1634 Eye Street N.W.
Suite 510
Washington, D.C. 20006

Joe A. Douglas
Vice President
Government Relations
PH 202-682-0153
FX 202-682-0154
jdouglas@neca.org

May 15, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Meeting
WC Docket Nos. 04-36, IP-Enabled services; 01-92, Developing a Unified Intercarrier Compensation Regime

On May 14, 2009 Linda Burton and David Baker, Sierra Telephone; Rhonda Armstrong and Dave Clark, Kerman Telephone; Bill Harder, Volcano Telephone; Eric Wolfe and Will Meyer, Ducor Telephone; and the undersigned met with Jennifer Schneider, Legal Adviser to Acting Chairman Copps to discuss the effects of continuing access arbitrage by interconnected VoIP telecommunications service providers (IVTSPs).

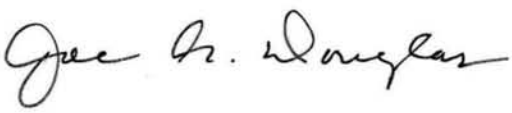
In this meeting, the telephone company representatives emphasized the increasing urgency for a decision by the Commission requiring IVTSPs to pay for traffic they terminate on the Public Switched Telephone Network (PSTN).

It is imperative that small rural telecommunications companies, charged with obligations as providers of last resort, will be able to sustain the critical revenue streams that enable continued investment in their networks. Further, the networks built by these companies are in large measure the very source of the commerce generated by VoIP, and upon which new telecommunications technologies and IVTSPs themselves depend.

Continued inaction by the Commission in declaring all users of the PSTN, including IVTSPs, must pay for its use inevitably can only chill investment by small rural telephone companies. This inaction is also stalling resolution of pending State court cases involving access charge disputes between IVTSPs and ILECs across the nation. Most critically, the continued erosion via regulatory arbitrage of a legitimate and fairly-earned access revenue stream by the small carriers serving rural America ultimately threatens to deprive rural consumers of the availability of affordable state-of-the-art services made possible on robust broadband networks.

The attached materials were presented and discussed in the meeting. Questions regarding the meeting may be directed to the undersigned.

