

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition of AT&T for Declaratory Ruling and Limited Waivers)	WCB Docket No. 08-152
)	
Petition for Waiver of Embarq)	WCB Docket No. 08-160

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (“USTelecom”)¹ is pleased to submit comments on the Petition of AT&T, Inc. for Interim Declaratory Ruling and Limited Waivers (“AT&T Petition”)² as well as the Petition for Waiver of Embarq (“Embarq Petition”)³.

Both petitions point out the problems with the current system of intercarrier compensation, in particular the numerous opportunities for regulatory arbitrage. Significantly, both petitions acknowledge that they propose partial interim solutions and that their strong preference is comprehensive reform. In its Petition, AT&T states “AT&T Inc. has been a staunch supporter of comprehensive intercarrier compensation reform, most notably through our ongoing participation in the Missoula Plan, and we will remain an advocate of that plan as well as an active, fully committed participant in pursuing the goal of a rational, unified rate structure.”

⁴ AT&T goes on to say that “...the rulings AT&T seeks are by no means a substitute for comprehensive intercarrier compensation reform; rather, they are designed to facilitate

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers*, WC Docket No. 08-152 filed July 17, 2008 (“*AT&T Petition*”)

³ See *Petition for Waiver of Embarq*, WC Docket No. 08-160, filed August 1, 2008 (“*Embarq Petition*”)

⁴ See *AT&T Petition* at page 3

substantial progress toward that end...”⁵ Similarly, the Embarq Petition states “Embarq supports comprehensive intercarrier compensation and universal service reform. It joined a broad industry coalition supporting the Missoula Plan.”⁶

However, the petitions recognize that such comprehensive reform is an ambitious undertaking and offer proposals for relief limited to each respective company that, absent adoption of comprehensive reform, would begin to address a subset of problems with intercarrier compensation. While each petition suggests solutions tailored to the particular circumstances of the filing company, those solutions may be inappropriate when applied to other companies that are not similarly situated. While comprehensive reform based on the Missoula Plan filing should remain the Commission’s primary focus, the Commission should give careful consideration to each of the petitions, absent adoption of comprehensive reform. The Commission should not mandate the particular solutions proposed by AT&T and Embarq for other companies, but rather allow others to volunteer to implement these solutions if adopted for the respective petitioners by the Commission.

I. THE COMMISSION SHOULD PURSUE COMPREHENSIVE REFORM

USTelecom has endorsed comprehensive reform of the intercarrier compensation regime through adoption of the Missoula Plan.⁷ It is universally acknowledged that intercarrier compensation reform is urgently needed because the existing systems for intercarrier compensation currently in place are outdated as a result of technological innovation, market evolution and legal and regulatory changes. Arbitrage schemes continue to multiply as

⁵ See *AT&T Petition* at 4

⁶ See *Embarq Petition*, Executive Summary at iii

⁷ See Comments of USTelecom filed October 25, 2006 on the Missoula Plan, (Missoula Plan, submitted July 18, 2006 in CC Docket No. 01-92, *Developing a Unified Intercarrier Compensation Regime.*)

articulated in AT&T's recent letter⁸ to Chairman Martin which listed seven urgent problems with the current regime, and suggested piece part solutions including maintaining its current rules for ISP bound traffic, combating traffic pumping and adopting USTelecom's proposal for addressing phantom traffic.⁹ USTelecom strongly endorses these solutions addressing particular forms of regulatory arbitrage. While these solutions may still be relevant even with adoption of comprehensive intercarrier compensation reform, it is clear that effective comprehensive reform would minimize the opportunity for current and new schemes of regulatory arbitrage.

II. THE PRINCIPLES UNDERLYING THE MISSOULA PLAN SHOULD BE PRESENT IN ANY COMPREHENSIVE INTERCARRIER COMPENSATION REFORM ADOPTED BY THE COMMISSION

USTelecom continues to support the Missoula Plan as the best solution for comprehensive intercarrier compensation reform. Some of the key principles of Missoula that are essential to any comprehensive reform are set out below.

1. Rates for Termination of Intercarrier Traffic Must be Uniform

Regulatory arbitrage can be minimized with a default intercarrier rate structure that treats all traffic uniformly. Uniform terminating rates are a key part of reform.¹⁰ Both the AT&T Petition and the Embarq Petition unify terminating interstate access and intrastate access, thus both acknowledge and attempt to address the potential and actual arbitrage problems stemming from different rates charged for the carriage of traffic for which the same function is performed. Today, telecommunications markets are disrupted by diverse intercarrier compensation regimes

⁸ See Letter to Chairman Kevin Martin from Robert W. Quinn, Jr. dated July 17, 2008.

