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

Petition of AT&T for Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption"	)	WC Docket No. 08-152 CC Docket Nos. 94-68, 01-92 WC Docket Nos. 07-135, 04-36, 06-122, 05-337
Intercarrier Compensation for ISP-Bound Traffic	)	WC Docket No. 99-68
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Federal-State Joint Board on Universal Service	)	CC Docket 96-45

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Cesar Caballero
Bill Kreutz
Windstream Communications, Inc.
4001 N. Rodney Parham Road
Little Rock, Arkansas 72212

Eric Einhorn
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Its Attorney

Dated: August 21, 2008

TABLE OF CONTENTS

I. The Commission Should Deny AT&T's Petition..... 4

II. The Commission Should Adopt the Missoula Plan 5

III. The Effectiveness of Any Other Comprehensive Reform Plan Will Depend on Identifying the Correct Policy "Dials" and Setting These Dials at Appropriate Levels 6

A. A National Rate Comparability Benchmark Is a Necessary Component of Any Comprehensive Intercarrier Compensation (and Universal Service) Reform Plan……...7

B. Uniform Terminating Intercarrier Compensation Rate Reductions Must Be Offset by Reasonable Recovery of Network Cost Through Increased End-User Rates/SLCs and Universal Service……8

C. A Modest Increase in Federal SLCs Could Be Used to Offset Reductions in Terminating Revenues and to Constrain Increases to the Universal Service Fund…….10

D. Federal Universal Service Support Will Be Needed to Recover Some of the Cost Now Recovered Through Intercarrier Charges……11

E. Comprehensive Reform Should Address Originating Access…….12

IV. VoIP Traffic Should Not Be Given Preferential Intercarrier Compensation Treatment..... 12

V. Other Issues Raised in AT&T's Filing 15

VI. Conclusion..... 16

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

Petition of AT&T for Declaratory Ruling	)	WC Docket No. 08-152
and Limited Waivers Regarding Access	)	CC Docket Nos. 94-68, 01-92
Charges and "ESP Exemption"	)	WC Docket Nos. 07-135, 04-36,
	)	06-122, 05-337
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	WC Docket No. 99-68
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Federal-State Joint Board on Universal Service	)	CC Docket 96-45

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following comments in response to the Federal Communications Commission ("Commission") request for comment[1] regarding the Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption" ("AT&T Petition").[2] Windstream also responds to two interrelated letter filings made by AT&T on the same day.[3]

Windstream, like AT&T, believes that the best way for the Commission to address intercarrier compensation is through comprehensive reform that carefully balances end-user

[1] *Petition of AT&T for Interim Declaratory Ruling and Limited Waivers Pleading Cycle Established*, Public Notice, WC Docket No. 08-152, DA 08-1725 (WCB rel. July 24, 2008)..

[2] Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption," WC Docket No. 08-152 (filed July 17, 2008) ("AT&T Petition").

[3] AT&T's Petition is one of a set of three filings made on July 17, 2008 (collectively, "July 17th Filings"). *See* Letter from Bob Quinn, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 04-36; WC Docket No. 05-337, 99-68, 07-135 (filed July 17, 2008) ("AT&T July 17 Cover Letter"), 1 (explaining that, in addition to the Petition, AT&T was also filing two ex parte letters addressed to Chairman Martin urging comprehensive intercarrier compensation reform and the extension of the *Vonage Order* to fixed-location VoIP).

rates, intercarrier rates, and universal service support. Pursuant to Section 254 of the Communications Act ("the Act"), this reform should lessen arbitrage opportunities and maintain revenue streams adequate to support affordable, quality service by carriers of last resort ("COLR") in high-cost rural areas.[4] Windstream and AT&T agree that the Missoula Plan provides a ready vehicle for advancing this positive, industry-wide reform.[5]

Windstream, however, strongly opposes AT&T's piecemeal, "second best" proposals for intercarrier compensation reform. Far from second best, the AT&T Petition and AT&T's ex parte letter request for extension of the *Vonage Order*[6] ("AT&T VoIP Preemption Ex Parte Letter") altogether fail to address the problems faced by mid-sized and small carriers and the rural, high-cost regions they serve. In particular, any alternative that proposes special treatment for Voice over Internet Protocol ("VoIP") should be rejected, because, among other defects, that proposal would increase, rather than decrease or eliminate, arbitrage opportunities.

