

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

In the Matter of	)	
	)	
UTEX Communications Corp.,	)	WC Docket No. 09-134
Petition for Preemption	)	

**COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) is pleased to provide these comments in response to the Commission’s Public Notice on the Petition of the UTEX Communications Corporation for Preemption of the Jurisdiction of the Public Utility Commission of Texas pursuant to Section 252(E)(5) of the Communications Act (“UTEX Petition”).<sup>1</sup> The Public Notice seeks comment on UTEX’s petition asking the FCC to preempt the jurisdiction of the Texas PUC and arbitrate the pending interconnection disputes between UTEX and AT&T.

USTelecom files these comments solely to highlight that – like so many one-off disputes before it – the UTEX Petition is in no small part the result of disputes that could be vastly reduced if the Commission would complete broad reform of the inter-carrier compensation regime. USTelecom believes that UTEX’s position on the merits of this dispute is clearly wrong. Nonetheless, the Commission’s failure to take on broad inter-carrier compensation reform, along with the long-standing proceeding on IP-Enabled Services, has emboldened some parties to raise these types of disputes. Indeed, the Texas

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<sup>1</sup> See Petition of UTEX Communications Corporation, pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Public Utility Commission of Texas Regarding Interconnection Disputes with AT&T Texas, WC Docket No. 09-134 (filed July 13, 2009).

Commission expressly pointed to these pending proceedings in its order. These disputes create an enormous hurdle to maintaining and increasing broadband investment. The current inter-carrier compensation regime has been outpaced by changes in communications technology and the market for communications services.

These disputes have important real world consequences, including the crowding out of fair competition by arbitrage and the distortion of the efficient growth of IP-based services. They are an unnecessary waste of judicial resources, a deterrent to investment, a roadblock to innovation, and a threat to universal service. These consequences can only be fully rectified by Commission action on inter-carrier compensation reform, preferably through a comprehensive approach.<sup>2</sup>

USTelecom members, like so many other stakeholders, are eager for the Commission to complete its work to comprehensively reform inter-carrier compensation. Last year, the Commission reached a major milestone and gained great momentum by gaining consensus on key issues that will enable it to complete the essential task of comprehensive inter-carrier compensation reform. One of the major elements of that reform, and the centerpiece of the dispute addressed by the UTEX Petition, is renewed clarity in the treatment of VoIP originated calls terminating on the Public Switched Telephone Network (PSTN). While USTelecom is confident that UTEX's position is contrary to existing Commission rules, the Commission's continued failure to expressly address the issue has allowed uncertainty to develop within the industry and among state

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<sup>2</sup> See letter of July 29, 2009, from Walter B. McCormick, Jr. to Julius Genachowski urging the Commission to complete reform of inter-carrier compensation.

regulators. Similarly, disputes involving phantom traffic and access pumping occupy too many hours time.

While Commission action is necessary, an arbitration proceeding is not the proper venue for establishing forward-looking policy or rule changes. The arbitration process is, by its nature, very specific to the situation and set of facts presented in each particular dispute. It relies on having a clear legal framework within which the arbiter can settle a specific dispute. It is not the appropriate process for making piece-meal policy decisions impacting a wide set of issues and providers. Indeed, arbitration decisions must rest on the rules in effect at the time. By contrast, UTEX's Petition seeks less to clarify existing rules than to change them. But the Commission has fully developed records in several open rulemakings that provide it appropriate opportunities to address both comprehensive reform of inter-carrier compensation or sub-issues such as the proper compensation for VoIP originated traffic terminating on the PSTN.<sup>3</sup> The Commission may not, however, engage in this type of rulemaking through an arbitration proceeding.

The Commission should instead promptly and comprehensively address the issue of inter-carrier compensation utilizing the extensive record already established in these other rulemaking proceedings and build on the industry consensus developed at the end of last year. While comprehensive inter-carrier compensation reform is clearly necessary and preferable, near-term reform should include, at the very least, addressing the issues of

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<sup>3</sup> See, e.g., In the Matter of IP-Enabled Services, WC Docket No. 04-36, Report and Order, 24 FCC RCD 6039 (2009); and also In the Matter of Developing a Unified Inter-carrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001), as well as Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) and Comment Sought on Missoula Inter-carrier Compensation Reform Plan, 21 FCC Rcd 8524 (2006); Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008). This list is merely illustrative of the immense record that has accumulated over the eight year period in which inter-carrier compensation reform has been pending before the Commission.

phantom traffic, access pumping and the proper compensation for VoIP traffic terminating on the PSTN. Such action would permit Texas, and other states in which similar disputes may arise, to arbitrate disputes based on clear and uniform federal rules. The UTEX Petition for preemption should be denied, and the Commission should initiate efforts to complete its reform of inter-carrier compensation.

Respectfully submitted,

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