⁹ See , e.g. Letter from Glenn Reynolds, United States Telecom Association, to Marlene Dortch, Federal Communications Commission, CC Docket No. 01-92 (filed May 8, 2008) , Letter from Glenn Reynolds, United States Telecom Association to Marlene Dortch, Federal Communications Commission, CC Docket 01-92 (filed February 12, 2008)

¹⁰ While there is clearly a more urgent need to address arbitrage on the terminating side of intercarrier compensation through rate unification, the Commission should also take steps to examine and deal with arbitrage on the originating side, such as that associated with originating 8YY traffic, through implementation of a similar solution.

that arbitrarily assess different charges for the handling of traffic depending on the jurisdictions, customers or technologies involved in calls. This state of affairs produces uneconomic arbitrage and intercarrier disputes. The overriding goal of intercarrier compensation reforms should be to minimize arbitrage by adopting a uniform rate structure, in particular for traffic terminating on the PSTN, regardless of the identity of the service provider, the jurisdiction of the call, or the underlying technology (e.g., wireless, wireline, VoIP etc.) with which the call was made.

2. Reform of the Universal Service Contribution Mechanism Can Facilitate Intercarrier Compensation Reform

Reform of high cost universal service support can play a significant role in facilitating comprehensive intercarrier compensation reform. The Commission could not have been more accurate than when it titled a recent News Release “Interim Cap Clears Path for Comprehensive Reform”.¹¹ The News Release referred to the Interim Cap as “a crucial first step toward comprehensive reform of Universal Service and intercarrier compensation, two carrier compensation regimes that are directly interrelated.” The News Release went on to explain that “Until the Commission took the necessary first step of capping support to those competitive ETCs, any attempt to reform intercarrier compensation would have resulted in even more explosive growth of the Fund.”

Further reform of universal service can serve to stabilize the fund and allow it to play a role in facilitating comprehensive intercarrier compensation reform. There is certainly a high degree of consensus on moving to a numbers based approach for the assessment of contributions to the universal service fund. While comprehensive intercarrier compensation reform can certainly be accomplished absent movement to a numbers based USF contribution mechanism,

¹¹ See NEWS, “Interim Cap Clears Path for Comprehensive Reform”, released by the Federal Communications Commission on May 2, 2008.

the time is propitious for the concurrent adoption of such a plan which would help ensure the stability and predictability of the high cost fund mechanism.

3. Comprehensive Intercarrier Compensation Reform Should Rely in the First Instance on Competition and Commercial Agreements Where Possible to Determine Market Outcomes

Comprehensive intercarrier compensation reform should facilitate commercial arrangements with any rules serving as a default. Companies should be free to negotiate alternatives, which will benefit all parties involved.

4. Network Owners Must Have a Consistent and Predictable Opportunity to be Compensated for the Use of their Networks

Unification of terminating intercarrier compensation rates will minimize regulatory arbitrage and resolve many intercarrier disputes, permitting a more consistent and predictable opportunity for network owners to receive fair compensation for the use of their facilities. This will thereby facilitate investment in advanced broadband networks. Physical networks are the heart of telecommunications and will remain so for the foreseeable future. Companies investing in physical networks must be reasonably confident that they will have a realistic opportunity to recover the cost of their investment and make a competitive return on that investment.

5. The Commission Should Consider the Impact of Any Reform on Rate of Return Carriers and NECA Pooling

Comprehensive intercarrier compensation reform should be implemented in as minimally disruptive a manner as possible. There is no need to create additional complications by implicating rate of return or NECA pooling mechanisms that are so important to the continued stability of small and rural carriers.

6. A Comprehensive Intercarrier Compensation Reform Solution Should Include Any Necessary Transitions

Although terminating intercarrier rate disparities should be resolved as soon as possible, elements of a comprehensive solution may be temporarily disruptive. Any such outcome should be dealt with through the inclusion of workable transitions that will provide stability to providers with carrier of last resort obligations. An appropriate revenue recovery mechanism will facilitate the eventual transition to an IP environment, particularly for small and rural carriers.

III. THE COMMISSION MUST ADDRESS SEVERAL KEY ISSUES THAT ARE OVERDUE FOR DECISION

Four intercarrier compensation issues demand timely decisions by the Commission – phantom traffic, access pumping, intercarrier compensation for VoIP traffic and ISP bound traffic.