I. The Commission Should Deny AT&T's Petition

The AT&T Petition does not advance intercarrier compensation reform for any carrier except AT&T and accordingly should be rejected. In the absence of comprehensive reform through adoption of the Missoula Plan or appropriate implementation of its Benchmark Framework, AT&T proposes the Commission grant its Petition seeking a piecemeal fix to address termination of IP-PSTN traffic terminating on its network. AT&T requests that the

---

[4] *See* 47 U.S.C. § 254(b) (establishing that the Commission should ensure that rates are "just," "affordable," and "reasonably comparable" across regions).

[5] *See* Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) ("Missoula Plan Ex Parte Letter"); *Comment Sought on Amendments to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*, Public Notice, DA 07-738, CC Docket No. 01-92 (WCB, rel. Feb. 16, 2007) ("Missoula Plan Amendments Public Notice"), 1, n.2 (listing AT&T and Windstream as supporters of the Missoula Plan).

[6] *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, FCC 04-267, WC Docket No. 03-211 (Nov. 12, 2004) ("Vonage Order"), *aff'd*, Minnesota Pub. Utils. Comm'n v. FCC, 483 F.3d 570 (8th Cir. 2007).

Commission clarify that terminating intrastate access charges would apply to IP-originated traffic terminated on AT&T's network, but only where its intrastate terminating access charges are equal to or less than AT&T's interstate terminating access rate. AT&T would be able to increase its originating access rates up to the maximum ATS target rate for rural price cap companies, which is $0.0095, and subscriber line charges ("SLCs") to the relevant cap to make up the revenue it would otherwise lose from the reduction of its intrastate access rates to the interstate level.

The AT&T Petition does not provide a rational path that most other carriers can follow. The SLC is an inadequate recovery mechanism for the majority of mid-size and small carriers. AT&T has more room to increase SLC rates to the caps than mid-size and small carriers, many of whom are already at or very close to the SLC cap. In addition, a number of mid-sized and small carriers are already near or above the $0.0095 originating rate cap proposed by AT&T, therefore, providing no opportunity for an increase. Moreover, AT&T generally has a smaller gap between its intrastate and interstate access rates than the mid-size and small carriers (not to mention lower rates to begin with). Thus, the AT&T Petition does not provide a pathway for intercarrier compensation reform for mid-sized or small ILECs.

II. The Commission Should Adopt the Missoula Plan

Windstream joins AT&T in reiterating its support of the Missoula Plan.[7] The Commission can and should adopt this plan now. The Missoula Plan provides a thoughtful and balanced approach to comprehensive intercarrier compensation reform. As described in 2006 by its supporters, which included AT&T and Windstream, the Missoula Plan would comprehensively reform intercarrier compensation by "rationalizing current regulatory

[7] *See* Missoula Plan Ex Parte Letter; Missoula Plan Amendments Public Notice.

distinctions, reducing the disparity in intercarrier charges, and shifting a portion of network cost recovery from intercarrier charges to a combination of (i) modestly higher subscriber line charges ("SLCs") and (ii) a new federally administered program called the Restructure Mechanism."[8] This plan has been extensively discussed in the record and has been endorsed by hundreds of carriers.[9]

III. The Effectiveness of Any Other Comprehensive Reform Plan Will Depend on Identifying the Correct Policy "Dials" and Setting These Dials at Appropriate Levels

If, however, the FCC does not adopt the Missoula Plan, AT&T's Benchmark Framework Ex Parte Letter offers useful guidance on issues that need to be addressed by any truly comprehensive reform.[10] AT&T would have the Commission establish a national rate benchmark and then address certain variables or "dials" in "systematic fashion . . . to adjust a flow of revenue or to achieve a specific policy outcome" – e.g., a uniform terminating intercarrier rate, changes to the Federal SLC, and universal service support.[11] AT&T identifies most of the correct dials to consider when reforming intercarrier compensation.