Sincerely,

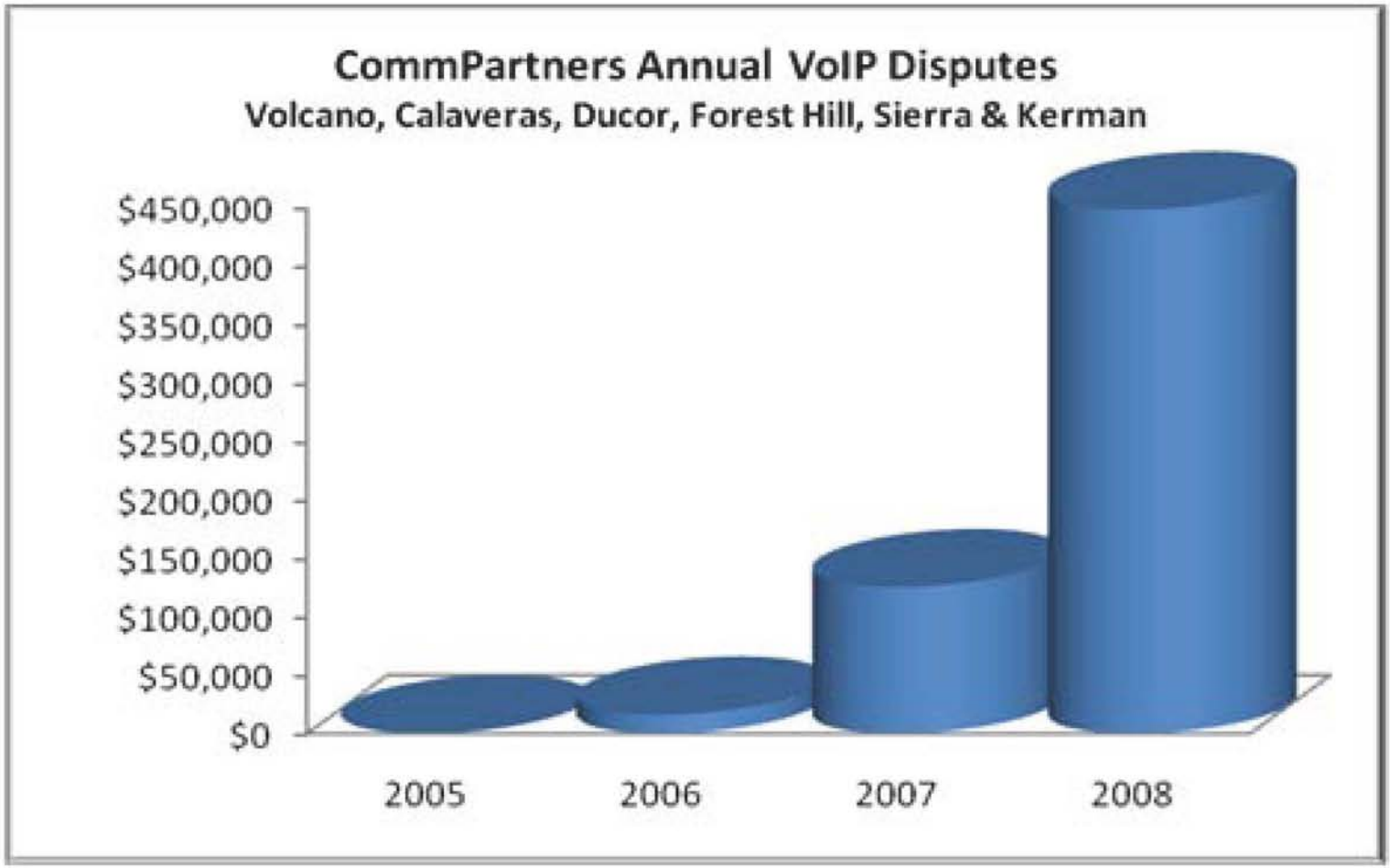


Cc: Michael Copps, Acting Chairman
Jonathan Adelstein, Commissioner
Robert McDowell, Commissioner
Mark Stone, Legal Adviser to Commissioner Adelstein
Jennifer Schneider, Legal Adviser to Acting Chairman Copps
Julie Veach, Acting Chief, Wireline Competition Bureau

Access Arbitrage by Interconnected VoIP Providers: The Case in California

WC Docket Nos. 04-36, 01-92

Interconnected VoIP Providers Are Refusing to Pay Access Charges for Terminating Voice Calls on the PSTN – and the Problem is Growing



