November 24, 2010

Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

CTIA–The Wireless Association® ("CTIA") and its member companies have met on a number of occasions over the last several months with Commission personnel to describe how wireless carriers are being targeted by traffic pumping schemes.[1] We have explained that these schemes involve both access traffic and "local" (intra-MTA) traffic, and are estimated to cost wireless carriers over $190 million per year in unnecessary carrier charges that could otherwise be used to expand mobile network coverage and improve service quality.[2]

In those meetings, CTIA indicated that these traffic pumping schemes have resulted in a large number of proceedings before state commissions, state and federal courts, and before the FCC, including a recent flood of CLEC traffic pumping tariff filings. These proceedings impose an additional burden on wireless carriers, drain governmental resources, and create uncertainty regarding treatment of traffic termination.

Attached to this letter is a listing of some of the wasteful and burdensome proceedings resulting from traffic pumping schemes that directly involve wireless carriers. As described in the attachment, disputes over traffic pumping are diverting resources in over 60 proceedings in venues across the country. Moreover, numerous parties have placed estimates on the record about the impact of traffic pumping schemes.[3] The scope of the traffic pumping problem is simply too great for the Commission to delay addressing it

[1] *See, e.g.*, CTIA ex parte letters, WC Docket No. 07-135, filed Aug. 26, 2010; Sept. 9, 2010; Sept. 13, 2010; Sept. 15, 2010; and Sept. 30, 2010.
[2] *Id.* It is important to note that this valuation does not include the estimated costs to wireless industry of intraMTA, *i.e.*, "local" traffic pumping.
[3] *See*, *e.g.*, *id.*; Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary Federal Communications Commission, filed Nov. 12, 2010 (stating that traffic pumping is costing the industry approximately $400 million annually); Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed Oct. 1, 2010) (citing evidence that "the total cost of Traffic Pumping to the industry is in excess of $2.3Billion (USD) over the past five years") (formatting omitted).

pending comprehensive intercarrier compensation reform. CTIA urges the Commission to take interim action immediately to stop traffic pumping.

CTIA compiled this list based on information obtained from extensive polling of its wireless carrier members. While it represents a thorough sample of these proceedings, it may not be comprehensive. Nevertheless, it amply demonstrates that this is a serious problem that must be solved now.

This problem is well within the Commission's power to solve. CTIA recently filed a letter demonstrating that traffic pumping involving wireless carriers, including both interstate and intra-MTA traffic, is well within the scope of the Commission's outstanding proceeding and legally ripe for resolution.[4] CTIA and its members look forward to working with the Commission to address this issue expeditiously.

Sincerely,

/s/ *Scott K. Bergmann*

Scott K. Bergmann

Attachment

cc (email): Edward Lazarus
Zachary Katz
Margaret McCarthy
Christine Kurth
Angela Kronenberg
Brad Gillen
Sharon Gillet
Randy Clarke
Albert Lewis
John Hunter
Jay Atkinson
Lynne Engledow
Dan Ball
Douglas Slotten

[4] CTIA ex parte letter, WC Docket No. 07-135, filed Oct. 13, 2010.