The AT&T Benchmark Framework Ex Parte Letter, however, fails to provide adequate guidance on how the Commission should set these policy dials. Without further clarification by AT&T, parties may try to use the AT&T Benchmark Framework as support for unsustainable proposals to move to a forced "bill and keep" model or to set unified termination rates at a level

---

[8] Letter from Brian Benison (for the Missoula Plan Supporters) to Marlene Dortch, Secretary, FCC, WC Docket No. 01-92 (filed Aug. 22, 2006).

[9] See Comment Sought on Missoula Intercarrier Compensation Reform Plan, Public Notice, DA 06-1510, CC Docket No. 01-92, (WCB 2006) (requesting comments on the Missoula Plan); Missoula Plan Amendments Public Notice (requesting further comments on and listing supporters of the compromise plan).

[10] *See* Letter from Bob Quinn, AT&T, to Kevin Martin, Chairman, FCC, CC Docket Nos. 01-92, 96-45; WC Docket No. 05-337, 99-68, 07-135 (filed July 17, 2008) ("AT&T Benchmark Framework Ex Parte Letter"), 1.

[11] *Id*. at 4.

below the economic cost of providing the service. Such proposals would not recognize that most COLRs still must rely heavily on revenues from intrastate and interstate access charges to keep rates and services affordable and comparable. Any reduction in intercarrier compensation rates without corresponding (real) recovery opportunities will jeopardize the availability of quality and affordable service to much of the high-cost and rural areas of the nation.[12]

To be successful, the Commission's intercarrier compensation reform plan not only must consider all the appropriate dials, but also must set these dials at appropriate levels. Below, Windstream provides guidance on the appropriate settings for these policy dials. This discussion provides critical instruction on how to ensure AT&T's Benchmark Framework serves as a blueprint for constructing robust, industry-wide reform.

A. A National Rate Comparability Benchmark Is a Necessary Component of Any Comprehensive Intercarrier Compensation (and Universal Service) Reform Plan.

Windstream supports the premise that carriers should first recover a reasonable amount of the costs to provide service from their customers before seeking universal service funding. Accordingly, Windstream agrees with AT&T's recommendation that the Commission establish a national rate comparability benchmark as part of comprehensive reform to reflect what consumers should generally pay for basic telephone service. A benchmark would act in combination with the SLC cap and explicit universal service support to ensure that universal service funding is not funding unreasonable low rates for basic telephone service.[13]

---

[12] This result would be contrary to the universal service principles adopted in Section 254 of the Act. *See* 47 U.S.C. § 254(b) (establishing that the Commission should ensure that rates are "just," "affordable," and "reasonably comparable" across regions).

[13] In its Benchmark Framework Ex Parte Letter, AT&T proposes to include the following elements in its rate benchmark: (1) the rate for basic telephone service; (2) SLCs (including state SLCs if applicable); and (3) the end-user charge attributable to any state high-cost universal service funds in the calculation of the benchmark. AT&T Benchmark Framework Ex Parte Letter at 6.

When instituting this national benchmark, the Commission, however, should be mindful of two important considerations. First, the Commission should set the national benchmark at a reasonable level. Windstream recommends a level between $20.00 to $25.00 per month, as proposed by the Missoula Plan.[14] Setting the benchmark at this level would ensure that rates in rural areas are "reasonably comparable" to rates charged for similar services in urban areas (as required by the Act),[15] without allowing rates to remain at unreasonably low or high levels. Second, the benchmark should include any mandatory extended area service ("EAS") additives that are common in local exchange carrier's local service. Expanded local calling rate additives are particularly widespread in rural service areas where the local exchange area is geographically smaller. Over time, state commissions have expanded mandatory calling areas and, in many instances, have allowed a separate rate additive to reflect the larger local calling scope.