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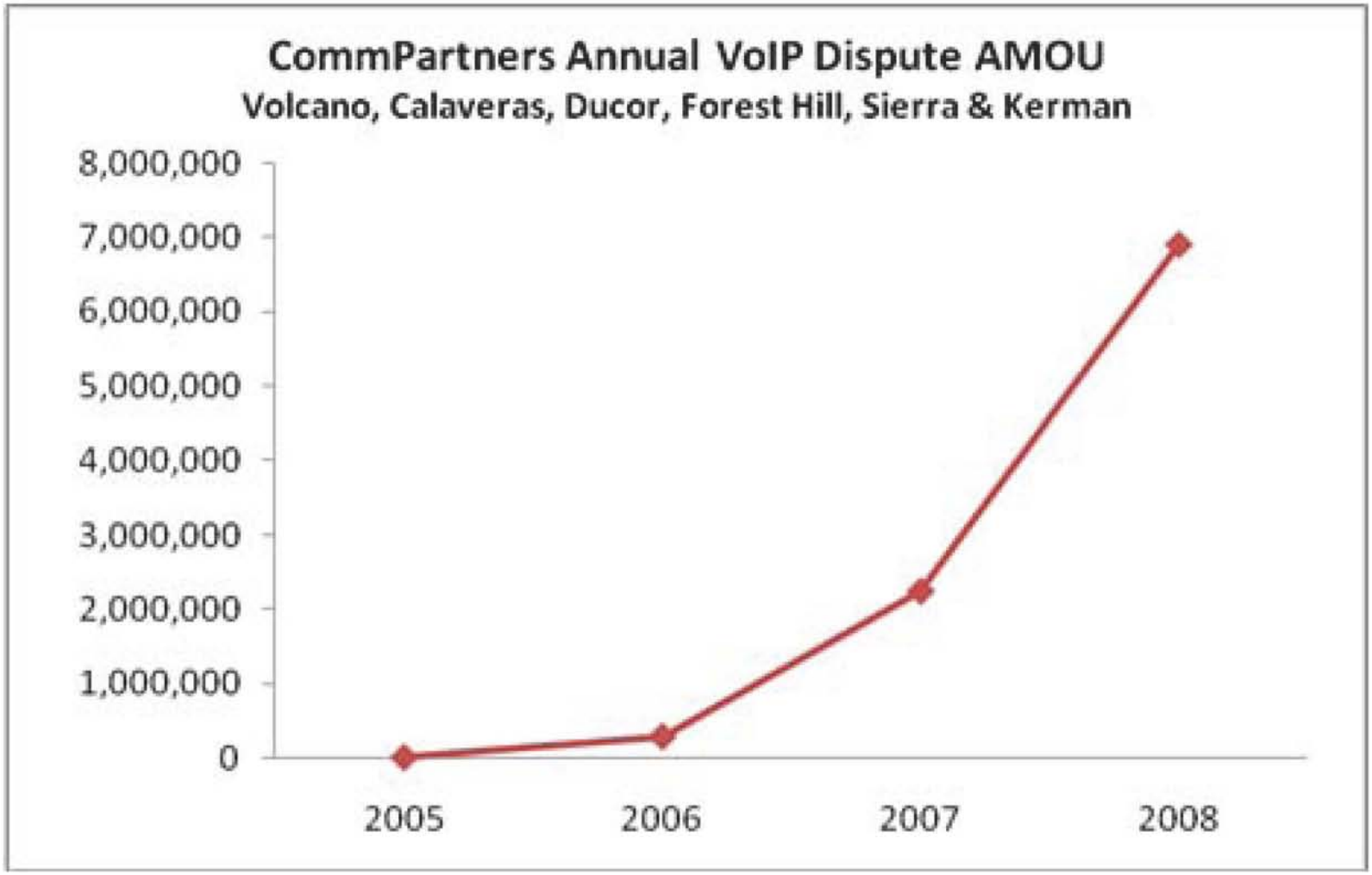
As These CLECs Get More Wholesale Customers, the Volume is Growing



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California Problem is Part of a Nation-wide Trend

- Number of disputes nationwide have increased in lock step with broader adoption of VoIP.
  - 126 disputes
  - 21 states
  - Total disputes - **$8,798,027**
  - Various disputing carriers
    - CommPartners (37 disputes)
    - GNAPs (28 disputes)
    - Choice One (9 disputes)
    - One Communications (28 disputes)
    - 11 others – (24 disputes)

As of May 2009

VoIP Has Gone Mainstream

- Operators of all stripes are moving to IP voice services as a network convergence strategy, and
- VoIP has gained wide acceptance among customers.
- Residential and business VoIP subscriptions are outpacing circuit-switched by 90% year over year. (VoIP Sector Analysis Report, New Paradigm Resources Group Inc., Dec 2008)
- While major telephone providers are seeing an overall decline in residential lines, VoIP customers increase as more customers buy fiber-optic service packages (e.g., Verizon's FiOS and AT&T's U-verse)(VoIP Market Outlook)

