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October 27, 2010

VIA ECF

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

In the Federal Communications Commission's National Broadband Plan, released on March 16, 2010, the Commission recommended that the FCC address issues related to access stimulation and remove financial incentives that encourage an artificial inflation of the number of terminating minutes.¹ Free Conferencing Corporation agrees with the FCC and other parties that the true root of the "traffic pumping" problem should and can be identified and resolved, and appreciates the opportunity to work with the Commission to address these issues as they relate to intercarrier compensation reform. To that end, we set forth herein a comprehensive proposal that seeks to accomplish that goal, while also helping the Commission to achieve other related goals including economic development in rural areas, tribal broadband deployment, and broadband adoption by low-income households.² This proposal is narrowly tailored to target perceived abuses, yet it is not so broad that it results in unintended consequences with potential ripple effects.

First, and foremost, Free Conferencing Corporation believes that "traffic pumping" should be defined and understood as a non-consumer dialed voice service that generates artificial traffic for the sole purpose of collecting access revenue. This form of abusive practice does exist in the marketplace today and should be prohibited. However, Free Conferencing Corporation

¹ Connecting America: National Broadband Plan, Recommendation 8.7 at 148.

² See e.g., *id.*, Recommendation 8.2 ("the FCC should create the Connect America Fund (CAF)."); Recommendation 9.1 ("The Federal Communications Commission (FCC) should expand Lifeline Assistance (Lifeline) and Link-Up America (Link-Up) to make broadband more affordable for low-income households."); Recommendation 9.14 ("The Executive Branch, the FCC and Congress should consider making changes to ensure effective coordination and consultation on broadband related issues.").

believes that “access stimulation,” defined as the act of routing a high volume of consumer dialed long distance traffic to a rural carrier, is not patently unjust or unreasonable. While many have attempted to blur the lines between these two distinct activities, there is one major difference: “traffic pumping” is artificial, non-consumer dialed traffic; whereas “access stimulation” occurs when real consumers make personal decisions regarding their long distance billing plans and then place genuine calls to obtain beneficial services.

To accomplish the FCC’s goal of addressing artificial minute generation, the FCC should find billing and collecting access charges for artificial traffic illegal. With regard to access stimulation, if the Commission no longer believes that the volume of traffic militates against intrusive regulation,³ the Commission should adopt a narrowly tailored approach that appropriately balances the competing interests. Chief among those interests are (1) the benefits enjoyed by consumers that utilize services like free conferencing; (2) the IXCs’ nearly unfettered discretion to create and modify their long-distance offerings to the public; and (3) the important policy considerations that originally gave rise to the rural exemption, including the desire to ensure seamless and ubiquitous access to the PSTN.⁴

Free Conferencing Corporation believes that a measured approach that has already been endorsed by the Commission and is at work in the industry accomplishes myriad goals and presents an appropriate resolution of this docket. Specifically, a High Volume Access (HVA) rate structure, which applies instead of the highest benchmark rate when telecommunications traffic to a rural area exceeds a pre-determined volume threshold established in the LEC’s tariff, appropriately balances the competing interests by restraining IXC costs while allowing competitive carriers to continue enjoying the benefits contemplated in the rural exemption. Once the traffic volume reaches a certain threshold, a lower tariff rate is substituted for the higher rural rate in order to provide a fair rate structure for the IXCs.

Three small regional carriers have already adopted this approach with the Commission’s approval. Indeed, on two separate occasions, the FCC has rejected challenges to tiered tariffs that enable these small rural carriers to avail themselves of the higher rural tariff rates for traditional residential and business traffic, while assessing lower rates when the carriers provide service to higher volume businesses, such as Free Conferencing Corporation.⁵ This structured

³ See, e.g., *In re Access Charge Reform*, CC Docket 96-262, Seventh Report and Order, 16 FCC Rcd 9923, ¶ 71 (2001).

⁴ See 47 C.F.R. § 61.26.

⁵ Those carriers are Bluegrass Telephone Company, Inc., d/b/a Kentucky Telephone Company, Tekstar Communications Inc., and Northern Valley Communications, LLC. See *Protested Tariff Transmittals Action Taken*, WCB/Pricing File No. 10-09; DA 10-1917 (rel. Oct. 6, 2010) (regarding Tekstar Communications Inc. Tariff F.C.C. No. 2); *Protested Tariff Transmittal Action Taken*, WCB/Pricing File No. 10-10; DA 10-1970 (rel. Oct. 14, 2010) (regarding Kentucky Telephone Company Tariff F.C.C. No. 3). Northern Valley’s tariff became effective July 23,

tariff system is a sensible and responsible solution that will mitigate the concerns raised by US Telecom, Qwest and other tier-one and tier-two carriers that are obligated to pay terminating access in rural areas.

In considering the appropriate policy outcome in this docket, the Commission should be careful not to eradicate HVA services generally or free conferencing services specifically. This market segment produces numerous benefits for carriers and consumers alike. For example, the Crow Creek Sioux Tribe of American Indians in Fort Thompson, South Dakota has been able to build a tribally-owned telephone company, Internet library, and communications center due, in part, to funds derived from HVA services. The telephone company now provides high speed broadband and telephone to over 110 homes and businesses and has created new jobs for Native Americans. This communications and economic success story was possible because of the ability to attract HVA traffic to promote capital investment necessary to build out the infrastructure.⁶

Thus, the proposed solution suggests the use of a HVA tariff to reduce the rates charged by rural LECs that provide HVA services, coupled with strict enforcement by the Commission against IXC “self help.” This combination creates the incentive for a rural LEC to utilize a lower rate for HVA traffic, while continuing to serve as a competitive alternative for local residential and business customers. However, it will also allow rural LECs to continue competing with non-rural LECs for HVA traffic, thereby creating a fair and equal playing field for all high volume LECs.

While some parties have targeted revenue sharing agreements as the root of the problem, revenue sharing is not illegal, nor should it be. In practice, revenue sharing is an integral component of the telecom sector enjoyed by carriers of all sizes and geographic locations. Attempting to regulate away all or some types of revenue sharing as a means of eliminating “traffic pumping” ignores the root of the problem, would be difficult and costly to police, and is likely to have significant unintended consequences.

Today, what the IXCs view as excessive rates are addressed with self-help remedies by the IXCs such as nonpayment of all terminating access fees, which is not productive for any of the parties involved. The IXCs simply cite their own self-serving interpretation of what constitutes illegal “traffic pumping” as an excuse to refuse to pay all terminating access obligations. In fact, some IXCs are now refusing to pay CLECs in metro locations, where the

2010, over objections from many IXCs, without rejection or suspension by the Commission, but no notice was issued by the Bureau.

⁶ At the time of submission of this *ex parte*, many IXCs are refusing to pay termination access fees on all traffic to carriers with an HVA tariff.

IXCs and incumbent LECs themselves receive interconnection revenue for their own toll conferencing services, based only on the IXC's accusation that the metro LECs are engaging in "illegal "traffic pumping" schemes." This broad use of self help by the IXCs has created a lawless and anticompetitive environment that has shifted all bargaining power into the hands of the IXCs.

Free Conferencing Corporation submits that the HVA tariff solution best harmonizes the goals of current inter-carrier compensation framework while preserving highly-desirable services for millions of consumers. It also provides an even playing field for all telecommunications service providers, while eliminating the incentive for IXCs to continue engaging in self help and curbing the perpetual cycle of litigation that has predominated the industry for the past four years.

Respectfully submitted,



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