**

Frontier agrees with AT&T that the Commission cannot put the problem of phantom traffic on hold while it postpones the consideration of comprehensive reform.<sup>8</sup> As Frontier has stated in prior comments,<sup>9</sup> dealing with phantom traffic would have many benefits, not the least of which is reducing the size of the revenue reallocations that will be required by comprehensive intercarrier compensation reform. There is no doubt whatsoever that some carriers are cheating, by delivering traffic to terminating carriers in ways that avoid the assessment of access charges. In some cases the Calling Party Number is stripped or altered. In others the

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<sup>8</sup> AT&T July 17, 2008 letter to Chairman Martin, p. 12.

<sup>9</sup> See Frontier Comments on Missoula Plan, CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime*, filed Oct 25, 2006.

traffic is re-originated to the terminating carrier through another carrier that has bill-and-keep arrangements with the terminating carrier for local traffic. In yet others the traffic is terminated over nonstandard routes (such as EAS trunks) instead of the normal route for interexchange traffic, to avoid the creation of an access billing record. The manipulation of call detail information to game the access charge system continues to be a growing problem. Frontier's carrier group has received offers from carriers asking us to deliver traffic to them with the Calling Party Number ("CPN") and Called Number ("CN") fields completely blank in the assigned NPA-NXX to receive a termination rate significantly lower than what would be paid for access.

Frontier's specific proposals are as follows:

First, all carriers should be required to populate and pass CPN, CN and the Jurisdictional Information Parameter ("JIP") whenever it is technically feasible. With the JIP, terminating carriers should be able to identify clearly where a call is coming from, and should much more readily be able to bill for it properly.

Second, the Commission should establish strong enforcement penalties for the intercarrier compensation rules. When a carrier is caught negligently not labeling or improperly labeling its traffic, or intentionally routing traffic to avoid access charges, it should pay a penalty on top of the charges it should have paid in the first place. Frontier proposes a penalty of an additional 25% of the improperly avoided charges. It is hardly a disincentive to cheating if the only penalty is to require the carrier to pay the appropriate charges. This is like making the penalty for shoplifting nothing more than paying for the shoplifted goods if the perpetrator is caught. Frontier submits that there is widespread misrepresentation, and the only effective remedy against a carrier engaging in such actions is to assign punitive damages.

**IV. The Commission Should Rationalize and Clarify the Rules for Origination and Termination of Voice over Internet Protocol Traffic.**

Frontier agrees with AT&T that the Commission should finally establish clear rules for the origination and termination of VoIP traffic from and to the Public Switched Telephone Network (PSTN).<sup>10</sup> The lack of clarity is leading to growth in intercarrier disputes on VoIP originated traffic and multiple interpretations by the parties disputing these charges. Some carriers are paying intrastate and interstate access charges to ILECs on such traffic, some are paying only interstate access charges, some are paying only reciprocal compensation charges, and some are paying nothing at all. A VoIP call is no different from any other call when it transits the PSTN. An ILEC providing PSTN origination or termination of a call that is VoIP on the other end handles the call using voice or TDM protocol and switches and routes the call exactly the same as a call that is POTS on both ends. The services are identical, the costs are identical, and the prices should be identical. The FCC should therefore order that when the jurisdiction of such a call can reasonably be determined, the same regime of reciprocal compensation, intrastate access charges and interstate access charges should apply to the PSTN portion of the call that applies when a call is POTS on both ends.

In many cases, there is no difficulty in determining the jurisdiction of a VoIP call. For example, VoIP service provided by cable television providers is generally fixed. At most, a subscriber might be able to move a cable television VoIP terminal adapter to another cable outlet within the same cable company's local region, but even this is a rare occurrence because cable television VoIP service is not marketed as a nomadic service. For these and other fixed VoIP services, the jurisdiction of the call can be determined the same way as the jurisdiction of a POTS call is determined. If it is local, reciprocal compensation (or bill-and-keep, depending on the interconnection agreement in question) should apply. If it is interexchange, then either

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<sup>10</sup> AT&T July 17, 2008 letter to Chairman Martin, p. 8.

intrastate or interstate access charges should apply depending on whether the end points of the call are intrastate or interstate.

