

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 CTIA–THE WIRELESS ASSOCIATION®

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April 1, 2011

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COMMENTS OF CTIA–THE WIRELESS ASSOCIATION[®]

CTIA – The Wireless Association[®] (“CTIA”) files the following comments on the Federal Communications Commission’s (“FCC”) proposals to address the intercarrier compensation arbitration issues raised in Section XV of the Commission’s February 9, 2011 Notice in the above-captioned dockets and applauds the Commission’s attention to reforming the broken intercarrier compensation system through both immediate and comprehensive measures.¹ As described in these comments, CTIA urges the Commission to address the growing issue of traffic pumping and offers specific modifications to ensure a successful end to these costly market-distorting and consumer-harming practices. CTIA also offers proposals that would

¹ *Connect American Fund et al.*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (the “*Notice*”).

enable the Commission to address the issues of compensation for Voice over Internet Protocol (“VoIP”) services and “phantom traffic” in a manner that focuses on the long-term goals of intercarrier compensation reform, rather than imposing legacy regulations or backward-looking technological mandates on innovative services. These measures would have a direct positive impact on consumers.

I. INTRODUCTION AND SUMMARY

CTIA has been a long proponent of comprehensive intercarrier compensation reform, which is crucial to incenting providers to invest in infrastructure, deploy broadband services, and make innovative services available to all Americans. The existing intercarrier compensation system is increasingly irrational and unstable, and is particularly pernicious when it comes to wireless services. By imposing above-cost monopoly rates, requiring wireless providers to pay access charges but denying them the same opportunity to collect these charges, and forcing providers into inefficient forms of interconnection, the current system protects wireline incumbent LECs and disregards the preferences of wireless consumers. CTIA looks forward to the opportunity to comment fully on the FCC’s proposals for comprehensive intercarrier compensation reform, but also agrees with the Commission that it can and should address certain arbitrage issues pending implementation of comprehensive reform. Thus, CTIA supports the Commission’s intention to address the three issues raised in Section XV of the instant *Notice*, and urges quick action, particularly with regard to traffic pumping.

Specifically, as detailed below, CTIA demonstrates in these comments that:

- The Commission should move quickly to curb traffic-pumping behavior by all providers, and that action should address all types of traffic, including traffic subject to the reciprocal compensation regime. However, the Commission must make critical modifications to its proposed rules to ensure that they successfully deter traffic-pumping activities.

- To the extent the Commission addresses the issue of “phantom traffic,” it should adopt a modified version of its proposed solution. In particular, the Commission must make clear that it is not requiring transmission of calling party information where such transmission is infeasible given existing network technologies; that calling party information is not determinative for purposes of jurisdictionalizing traffic; and that competitive local exchange carriers (“LECs”) are not entitled to invoke the Section 251/252 interconnection arbitration process against mobile wireless providers.
- The Commission should reaffirm exclusive federal jurisdiction over compensation for voice over Internet protocol (“VoIP”) traffic that touches the public switched telephone network (“PSTN”). It should then implement a default “bill and keep” regime for that traffic. Short of that result, the Commission should apply a per-minute rate of no higher than \$0.0007, making clear that no rate may be applied to wireless traffic subject to Rule 20.11 in the absence of an agreement, and that any negotiated rate that is below the Commission-prescribed rate will remain in effect notwithstanding that default rule.

CTIA believes that these actions would represent meaningful steps toward addressing the increasingly irrational intercarrier compensation system, while the Commission implements comprehensive reform. Indeed, CTIA remains fully committed to comprehensive reform that will limit marketplace distortions, promote efficiency, reduce costs for consumers, and increase the choices available to them. In fact, the traffic pumping and phantom traffic issues described in the NPRM are merely reflections of how broken the current intercarrier compensation system is. They are “symptoms” of the inevitable market distortions generated by an intercarrier compensation system that arbitrarily imposes disparate charges based on artificial distinctions among different jurisdictional and technological categories of traffic and types of providers. This does not at all diminish the need for the Commission to address these arbitrage issues promptly. Traffic pumping activities have festered for years and make the system less rational and efficient every day they continue. It is merely to note that meaningful reform will ultimately be the most effective way to address the arbitrary, discriminatory, and uneconomic intercarrier compensation rates that now burden carriers and consumers.

II. THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO CURB TRAFFIC PUMPING IN A MANNER THAT ENCOMPASSES WIRELESS AND INTRA-MTA TRAFFIC

CTIA and its members applaud the Commission's recognition of the need to address this issue, and support immediate action to curtail this traffic pumping by all carriers and for all types of traffic. As discussed below, however, CTIA proposes that the Commission reconsider two key aspects of its proposed remedy in order to ensure that the scourge of traffic pumping is indeed eliminated when new rules take effect.

A. The Commission Should Take Immediate and Comprehensive Action to Curb Traffic Pumping

The traffic-pumping problem continues to grow. While the Commission's actions in 2007 and since have suppressed traffic-pumping activities by incumbent local exchange carriers ("LECs"), competitive LECs have more than made up the difference. These entities have developed a host of schemes relying on high tariffed access rates and/or above-cost reciprocal compensation rates. Indeed, the Commission's *North County v. MetroPCS* decision² has only *exacerbated* problems between wireless providers and competitive LECs. That decision reduced the LECs' incentives to negotiate reasonable agreements and created confusion among state commissions and federal courts, leading to an upsurge in costly litigation. In the shadow of this uncertainty, traffic-pumping schemes have proliferated.

Indeed, CTIA has previously documented that these traffic pumping schemes have resulted in a large number of proceedings before state commissions, state and federal courts, and

² *North County Communications Corp. v. MetroPCS California, LLC*, 24 FCC Rcd 3807 (E.B. 2009), *pet. for recon. granted in part and denied in part*, 24 FCC Rcd 14036 (2009), *pet. for rev. pending sub nom., MetroPCS California, LLC v. FCC*, No. 10-1003 (D.C. Cir. filed Jan. 11, 2010).

before the FCC, including a recent flood of CLEC traffic pumping tariff filings.³ These proceedings impose an additional burden on wireless carriers, drain governmental resources, and create uncertainty regarding treatment of traffic termination. CTIA is including, as Attachment A, an *ex parte* letter filed with the Commission listing just some of the wasteful and burdensome proceedings resulting from traffic pumping schemes that directly involve wireless carriers.⁴ 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. The scope of the traffic pumping problem is simply too great for the Commission to delay addressing it pending comprehensive intercarrier compensation reform.

As the *Notice* recognizes, traffic pumping “imposes undue costs on consumers, inefficiently diverting the flow of capital away from more productive uses such as broadband deployment, and harms competition.”⁵ CTIA has 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.⁶

Thus, CTIA strongly supports prompt action to curb traffic pumping, and believes that such action is critical to the Commission’s goals with regard to broadband deployment and

³ See Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 01-92 (Nov. 24, 2010) (“CTIA Nov. 24, 2010 Letter”).

⁴ *Id.* appended as Attachment A.

⁵ *Notice* ¶ 637.

⁶ CTIA Nov. 24, 2010 Letter at 1 (*citing* “The Impact of Traffic Pumping,” Connectiv Solutions, rel. July 2010, *available at*: www.connectiv-solutions.com).

migration to next-generation networks. Moreover, any solution to traffic pumping must address *all* types of traffic (including intra-MTA wireless traffic subject to the reciprocal compensation regime) and must cover all potential traffic-pumpers and all providers (including competitive LECs).

B. The Commission Must Modify Its Proposed Traffic Pumping Rules to Ensure That They Are Effective

While CTIA agrees with the Commission that action is necessary, it fears that the approach proposed by the *Notice* will fall short of its goal by permitting continued traffic pumping. To avoid this result, CTIA proposes (1) a substantial reduction of the per-minute rate applied to pumped traffic and (2) reliance on traffic imbalances, rather than the presence of a revenue-sharing arrangement, to trigger application of the new rate.

First, it is essential that the Commission modify its proposed remedy to competitive LEC traffic pumping – *i.e.*, application of the BOC local switching rate to competitive LECs that satisfy the relevant trigger.⁷ The BOC local switching rate, as the Commission knows, is generally above the LEC’s cost of performing the relevant switching function. Indeed, as is widely recognized, the true incremental cost of performing an additional minute of local switching at high volumes is nearly zero.⁸ The BOC rate may well be high enough to permit the LEC to share funds with conferencing or other service providers and to still earn substantial

⁷ *Notice* ¶ 665.