With the Exception of Access, the FCC Is Treating VoIP Like It Is Mainstream

Feb 2004	Pulver.com	Computer-to-computer VoIP is enhanced
April 2004	AT&T IP-in-the-Middle	Calls originating & terminating on PSTN are telecom services
Nov 2004	Vonage	Nomadic VoIP preempted to interstate
June 2005	E911	Applied to interconnected VoIP
Sept 2005	CALEA	Applied to interconnected VoIP
June 2006	USF Contributions	Applied to interconnected VoIP
March 2007	CPNI	Applied to interconnected VoIP
March 2007	Time Warner	Confirmed interconnection rights for wholesale carriers who provide service to VoIP providers
Aug 2007	Fed Reg fees	Applied to interconnected VoIP
Nov 2007	LNP	Extended to interconnected VoIP
May 2009	Disconnect Notification	Required disconnect notifications be sent to customers

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FCC Inaction on Access Charges is Tying Up Courts and State PUCs

Sample of Cases:

New York District Court August 2005	Frontier Tel v. Datanet	Stayed, pending FCC decision on applicability of access to VoIP
Missouri District Court August 2005	*Southwestern Bell Telephone v. VarTec*	Dismissed in deference to primary jurisdiction of the FCC
Missouri District Court February 2006	*Southwestern Bell Tel v. Global Crossing*	Stayed, pending FCC decision on applicability of access to VoIP
U.S. District Court Conn., October 2005	*Southern New England Telephone v. Global NAPS*	Stayed, pending FCC decision on applicability of access to VoIP
Washington UTC June 2007	*Quest v. Level 3*	Refrained from setting compensation until FCC rules on regulatory status of VoIP
New York PSC March 2008	*Tech Valley Comm v. Global NAPs*	Concluded GNAPs' traffic is nomadic VoIP, but ordered ICA negotiations to address it
Montana District Court April 2008	*3Rivers, et al. v. CommPartners*	Stayed, pending FCC decision on applicability of access to VoIP

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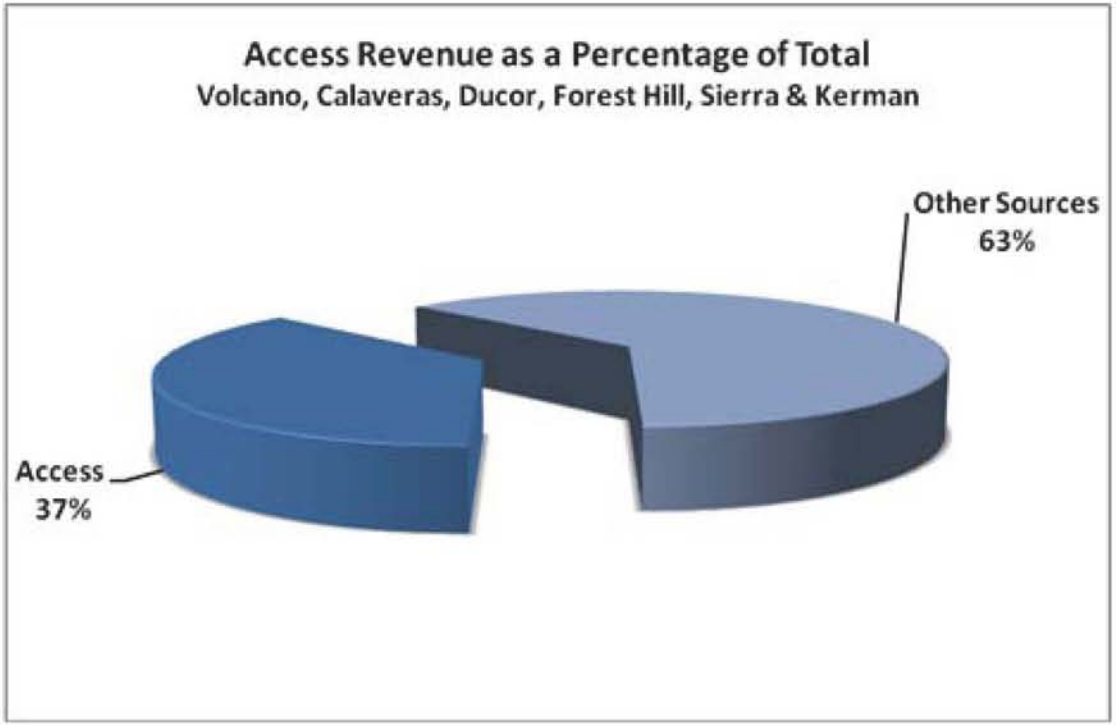
Today's Networks Need a Stable Revenue Base to Deploy Tomorrow's Services

