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 a 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

NOTICE OF INQUIRY AND NOTICE OF PROPOSED RULEMAKING

Adopted: February 8, 2011 **Released: February 9, 2011**

Comment Date on Section XV: [30 days after date of publication in the Federal Register]
Reply Comment Section XV: [45 days after date of publication in Federal Register]
Comment Date on the Remaining Sections: [45 days after date of publication in the Federal Register]
Comment Date of State Members of the Federal-State Joint Board on Universal Service: [59 days after date of publication in the federal Register]
Reply Comment Date on Remaining Sections: [80 days after date of publication in the Federal Register]

Comments of: Warinner, Gesinger & Associates, LLC

William J. Warinner
Managing Partner
Warinner, Gesinger & Associates LLC
10561 Barkley Street, Suite 550
Overland Park, KS 66212-1835
wwarinner@wgacpa.com
Telephone: (913) 599-3236
Facsimile: (913) 599-3737

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I. BACKGROUND and COMMENTS

The Federal Communications Commission ("FCC") in its Notice of Proposed Rulemaking ("NPRM") requested comments on proposed rules and changes intended to curb arbitrage opportunities enabled by the current intercarrier compensation system.[1] Specifically, the FCC requested comments on three areas; (1) the appropriate intercarrier compensation framework for voice over Internet protocol ("VoIP") traffic; (2) proposed revisions to the FCC's call signaling rules to reduce "phantom traffic"; and (3) amending the FCC's access charge rules to address access stimulation and ensure rates remain just and reasonable.[2]

Warinner, Gesinger and Associates, LLC ("WGA") provides comments on these issues and requests that the FCC proceed with the following steps to address these issues:

• Require that, beginning immediately, VoIP traffic be subject to the same rates as any other carrier who uses and will continue to use the Public Switched Telecommunications Network ("PSTN");

• Immediately adopt revisions to the FCC's rules requiring that all forms of traffic, originating or terminating on the PSTN, adhere to the industry standard record requirements to provide and pass all of the necessary data from which carriers can bill for the use of their network, regardless of jurisdiction or technology; and

• Adopt threshold rules to address tariff changes on an expedited basis to revise access rates that were developed on lower minutes-of-use ("MOUs") to avoid rate disparity when MOUs are increased dramatically during the tariff effective dates.

[1] Refer to Section XV. ¶ 603 of the FCC's NPRM published March 2, 2011
[2] Required by § 201 (b) of the Telecommunications Act of 1996

These issues have been discussed at the FCC and States over the years in various dockets and *Ex Parte* letters. Some states opened proceedings, workshops, and issued orders in an effort to resolve compensation for VoIP traffic, "phantom traffic" and access stimulation. WGA requests the FCC resolve these issues so carriers are compensated fairly and adequately for the use of their network.

A. Intercarrier Obligations for VoIP Traffic

VoIP traffic that originates on or terminates to PSTN should be subject to the same interstate and intrastate compensation rates as other carriers because the VoIP traffic requires the use of the same local network. There are basically four types of VoIP: (1) Phone-to-Phone VoIP; (2) Computer-to-Phone VoIP (including Nomadic VoIP); (3) Computer-to-Computer VoIP; and (4) cable TV VoIP.

The Phone-to-Phone VoIP application requires media gateways to convert the traffic to Internet protocol and the long distance carrier usually performs this function. The Computer-to-Phone VoIP application requires a broadband connection by the end-user subscriber whereby the Internet protocol conversion is performed at the customer's location. Both of these applications require the use of the PSTN. Internet protocol for traffic in the Phone-to-Phone application is at the discretion of the carrier and is transparent to the end-user subscriber. There should be no change in the intercarrier compensation on Phone-to-Phone and Computer-to-Phone VoIP traffic. Even though the Computer-to-Phone requires a broadband connection, this traffic should be under the same intercarrier compensation arrangements as the Phone-to-Phone applications because one end of the call originated or terminated on the PSTN.

The Computer-to-Computer VoIP application is usually provided without the PSTN because the users must register for an account at the VoIP provider's website. If the traffic for this application does not use the PSTN at any time during the call, then intercarrier compensation on the originating and terminating ends of the Computer-to-Computer call is not required. However, some providers offer access to the PSTN for Computer-to-Computer traffic, e.g. when a telephone number is used for the call. In this scenario the traffic should be under the same intercarrier compensation arrangements as the Phone-to-Phone applications.

