

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

In the Matter of)	
)	
Petition of the Frontier 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. 08-205
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Reply Comments of Frontier Communications

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Date: October 17, 2008

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Reply Comments of Frontier Communications

Frontier Communications ("Frontier"), the petitioner in the above-captioned matter, hereby submits its reply comments pursuant to the Commission's October 3, 2008 Public Notice.¹ Only four parties filed comments on Frontier's petition:

The National Association of State Utility Consumer Advocates supports Frontier's petition.

The New Jersey Division of Rate Counsel has no cognizable interest in Frontier's petition. Frontier has no customers or access lines in New Jersey. However, even though it opposes Frontier's petition, Rate Counsel supports Frontier's argument "that the Commission should not allow IP-originated voice traffic to evade the obligation of all carriers to pay access charges."² This is reason enough by itself to grant Frontier's petition.

The primary reason Rate Counsel puts forward to deny the petition is its position that the Commission should address this problem comprehensively, not piecemeal.³ This argument does not withstand scrutiny. If it were correct, the Commission could never grant a carrier

¹ Public Notice, Pleading Cycle Established for Petition of the Frontier 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, DA 08-2228 (Oct. 3, 2008).

² Comments of the New Jersey Division of Rate Counsel, p. 4.

³ *Id.*, p. 3.

forbearance from a general requirement such as a statute, rule or order on an individual basis. This argument would read § 160 out of the Act, because the forbearance mechanism was specifically designed by Congress to allow individual carriers to seek regulatory relief from general requirements on a piecemeal basis.

Rate Counsel further argues that Frontier's petition should be denied because the issue of intercarrier compensation is before the Commission in other proceedings.⁴ This argument makes no sense. Frontier should not be penalized for using one of the methods explicitly allowed by Congress for a carrier to obtain regulatory relief.

Finally, Rate Counsel argues that Frontier's petition is incomplete as filed and that Frontier has failed to exhaust other administrative remedies.⁵ The "exhaustion" argument makes no sense at all. The doctrine of exhaustion applies to appeals of administrative agency decisions. The doctrine in no way applies to an initial petition to the very agency that has jurisdiction to grant the requested relief. Nothing in the Act requires any kind of exhaustion of other avenues of redress before a carrier follows the forbearance mechanism established by Congress for just this kind of situation.

The "incomplete as filed" argument asks only for irrelevant data that would have no impact on the decision. It does not matter which states are involved. It does not matter which carriers are involved. It is not possible to quantify the volume of traffic or revenue involved because Frontier is unable to tell where and how much it is being cheated by carriers terminating interexchange IP-originated traffic as if it were local. The whole point to Frontier's petition is that carriers are taking advantage of what they see as a loophole in the Commission's rules, and that this cheating should be stopped. It does not matter whether 1 or 50 states are involved, whether 1 or 1,000 carriers are involved, or whether the improperly avoided access

⁴ *Id.*, p. 4.

⁵ *Id.*, p. 5.

charges are \$100 or \$100 million. The cheating should be stopped.

Google Inc. makes the argument that applying access charges to IP-originated traffic would stifle innovation and economic growth.⁶ This “infant industry” argument rings hollow, coming from a company that has a market capitalization more than 40 times Frontier’s.⁷ It amounts to an argument that a special break for IP-originated traffic is good, even though it is indistinguishable from POTS traffic, because the access avoider receives a profit reward that stimulates further innovation and further access avoidance. This is hardly the basis of sound public policy. The remedy for an unfair, and in Frontier’s view unlawful, avoidance of access charges is not to reward the avoider with more profits.

Google mistakenly asserts that applying access charges to IP-originated traffic would “expand regulation to unregulated IP innovators.”⁸ Such is not the case. The termination of traffic on the PSTN by an incumbent local exchange carrier like Frontier is already regulated. The only question is what is the price that Frontier may charge to terminate IP-originated traffic as opposed to POTS-originated traffic. Most of the carriers terminating IP-originated traffic are regulated interexchange carriers such as AT&T and Verizon. VoIP providers rarely terminate their own interexchange traffic on Frontier’s networks. Setting the appropriate price for Frontier to provide the regulated service of terminating interexchange traffic is hardly an expansion of regulation.

Verizon offers an argument that rings hollow in light of its own forbearance filings. It argues, like the New Jersey Division of Rate Counsel, that a generic problem should not be addressed in a piecemeal fashion.⁹ If this argument is taken to its logical conclusion, then either

⁶ Comments of Google Inc., p. 7.

⁷ Based on market capitalization shown on <http://finance.yahoo.com> as of the close of trading on Thursday, October 16, 2008.

⁸ Comments of Google Inc., p. 9.

⁹ Comments of Verizon, p. 2.

Verizon's own well-founded petitions for forbearance should never have been granted, or the relief granted to Verizon should have been expanded to all carriers. As noted above, Frontier should not, and under the provisions of § 160 must not, be penalized for following a process to obtain relief specifically established by Congress, nor should the Commission give any weight to an argument that would effectively read § 160 out of the statute. Petitions for forbearance rarely if ever raise issues unique to the petitioning carrier, and no petition for forbearance should be denied because it raises issues of general interest and potential general applicability. Rather than deny a petition for forbearance because it raises general issues, the appropriate relief is to expand the forbearance to all similarly situated carriers.

Conclusion

None of the commenting parties have offered any basis for the Commission to reject Frontier's petition. It should be granted at the same time that the Commission acts on Embarq's request for the same forbearance.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

WC Docket No. 08-205

I, Gregg C. Sayre, do certify that on October 17, 2008, the aforementioned **Reply 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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