B. Uniform Terminating Intercarrier Compensation Rate Reductions Must Be Offset by Reasonable Recovery of Network Cost Through Increased End-User Rates/SLCs and Universal Service.

AT&T's proposal calls for terminating intercarrier rates for intrastate, interstate, and local traffic to be transitioned to a uniform structure and unified "at relatively low reciprocal compensation levels (i.e., below existing interstate access rate levels)."[16] AT&T recognizes that "[t]he precise rate levels would depend on the Commission's decisions concerning the size of the universal service fund and end-user rates."[17] It concludes that "moving to a unified terminating rate will result in access revenue reduction that should be offset by these other revenue sources,"

---

[14] *See* Letter from State Commissions and Missoula Plan Supporters, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Jan. 30, 2007) (describing the benchmark designed for the Early Adopter Fund).

[15] 47 U.S.C. § 254(b)(3).

[16] AT&T Benchmark Framework Ex Parte Letter at 4.

[17] *Id*. at 6.

but does not identify how much end-user rate increases can be expected, or universal service support will be needed, to offset the reductions.[18]

Although it generally supports unifying such rates (as is the case in the Missoula Plan), Windstream is concerned with the lack of detail presented in AT&T's proposal. The proposal, without further detail, could be used to justify rates that do not allow ILECs a reasonable opportunity to recover revenue from other sources. Unified intercarrier compensation rates that are too low would result in unaffordable end-user rates, an unsustainable increase to the universal service fund, and/or revenue reductions that are too large to enable carriers to provide quality services to consumers (especially in high-cost and rural areas).

This lack of detail is even more significant in light of a letter AT&T jointly filed ("Joint Letter"), subsequent to its July 17th filings, with a group of companies that would benefit from lower access rates.[19] The Joint Letter requests that the Commission establish a uniform terminating rate for all carriers at no higher than $0.0007 per minute – an amount that is not cost based.[20] Thus, unfortunately, taking these various filings together, it appears AT&T's proposal is not only for supporting a uniform terminating rate to be set below current interstate levels, but also supports a rate that effectively eliminates intercarrier compensation (i.e., set at $0.0007).

Setting a uniform rate at $0.0007 would jeopardize the ability of carriers of last resort to offer telecommunications services, in particular in high-cost and rural areas. As a price-cap company, Windstream operates in areas that for interstate access rate purposes have a target of $0.0095 per minute, $.0065 per minute, and $0.0055 per minute. At the $0.0007 rate proposed

---

[18] *Id*.

[19] *See* Letter from AT&T et al. to Kevin Martin, Chairman, FCC, et al., WC Docket 04-36, CC Docket No. 01-92 (filed Aug. 6, 2008) ("August 6 Joint Filing").

[20] *Id*. at 2.

by the Joint Letter, Windstream's *interstate* access rates would be reduced by over 90 percent, to just tiny fractions of a cent per minute. The impact is even larger when considering *intrastate* access reductions. Imposing a $0.0007 rate would only provide Windstream a fraction of the annual revenue it would otherwise be entitled to recover for terminating on its network many billions of minutes of other carriers' traffic. In fact, the cost of recording, billing and collecting intercarrier compensation revenues for terminating other carrier's traffic on our network would likely exceed the $0.0007 per minute rate.

Setting rates at the unduly low level proposed by AT&T runs contrary to Commission precedent that recognizes rate levels should reflect the different conditions of carriers of different sizes. For example, the *CALLS Order* concluded that the rates of the larger carriers and the mid-size and small carriers need not be unified at the same level.[21] The Commission there found that the RBOCs and GTE had significantly larger economies, and, therefore, should be able to recover a fair portion of their network costs through lower rates.[22]

C. A Modest Increase in Federal SLCs Could Be Used to Offset Reductions in Terminating Revenues and to Constrain Increases to the Universal Service Fund.