There are of course some situations in which the jurisdiction of a VoIP call cannot readily be determined. If the service is fully nomadic, a VoIP user may move the terminal adapter to any broadband Internet connection anywhere in the world, and make and receive calls using the telephone number assigned to the user's home location. The user cannot be counted on to register a new location pursuant to the FCC's regulations at Part 9<sup>11</sup> every time the adapter is moved. Current Internet technology does not provide either the VoIP provider originating a VoIP-to-PSTN call or the ILEC receiving and terminating the call with the location of the customer making a nomadic call over a broadband Internet connection. It is generally not even possible to tell with reasonable certainty whether a call from a nomadic subscriber is intrastate or interstate. Given these circumstances, the Commission should declare that interstate access charges apply to the origination and termination of VoIP calls from and to the PSTN when the VoIP carrier provides a nomadic service. VoIP providers should be required to certify whether their VoIP services are fixed or nomadic.

Such a ruling will increase the amount of access charges paid by VoIP providers, especially the providers who fail to pay any compensation for their traffic, but the treatment of VoIP interexchange calls like POTS interexchange calls is fair and reasonable. The costs to the PSTN providers and the services that they provide are the same for both kinds of traffic, and VoIP service is not an infant industry that needs some kind of protection. Most VoIP service is provided by giant cable television Multiple System Operators, which rival AT&T and Verizon in size, and which exceed the size of a large mid-size carrier such as Frontier by more than an

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<sup>11</sup> 47 CFR § 9.5 requires nomadic interconnected VoIP service providers to provide a means for a subscriber to change a registered location within the United States, to ensure that 911 calls are properly routed. However, nothing requires the user to take the steps to change the registered location when moving the terminal adapter.

order of magnitude. For the last several years cable television VoIP has been attracting POTS customers away from ILECs at the rate of thousands per day, to the point that ILECs are now losing access lines in contrast to the entire prior history of telephony, during which ILECs gained access lines. Under these circumstances VoIP providers should expect to pay their fair share of access charges.

The Commission should reject AT&T's proposal to limit the application of intrastate access charges to situations "when the LEC's intrastate terminating per-minute access rates are at parity with or below its interstate terminating per-minute access rates."<sup>12</sup> This would only create another Catch-22 for smaller ILECs, forcing them to choose between foregoing intrastate access charges on intrastate VoIP traffic, or giving up a great deal of intrastate access revenue from all other carriers. The Commission should instead use the forbearance petition filed by Embarq as the basis for application of access charges on VoIP.<sup>13</sup> The Commission should not attempt to tinker with intrastate access rates by handing VoIP carriers a windfall at the expense of the ILECs. If intrastate access rates need to be reformed by the Commission,<sup>14</sup> the reformation should take place in a straightforward way rather than by putting small ILECs into a Catch-22 situation in which both alternatives are unfair and unreasonable.

## CONCLUSIONS

The Commission should:

- (1) maintain its jurisdiction over dial-up ISP-bound traffic;

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<sup>12</sup> AT&T Petition, p. 27.

<sup>13</sup> Public Notice, Pleading Cycle Established for Petition of the Embarq Local Operating Companies for Forbearance from Enforcement of Section 69.5(a) of the Commission's Rules, Section 251(b) of the Communications Act and Commission Orders on the ESP Exemption, WC Docket No. 08-08, DA 08-94 (Jan. 14, 2008).

<sup>14</sup> Such a step may require Federal legislation to give the Commission authority to change intrastate rates.

- (2) open a notice-and-comment proceeding with a view toward reducing the \$.0007 rate for the termination of dial-up Internet traffic;
- (3) eliminate the requirement for an ILEC to offer the \$.0007 rate for all reciprocal compensation traffic as a condition of limiting the rate for dial-up Internet traffic to that amount;
- (4) open a notice-and-comment proceeding with a view toward addressing phantom traffic by requiring the transmission of JIP where technically feasible and by establishing a 25% penalty surcharge on access charges improperly and intentionally avoided;
- (5) if the jurisdiction of VoIP traffic can be determined, apply the same intercarrier compensation rules for VoIP-to-PSTN or PSTN-to-VoIP traffic that apply to POTS traffic; and
- (6) if the jurisdiction of VoIP traffic cannot be determined, apply interstate access charges to VoIP-to-PSTN or PSTN-to-VoIP traffic.

Respectfully Submitted,



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Date: August 21, 2008

**CERTIFICATE OF SERVICE**

I, Gregg C. Sayre, do certify that on August 21, 2008, the aforementioned **Comments of Frontier Communications** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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