- ICC represent 30%-47% of operating revenues for California Rural ILECs
- Without stable revenue, broadband deployment is not possible



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Impacts of Access Revenue Loss: An Example Company

- Company stands to lose on average $3.8 million in access revenues. The practical effect of this loss would be:
  - Lost jobs.
    - Access revenue loss equates to 50 employee salaries and benefits. In 2008, the average number of employees was 56.
  - Reduced telco viability.
    - Operating capital would be non-existent. A $3.8 million reduction after taxes results in $2.2 million. This would more than wipe out the average company 2008 net income of $1.4 million
    - The company would be unable to attract investors or lenders
  - Reduced investment in advanced services and broadband – average company investment in 2008 was $2.7 million. A $3.8 million reduction in annual infrastructure investment would be devastating.

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CLEC bandwidth.com

05/04/09

Volcano Telephone Co
PO Box 1070, 20000 Hwy 88
Pine Grove, CA 95665

RE: Payment for Volcano Telephone for invoice D5210VU090403

To Whom It May Concern:

This letter is sent with respect to your company's continuing billing of access charges to Bandwidth.com CLEC ("Bandwidth"). These charges are inappropriate and inapplicable to the traffic in question because all such traffic is VoIP (Voice over Internet Protocol) Traffic and is therefore exempt from access charges.

VoIP is traffic that originates in Internet Protocol at the end user customer premises using IP-Telephone handsets, end-user customer premises IP adapters, CPE-based IP Telephone (IPT) Management "plug and play" hardware, IPT application management and monitoring hardware or such similar equipment and is transmitted over a broadband connection to Bandwidth. VoIP Traffic is an Information Service.

Over twenty years ago, the Federal Communications Commission ("FCC") first recognized that Information Service traffic should not be subject to the traditional access charge structure. Instead, the FCC has consistently found that such traffic is interstate in nature, that information service providers are entitled to purchase local access to the public switched telephone network ("PSTN"), and that this information traffic should be exempt from the access charge regime and other traditional forms of telephone regulation. All traffic terminating to your company from Bandwidth is VoIP-originated as described above.

Bandwidth is a certified CLEC that exchanges this VoIP traffic with your company via the transit service of the major ILEC. When two local exchange carriers ("LECs") have not entered into a traffic exchange agreement, the typical practice is to exchange such traffic on a bill-and-keep basis. In the interest of resolving the outstanding invoices, however, we are willing to reach a compromise with respect to the outstanding charges. The FCC Internet Order (Docket Nos. 96-98) and other applicable FCC orders and FCC regulations adopted a default regime that requires compensation for all VoIP telecommunications traffic exchanged between two LECs above a 3:1 ratio to be compensated pursuant to a cap, currently $0.0007 per minute of use. In addition, the FCC has been considering intercarrier compensation reform proposals that would establish terminating rates at $0.0007 per minute of use or lower for all traffic. To resolve the present dispute (and not as any waiver of any legal or regulatory position), Bandwidth would agree to pay your company $0.0007 per minute of use for all Bandwidth VoIP-originated traffic previously exchanged.