AT&T proposes that the Commission allow increases in the SLC cap to recover a portion of the revenue reductions resulting from the reductions in terminating access rates when a carrier is below the national comparability benchmark.[23] Although AT&T makes no specific recommendation with regard to what the "moderate" increase in the SLC cap amount should be,

---

[21] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45; FCC 00-193 (rel. May 31, 2000), ¶ 177.

[22] *Id. See also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, FCC 90-314, CC Docket No. 87-313 (rel. Oct. 4, 1990, as corrected Oct. 31, 1990), ¶ 262 (concluding that mid-sized and small carriers, unlike the Regional Bell Operating Companies and GTE, may not have the scale to benefit from price cap regulation, so price cap regulation was offered on an optional basis).

it clearly links the increase in the SLC cap to the amount needed to reach the comparable benchmark for end users' rates.

Windstream supports this general recommendation that the Commission consider modest increases in the SLC caps as a means to constrain the growth of the universal service fund, with one important clarification: The Commission should not require carriers to increase SLCs to the cap or to the national benchmark levels. Rather, end-user revenues calculated at the SLC cap (assuming the national benchmark constraint) should be imputed to carriers seeking universal service funding. The Commission should enable carriers to recover lost revenue, but need not guarantee such recovery at levels below the rate benchmark. Given this approach, the Commission must ensure that carriers are not precluded from raising basic rates to the national benchmark.

D. Federal Universal Service Support Will Be Needed to Recover Some of the Cost Now Recovered Through Intercarrier Charges.

Although AT&T's proposal correctly recognizes the need for universal service support in the context of its unified terminating rate plan, the AT&T Benchmark Framework Ex Parte Letter provides little detail or indication of how this important "dial" should be set. AT&T merely provides that "the size of the federal universal service fund cannot be allowed to expand without limit."[24]

To provide clarity on the matter, Windstream urges the Commission to address this concern by setting the unified rate at a level that allows carriers, particularly those serving high-cost areas, to recover a fair portion of their network costs from other carriers using their network. This measure is necessary to satisfy the principles in Section 254 of the Act: Carriers in rural

---

[23] AT&T Benchmark Framework Ex Parte Letter at 7.

[24] *Id*.

areas must be able to maintain affordable rates, without placing overwhelming demands on the Universal Service Fund.[25] An unreasonably low unified rate, such as $0.0007, otherwise would result in significant and unsustainable growth in the universal service fund, even after rural carriers reach or impute the national benchmark. If the $0.0007 unified terminating rate were adopted, SLCs were increased to the current caps, and a $25.00 national benchmark were effectively implemented, Windstream alone would require significant additional federal universal service/access replacement funding to maintain its current levels of service.

E. Comprehensive Reform Should Address Originating Access

Finally, AT&T has neglected to identify an important "dial" in its Benchmark Framework – originating access. Unlike the Missoula Plan, AT&T's alternative proposals only address the establishment of a uniform *terminating* intercarrier compensation rate. The same local exchange network is used to both originate and terminate traffic, so maintaining a disparity in originating and terminating rates does not make economic sense. Moreover, any reform that does not include originating access services will likely result in new arbitrage opportunities.

IV. VoIP Traffic Should Not Be Given Preferential Intercarrier Compensation Treatment

The Commission should not provide VoIP traffic special status, as recommended in AT&T's VoIP Preemption Ex Parte Letter.[26] Specifically AT&T asks the FCC to preempt the jurisdiction of state commissions to regulate VoIP services while recognizing that states may still assess state universal service and TRS contributions to VoIP providers.[27] Effectively AT&T would carve VoIP out from the intercarrier compensation rules to which all other traffic is

[25] *See* 47 U.S.C. § 254(b) (calling for the Commission to ensure "reasonably comparable rates" across the United States and provide "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service").

