

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

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act of 1996)	
)	
Developing a Unified Intercarrier Compensation)	CC Docket No. 01-92
Regime)	
)	
Intercarrier Compensation for ISP-Bound Traffic)	CC Docket No. 99-68
)	
IP-Enabled Services)	WC Docket No. 04-36
)	

COMMENTS OF GOOGLE INC.

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COMMENTS OF GOOGLE INC.

Google Inc., by its attorneys, respectfully submits these comments in response to the *Further Notice of Proposed Rulemaking (FNPRM)* in the above-referenced proceedings that proposes significant FCC steps on intercarrier compensation, universal service, and related matters.¹ Google urges the FCC only to take action on these central issues in ways that also will bolster broadband deployment, support the continued expansion of innovative IP-enabled services, web applications and software, and promote widespread interconnectivity between networks for seamless communication. By pursuing these goals, the Commission can help catalyze our nation’s economic growth and maximize consumer welfare.

¹ Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (“*FNPRM*”).

I. INTRODUCTION AND OVERVIEW

Google continues to believe that deployment of broadband and the continued growth of innovative and interconnected IP-enabled services and applications should be paramount goals of our nation's communications and technology policy.² Especially in today's uncharted economy, the still evolving IP platform, with myriad consumer services and web applications, is a promising beacon of economic expansion for our nation. FCC action must proceed from this baseline understanding.

Google continues to support strongly the goal of broadband universal access and interconnectivity, and believes in the tangible benefits to consumers of comprehensive reform of the current federal universal service fund ("FUSF"), including improving both the contribution and distribution components of the present system. Strengthening the link between broadband access and FUSF distributions would correctly re-focus our country's resources in the direction needed to advance interconnectivity in rural areas and spur our country's infrastructure with investment that will reap benefits for decades. Google looks forward to participating with the FCC in early 2009 to develop a comprehensive national broadband strategy, including reform of today's FUSF.

Nonetheless, successful reform of both the present intercarrier compensation ("ICC") rules and the FUSF requires consideration of the substantial risks of unintended regulatory consequences that could dampen the development of valuable information and IP, web-based services, and software applications. Whatever the benefits and detriments of the legacy

² See Letters from Donna N. Lampert, Counsel for Google Inc., to Marlene H. Dortch, Secretary, FCC, at 1, CC Docket Nos. 01-92, 99-68, 96-45; WC Docket Nos. 06-122, 04-36 (Oct. 21, 2008); Letters from Donna N. Lampert, Counsel for Google Inc., to Marlene H. Dortch, Secretary, FCC, at 1, CC Docket Nos. 01-92, 99-68, 96-45; WC Docket Nos. 06-122, 04-36 (Oct. 17, 2008); *see also* Comments of Google Inc., at 1-2, WC Docket No. 08-205 (Oct. 10, 2008).

telephone regulatory model, it is a regime developed out of yesterday's paradigm of analog voice "calls." Going forward, however, the Commission should promote a communications model where IP innovators can meet consumers' needs, promote universal connectivity, and export American technological ingenuity, without saddling these services and applications with "phone call" requirements. A "new" framework that does not adequately recognize the developing IP information landscape will decrease innovation and create backward-looking, voice-only service incentives, counter to economic growth and consumer well-being.

In particular, the FCC should clarify that the proposed ICC rules would not subject IP traffic to carrier access charges and explicitly reiterate that it is not eliminating its treatment of information (enhanced) service providers as end-users outside of the interstate per-minute carrier access charge system (the so-called "ESP exemption"). The FCC also should make clear that its proposed billing rules are limited expressly to carriers handling voice calls, and are not intended to apply to non-carrier IP services, software and web applications. Finally, any reform of the FUSF contribution mechanism should establish an equitable mechanism that promotes innovative information services and applications such as unified messaging, which provide consumers universal access benefits independent of the FUSF regulatory edifice.

