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**EX PARTE**

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

**RE: Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135**

Dear Ms. Dortch:

To help put current traffic pumping scams in the proper perspective, Commission staff and others asked Verizon to quantify the impact of these schemes on the industry and on consumers. Industry-wide, we estimate that traffic pumping currently is a \$330-\$440 million annual problem, with the potential to grow much larger in a short period of time absent prompt Commission action.

To arrive at this estimate Verizon analyzed internal and external data. Based on current tracking and analysis, we anticipate that traffic pumping LECs will bill Verizon companies alone for approximately two billion wireline and wireless long distance minutes (primarily interstate access traffic) in 2010.<sup>1</sup> These LECs tend to charge tariff rates of several cents per minute. Verizon Wireless also anticipates that the minutes of use (MOUs) it will be billed for in 2010 by traffic pumping competitive LECs to terminate intraMTA wireless traffic (i.e., local wireless traffic) will continue to accelerate in the wake of the Commission's *North County Order*.<sup>2</sup> In sum, a conservative estimate of the annual impact of traffic pumping to Verizon (wireline and wireless) is \$66-\$88 million. Assuming Verizon companies are billed for roughly 20 percent of all traffic pumping MOUs nationwide, the estimated industry impact of traffic pumping would be \$330-\$440 million per year.<sup>3</sup> This estimate is roughly consistent with a recent study by

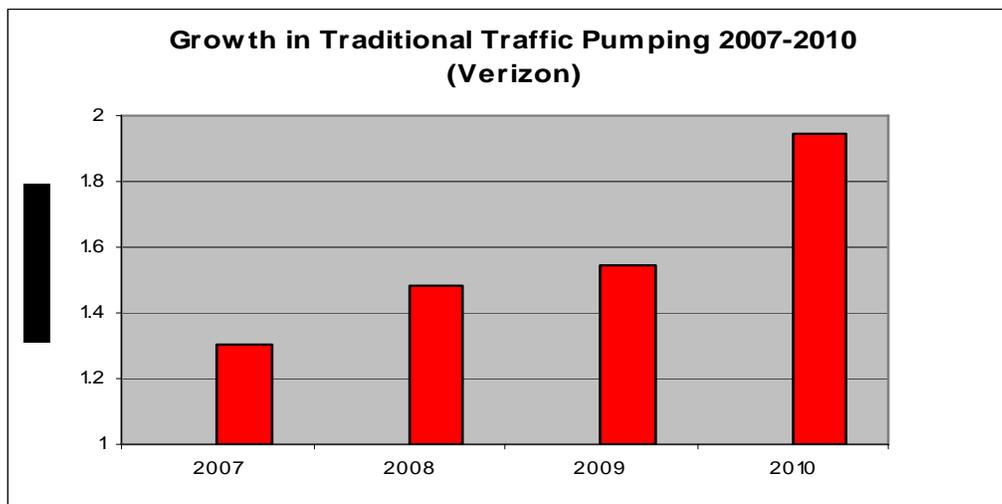
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<sup>1</sup> The Verizon-specific projections discussed herein include relatively small amounts associated with wireline operations that have since been transferred to Frontier Communications.

<sup>2</sup> *North County Communications Corp. v. Metro PCS California*, Memorandum Opinion and Order, 24 FCC Rcd 3807 (2009) ("*North County Order*"). The full Commission subsequently upheld this part of the Enforcement Bureau's *North County Order*. See *North County Communications Corp. v. Metro PCS California*, Order on Review, 24 FCC Rcd 14036 (2009). The Commission's explanation that state commissions may set a "reasonable" rate for CLECs to charge CMRS carriers for intrastate intraMTA traffic has encouraged CLECs to seek non-cost based rate determinations from state regulators.

<sup>3</sup> The assumption that Verizon companies are billed for approximately 20 percent of all wireline and wireless originated traffic pumping minutes is an estimate based on total known

Connectiv Solutions, which found that traffic pumping costs the American wireless industry alone (i.e., looking only at wireless originated long distance minutes) approximately \$190 million per year.<sup>4</sup> These estimates *do not* include the significant additional litigation and other tracking expenses associated with traffic pumping scams. Nor do these estimates account for traffic pumping schemes that target non-switched access intercarrier compensation payments. The traffic pumping problem will also continue to expand significantly in the near term absent prompt Commission action. In particular, the local intraMTA wireless-CLEC traffic pumping problem will grow exponentially, and will rival or exceed the scope of the ISP dial-up arbitrage schemes that began a decade ago, unless the Commission acts immediately to cut this off and fill the gap left by the *North County Order's* announcement that there is no federal guidance as to the proper terminating rate for this traffic. Separately, Verizon continues to experience year-over-year, double-digit growth in billed MOUs that are tied to the traditional wireline and wireless long distance traffic pumping scams, as reflected in the chart below.



Third-party entities with access to additional industry data may be able to provide a more precise estimate of the total cost of traffic pumping. Regardless, it is safe to say that traffic pumping scams cost hundreds of millions of dollars annually, and over time these scams likely total billions of dollars.

Moreover, traffic pumping is a consumer concern in the same way that other fraudulent, or allegedly fraudulent, schemes involving Commission-regulated revenues impact ordinary consumers.

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traffic pumping MOUs. At the end of last year AT&T estimated that just 12 CLECs accounted for approximately nine billion traffic pumping MOUs per year. Letter from Brian Benison, AT&T, to Marlene Dortch, FCC, WC Docket No. 07-135, Attachment at 6 (Dec. 3, 2009). However, traffic pumping has grown since that time, and there are more than 12 known traffic pumpers. Conservatively assuming, therefore, that industry-wide there are now 10 billion traffic pumping MOUs annually and Verizon is tracking approximately two billion MOUs with associated billings to Verizon companies, 20 percent is a reasonable estimate.