[26] *See* Letter from Bob Quinn, AT&T, to Kevin Martin, Chairman, FCC, WC Docket No. 04-36, 06-122; CC Docket No. 96-45 (filed July 17, 2008) ("AT&T VoIP Preemption Ex Parte Letter").

subject. The Commission should deny this request and affirm that VoIP traffic is subject to the appropriate jurisdictionalized access rate based on the originating and terminating points of the traffic.

AT&T would have the Commission believe that the PSTN is "rapidly obsolescing" and suggests that applying juridictionalized access charges somehow could "retard" the transition to a broadband infrastructure.[28] These assertions are not supported by fact and could not be further from reality. AT&T ignores the ongoing need for the foreseeable future for PSTN facilities to provide voice and broadband services in high-cost areas.

Ensuring sufficient support for the PSTN is necessary to fulfill Congress's intent that consumers in all corners of the Nation have access to telecommunications and advanced services.[29] To the extent regulators still rely on rates for terminating calls as a means of recovering costs of providing those services, VoIP calls terminating on the PSTN must continue to contribute funding those obligations. Otherwise carriers serving consumers in high-cost areas will not be able to reasonably recover network costs required to provide affordable and comparable services. Reducing access charges and corresponding revenues will actually make it *more* difficult, not less, for Windstream to invest in additional broadband deployment.[30]

---

[27] *See* AT&T VoIP Preemption Ex Parte Letter at 3.

[28] *See* AT&T July 17 Cover Letter at 1.

[29] 47 U.S.C. § 254(b).

[30] Windstream receives less than 1% of its total revenue from high-cost loop and model support, and less than 3% of its total revenues from all federal high-cost support combined. Since it receives relatively little high-cost universal service funding, Windstream – unlike small carriers that can apparently finance fiber to the home in high-cost, remote areas – must make a business case for broadband deployment based on revenues it receives from its retail and wholesale customers. *See* U.S. Government Accountability Office, *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, GAO-08-633 (rel. June 2008), 22-23 ("In rural areas served by rural carriers, the high-cost program allows the carrier to recoup a large portion of the investment that facilitates broadband service since, as we mentioned earlier, these carriers receive high-cost program support based on their costs. Alternatively, in rural areas served by nonrural carriers, which generally do not receive as much funding as rural carriers and do not receive funding based on their costs, the network upgrades necessary for broadband service are less likely. As a result, the availability of broadband services to rural customers is largely determined by the type of carrier they are served by, and not where they are located.").

There is no rational basis for treating PSTN and VoIP traffic differently for intercarrier compensation purposes. VoIP traffic terminating on the circuit switched network uses the same network components, and the terminating carrier incurs exactly the same costs as terminating a call that originated instead as a circuit switched call. The primary difference between PSTN and VoIP traffic is that VoIP traffic originates on an IP network rather than a circuit switched network. From a customer's perspective, VoIP providers offer voice services that are virtually identical to the ones offered by traditional wireline providers and, in fact, such services are marketed as substitutes for switched telecommunications services. In light of these substantial similarities, the Commission already has determined that VoIP services must comply with CALEA,[31] E911,[32] and USF contributions,[33] and recently it supported the Nebraska Public Service Commission's efforts to assess state universal service contributions to VoIP services.[34]

At the moment, the primary (albeit improper) advantage held by VoIP providers is the perception of some of its purveyors that they may subvert the payment of properly jurisdictionalized access charges for the use of the PSTN. This refusal to pay gives VoIP-based voice telephony providers a cost advantage over PSTN-based service and at the same time undermines fair competition. It is incorrect for VoIP providers to repeatedly assert that applying the same rules to them when they use the PSTN as all other carriers that use the PSTN would

---

[31] *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, WC Docket Nos. 04-36, 05-196 (rel. June 3, 2005), *petitions for review denied*, Nuvio Corp. v. FCC, 473 F.3d 302 (D.C. Cir. 2006).