To demonstrate Bandwidth's good faith in this offer, we have enclosed a check in the amount of $0.91 as payment for your company's handling of all Bandwidth VoIP-originated traffic to date. This payment amount has been determined by recalculating all minutes of traffic for which Bandwidth agrees it was the originating party at the rate of $0.0007 per minute of use. By cashing the enclosed check, your company agrees that: (1) this amount represents full and final payment of all amounts due by Bandwidth to your company for traffic terminated through the most recent bill generated by your company for Bandwidth; (2) all future VoIP traffic exchanged between Bandwidth and your company will be rated at $.0007 per minute of use; and (3) there is no tariff rate applicable to the traffic exchanged between the parties. If your company does not agree with the preceding sentence in all respects, do not cash the enclosed check.

If you have any questions regarding the foregoing, please do not hesitate to contact us at intercarriercomp@bandwidthclec.com.

Sincerely,

Accounts Payable – Bandwidth.com CLEC, LLC.

Bandwidth.com CLEC, LLC. 4001 Weston Parkway, Cary, NC 27513 phone (800) 808-5150 fax (919) 297-1101 info@bandwidth.com

CommPartners™

THE IP NETWORK AND VOIP SOLUTIONS PROVIDER

Kristopher E. Twomey
Regulatory Counsel
CommPartners
3291 N. Buffalo Drive, Suite 150
Las Vegas, NV 89129
P: 702.367.8647 ext. 1079
F: 702.365.8647

December 20, 2006

Foresthill Telephone Co
Po Box 1189
Foresthill, CA 95631

Re: Disputed invoice(s). Please see attached

To Whom It May Concern:

We are in receipt of an invoice for the billing account number ("BAN") referenced above. Please be advised that the billed party, CommPartners, is disputing the invoice. Based on CommPartners records, it appears that 97.5% of the originated traffic is interstate in nature ("PIU"), with 2.5% as local ("PLU"). CommPartners has not delivered any circuit-switched telephone calls to your company during the time period referenced in the invoice. According to CommPartners customer detail records, every call originated by one of our end users and terminated by your company, was initiated as an Internet protocol ("IP") stream, i.e., voice over Internet protocol ("VoIP'). Because all the traffic listed on this invoice represents VoIP transmissions rather than circuit-switched telephone calls, your company is not entitled to collect access charges.

CommPartners understands that this issue is currently the object of much debate at the Federal Communications Commission ("Commission"), specifically in the *IP Enabled Services* docket[1] and the *Intercarrier Compensation reform* docket[2]. In the *AT&T Declaratory Ruling*[3], the Commission specifically noted that although AT&T's "IP in the middle" services were subject to access charges, the FCC was not applying this to IP-originated calls. The Commission reserved the right to do so in the future, noting that its decision "in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding." This specific issue is also the subject of a number of other pending petitions at the Commission. After these proceedings are completed and their results become final and non-appealable, CommPartners will comply with any federal or state requirements to pay access charges. Until that time, however, CommPartners refuses to pay access charges on any interstate IP-originated traffic terminated by your company. As a compromise, CommPartners will agree to pay tariffed local termination rates to your company for the 2.5% PLU traffic.

Should there be any questions or additional information required, please do not hesitate to contact me at 702 367-8647 ext. 1079. Thank you.

Sincerely,

Kristopher E. Twomey
Regulatory Counsel

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[1] *In the Matter of IP Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36 (Released March 10, 2004).

[2] *In the Matter of Access Charge Reform, Notice of Proposed Rulemaking*, CC Docket No. 96-488.

[3] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order*, WC Docket No. 02-361, FCC 04-97 (April 21, 2004) ("*AT&T Declaratory Ruling*").

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MagicJack attacks

May 2, 2008 4:16 PM, By Sarah Reedy

more on the topic

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Six months into business, MagicJack is poised to take over the VoIP market

MagicJack founder, and inventor of its technology, Dan Borislow, doesn't like the term voice-over IP (VoIP). He thinks it has a negative connotation in an industry prone to struggles. Why not call it what it is – really, really cheap phone service? With the largest network in the United States and growth on track to surpass market leaders Comcast and Vonage, MagicJack has arguably earned the right to call the service whatever it wants.