<sup>4</sup> Connectiv Solutions, *Understanding Traffic Pumping, Industry Study*, <http://www.connectiv-solutions.com/traffic-pumping.html> (2010).

For example, the Enforcement Bureau recently settled what was essentially a \$22 million video relay program traffic pumping case. The matter involved allegations that the provider, among other things, “unlawfully offered financial incentives or rewards simply to inflate TRS usage and billables.” FCC, Press Release, *Enforcement Bureau Settles Investigations of Purple Communications, Inc.*, at 1, [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db0920/DOC-301517A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0920/DOC-301517A1.pdf) (Sept. 21, 2010) (“*VRS Press Release*”). The Telecommunications Relay Service (TRS) pays for video relay and other services provided to deaf and hard-of-hearing individuals. Earlier this year the Commission issued a declaratory ruling to make clear that video relay traffic pumping violates the Act. *See Structure and Practices of the Video Relay Service Program*, Declaratory Ruling, 25 FCC Rcd 6012, ¶ 6 (2010). (“[VRS calls made or arranged, in whole or in part, for the purpose of generating compensable minutes of use as a source of revenue for the providers. . . are not and have never been compensable from the TRS Fund. . . . But for the availability of per-minute compensation from the Fund, such calls likely would not have been made.”). The TRS fund is paid for by Commission assessments on providers—not directly by consumers through a line-item on customer bills or otherwise. The Commission has recognized, however, that those costs ultimately are borne by customers and that video relay traffic pumping and TRS fraud is indeed a consumer issue. “Every dollar misappropriated from this Fund is ultimately a dollar taken from consumers.” *VRS Press Release* at 2 (emphasis added).

The same is true with other traffic pumping scams outside of the video relay program. The bills for minutes associated with these schemes go to carriers, not directly to consumers, but because carrier revenue used to satisfy these bills comes from the carrier’s customers, consumers in the end must subsidize traffic pumping scams. In addition, the communications marketplace is capital-intensive, requiring (especially these days) massive private investment in high-speed wireline and 4G wireless broadband networks. The amount of capital that traffic pumping diverts from broadband deployment and other investments that have tangible benefits for consumers is material. By comparison, the \$330-\$430 million annual traffic pumping problem is about the same size as the entire non-rural high cost universal service fund (\$330 million per year), the National Broadband Plan’s contemplated Mobility Fund for 3G wireless deployment in states that lag behind (up to \$300 million), and the current year TRS fund (\$430 million). There is no question that consumers will benefit when the Commission takes decisive action to eliminate the traffic pumping scams that have plagued the industry.

There is also no question that the Commission *must* act to end traffic pumping. Recent suggestions by traffic pumpers that the Commission should continue to sit on the sidelines because the industry is essentially learning to live with their schemes are absurd. *See, e.g.*, Letter from Jeff Holoubek, Free Conferencing Corp., to Marlene Dortch, FCC, WC Docket No. 07-135 (Sept. 17, 2010) (suggesting that traffic pumping is “pro-consumer” regulatory arbitrage); Letter from Edward Yorkgitis, Tekstar Communications, to Marlene Dortch, FCC, WC Docket No. 07-135 (Sept. 15, 2010) (suggesting that a “market has developed” to determine the right terminating rate for pumped traffic and foretelling a revised Tekstar tariff that proposes to lower its terminating rates for this traffic).

Some consumers indeed make use of the supposedly “free” chat line (in some cases including pornographic content), conferencing, and other services associated with traffic pumping schemes. But these services are not in fact “free.” They are made possible only by intercarrier compensation rates that are too high when traffic is spiked by one of these schemes

and results in consumers—i.e., the customers of the wireline and wireless carriers that deliver the traffic—paying forced subsidies.

In some cases carriers have made the difficult decision to resolve certain traffic pumping disputes on negotiated terms. Such resolutions, however, merely reflect calculated business decisions to stop the bleeding from traffic pumping scams that have now gone on for five years. Providers should always be free—and encouraged—to enter into commercially negotiated intercarrier compensation arrangements. In no way, however, does resolution of a traffic pumping dispute somehow legitimize these scams or indicate that we should now consider them to be appropriately wrapped up in the cost of doing business. Further, recent tariff filings by some traffic pumping LECs proposing to lower certain terminating rates for pumped traffic speak only to their unilateral desire to preserve windfall profits, not a new “market” in which traffic pumping is now a legitimate practice.

There is simply no connection between the traffic pumpers’ latest rhetoric about marketplace solutions and what is actually happening in these disputes. For example, Verizon amicably resolved, for a period of time, one dispute with a South Dakota LEC involving traffic pumping allegations. Far from embracing this resolution as an appropriate market-based approach, last month Free Conferencing—the South Dakota LEC’s presumed traffic pumping partner and one of the pioneers of traffic pumping—then sued Verizon directly, alleging that Verizon tortiously interfered with Free Conferencing’s two-cent per minute “marketing fee” contract (attached to the complaint) with the LEC. *See Free Conferencing v. Verizon, et al.*, CIV. 10-4113, Complaint (D. S.D. Aug. 19, 2010). Having already been paid millions by the LEC since 2006, Free Conferencing now alleges that it is still owed in excess of \$10 million under the contract that the LEC will not or cannot pay. *Id.* Free Conferencing’s lawsuit makes clear that traffic pumpers will stop at nothing to keep these lucrative scams going and that new allegations about a marketplace solution to traffic pumping is just another smokescreen designed to further delay Commission action.

We once again urge the Commission to promptly resolve these issues. Should you have any questions, please contact me.

Sincerely,



cc: Sharon Gillett  
Marcus Maher  
Rebecca Goodheart  
Albert Lewis