

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

SECTION XV COMMENTS OF GVNW CONSULTING, INC.

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EXECUTIVE SUMMARY

In most parts of our American life, we are governed by rules and regulations, and there are consequences to our actions. If you enter a grocery store, you have to pay for your cart of groceries before you take them to the trunk of your car. If you enter a car dealership, the owner expects you to pay or make arrangements to pay before you are given the keys and allowed to drive away. However, for the past decade, some carriers have been able to access the facilities of wireline carriers and receive service without an obligation to pay by removing billing information from the data stream. The FCC has proposed “phantom traffic” rules by amending 64.1601, as reflected in Appendix B of the Notice. We recommend these rules be adopted as an initial step toward addressing this issue. We recommend that the proposed rules be enhanced by adding additional language.

We certainly understand the Commission’s desire to aggressively address the traffic pumping situation by requiring carriers to adopt access rates that reflect actual demand levels. We also encourage the Commission to craft rules and carefully set triggers that will permit the recognition of the difference between artificially inflated demand levels from traffic level changes that are the result of rural economic development activity that changes prior traffic patterns.

The FCC should take actions in 2011 to confirm that current access charges apply to all traffic terminating via carrier facilities on the public switched telecommunications network (PSTN). There should be no exceptions based on regulatory classification or the technology used to originate the calls (e.g., VoIP). We recommend that there be an immediate obligation for VoIP traffic to pay existing ICC rates, in order to put an end to the arbitrage activity related to this type of traffic.

Introduction and Background

In Section XV of the instant Notice of Proposed Rulemaking (NPRM), the Commission seeks comment on proposed rules related to phantom traffic, access stimulation, and the proper access treatment of VoIP traffic. The Commission's stated intent of these proposed rules is to curb arbitrage opportunities in the intercarrier compensation (ICC) system.

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. We are pleased to have the opportunity to offer comments addressing the issues the Commission has raised in Section XV of the Notice.

Addressing the Section XV issues posed in the Notice is ripe for resolution. Rural carriers have borne a tremendous burden over the last several years in collecting legitimate access bills from carriers that attempt to use a "self-help" technique of simply refusing to pay for using rural carrier infrastructure. This situation will eventually lead to a degradation of service if rural carriers are unable to recover the cost of maintaining their networks.

**THE COMMISSION SHOULD IMMEDIATELY ADOPT CALL SIGNALING
RULES THAT INCLUDE ADEQUATE ENFORCMENT MECHANISMS
SINCE THE COMMISSION HAS LIMITED CARRIER ABILITY TO
ENSURE BILLING INFORMATION IS NOT REMOVED**

In most parts of our American life, we are governed by rules and regulations, and there are consequences to our actions. If you enter a grocery store, you have to pay for your cart of groceries before you take them to the trunk of your car. If you enter a car dealership, the owner expects you to pay or make arrangements to pay before you are given the keys and allowed to drive away. However, for the past decade, some carriers have been able to access the facilities of wireline carriers and receive service without an obligation to pay by removing billing information from the data stream. When carriers have attempted to remedy this situation by various means, the Commission has unequivocally stated that cutting off service for theft of said service shall not be permitted. Thus, for any proposed rule to be successful, enforcement must be realistic and consistent.

The Commission has proposed “phantom traffic” rules by amending 64.1601, as reflected in Appendix B of the Notice. We recommend these rules be adopted as an initial step toward addressing this issue. We recommend that the proposed rules be enhanced by adding the following sentence to the end of proposed 64.1601 (a) (1):

Entities subject to this provision shall transmit Carrier Identification Codes (CIC) or Operating Company Number (OCN) codes in addition to the Calling Party Number (CPN).

This addition is necessary as CPN data alone does not permit carriers to identify the financially responsible service provider. In a typical SS7 situation, the CIC or OCN

is placed in the signaling stream, and this data is essential to allow the terminating carrier to identify the service provider that is responsible for the call and render an appropriate bill. In the case that the CIC is not appropriate when an IXC is not involved, the OCN is used to indicate to the terminating party that the call was carried by a local exchange carrier or a wireless carrier.