[32] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153, ET Docket No. 04-295, RM-10865 (rel. Sept. 23, 2005), *petitions for review denied*, American Council on Educ. v. FCC, 451 F.3d 226 (D.C. Cir. 2006).

[33] *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, WC Docket Nos. 06-122, 04-36; CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170; NSD File No. L-00-72 (rel. June 27, 2006), 34, *petitions for review granted in part and vacated in part*, Vonage Holdings Corp. v. FCC, 489 F.3d 1232 (D.C. Cir. 2007).

somehow "saddle" IP-based voice services with legacy regulation.[35] Although it may not be necessary for access charges to apply to IP-to-IP traffic that does not touch the PSTN, the fact remains that calls to PSTN customers are terminated no differently than any other traffic terminating over the PSTN. Permitting such traffic to pay a different amount merely because they originate in an IP platform would not be competitively or technologically neutral.

Although AT&T correctly asserts that the existing compensation regime has resulted in numerous disputes resulting from the numerous rates assessed to the various traffic types, creating a different compensation mechanism for another class of traffic will exacerbate the very problem AT&T is purportedly trying to resolve. Many more carriers will assert, as they do today, that the traffic they are terminating is VoIP originated and therefore the lower rate (or no rate) would apply. Most carriers do not provide any evidence that their traffic is in fact VoIP originated and the terminating carrier has no ability to verify these claims. Creating a special category for VoIP traffic will only aggravate the problem. For this and other reasons cited above, the Commission should deny any request to treat VoIP services as a separate class of traffic subject to different intercarrier compensation requirements.

V. Other Issues Raised in AT&T's Filing

AT&T raises additional issues regarding intercarrier compensation that need the Commission's action for clarification. Windstream agrees that clarification is needed to create a more stable and predictable intercarrier compensation system. In particular, Windstream urges the Commission to address treatment of Internet Service Provider-bound ("ISP-bound") traffic and phantom traffic.

---

[34] Brief for Amici Curiae United States and Federal Communications Commission Supporting Appellants' Request for Reversal, Vonage Holdings Corp. and Vonage Network, Inc. v. Nebraska Pub. Serv. Comm'n (8th Cir. 2008) (No. 08-1764).

[35] *See* August 6 Joint Filing at 3.

ISP-bound traffic:

Windstream supports AT&T's position that the Commission should consider adopting bill-and-keep for dial-up ISP-bound traffic. At a minimum, the Commission should affirm that the jurisdiction of a call is determined by the originating and terminating points and that, therefore, virtual NXX calls are deemed interexchange and not subject to reciprocal compensation charges. This clarification is an appropriate response to marketplace conditions. From Windstream's experience, there is an increasing amount of ISP-bound traffic in rural areas, and some forms of this traffic are an ongoing source of arbitrage. For example, certain CLECs offer services only to ISP providers and do not offer any services to the community at large. Their business plan is premised on the CLECs' ability to collect reciprocal compensation charges, even when the traffic is interexchange but provided via a virtual NXX arrangement.

Phantom traffic:

Windstream, like AT&T, fully supports US Telecom's proposal to assure that carriers have the ability to identify and track traffic on their network. Adoption of the proposal will ensure carriers are able to appropriately bill and collect intercarrier compensation. Without repeating the extensive record support for that proposal, Windstream reiterares that adopting rules for the proper identification of traffic will greatly help to eliminate intercarrier compensation billing disputes.

VI. Conclusion

For the reasons discussed above, the Commission should deny the AT&T petition and instead adopt the Missoula Plan. In any case, the Commission should adopt comprehensive intercarrier compensation reform that carefully balances end-user rates, intercarrier rates, and universal service support. Such reform is long overdue and would benefit consumers by

maintaining adequate revenue streams for carriers to support affordable, quality service in high-cost rural areas.

Respectfully submitted,

/s/ Eric N. Einhorn

Eric N. Einhorn
Windstream Communications, Inc.
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Dated: August 21, 2008

Its Attorney