CTIA TRAFFIC PUMPING TRACKER

State	Case Name/# or Docket #	Summary
Arizona		
U.S. District Court of Arizona	*North County Communications Corp. v. Cricket Communications, Inc. et al.* , Case No. CV2009-054578 (Sup. Ct, Maricopa County, Ariz.), and Case No. 2:09-cv-02623 (D. AZ)	North County sought compensation for terminated intraMTA traffic. CMRS providers alleged evidence of traffic pumping. Case was dismissed in part on primary jurisdiction grounds, with the other claims remanded to state court.
U.S. District Court of Arizona	*North County Communications Corp. v. McLeod Telecommunications Services, Inc. et al.* , 2010 WL 2079754 (D. AZ)	North County sought compensation for terminated intraMTA traffic. CLECs alleged evidence of traffic pumping. Case was dismissed in part on primary jurisdiction grounds, with the other claims remanded to state court.
California		
California PUC	10-01-003	North County asked the CPUC to establish to establish a "just and reasonable" rate that North County should charge for terminating wireless traffic in its dispute with MetroPCS. North County has asked the CPUC to establish a default compensation rate of $0.0110 for termination of CMRS-originated traffic in the absence of negotiated agreements. In its dismissal, the CPUC pointed out that the FCC's decision that led to this proceeding is under appeal at the D.C. Circuit Court, and that the FCC has not yet indicated that it would use the CPUC's deliberation in resolving the dispute.
California PUC	10-01-021, 10-01-020, 10-01-019, 09-12-014	PAC-West sought compensation from multiple CMRS providers for intrastate traffic termination. CMRS providers alleged traffic pumping, and requested that the CPUC dismiss the complaint because Pac-West is seeking similar relief to that of North County. Alternatively, CMRS providers urged the CPUC to hold the case in abeyance pending the resolution of a D.C. Circuit challenge of the FCC decision regarding North County.
9th Circuit Court of Appeals	*North County v. Cal. Catalog & Tech. et al.* , No. 06CV1542-LAB (RBB), 2007 WL 4200203 (S.D. Cal. Nov. 26, 2007), 594 F.3d 1149 (9th Cir. 2010), *petition for cert. pending* , No. 10-57	North County sought compensation from CMRS providers and CLECs for intraMTA/local traffic. Providers alleged traffic pumping. One count was dismissed with prejudice, one count was dismissed without prejudice, and two counts were dismissed for lack of supplemental jurisdiction.
San Diego Superior Court	*North County v. A+ Wireless, Inc., et al.* (Case No. 37-2008-0075605-CU-BC-CTL)	North County sought compensation from CMRS providers and CLECs for intraMTA/local traffic. Providers alleged traffic pumping.
Superior Court for State of California	*North County v. Telscape, et. Al* , # 37-2009-00099882-CU-BC-CTL	North County sought compensation from CLECs for intraMTA/local traffic. Providers alleged traffic pumping.

CTIA TRAFFIC PUMPING TRACKER

State	Case Name/# or Docket #	Summary
U.S. District Court, Southern District of California	*North County v. Verizon Select Services, Inc.* , No. 3:08-cv-01518	North County sought compensation from Verizon for intraMTA/local traffic. Verizon alleged traffic pumping.
U.S. District Court, Southern District of California	*North County v. Sprint,* 3:09-cv-02685-JM-WVG	NCC sought compensation from Sprint for tariffed access charges. Sprint alleged traffic pumping.
U.S. District Court, Southern District of California	*North County v. Sprint and Nextel of California* 3:09-cv-02782-DMS-RBB	NCC sued Sprint and Nextel wireless entities for compensation pursuant to an interconnection agreement and Rule 20.11. Sprint and Nextel alleged traffic pumping.
Iowa		
Iowa Utilities Board	TF-2010-0087	Sprint and T-Mobile filed joint comments urging the IUB to reject a proposed tariff filed by Aventure Communication Technology, alleging that Aventure "has yet to show it is operating consistent with its certificate," that the tariff redefines "customer" & "end user," and that language in the proposal undermines the IUB's traffic pumping order. In addition, the proposal includes "improper provisions relating to CMRS traffic" and amounts to a legitimization of traffic pumping. AT&T also filed a resistance and request to suspend Aventure's tariff challenging, among other things, the reasonableness of the Aventure rates associated with its traffic stimulation activities, its rounding of access charges and its demand for wireless traffic studies. On 8/10/10 the IUB suspended the proposed tariff and opened a contested case proceeding to determine the tariff's legality. The IUB also said the tariff may be in conflict with its traffic pumping decisions. On 8/12/10, Aventure filed a motion seeking a stay in the proceeding pending the resolution of Aventure's federal court proceeding on high volume access services.
Iowa Utilities Board	RMU-2009-0009	In connection with its recent order finding that eight LECs failed to comply with the terms of their intrastate tariffs and were engaged in a scheme to artificially inflate access rates, the IUB opened a new rulemaking to address the effects of traffic pumping on LEC revenues from intrastate access services. Qwest Corp., along with several other carriers, said that any switched access revenue sharing between a LEC and a "free calling service company" should be prohibited. The new rules, which go into effect on 8/4/10, will prevent LECs from engaging in schemes that artificially raise access rates. Aventure filed a lawsuit in federal district court seeing a declaratory ruling along with preliminary and permanent injunctive relief against the order. (See case No. 5:10-CV-04074-MWB below)
Iowa Utilities Board	FCU 07-2	Qwest, joined by Sprint and AT&T, brought a formal complaint with the IUB against eight LECs, alleging that schemes to inflate access charges by "pumping" high volumes of conference and chat traffic through high-rate rural LECs were unlawful under the LEC tariffs and unreasonable under Iowa law.
U.S. District Court, Northern District of Iowa	*Sprint v. Northwest Iowa Tel Co* 5:10-cv-04004	Sprint long distance sought refund of tarriffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Northern District of Iowa	*Aventure v. IUB, Case* No. 5:10-CV-04074-MWB	Aventure filed a complaint requesting a temporary restraining order, a preliminary injunction and a permanent injunction against enforcement of the IUB's High Volume Access Rules HVAS aimed at curbing the access rate abuse wrought by traffic pumpers. Carriers intervened in the proceeding and objected to the TRO and PI. The U.S. District Court denied the TRO and PI as to all counts finding that Aventure did not prove a substantial likelihood that it would prevail in the proceeding. The Court held further that even if Aventure had some likelihood of success on the merits of its claims, the "balance of harms" did not weigh in favor of issuance of a preliminary injunction. "The potential harm to Aventure, if the regulations are implemented unimpeded is not, as Aventure suggests, its imminent demise… . Indeed, the speculative possibility of revocation of its certificate borders on, if not crosses the line, into realm of an illusory harm that will not outweigh any actual harm to the nonmovant. On the other hand, the harm to the IUB of an injunction is the IUB's inability to administer reasonable rates for telecommunications services, and the harm to the IXCs is continued payment of unreasonable rates for HVAS."