The Commission will need to monitor the impact of this amended rule relative to the compliance by both originating and transiting carriers. While we anticipate that the Commission will receive a variety of suggestions as to how best to incent enforcement and compliance, we recommend an approach similar to language discussed in the 2008 Further Notice debate. We recommend that 64.1601 (a) add a section (3) as follows:

In the event that traffic does not contain the information required by our rules, or the provider delivering the traffic does not otherwise provide the required call information, we allow the terminating service provider to charge its highest terminating rate to the service provider delivering the traffic. In the case of an intermediate provider, that provider can charge the rate it was charged to the provider that delivered the improperly labeled traffic to it.

This approach will create a scenario wherein service providers have strong financial incentives to ensure compliance with the signaling obligations established by the Commission in this docket.

**THE COMMISSION SHOULD ADOPT REASONABLE RULES TO
PREVENT ACCESS STIMULATION**

In this portion of Section XV of the Notice, the Commission requests comment on proposed rules to curtail or prevent carriers from being involved in what has come to be known as access stimulation or “traffic pumping.” As defined in the Notice, access stimulation involves a situation that encourages large volumes of terminating traffic in order to generate revenues from access charge rates that are based on a different (lower) demand level. One common situation involves free conference calling services or so-called “chat lines” that generate volumes of terminating traffic that are much larger than the demand levels anticipated when the tariff rates were established.

The proposed rules focus on “access revenue sharing arrangements” and require carriers involved in such situations to re-file their interstate switched access tariffs to reflect higher demand, and thus a lower rate. For NECA pool participants, meeting a revenue sharing arrangement trigger results in the loss of eligibility to participate in the NECA tariff 45 days after reaching the trigger.

We certainly understand the Commission’s desire to aggressively address the traffic pumping situation by requiring carriers to adopt access rates that reflect actual demand levels. That is the proper public policy role to fulfill. However, we also encourage the Commission to craft rules and carefully set triggers that will permit the recognition of the difference between artificially inflated demand levels from traffic level changes that are the result of rural economic development activity that changes prior traffic patterns. We are confident that the Commission can meet both objectives with its revised rules.

**THE COMMISSION SHOULD CONFIRM THAT ANY TRAFFIC
ORIGINATING FROM OR TERMINATING TO THE PSTN IS SUBJECT TO
ACCESS CHARGE OBLIGATIONS – INCLUDING THE SUBSET OF
INTERCONNECTED VOIP SERVICES**

In Section XV, the Commission seeks comment for at least the fifth time in the past decade¹ on whether switched traffic generated by or terminating to IP-enabled services is subject to intercarrier compensation rules and, if so, what rate should be applied to the traffic.

The FCC should take actions in 2011 to confirm that current access charges apply to all traffic terminating via carrier facilities on the public switched telecommunications network (PSTN). There should be no exceptions based on regulatory classification or the technology used to originate the calls (e.g., VoIP). We respectfully submit that it was never the intent to exempt² this form of traffic from access charges, but rather the debate as to the applicable rate has devolved into a situation where carriers are permitted forms of self-help not available to wireline carriers in phantom traffic scenarios. We recommend that there be an immediate obligation for VoIP traffic to pay existing ICC rates, in order to put an end to the arbitrage activity related to this type of traffic.

Avoidance of access has created an increased demand on USF and will not go away by a continued avoidance of the problem. Until the actual point in time that voice becomes an application, the FCC must face its access charge regulatory responsibility.

¹ Previous Commission attempts have occurred in 2001, 2004 IP-Enabled NPRM, Further Notice in 2005, 2008 Further Notice.

² Allowing “reform” to occur by regulatory inaction and thus defaulting to all traffic being considered as VoIP is not consistent with existing law, does not fulfill the Commission’s universal service responsibilities and defies common sense and logic. VoIP traffic uses the PSTN the same way as traffic that is generated through the use of other technology platforms. The Commission was correct seven years ago in the 2004 IP-Enabled NPRM, by stating at paragraph 61 that: “*We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.*” We hope that the FCC will balance the promotion of competition with equitable treatment to those that invest in the infrastructure that actually provides the service to customers.

GVNW Comments on Section XV issues
WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC
Docket No. 01-92, CC Docket No. 96-45, and WC Docket No. 03-109
April 1, 2011

Respectfully submitted,

Via ECFS at 4/1/11

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