II. FCC ACTION SHOULD MINIMIZE UNINTENDED REGULATORY CONSEQUENCES FOR IP SERVICES AND APPLICATIONS

As the Commission reforms today's ICC structure to incorporate expressly communications from broadband and IP services, it is critical to provide innovators and their investors a clear and full explanation of the intended impact upon broadband and IP applications and services, as well as a clear and pragmatic timetable of when such impacts would occur in the suggested regulatory transition. Google agrees, as the *FNPRM* recognizes, that encouraging broadband adoption should be among the FCC's highest priorities. If, however, the FCC's

actions generate new ambiguities concerning the impact of regulation upon IP services and applications, including the right of carriers to charge web-based applications providers or to force IP services and applications to “retrofit” services to PSTN carrier-based billing and identification standards, the broadband priorities will not succeed. While the *FNPRM* sketches a bold new picture for intercarrier compensation, the Commission also must consider precisely the contours of how the regulatory approach reaches or impacts IP communications in all of its current and emerging forms.

A. The FCC Should Clarify That the ICC Rules Would Not Subject IP Traffic to Access Charges and That the FCC Is Not Eliminating the ESP Exemption

Google urges the FCC to clarify that it is not the agency’s intention to subject IP communications, including communications generated by web-based and software applications and IP information services, to the PSTN carrier’s carrier access charge system. As the Commission is well aware, the IP communications of non-carrier web-based applications providers are end-user communications and, as such, carrier access charges do not today apply, nor should they apply going forward.³

Any action on the *FNPRM* in this area should make this explicit. For example, while the *FNPRM* asserts that “[t]he Commission unquestionably has authority to reform intercarrier compensation with respect to . . . IP/PSTN traffic,”⁴ it is not clear on exactly what specific IP/PSTN reforms it proposes to make.⁵ Instead, the *FNPRM* alludes at points to a narrow subset

³ *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682, ¶¶ 75-80 (1983); *see also* Comments of Google, Inc., at 4-7, WC Docket No. 08-205 (Oct. 10, 2008).

⁴ *See FNPRM*, Appendix A, Chairman’s Draft Order (“App. A”), ¶208.

⁵ Google also notes that it is far from “unquestionable” that the Commission’s statutory authority extends to all IP applications and services. Indeed, the Commission itself has acknowledged, and Courts have confirmed repeatedly, that the FCC lacks “blanket” Title I authority to regulate non-telecommunications industries, including the computer industry and the fruits of computing works, including web software. *See Amendment of Section 64.702 of the*

of IP communications by defining “IP/PSTN services” as those that “originate calls on IP networks and terminate them on circuit-switched networks, or conversely that originate calls on circuit-switched networks and terminate them on IP networks. . . .”⁶ The *FNPRM* then posits that these IP/PSTN services are “within the section 251(b)(5) framework” and the Commission’s “independent authority under section 201” in order “to regulate IP/PSTN services” for intercarrier compensation purposes.⁷ Similarly, the *FNPRM* purports to authorize each State to “establish reciprocal compensation rates . . . including for IP/PSTN traffic.”⁸ At the same time, the *FNPRM* asserts that the State actions may occur only at the end of the planned ten-year transition period and that “[w]e maintain the status quo for this [IP/PSTN] traffic during the transition, however.”⁹

It would appear the FCC is addressing a single IP service scenario: an interconnected VoIP call that is transported to the PSTN via CLEC-to-ILEC interconnection trunks and, as such, is subject to the Section 251(b)(5) reciprocal compensation pricing mechanism. In that scenario, it is apparent that the *FNPRM* means to apply the “status quo” reciprocal compensation arrangements until such time as the States reach the end of the ten-year transition period and impose rates at or less than \$.0007 per minute for all traffic, including interconnected VoIP

Commission's Rules and Regulations (Second Computer Inquiry), Memorandum Opinion and Order, 84 F.C.C.2d 682, ¶¶ 120-133 (1980) (rejecting “a delineation of [FCC Title I] jurisdiction which would render either all enhanced services within the Commission’s jurisdiction or all enhanced services beyond our jurisdiction”); *American Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005) (holding invalid broadcast flag rules adopted pursuant to Title I authority, “because the Commission can only issue regulations on subjects over which it has been delegated authority by Congress,” *id.* at 705).

⁶ *FNPRM*, App. A, ¶209.

⁷ *Id.*, ¶211, n.564.

⁸ *Id.*, ¶211.