MagicJack came onto the scene last September, launching a $19.95 per year VoIP USB device that plugs directly into the PC or Mac and provides unlimited service over a broadband connection. Upon launch, the company sold about 50 a day. Today that number rests comfortably around 8,000 – a sales rate increase surpassing 25% week-over-week. Between January and March, the company exceeded the amount of phones sold in the entire four years of business for SunRocket, the now-defunct VoIP provider. MagicJack sold more than 200,000 units in March. Still, most sales have come in the last six weeks, since MagicJack launched an improved version of the device.

"How many people don't want to pay $800 a year for a cell phone they don't use very much in their house anymore? To me, that is 100%," Borislow said. "How many people are willing to spend $20 a year to have the comfort of having a telephone in their house where half the time the cell phone doesn't work? That may be 95% of the people. So 100% of people don't want the phone anymore, and 95% of people might want us."

The venture, funded entirely by Borislow and CEO Don Burns, owns its own next-generation voice network, including media gateways and session border controllers. The network, which took three and a half years to construct and acquire CLEC certifications for, now spans all 50 states. The company has interconnect agreements with all the Bell companies and 44 gateways along the edge of its network.

"As a VoIP company, we don't have to pay for access charges," he said. "Telephone companies do have to pay access charges to terminate calls to our customers. That took us three and a half years to build. The network is very important, and it makes everything work for us."

The technology also works anywhere in the world, allowing international travelers to call home for free. Weighing in at less than an ounce, the USB port is suited for MagicJack's travel-prone consumers. It is powered by a propriety Samsung memory chip, including 1.7 million lines of software code, what Borislow calls MagicJack's "secret sauce." It is the ease of use and price that get people interested, he said, and the quality of service that will keep them renewing year after year. "[With] Vonage and others, you have to take a box and hook it up to your Ethernet connection and a router and hope everything comes out okay after a 20-minute process," he said. "With Magic Jack, you just plug it in, and within a minute's time, you can pick any area code in the country, and you're good to go."

A scan of blogs will indicate that MagicJack did have several kinks to work out, a fact that Borislow willingly admits. Customer complaints centered on reliability issues and latency in the networks, complaints that have all but gone away, he said. "Every day that we are into this is 1% more as far as the life of the company," Borislow added. "Everyday is a day to get experience for customer service reps. We are going to improve every day."