⁸ *See, e.g., Investigation of Certain 2007 Annual Access Tariffs*, 22 FCC Rcd 16109, 16116 ¶ 15 n.35 (WCB 2007) (“It is well established that there is a large fixed cost to purchasing a local switch and that the marginal or incremental cost of increasing the capacity of a local switch are low (some contend that they are zero) and certainly less than the average cost per minute of the local switch.”). *See also Notice* ¶ 495 (recognizing that “most intercarrier compensation rates are set above incremental cost”).

profits.⁹ In short, then, the proposed remedy may in many cases permit continued traffic pumping.

CTIA therefore believes the Commission must apply a lower rate to traffic that is sent to or from all LECs, including CLECs, that satisfies whatever trigger is chosen. CTIA has proposed that traffic between carriers that satisfy the traffic pumping trigger be exchanged pursuant to a default “bill and keep” framework. This approach would be consistent with the ultimate goal of the National Broadband Plan’s intercarrier compensation recommendations, as well as the Commission’s proposal ultimately to eliminate all mandatory per-minute intercarrier charges.

Even if the Commission does not apply a “bill and keep” framework to pumped traffic, it should not impose any rate greater than the rate cap imposed on ISP-bound telephone traffic – *i.e.*, \$0.0007 per minute. The Commission developed this cap in 2001 by examining a variety of interconnection agreements, finding that the new rate would “provide a reasonable transition from dependence on intercarrier payments while ensuring cost recovery.”¹⁰ In 2008, responding to a remand of the \$0.0007 cap, the Commission reaffirmed the propriety of that cap, observing that the “policy justifications provided by the Commission in 2001 ... ha[d] not been questioned by any court.”¹¹

⁹ As CTIA has emphasized, at least some entities have pursued traffic-pumping schemes relying on reciprocal compensation payments. *See, e.g.*, Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WC Docket No. 07-135, CC Docket No. 01-92 (filed Nov. 24, 2010). Of course, as the Commission knows too well, reciprocal compensation payments have also driven long-running arbitrage schemes involving dial-up Internet traffic.

¹⁰ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151, 9156 ¶ 8, 9190-91 ¶ 85 & n.158 (2001).

¹¹ *High-Cost Universal Service Support*, 24 FCC Rcd 6475, 6489 ¶ 27 (2008).

Finally, if the Commission applies any non-zero rate to stimulated traffic, it must be clear that (1) its new rules do not trump preexisting negotiated rates if those negotiated rates are lower than the regulated rates that would replace them, and (2) LECs continue to abide by Section 20.11 of the Commission's rules, which prohibits them from applying access charges to intraMTA (i.e., local) traffic in the absence of an interconnection agreement.

Second, the Commission should also closely consider its trigger for action. The proposed trigger, based solely on the presence of revenue-sharing arrangements, may be difficult to apply, because it will rely substantially on self-reporting by the very entities engaged in traffic pumping. While the victims of traffic-pumping schemes may well come to suspect the presence of a revenue-sharing arrangement based on great increases in traffic volumes, those suspicions may come well after the initiation of a particular scheme, and would require the long-distance provider, the Commission, or some other entity to investigate and demonstrate revenue-sharing. Moreover, the revenue-sharing trigger could be undermined by gaming on the part of traffic pumpers, including creative corporate structures and vertical integration of carriers with traffic pumping enterprises – a concern recognized by the *Notice*.¹²

CTIA therefore continues to support the use of a trigger based on traffic asymmetries rather than relying solely on the proposed revenue-sharing trigger. For example, the chosen remedy might apply if and when the LEC's traffic (including local traffic) exceeds a 3:1 ratio of terminating to originating (or, originating to terminating) traffic. This alternative trigger will place control in the hands of traffic pumping's potential victims, who will be able to monitor traffic flows and to apply the appropriate rates to stimulated traffic without investigating and

¹² See *Notice* ¶ 659 (asking how the Commission should address “a revenue sharing arrangement within the same company where an explicit revenue sharing agreement may not exist”).

proving the existence of a revenue-sharing arrangement. It will also prevent traffic-pumping LECs and their business partners from devising new ways to escape the revenue sharing trigger.