⁹ *Id.*, ¶211, n.564.

traffic. The *FNPRM* is unclear on at least two significant matters on IP communications: *First*, whether the term “IP/PSTN Services” includes some or all IP communications that may touch the PSTN but that are not VoIP “calls”; and *second*, what exactly is the regulatory change or shift proposed by the *FNPRM* with regard to IP/PSTN Services, including VoIP. For example, does reciprocal compensation apply to the termination of a web-based application located on one or more Internet-connected servers that generates a non-voice communication and sends it in IP to a dial-up Internet access user?¹⁰ The *FNPRM* appears to declare sweeping FCC authority over all such communications for intercarrier compensation purposes, but then says nothing on how, or if, compensation rules work for such non-VoIP IP communications. Without further explication, the *FNPRM* assertions of jurisdiction raise more questions than answers for IP communications.

At a minimum, if the FCC is to adopt some version of the *FNPRM*, it should state that the so-called “ESP exemption” remains in effect and that the IP traffic of web-based applications and other information service providers is not deemed subject to carrier’s carrier access charges or to any additional terminating charges. This would mean that while the question of reciprocal compensation for the dial-up Internet access session would be governed by CLEC-ILEC reciprocal compensation arrangements, if applicable (*i.e.*, where the CLEC receives reciprocal compensation for termination of the call to the ISP customer), there would be no *additional* charging permitted by either LEC for additional “communications” occurring during that Internet session. This sound approach is one that should be made explicit.

¹⁰ Moreover, in what direction would the reciprocal compensation be paid, assuming that the dial-up user had initiated the session with its dial-up ISP and then made a request for that web-based information? Similar issues arise in the context of voice instant messaging (IM) communications occurring within a dial-up Internet access session, web-based click-to-call applications, and others.

B. FCC Billing Rules Should Be Limited Expressly to Carriers Handling Voice Calls, and Not Impede IP Services and Applications

While Google generally supports improvements to the carrier-to-carrier calling-party information/billing information exchange regarding PSTN calling,¹¹ as a non-carrier, it takes no position on the particular *FNPRM* proposals. At the same time, however, the *FNPRM* seems to impose these wholly unnecessary and inapt obligations upon non-carrier IP service providers.¹² While CPN and call detail information may be necessary for smoother implementation of the carrier access charge system until that system is folded into the reciprocal compensation at the end of the proposed transition, IP services traffic is not subject to carrier access charges now nor would it be under the *FNPRM*.

Critically, other parties have pointed out previously that many IP services cannot simply be “retrofitted” to conform to the telecommunications carrier industry standards in which communications originate and terminate in a single specific geographic locale and the costs of the service correlate closely with the distance between persons communicating.¹³ Instead of imposing these needless costs on IP services and applications, and seeking to carve out exceptions (or be faced with waiver requests) based upon practical feasibility, the FCC should

¹¹ *FNPRM*, App. A, ¶¶ 329–342.

¹² Since the *FNPRM* proposes to subject “IP/PSTN Service” traffic to a single reciprocal compensation rate (*i.e.*, \$.0007) that does not vary based on the geographic location of the calling party, it is unnecessary to propose applying these rules “to providers of services that originate calls on IP networks and terminate them on circuit switched networks.” *Id.* at ¶326, n. 843.

¹³ See *Ex Parte* Letter of The VON Coalition, CC Docket No. 01-92, WC Docket No. 04-36 at 3 (Oct. 6, 2008) (“altering today’s system by imposing telephone carrier economic regulation on information service providers would put at risk innovative broadband applications, and deployment . . . ”); see also “‘Phantom Traffic’ – Problems for Termination of Telephone Calls: Issues for Congress,” CRS Report for Congress, at 6, 13-14 (July 27, 2008) (noting the technical challenges for VoIP, wireless and CLEC service providers if forced to conform to incumbent LEC industry billing procedures).

appropriately limit its billing rules only to those TDM-based services to which carrier's carrier access charges apply.

It is especially important that the Commission clarify this matter, as it otherwise engenders needless litigation costs on all parties – ILEC and IP providers – as incumbent carriers may well institute collection actions under these new rules under their long-held views that access charges apply to all traffic, including all forms of IP traffic.

III. UNIVERSAL SERVICE REFORM SHOULD MAXIMIZE IP INNOVATION AND BROADBAND DEPLOYMENT TO PROMOTE CONSUMER WELFARE

Google consistently has supported federal universal access, and agrees that reform is indicated for many key aspects of the current FUSF, including both the contribution and distribution mechanisms. As our society moves from the old paradigm of a voice-based TDM network designed primarily to facilitate telephone calls, to increasing reliance on new broadband-based IP services and applications to meet our social and economic communications objectives, it is necessary to re-vamp the universal services framework to a forward-looking model. Indeed, some offerings – including IP-enabled applications, unified messaging, and integrated voice-video-data software services – can meet many of our key national universal access objectives wholly outside of a traditional regulatory-centric framework.