The Cable TV VoIP application offers "off-network" and "on-network" calls. The "off-network" traffic uses the PSTN to terminate traffic and should be subject to the same intercarrier compensation arrangements as the Phone-to-Phone applications. The "on-network" traffic is provided with a managed Internet protocol and may not use the PSTN. However, any originating and terminating traffic provided through Cable TV VoIP that uses the PSTN should be treated in the same manner as "Phone-to-Phone" traffic.

WGA supports an immediate obligation that VoIP originating and terminating traffic utilizing the PSTN be included in the existing intercarrier compensation rules. WGA supports the comments filed in this proceeding on the VoIP issue by the National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Western Telecommunications Alliance, and Eastern Rural Telecom Association ("the Associations").

WGA also supports the comments filed by the Missouri Small Telephone Company Group ("MSTCG") and the State of Missouri's statute that made it clear that "interconnected voice over Internet protocol service shall be subject to appropriate exchange access charges to the same extent that telecommunications services are subject to such charges".[3]

B. Rules to Reduce Phantom Traffic

The disparity in intercarrier compensation rates provides carriers an incentive to misidentify or otherwise conceal the source of the traffic to avoid or reduce payments to the terminating carrier for the use of the network.[4] WGA supports rules, including incentives using penalties, which require providing call detail information from the origination of the call to each and every provider along the path of the call until termination of the call.

The proposed amendment to the rule on delivery requirements, § 64.1601 provided in Appendix B to the NPRM, requires telecommunications providers and entities providing VoIP that originate traffic on the PSTN or originate traffic destined for the PSTN to provide the telephone number received from or assigned to, or otherwise associated with the calling party.[5]

WGA supports the following amendment on the proposed rule and would add an additional safe-guard to the rule. "If the call detail necessary to bill the call is not provided to the terminating carrier, or any carrier along the path of the call, then the carrier that passed the incomplete billing information will be billed for that call." For example, terminating carriers

[3] Refer to Missouri Law; Section 392.550.2
[4] Refer to ¶ 620of the FCC's NPRM published March 2, 2011
[5] Refer to Appendix B of the FCC's NPRM published March 1, 2011 for specific required data.

have established trunks over which traffic is delivered for termination of the call. The tandem carrier that delivered traffic to an end office on established trunks, including common trunks, would be responsible for payment to the terminating carrier for any call that does not have the required information for billing. If the information provided to the tandem office was incomplete, then the tandem office would bill the carrier who provided the incomplete information to them. This process would continue until the originating carrier was billed for the traffic that transmitted incomplete information on the path of the call.

When the information is not provided to the terminating carrier, the FCC could include an incentive or "penalty" rate to cover the costs of identifying such traffic and establishing billing procedures to bill the "upstream" carrier, as explained below.

In addition to the "phantom traffic" situation, there are situations where the termination of VoIP traffic may be disguised as local. For example, some Competitive Eligible Telecommunications Carriers (CETC) may have negotiated agreements with Internet providers that terminate the VoIP traffic as a "local" call. If the calling party number (or the equivalent) is required on VoIP traffic, then the CLEC, who has negotiated such agreements, would be required to provide the call detail to the terminating carrier. This process should allow the terminating carrier to be compensated for the use of its network.

The State of Missouri established an enhanced record exchange rule[6] to address "phantom traffic". As part of this Missouri rule, procedures were established to allow carriers to

[6] Refer to 4 CSR 240-29 developed with the assistance of the Missouri Telecommunications industry

block traffic if the Originating Carrier Identification, as defined in the rule, is not delivered. The FCC could also include similar blocking provisions in its rules for those carriers who repeatedly fail to provide the necessary information required by the FCC's rules.

WGA supports the Associations comments whereby the FCC should also require: (1) providers to transmit the Carrier identification Code ("CIC") or Operating Company Number ("OCN") in addition to the Calling Party Number ("CPN"); (2) providers cannot substitute a calling "platform" or "gateway" for CPN; (3) terminating carriers can charge their highest terminating rate to the service provider delivering unidentified traffic (a penalty rate)[7]; and (4) carriers can use the originating and terminating numbers of a call to determine jurisdiction if more accurate information is not transmitted.