CTIA TRAFFIC PUMPING TRACKER

State	Case Name/# or Docket #	Summary
U.S. District Court, Northern District of Iowa	*Aventure v. MCI* , No. 5:07-cv-04095	CLEC brought collections action against IXC for disputed and unpaid balances associated with traffic pumping.
U.S. District Court, Northern District of Iowa	*FuturePhone v. MCI* , No. 5:09-cv-04017	LEC brought damages and declaratory action against IXC to establish lawfulness of traffic patterns and require payments to LECs.
U.S. District Court, Northern District of Iowa	*NW Iowa Tel. v. MCI* , No. 5:09-cv-04103	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Northern District of Iowa	*MCI v. Readlyn* , No. 6:09-cv-02035	MCI sought refund of tarriffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Northern District of Iowa	*Readlyn v. Qwest* , No. 6:10-cv-02040	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Northern District of Iowa	*Readlyn v. Sprint* 6:10-cv-02039-EJM (N.D. Iowa)	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Farmers & Merchants v. MCI* , No. 3:09-00055	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*West Liberty v. MCI,* No. 3:09-cv-00056	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Farmers & Merchants v. Qwest,* No. 3:09-cv-00058	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Sprint vs. Superior Telephone Co-op,* No. 4:07-CV-0019	Sprint long distance sought refund of tarriffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Southern District of Iowa	*Qwest Communications Corp. v. Superior Telephone et al.* , Case No. 4:07-cv-0078	Qwest long distance sought refund of tarriffed access charges from LEC, alleging traffic pumping.

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State	Case Name/# or Docket #	Summary
U.S. District Court, Southern District of Iowa	*AT&T vs. Superior Telephone Co-op* No. 4:07-CV-0043	AT&T long distance sought refund of tarriffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Southern District of Iowa	*North County Communications vs. Sprint,* 09-CV-2685	North County sought compensation for terminated intraMTA traffic. Sprint alleged evidence of traffic pumping. Case was dismissed in part on primary jurisdiction grounds, with the other claims remanded to state court.
U.S. District Court, Southern District of Iowa	*Iowa Network Services v Sprint,* 10-00102	Iowa Network Services sought compensation for terminated intraMTA traffic. Sprint alleged evidence of traffic pumping. Case was dismissed in part on primary jurisdiction grounds, with the other claims remanded to state court.
U.S. District Court, Southern District of Iowa	*BTC v. Sprint* 4:09-cv-00465-JEG-CFB	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Aventure v. Qwest, Sprint,* No. 4:08-cv-00005	CLEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Spencer Muni v. MCI,* No. 4:09-cv-00220	Spencer sought collection of terminated traffic compensation from MCI. MCI alleged traffic pumping and counterclaimed.
U.S. District Court, Southern District of Iowa	*Spencer Municipal Communications Utility v. AT&T Corp., No. 4-10-cv-00012*	Spencer sought collection of terminated traffic compensation from Sprint. Sprint alleged traffic pumping and counterclaimed for redress regarding overcharges billed by Spencer.
U.S. District Court, Southern District of Iowa	*MCI v. Sully,* No. 4:09-cv-00262	MCI sought refund of tariffed access charges from Sully, alleging traffic pumping. Sully counterclaimed.
U.S. District Court, Southern District of Iowa	*Sully v. Qwest,* No. 4:10-cv-00218	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Sully Telephone v. Sprint Communications Co.* 4:10-cv-00428	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.