III. A REASONABLE APPROACH TO PHANTOM TRAFFIC MUST RECOGNIZE TECHNICAL FEASIBILITY AND FACILITATE AGREEMENTS BETWEEN CARRIERS

CTIA supports, subject to certain conditions, the *Notice*'s proposal regarding phantom traffic. Specifically, the *Notice* proposes to require that carriers provide the calling party's telephone number and to prohibit the stripping or alteration of call signaling information.¹³ CTIA also agrees that how the required signaling information is carried depends on protocol – *i.e.*, whether the carrier relies on Internet Protocol (“IP”), SS7 signaling, or MF signaling.

CTIA's support for the proposal is, however, subject to several caveats. First, the Commission must make clear that its new rule only applies where transmission of the required information is feasible given the network technology deployed at the time the call is originated. Put differently, the new rule should not be understood to require (either explicitly or implicitly) that carriers deploy or replace costly equipment solely to comply with its mandate regarding the transmission of calling party information. This “technological exception” should also apply to intermediate carriers (which are omitted from draft § 64.1601(a)(2) in proposed rules). It would be even less reasonable to expect carriers to expend resources to deploy new equipment to pass *other carriers'* traffic. This issue is of particular relevance to mobile wireless providers, which frequently provide roaming service to other carriers and those other carriers' customers.

Second, the Commission must make clear that the calling party information transmitted in the signaling information pursuant to the new rule will not be determinative of the traffic's jurisdiction. As CTIA previously has noted, mobile phone providers can and do place calls from

¹³ *See id.* ¶ 626.

locations other than the geographical area indicated by their NPA/NXX. Thus, the originating and terminating telephone numbers associated with CMRS calls are inherently unreliable identifiers of the parties' locations. Consequently, wireless providers and the entities with whom they exchange traffic typically negotiate "factors" reflecting the appropriate jurisdictionalization of that traffic, based on the carriers' traffic patterns and other commercial factors. Any regulatory approach that jurisdictionalized mobile wireless traffic based on the calling or called party's number therefore would be inaccurate and would diminish LECs' incentives to negotiate reasonable factors. Nor is such an approach necessary: Under the rules contemplated, the calling party number will be passed to the terminating carrier, providing that carrier the identity of the originating carrier and ensuring that the terminating carrier can obtain appropriate compensation. Clarifying that signaling information is not determinative of the jurisdiction of traffic will thus facilitate the negotiation of interconnection agreements among carriers.

Third, the Commission should emphasize that the *T-Mobile Order* does not apply to competitive LECs. The *T-Mobile Order* amended the Commission's rules to provide "that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act."¹⁴ In 2008, USTelecom suggested that competitive LECs should also be permitted to invoke section 251 and 252 negotiation and arbitration rights against CMRS carriers. This approach would be incorrect as a matter of both law and public policy. As CTIA has previously stated, competitive LECs and other competitors have equal bargaining power with wireless providers, and are in general regulatory parity in terms of interconnection rights and obligations. Wireless providers, ISPs, competitive LECs and

¹⁴ See *Developing a Unified Inter-carrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855, 4860 ¶ 9 (2005).

other competitors have for years exchanged traffic on a largely commercial basis, without any need for regulatory arbitration. Sections 251 and 252 were never intended to govern interactions between two competitive providers, and they should not be extended to do so.

IV. CLARIFICATION OF THE OBLIGATIONS ASSOCIATED WITH IP-PSTN TRAFFIC OFFERS THE COMMISSION AN OPPORTUNITY TO ADVANCE THE COMMISSION’S LONG-TERM GOALS

CTIA also applauds the Commission’s effort to provide clarity with respect to voice over IP (“VoIP”) traffic that transits the public switched telephone network (“PSTN”). As a longtime supporter of a federal default “bill and keep” framework for *all* PSTN traffic, CTIA believes that IP-PSTN traffic should be placed under a default bill and keep regime now, even as the Commission works to develop a transitional mechanism for other types of traffic.