C. Rules to Identify and Monitor Access Stimulation Occurrence

The FCC rules provide for the filing of interstate access charges on a two-year cycle based on projected costs and demand under §61.38, and based on historical costs and demand under §61.39. Carriers filing under Section 61.38 retain the increased revenues to the extent they do not exceed the cost of providing service. Carriers filing under Section 61.39 retain the increased revenues from the increased demand irrespective of the future cost of providing service. The ability of carriers filing interstate access tariffs without adjusting rates over a two-year period provides an incentive to engage in access stimulation activity. Once access charges are set at a predefined level, the carrier (usually a Local Exchange Carrier, ("LEC")) could enter

[7] If a single unified rate is applicable, WGA recommends using "an incentive rate" of 1.5 times the applicable rate.

into agreements that would result in access stimulation arrangements, e.g. with a provider of high call volume operations.[8]

The FCC proposes to revise its interstate access rules for tariff revisions to adopt a trigger based on the existence of access revenue sharing agreements. The FCC has chosen to focus on billing arrangements between a LEC and another entity that result in a net payment of access charges over the course of the agreement. Revenue sharing includes all payments, including those that are called marketing fees or other similarly named payments.[9]

WGA supports a proposed revision to the FCC's rules to address traffic pumping, but does not agree with current FCC proposals that could discourage carriers from legitimate efforts to increase traffic that uses the public network. The FCC should encourage any and all forms of rural economic development (e.g. call centers) that can spread the cost of the public network over a larger base of minutes. In so doing, the FCC need only revise the rules that apply to the calculation of rates when access stimulation occurs. WGA agrees with the position of the Associations that supports rules that would require LECs to re-file tariffs when a reasonable trigger, such as a MOU/line/month is exceeded. This will be a more accurate, effective, and sufficient indicator of when access stimulation is occurring than a revenue sharing trigger. However, WGA believes that no trigger or rate adjustment mechanism should be applied to competitive LECs in instances where an interconnection charge has been negotiated under agreement or contract with the originating toll provider. For services provided under a negotiated rate, the negotiated rate should apply for the duration of the agreement or contract and

[8] Refer to ¶ 636, and ¶ 646 to ¶ 648 of the FCC's NPRM published March 2, 2011
[9] Refer to ¶ 659 of the FCC's NPRM published March 2, 2011

should be subject only to revisions that are specified in the agreement or contract.

For services provided under tariffs, WGA believes that it can support tariff requirements that would include a high-volume rate and require an associated minute-of-use threshold, or the requirement to re-file rates once a predefined trigger has been met.[10] Some states, such as Iowa, adopted rules to address intrastate access stimulation[11] related to certain triggering circumstances.

II. SUMMARY

WGA believes that the FCC rules should be revised to accomplish the following:

(1) VoIP providers, as well as all other traffic that uses the PSTN, should be subject to the same intercarrier compensation rules, rates and charges as all other carriers effective immediately.

(2) All carriers should be required to provide the necessary billing information from the origination to the termination of a call so that all carriers along the path of the call can bill for the use of its network. If the necessary information is not provided to the carriers, then the terminating carrier should be able to bill the carrier that sent the traffic to its end user. Carriers along the path of the call should also bill the "upstream" carrier. Those that continue non-compliance of the rule's requirements will be assessed an incentive in the form a penalty of either the highest rate applicable or in a unified rate situation, 1.5 times the applicable rate. "Phantom traffic" can be

[10] Refer to ¶ 668 of the FCC NPRM published March 2, 2011
[11] Refer to ¶ 669 of the FCC's NPRM published March 2, 2011

eliminated if all carriers populate the necessary fields in the call record for delivery to the terminating carrier.

(3) Access tariffs, including rates and charges and any other required terms and conditions of providing services should be revised to include provisions to revise rates and charges as higher volumes of traffic are experienced by a carrier. This could be accomplished through the use of certain trigger mechanisms for the measurement of access stimulation. The FCC should not discourage carriers from seeking opportunities to increase the minutes-of-use on the public network. Rule changes implemented to address excessive earnings from access stimulation should not apply to rates and charges for services negotiated through agreements or contracts. Negotiated rates and charges should only be subject to revisions that are stipulated in the agreements or contracts.

WGA will address the other areas of the NPRM in comments to be filed on April 18, 2011.

Respectfully Submitted,

/s/ William J. Warinner

Managing Partner
Warinner, Gesinger & Associates LLC
10561 Barkley Street, Suite 550
Overland Park, KS 66212-1835
wwarinner@wgacpa.com
Telephone: (913) 599-3236
Facsimile: (913) 599-3737

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cc: Best Copy and Printing, Inc. (BCPI) fcc@bcpiweb.com