CTIA TRAFFIC PUMPING TRACKER

State	Case Name/# or Docket #	Summary
U.S. District Court, Southern District of Iowa	*Searsboro and Lynnville v. Qwest,* No. 4:09-cv-00308	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Searsboro and Lynnville v. Sprint,* No. 4:10-cv-00176	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.
U.S. District Court, Southern District of Iowa	*Iowa Network Svcs v. Sprint,* No. 4:10-cv-00102	Sprint disputed and withheld certain payments to centralized equal access provider owned by Iowa LECs alleging (a) traffic pumping resulted in billed PIU being inaccurate; (b) pumped minutes not properly charged access charges by tandem provider; (c) INS was directly involved in unlawful traffic pumping scheme. INS brought collections action in Kansas, removed to Iowa. Sprint has counterclaimed.
Kentucky		
Kentucky PSC	2010-00012	The PSC opened a docket in response to a complaint by Sprint against Bluegrass Telephone Company (KTC) for the unlawful imposition of access charges. Sprint asked the PSC to determine that KTC has improperly billed intrastate switched access charges, and alleged traffic pumping.
U.S. District Court, Western District of Kentucky	*Bluegrass Tel Co. vs. Sprint* 410-CV-104	ILEC sought collection of tarriffed access services. Sprint alleged traffic pumping.
U.S. District Court, Western District of Kentucky	*Bluegrass Tel Co. d/b/a Kentucky Tel. vs. Qwest Communications Company LLC* , Case No. 4:09-cv-00070-JHM-ERG	ILEC sought collection of tarriffed access services. Qwest alleged traffic pumping.
U.S. District Court, Western District of Kentucky	*Bluegrass Tel Co. d/b/a Kentucky Tel. v. Level 3 Communications LLC* , Case No. 4:10-cv-00075-JHM-ERG	ILEC sought collection of tarriffed access services. Level 3 alleged traffic pumping.
Minnesota		
Minnesota PUC	C-09-265	Wireless carriers (ATT, T-MO, VZW) intervening in dispute between Qwest and Tekstar; Related to litigation involving Sprint referenced below, and similar litigation by Tekstar against other wireless carriers.
U.S. District Court, District of Minnesota	*Tekstar Communications vs. Sprint,* 08-CV-01130-JNE-RLE	Tekstar filed a complaint against Sprint for not paying terminating access charges. Sprint alleged traffic pumping.
U.S. District Court, District of Minnesota	Mid-Communications, Inc., dba HickoryTech v. Sprint Communications Company L.P., Case No. 09-cv-03496	HickoryTech sought collection of tariffed access charges. Sprint alleged traffic pumping.
U.S. District Court, District of Minnesota	*Minnesota Independent Equal Access Corporation, v. Sprint Communications Company L.P.* , Case No. 10-cv-2550	Onvoy sought collection of tariffed access charges. Sprint alleged traffic pumping.

