

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 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

**COMMENTS OF
TDS TELECOMMUNICATIONS CORPORATION**

TDS Telecommunications Corporation (TDS Telecom) welcomes this opportunity to comment on steps that the Commission should take to curb regulatory arbitrage, including the process by which interconnected Voice over Internet Protocol (VoIP) providers and certain other providers are evading paying their fair share of costs for terminating voice traffic on the public switched telephone network (PSTN).¹ Curbing such regulatory abuses now is essential to ensuring that rural carriers have sufficient funds to maintain and deploy “robust, affordable broadband to all Americans” — a primary goal of this proceeding.²

¹ These comments are provided in response to Section XV of the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (the “NPRM”) in the above-referenced proceeding.

² See NPRM at ¶ 1.

As a provider of services to small and rural communities across 28 states, we understand the challenges the country faces in developing robust, affordable broadband access in rural and other high-cost areas.³ We are working to develop meaningful, ubiquitous and stable universal broadband service throughout the communities we serve in an efficient and cost-effective manner, and we are proud of the progress made. Unfortunately, these efforts are being undermined by the unlawful, self-help tactics of interconnected VoIP providers that refuse to pay the access charges owed for termination of their voice traffic on the PSTN. Failure of both interconnected VoIP and many other carriers to include complete and accurate call signaling information with traffic terminating on ILEC networks also undermines universal service goals.

Regulatory arbitrage is a problem for many reasons. It clearly harms compliant carriers such as TDS Telecom because it requires them to incur network costs without receiving appropriate compensation, and to bring costly litigation to pursue recovery of charges owed. These harms have only grown in recent years, as VoIP traffic terminating on the PSTN continues to increase significantly. Over the past five years, access charge revenues for TDS Telecom have decreased by more than 40 percent, due in part to the self-help tactics of providers that openly refuse to pay the access charges they owe unless and until the Commission directs them to do so by order. This simply is not how intercarrier compensation can — or should — work.

Throughout the industry, concerns over this particular form of regulatory arbitrage are at a crescendo because failure to pay for terminating traffic increasingly is undermining the Commission's policy objectives by unlawfully reducing a source of revenue on which compliant, terminating carriers rely to fund their businesses. If terminating carriers such

³ Many areas within TDS Telecom's footprint are extremely challenging and costly to serve, such as the bottom of the Grand Canyon and islands off the coast of Maine.

as TDS Telecom experience mounting difficulty collecting these revenues, they will have an even greater need to rely on other mechanisms to fund their broadband deployment efforts in rural and underserved areas.

Fortunately, the Commission has the tools it needs to address the most immediate of these issues — the lack of full payment due for terminating traffic. Indeed, the Commission already has acknowledged that “the cost of the network should be borne equitably among those that use it in a similar way.”⁴ If the Commission’s objective is to eliminate opportunities and incentives for arbitrage, it should implement the following solutions without delay:

- *First*, the Commission should unequivocally affirm that interconnected VoIP services are subject to the same intercarrier compensation charges as other voice telephone service traffic, and must promptly pay any overdue access charges to terminating carriers.
- *Second*, the Commission should address the increasing problem of terminating traffic that lacks sufficient identification information for the terminating provider to identify and bill the appropriate upstream provider (*i.e.*, “phantom traffic”).

These solutions are discussed more fully below.

I. THE FCC SHOULD AFFIRM THAT INTERCONNECTED VOIP TRAFFIC IS SUBJECT TO THE SAME INTERCARRIER COMPENSATION CHARGES AS OTHER VOICE TRAFFIC.

Under existing law, all voice transmission services that terminate on the PSTN, including interconnected VoIP, are subject to intercarrier compensation charges. But because some interconnected VoIP providers and their partners refuse to pay some or all of the compensation due for such traffic — thereby engaging in unlawful self-help measures that violate lawful tariffs — the Commission should take steps to make this point abundantly clear to these noncompliant providers. In doing so, the Commission also should require interconnected VoIP providers to make restitution for all access charges that they have failed to pay over the

⁴ *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863, 4885 ¶ 33 (2004).

years. These steps should be taken regardless of whether the Commission reaches the question of how to classify interconnected VoIP services more broadly under the Act. Without an order affirming that interconnected VoIP traffic is subject to intercarrier compensation at the same rates as other voice traffic, the Commission risks a collapse of intercarrier compensation revenues and a corresponding decline in investment in rural and other high cost areas during the pendency of broader universal service reform.

A. Interconnected VoIP Providers That Fail To Pay Intercarrier Compensation Charges Are Violating Their Intercarrier Compensation Obligations Under Existing Law.