The *FNPRM* correctly notes that broadband Internet access service is increasingly a “critical service for American consumers.”¹⁴ Broadband Internet service, of course, depends upon broadband access and availability. For this reason, Google is encouraged by the *FNPRM* proposal linking FUSF and the roll-out of broadband. Google has previously advocated a federal subsidy to support ubiquitous broadband deployment, particularly in high-cost areas.¹⁵ Coupling

¹⁴ *FNPRM*, App. A, ¶¶ 22, 73.

¹⁵ *See, e.g.*, Comments of Google Inc., at 36, WC Docket No. 07-52 (June 15, 2007).

the receipt of FUSF support with the critical goal of promoting universal broadband access underscores the need to transition our national communications policy from a telephone-centric model to an IP-centric world that supports high capacity broadband buildout, especially in rural, un-served and underserved areas.

Google looks forward to participating in the process in early 2009 and assisting the FCC to tackle these issues expressly. Beyond the proposal to tie today's FUSF dollars to broadband deployment, there are a host of ways the FCC and the federal government can help spur our country's transition to high-capacity broadband access availability and the benefits it spawns. Old carrier-based archetypes will inevitably need to be re-thought as we prepare for the next evolutionary step in our communications ecosystem. There will likely be a large role for new web-based IP applications, such as unified messaging, that are properly outside of the universal service system established on the assumption of voice services.

Accordingly, Google maintains that requiring services such as "unified messaging" (*e.g.*, Google's GrandCentral) applications, and other web-based information services and software applications, to contribute directly to FUSF would hamper the growth of innovative IP-enabled applications and information services, be unfair to consumers, and create unintended regulatory consequences. Rather than promote universal access in the broadest sense, such a step could well frustrate beneficial services that help redefine and improve universality.

With respect to the specific telephone numbers-based contribution methodology set forth in the *FNPRM*, Google agrees that it may serve as a reasonable, lawful proxy for underlying telecommunications connections. As Google has explained previously,¹⁶ however, the FCC must

¹⁶ See Letter from Donna N. Lampert, Mark J. O'Connor, and E. Ashton Johnston, Counsel for Google, Inc., to Marlene Dortch, Secretary, FCC, at 1, WC Docket No. 06-122; CC Docket No. 96-45 (Oct. 28, 2008).

be mindful that expansion of the universal service contribution obligation to unified messaging services that neither provide telecommunications nor generate revenues from a telecommunications “fee” raises significant issues under the Communications Act and settled precedent.¹⁷ Especially given that this and other non-telecommunications services hold the potential to supplement – if not supplant – today’s universal service and access availability, great care should be taken to avoid any new definitional lines that would expand the reach of regulation over IP communications.

For these reasons, it is important that the proposed exclusion from the definition of Assessable Number¹⁸ be set to address unified messaging services in a manner that allows such services to evolve and continue to meet consumer demand for service innovation. The condition that such numbers “are used for routing *only* to Assessable Numbers for which a universal service contribution has been paid” (emphasis added) is excessive, since such services should grow to include routing to other features or enhanced services.¹⁹ Moreover, this aspect of the exclusion is unnecessary given that the other conditions – free service and 1:1 ratio – would prevent any potential “gaming” of this exclusion.

¹⁷ Web applications that use telecommunications are distinct from services that provide telecommunications. See, e.g., *Petition for Declaratory Ruling that pulver.com’s Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd. 3307, ¶9 (2004) (“Pulver may ‘use’ some telecommunications to provide its FWD directory service but that does not make FWD itself telecommunications.... Pulver neither offers nor provides transmission to its members”).

¹⁸ *FNPRM*, App. A, ¶123.

¹⁹ Google proposes that this language be modified as follows: “are used for routing *primarily* to Assessable Numbers for which a universal service contribution has been paid.”

CONCLUSION

For the foregoing reasons, Google urges the FCC to focus its actions here on promoting broadband access, supporting the valuable role of emerging IP-based applications and services, and ensuring that its new framework is forward-looking.

Respectfully submitted,



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