As the NPRM notes, “[t]here is considerable dispute about whether, and to what extent, interconnected VoIP traffic is subject to existing intercarrier compensation rules” and the FCC “has recognized the need to move away from today’s intercarrier compensation system.”¹⁵ The current regulatory vacuum affords the Commission an opportunity to resolve uncertainty while simultaneously achieving its reform goals by applying a default bill and keep regime to IP-PSTN calls, which comprise a rapidly growing segment of traffic. Indeed, given the *Notice*’s appropriate focus on the migration to IP networks, the creation of a default bill-and-keep framework for IP traffic would send a strong signal regarding the Commission’s commitment to the “end state” articulated in the *Notice* – the phase out of all mandatory per-minute intercarrier charges.¹⁶

¹⁵ *Notice* ¶ 615.

¹⁶ *See, e.g., Notice* ¶ 34 (“[L]ong-term reform would gradually phase out the current per-minute ICC system....”).

Alternatively, if the Commission believes that an immediate shift to a default bill-and-keep regime for IP traffic is not feasible, CTIA would then support the Commission’s proposal to impose an IP-specific intercarrier compensation rate not higher than \$0.0007 per minute.¹⁷ This rate is more than sufficient to ensure recovery of the truly incremental costs associated with the origination and/or termination of traffic – particularly traffic transiting IP networks.

As noted above, however, it is important that the Commission’s interim rules not have the effect of in any case increasing per-minute rate applied to IP traffic exchanged between particular parties. Therefore, in the even the Commission adopts a default \$0.0007 per minute rate for such traffic – or any other nonzero rate – it must also make clear that the rate does not trump any preexisting agreements between or among providers that call for a rate lower than the new federal default. Given the Commission’s recognition that the “end state” of reform should involve the elimination of mandatory per-minute payments, it would be illogical and unfair to countermand commercial agreements contemplating lower rates by insisting on the application of a rate that moved the parties farther away from the ultimate “bill and keep” framework.

Consistent with the above, the Commission should not under any circumstances apply existing intercarrier compensation rules to IP-originated traffic.¹⁸ Application of existing, above-cost rates will simply reduce carriers’ incentives to transition to more efficient IP-based technology, undercutting the principal goal articulated by the *Notice*.¹⁹ As the *Notice* recognizes,

¹⁷ *Notice* ¶ 616.

¹⁸ *See Notice* ¶ 618 (“The Commission could determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges—intrastate access, interstate access, and reciprocal compensation—as other voice telephone service traffic both today, and during any intercarrier compensation reform transition.”).

¹⁹ *See id.* ¶ 7 (“The ICC regime ... was designed for a world of voice minutes and separate long-distance and local telephone companies. It has had the effect of rewarding carriers for maintaining outdated infrastructure rather than migrating to Internet protocol (IP)-based

any questions about how to maintain incumbent LEC revenue streams are better addressed, to the extent necessary, in the universal service context – that is, through the development of competitively neutral, explicit support mechanisms that do not distort the market or impede the migration to IP networks.

Finally, CTIA observes that the Commission has clear legal authority to implement a default bill and keep regime for IP traffic. As the Commission recognized in its 2004 *Vonage Order*, irrespective of whether IP-PSTN calls are viewed as “telecommunications service” traffic or “information service” traffic, they are jurisdictionally interstate, because there is “no practical way to sever [interconnected VoIP] into interstate and intrastate communications.”²⁰ Thus, these services were deemed immune from state public-utility regulation that conflicts with federal policy.²¹ The Commission reiterated this point just last year, when it permitted state assessment of interconnected VoIP revenues for universal service purposes, but only “so long as a state’s particular requirements do not conflict with federal law or policies.”²² Here, the application of a rate above that which the Commission prescribes for IP-PSTN traffic would countermand federal policy and undercut Commission goals. As such, the Commission is entitled to preempt contrary state regulation and establish a maximum default intercarrier rate for interconnected VoIP traffic pursuant to Section 201 of the Act.

networks. Thus, current rules actually *disincentivize* something necessary for our global competitiveness: the transition from analog circuit-switched networks to IP networks.”).