Interconnected VoIP traffic is subject to existing intercarrier compensation rules. As the Commission previously has recognized, “any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network” and “the cost of the PSTN should be borne equitably among those that use it in similar ways.”⁵ This is sound reasoning, and the Commission should bring it to bear in this proceeding as well. From the customer’s perspective, the service is the same. As the Iowa Utilities Board recently observed, “From a technological and functional perspective, there is no practical distinction” between interconnected VoIP service and traditional circuit-switched telephony services.⁶ Allowing unlawful self-help measures by interconnected VoIP providers and their partners to continue, or adopting new measures like bill-and-keep for termination of VoIP traffic, will legitimize and enhance opportunities and incentives for arbitrage. In order to eliminate arbitrage opportunities

⁵ *Id.*

⁶ *Sprint Commc’n. Co. v. Iowa Telecomm. Serv.*, Docket No. FCU-2010-0001, 48 (Iowa Util. Bd. 2011).

in the near term and create a more solid foundation for comprehensive reform thereafter, all traffic terminating on the PSTN must be subject to the same intercarrier compensation rules.

Furthermore, the Commission should affirm the access charge obligations of interconnected VoIP providers *regardless* of whether the Commission decides to classify these services as “telecommunications services” in this proceeding. When the Commission established the access charge regime nearly 30 years ago, it adopted a “single, uniform, and nondiscriminatory structure for interstate access tariffs covering those services that make identical or similar use of access facilities.”⁷ The Commission subsequently adopted a narrow exemption for “enhanced service providers” (ESPs), but this exemption applies only to services in which a provider (*e.g.*, an Internet Service Provider) uses the PSTN to connect to its *own* customers, not to PSTN customers of another provider.

In creating this narrow exemption, the Commission reasoned that ESPs are akin to end-user “business subscriber[s]” that purchase a local business line to “receive calls from customers who want to buy that subscriber’s wares that are stored in another state and require shipment back to the customer’s location.”⁸ In that case, charging the business customer interstate access charges was deemed inappropriate because the business customer does not “utilize LEC services and facilities in the same way or for the same purposes as other customers who are assessed per-minute interstate access charges.”⁹ With interconnected VoIP, however,

⁷ *MTS and WATS Market Structure*, Third Report and Order, 93 FCC 2d. 241, ¶ 24 (1982).

⁸ Brief for the Federal Communications Commission, No. 97-2618, at 75-76 (Dec. 16, 1997), filed in *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

⁹ *Id.*

traffic is delivered to the terminating carrier for the *same* service as that provided by any other interexchange service: placing a telephone call to a subscriber connected to the PSTN.¹⁰

More broadly, the Commission time and again has seen fit to regulate VoIP services according to the many other regulatory obligations applicable to other voice traffic that terminates on the PSTN. These obligations include universal service contributions, 911 emergency calling capability, CPNI protection, disability access and TRS contribution requirements, local number portability, and Section 214 discontinuance-of service-obligations.¹¹ Affirming that access charges and other intercarrier compensation obligations apply to VoIP traffic are logical outgrowths of these decisions.

There likewise is no basis in law for the self-help practices of interconnected VoIP providers that decline to pay tariffed access charges. It is axiomatic that a filed tariff becomes the “exclusive source of the terms and conditions by which the common carrier provides to its customers the services covered by the tariff.”¹² Unfortunately, short of action by the Commission, terminating carriers have difficulty in obtaining redress against self-help

¹⁰ See, e.g., Comments of AT&T Inc., WC Docket Nos. 08-8 and 07-256 (filed Feb. 19, 2008) (explaining that interconnected VoIP providers are subject to access charges).

¹¹ See NPRM at ¶ 73, citing *Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket Nos. 07-243 & 244, Report and Order, Declaratory Ruling, Order on Remand, and NPRM, 22 FCC Rcd 19531 (2007); *IP-Enabled Services*, WC Docket Nos. 04-36 & 05-196, First Report and Order and NPRM, 20 FCC Rcd 10245 (2005); *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and NPRM, 21 FCC Rcd 7518 (2006), *pet. for review granted in part and denied in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007), *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and FNPRM, 22 FCC Rcd 6927 (2007), *aff’d sub nom. Nat’l Cable & Telecomms. Ass’n v. FCC*, 555 F.3d 996 (D.C. Cir. 2009); *IP-Enabled Services, Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996*, WC Docket No. 04-36, Report and Order, 22 FCC Rcd 11275 (2007); and *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039 (2009).

¹² *Brown v. MCI WorldCom Network Servs., Inc.*, 277 F.3d 1166, 1170 (9th Cir. 2002) (internal citation omitted).

measures taken by interconnected VoIP providers and their partners — particularly given the Commission’s concomitant policy that arguably precludes a LEC from refusing to terminate traffic.