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State	Case Name/# or Docket #	Summary
New York		
New York PSC	09-C-0370	XChange sought compensation from Sprint for terminated intraMTA traffic. On behalf of wireless carriers, CTIA stated that the NYPSC should hold this proceeding in abeyance pending the FCC's completion of a proceeding to review the Enforcement Bureau decision that triggered the filing in New York. In a 2/4/10 Order, the PSC said state and federal regulations do not preclude PSC from establishing a rate for the termination of intrastate wireless traffic to a local exchange carrier. CTIA filed comments on 3/5/10 asking the PSC to reconsider its decision or to request a stay pending a solution on the national level at the FCC or Federal Court.
U.S. District Court, Southern District of New York	*All-American Tel. Co., et al. v. AT&T Corp.,* No. 07-cv-861	CLECs sought collection of tariffed access charges. AT&T alleges traffic pumping.
Oregon		
U.S. District Court, District of Oregon	*North County Communications Corporation v. United States Cellular Corp. et al.,* Case No. 3:10-cv-181-PK	North County sought collection of compensation for intraMTA traffic termination. US Cellular alleged traffic pumping.
U.S. District Court, District of Oregon	*North County Communications Corporation v. Allegiance Telecom et al.* , Case No. 3:10-cv-00180	North County sought collection of compensation for local traffic termination. CLECs alleged traffic pumping.
South Dakota		
South Dakota PUC	TC09-098	SDN filed a complaint against Sprint for 1) failing to pay intrastate centralized equal access charges at the rates approved by the South Dakota PUC, 2) failing to immediately pay undisputed portions of SDN's invoices as required by SDN's Tariff, and 3) for payment by Sprint of SDN's costs of action, reasonable attorneys fees incurred by SDN, and for twice the amount of damages sustained by SDN, if SDN is required to recover its damages by suit or on appeal. In response, Sprint filed a counterclaim noting that SDN is billing for minutes that are not subject to South Dakota's Tariff No.2 or are unjust or unreasonable and alleging traffic pumping. Sprint alleges that SDN knew or reasonably should have known that four of SDN's participating telecommunications companies (PTCs) were involved in traffic pumping and that SDN unlawfully billed Sprint centralized switched access charges for calls delivered
South Dakota PUC	TC10-026	Sprint seeks: 1) a determination that the PUC has the sole authority to regulate Sprint's intrastate interexchange services and that Native American Telecom, Inc. (NAT) lacks authority to bill Sprint for switched access services without a Certificate of Authority and valid tariff on file with the PUC; 2) a declaration that because the PUC has the sole authority over Sprint's intrastate interexchange services, the Crow Creek Sioux Tribe Utility Authority is without jurisdiction over Sprint; 3) a determination that NAT must repay Sprint the amounts it inadvertently paid NAT for alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	*Sancom vs. Sprint* , CIV 07-4107	Sancom sought compensation for tariffed access traffic. Sprint alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	*Northern Valley Commun's vs. Sprint,* CIV 08-1003	Northern Valley sought compensation for tariffed access traffic. Sprint alleged traffic pumping.

CTIA TRAFFIC PUMPING TRACKER

State	Case Name/# or Docket #	Summary
U.S. District Court, District of South Dakota, Southern Division	*Northern Valley Communications LLC v. AT&T,* Case No. CIV 09-1003	Northern Valley sought compensation for tariffed access traffic. AT&T alleged traffic pumping and counterclaimed.
U.S. District Court, District of South Dakota, Southern Division	*Northern Valley Communications, LLC v. Qwest Communications Corp* ., Case No. Civ 09-1004	Northern Valley sought compensation for tariffed access traffic. Qwest alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	*Splitrock Properties vs. Sprint* , CIV 09-4075	Splitrock sought compensation for tariffed access traffic. Sprint alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	*Sancom, Inc. v. Qwest Communications Company LLC* , Case No. 4:07-cv-04147	Sancom sought compensation for tariffed access traffic. Qwest alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	*Sprint Communications Company L.P. v. Native American Telecom et al.* , Case No. 10-4110	Sprint long distance sought refund of tarriffed access charges from LEC, alleging traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	*Sprint v. Maule et al,* 4:10-cv-04110-KES	Sprint sought to end Native American Telecom's efforts to establish traffic pumping operations on the Crow Creek Sioux Reservation. NAT denies that Sprint is entitled to any relief.

CTIA TRAFFIC PUMPING TRACKER

State	Case Name/# or Docket #	Summary
Utah		
U.S. District Court, District of Utah	*Beehive Tel Co. vs. Sprint* , 08-CV-00380	Beehive sought compensation for tariffed access traffic. Sprint alleged traffic pumping.