1. **Phantom traffic** is terminating carrier receipt of voice calls which bear incomplete, inaccurate or missing signaling data. This can result in the billing of access at a rate lower than the rate appropriate to the jurisdictionalization would warrant, or the inability to bill for the call at all. Such disguise of the proper regulatory classification of traffic, generously characterized as arbitrage, disadvantages other carriers that adhere to the rules, and leads to higher than necessary rates for termination of intercarrier traffic. While unification of terminating rates would ameliorate the problem of disguising the regulatory classification of traffic, it would not address questions concerning which carrier to bill. USTelecom has proposed a solution to the Commission which would greatly reduce the level of phantom traffic without unfairly burdening any particular class of carriers, and would benefit carriers and consumers.¹²

¹² See Letter from Glenn Reynolds, United States Telecom Association, to Marlene Dortch, Federal Communications Commission, CC Docket No. 01-92 (filed May 8, 2008) , Letter from Glenn Reynolds, United States Telecom Association to Marlene Dortch, Federal Communications Commission, CC Docket 01-92 (filed February 12, 2008)

Regardless of the action taken by the Commission on comprehensive intercarrier compensation reform, the Commission should act promptly to adopt the USTelecom phantom traffic proposal.

2. **Access pumping** is a form of arbitrage in which a LEC artificially creates enormous increases (pumps) the volume of its traffic in an area with high access charges in order to reap windfall profits. USTelecom submitted comments and reply comments in the Commission's proceeding on this issue and urged the Commission to adopt rules to ensure that access rates remain just and reasonable.¹³ Particularly since most access pumping schemes have shifted to the CLEC portion of the industry and because CLEC access charges are not as closely regulated as those of ILECs, the Commission should address access pumping whether or not it adopts a comprehensive intercarrier compensation solution.

3. **Intercarrier compensation for VoIP traffic** is a rapidly growing area of dispute between VoIP providers and carriers terminating VoIP-originated traffic on the PSTN. Many VOIP providers are using the uncertainty around this issue as a reason for not paying appropriate—and sometimes any—compensation to LECs for terminating such traffic on the PSTN. As a result, State commissions, courts and the FCC itself are all being dragged into duplicative and resource consuming disputes over compensation for such traffic. The Commission needs to resolve these disputes by addressing the appropriate jurisdiction of such traffic--an issue that has been teed up in the *IP Enabled Services* docket¹⁴ and other proceedings and is ripe for decision.

¹³ See Comments of USTelecom submitted December 17, 2007 and Reply Comments of USTelecom submitted January 16, 2008 in WC Docket No. 07-135, *Establishing Just and Reasonable Rates for Local Exchange Carriers*

¹⁴ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004)

4. **ISP Bound Traffic** rules provided a massive arbitrage opportunity that the Commission effectively remedied in a 2001 Order.¹⁵ Absent an order on the Core Petition for mandamus, the Commission's rules would be vacated and that opportunity for arbitrage would return with a vengeance. The Commission should adopt one or more of the legal theories available to it to maintain the current rules for ISP bound traffic.

IV. THE COMMISSION HAS A MORE THAN AMPLE RECORD TO COMPREHENSIVELY RESOLVE INTERCARRIER COMPENSATION ISSUES NOW

The Commission last reformed intercarrier compensation in a comprehensive manner with the CALLS and MAG Orders which were issued in 2001.¹⁶ Following on the heels of those orders, and with the recognition that each order was scheduled to sunset after a period of years, the Commission issued Notice of Proposed Rulemaking in 2001¹⁷ to explore approaches to comprehensive intercarrier compensation reform. A Further Notice of Proposed Rulemaking was released in 2005.¹⁸ In 2006 the Missoula Plan was filed by an industry coalition and given its extraordinarily complete and complex nature, the Commission was able to compile a very thorough record on myriad aspects of intercarrier compensation reform. Although the record in that proceeding is still relatively fresh, the Commission recently provided commenters wishing to refresh the record on open dockets addressing universal service and/or intercarrier

¹⁵ Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001)

¹⁶ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Service of Local Exchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket 98-77, Report and Order in CC Docket 98-166, 16 FCC Rcd 19613, (“MAG Order”), and *In re Access Charge Reform*, 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, 15 FCC RCD 12962 at _____ (2000) (“CALLS Order”).

¹⁷ See *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001)

¹⁸ See *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005)

compensation reform the opportunity to do so.¹⁹ The Commission went so far as to delineate six proceedings which addressed such reform and then suggested another six proceedings that raised those and related issues. Several filings have been made in response to the opportunity afforded by the Commission.

V. CONCLUSION

AT&T and Embarq have performed a service for the Commission and the industry by filing petitions which highlight the potential for reform of intercarrier compensation and particularly by expressing their strong preference for comprehensive reform. The Commission should not miss this opportunity to comprehensively address the economic irrationality of the current system, minimize regulatory arbitrage, and resolve intercarrier disputes. An economic rational system will benefit consumers by shifting resources used to either perpetrate or combat regulatory arbitrage to investment in advanced broadband networks which will bring a plethora of innovative services to all Americans.

Respectfully submitted,

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¹⁹ See NEWS, "Interim Cap Clears Path for Comprehensive Reform" released May 2, 2008