For example, TDS Telecom and other ILECs spent significant resources on litigation with Global NAPs, Inc., and its affiliates (GNAPs), because GNAPs refused to pay access charges owed for termination of VoIP traffic carried by GNAPs on a wholesale basis for interconnected VoIP providers. Despite the Georgia Public Service Commission’s finding that access charges were in fact owed by GNAPs, GNAPs has not made payment to any of the ILECs. More recently, CommPartners, Inc. (“CommPartners”) unlawfully withheld access charge payments for traffic terminated on the PSTN by ILECs, including TDS Telecom’s Blue Ridge Telephone Company. CommPartners has since filed for bankruptcy, owing rural telephone companies around the country millions of dollars in unpaid access charges. The Commission should not condone or encourage such business tactics by remaining silent. Instead, it should address this issue directly once and for all.

B. Permitting Interconnected VoIP Providers to Evade Inter-carrier Compensation Obligations Undermines the Commission’s Goals in This Proceeding.

Among other harms, the continued failure of interconnected VoIP providers to pay for the termination of traffic to the PSTN undermines the ability of rural ILECs to invest in broadband infrastructure and new technologies and services. The existing inter-carrier compensation mechanism (in combination with the Universal Service Fund system) maintains a careful balance: without unduly burdening carriers or end users, it ensures that rural carriers have the ability to provide high quality service to their communities. Yet without the ability to recover the costs of providing access to their networks, rural ILECs would not be able to

maintain existing infrastructure and provide basic services — much less to improve and develop new infrastructure and provide IP-enabled services — at affordable rates.

Disputes about payment for VoIP traffic have contributed to a declining revenue base in intercarrier compensation, and, as explained by the National Broadband Plan, “[t]he continued decline in revenues and free cash flows at unpredictable levels could hamper carriers’ ability to implement network upgrade investments or other capital improvements.”¹³ TDS Telecom knows firsthand, from the perspective of 115 ILEC operating subsidiaries serving rural and small communities, that rural providers need a mechanism to recover the costs of their networks before they are able to invest in expensive, new infrastructure. Intercarrier compensation revenue supports network and advanced services investments, including the network upgrades necessary provision broadband to rural customers. Particularly given the upward trajectory of interconnected VoIP subscriptions as a percentage of all wireline telephone service¹⁴, continued failure to address nonpayment or underpayment of access charges by interconnected VoIP providers risks premature collapse of the intercarrier compensation support mechanism, and, ironically, the very infrastructure on which VoIP service depends.

II. THE COMMISSION SHOULD REVISE ITS CALL SIGNALING RULES TO ADDRESS PHANTOM TRAFFIC.

Too often, originating and intermediate providers are not providing terminating carriers with sufficient information to bill and receive intercarrier payments from the appropriate provider. Because of phantom traffic, rural LECs increasingly are struggling to recover their network costs, as provided for under the intercarrier compensation system.

¹³ *National Broadband Plan*, Chapter 8, at 142.

¹⁴ Local Telephone Competition: Status as of June 30, 2010, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at 1-2 (March 2011).

TDS Telecom strongly supports the Commission's proposal to amend call signaling rules to require that the calling party's telephone number (CPN) be provided without alteration or stripping by the originating service provider, extend call signaling requirements to all traffic originating or terminating on the PSTN, and clarify both that the SS7 Charge Number (CN) field is to be populated solely with the charge number to be billed for a call and that signaling information may not be stripped or altered from the CN or CPN fields. While these steps will be helpful, the Commission also should address the other deficiencies with current call signaling rules, including those that were identified in the Petition for an Interim Order filed by the National Exchange Carrier Association (NECA) in January 2008. For example, billing records should include Local Routing Number (LRN) and Jurisdictional Information Parameter (JIP) data unless a provider can demonstrate that inclusion of such data would not be technically feasible.¹⁵ Providers also should be required to include Carrier Identification Codes (CIC) or Operating Company Number (OCN) codes in signaling information and/or billing records, as the case may be.

In short, the Commission should fully address the phantom traffic problem as part of any interim measures it adopts. Whether the reason for phantom traffic is willful or not, TDS Telecom urges the Commission to adopt clear rules that prohibit this practice, together with meaningful reforms to ensure that terminating providers have adequate information to recover intercarrier compensation charges properly assessed.

¹⁵ See NECA Petition for Interim Order, CC Docket No. 01-92 (filed Jan. 22, 2008).

CONCLUSION

TDS Telecom appreciates the Commission's recognition of the need to take action so that interconnected VoIP providers and other carriers cannot engage in regulatory arbitrage by evading intercarrier compensation charges due for termination of traffic to the PSTN. These loopholes undermine investment in new infrastructure for rural and other high cost areas. To ensure that broadband deployment can continue at least at its current pace while the Commission considers broader universal service reform, the Commission should promptly (1) affirm that interconnected VoIP providers have been and remain subject to the same intercarrier compensation charges as other voice services terminating on the PSTN, and (2) revise its call signaling rules to prevent phantom traffic.

Respectfully Submitted,

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