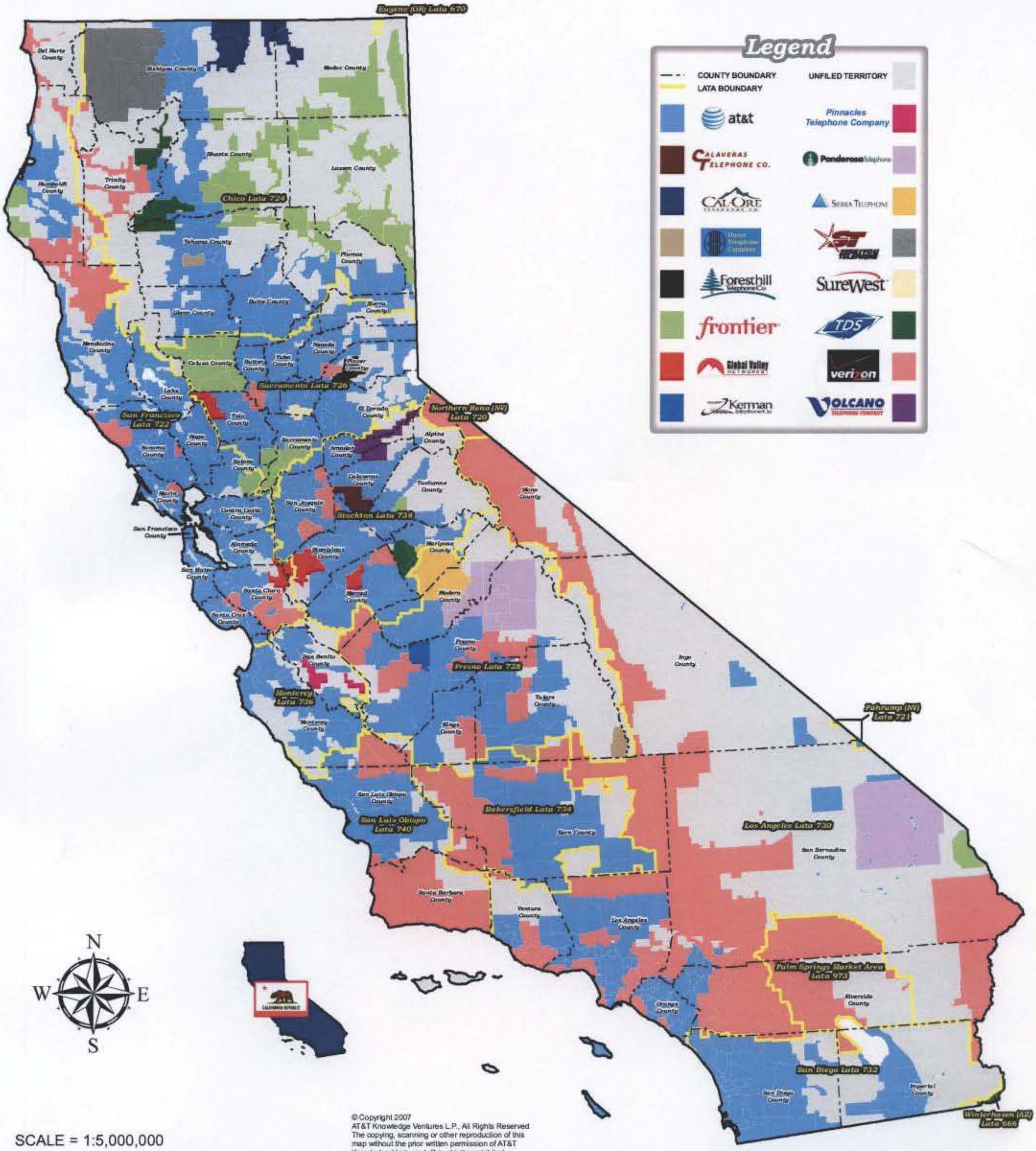
Customer service starts with a list of frequently asked questions that Borislow said has eliminated 30% of customer concerns. The next step is a Web chat with service representatives. Right now there are no plans for a customer service number or call centers for technical issues. After all, the first question is always if the Internet connection is working. If the consumer is on a live chat session, that step can automatically be skipped, Borislow said.

Magic Jack is focusing on starting small, not only in size and service, but also in functionality. Considering they are selling everything they make, Borislow doesn't feel pressure to innovate right now. As sales volumes continue to increase, however, he plans to expand the device's capabilities into number porting and 911 services in which the device will take the form of a cell phone. Further down the product roadmap, MagicJack will evolve into a base station for a handset and a station for a femtocell.

"AT&T just announced that they are spending a half billion on [femtocells]. Little do they know what this little company has," Borislow said, adding that the timeline for the femtocell is the first quarter of next year, while the 911 services will be ready to go by the summer.

Borislow said that the production and marketing of MagicJack costs the company less than what they sell the product for, making this the first time a telephone company has made rather than lost money acquiring customers.

"Fortunately, Don and I both made a lot of money before," Borislow said. "This is six different patents, and we have five more pending. To me it is a matter of this being our second time around and proving we weren't a fluke the first time. Making money is the other motivation. For me, it is putting my signature on something I can be proud of for the next couple of years."

Find this article at:
http://www.telephonyonline.com/voip/news/magicjack-attacks-0502/index.html

California Communications Association
Telephone Exchange Areas