²⁰ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, 22409 ¶ 11 (2004).

²¹ *See id.* at 22415-24 ¶¶ 20-32.

²² *Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, 25 FCC Rcd 15651, 15651 ¶ 1 (2010).

V. CONCLUSION

For the reasons discussed above, CTIA urges the Commission to take action consistent with these comments.

Respectfully submitted,

By: /s/ Scott K. Bergmann

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April 1, 2011

ATTACHMENT A

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
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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	<i>North County Communications Corp. v. Cricket Communications, Inc. et al.</i> , 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	<i>North County Communications Corp. v. McLeod Telecommunications Services, Inc. et al.</i> , 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	<i>North County v. Cal. Catalog & Tech. et al.</i> , No. 06CV1542-LAB (RBB), 2007 WL 4200203 (S.D. Cal. Nov. 26, 2007), 594 F.3d 1149 (9th Cir. 2010), <i>petition for cert. pending</i> , 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	<i>North County v. A+ Wireless, Inc., et al.</i> (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	<i>North County v. Telscape, et. Al.</i> , # 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	<i>North County v. Verizon Select Services, Inc.</i> , 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	<i>North County v. Sprint</i> , 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	<i>North County v. Sprint and Nextel of California</i> 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 seeking 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	<i>Sprint v. Northwest Iowa Tel Co</i> 5:10-cv-04004	Sprint long distance sought refund of tariffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Northern District of Iowa	<i>Aventure v. IUB</i> , 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	<i>Aventure v. MCI</i> , 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	<i>FuturePhone v. MCI</i> , 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	<i>NW Iowa Tel. v. MCI</i> , 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	<i>MCI v. Readlyn</i> , No. 6:09-cv-02035	MCI sought refund of tariffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Northern District of Iowa	<i>Readlyn v. Qwest</i> , 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	<i>Readlyn v. Sprint</i> 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	<i>Farmers & Merchants v. MCI</i> , 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	<i>West Liberty v. MCI</i> , 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	<i>Farmers & Merchants v. Qwest</i> , 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	<i>Sprint vs. Superior Telephone Co-op</i> , No. 4:07-CV-0019	Sprint long distance sought refund of tariffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Southern District of Iowa	<i>Qwest Communications Corp. v. Superior Telephone et al.</i> , Case No. 4:07-cv-0078	Qwest long distance sought refund of tariffed 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	<i>AT&T vs. Superior Telephone Co-op</i> No. 4:07-CV-0043	AT&T long distance sought refund of tariffed access charges from LEC, alleging traffic pumping.
U.S. District Court, Southern District of Iowa	<i>North County Communications vs. Sprint</i> , 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	<i>Iowa Network Services v Sprint</i> , 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	<i>BTC v. Sprint</i> 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	<i>Aventure v. Qwest, Sprint</i> , 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	<i>Spencer Muni v. MCI</i> , 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	<i>Spencer Municipal Communications Utility v. AT&T Corp.</i> , 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	<i>MCI v. Sully</i> , 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	<i>Sully v. Qwest</i> , 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	<i>Sully Telephone v. Sprint Communications Co.</i> 4:10-cv-00428	ILEC sought collection of terminated traffic compensation from IXCs. IXCs alleged traffic pumping.

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State	Case Name/# or Docket #	Summary
U.S. District Court, Southern District of Iowa	<i>Searsboro and Lynnville v. Qwest</i> , 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	<i>Searsboro and Lynnville v. Sprint</i> , 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	<i>Iowa Network Svcs v. Sprint</i> , 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	<i>Bluegrass Tel Co. vs. Sprint</i> 410-CV-104	ILEC sought collection of tariffed access services. Sprint alleged traffic pumping.
U.S. District Court, Western District of Kentucky	<i>Bluegrass Tel Co. d/b/a Kentucky Tel. vs. Qwest Communications Company LLC</i> , Case No. 4:09-cv-00070-JHM-ERG	ILEC sought collection of tariffed access services. Qwest alleged traffic pumping.
U.S. District Court, Western District of Kentucky	<i>Bluegrass Tel Co. d/b/a Kentucky Tel. v. Level 3 Communications LLC</i> , Case No. 4:10-cv-00075-JHM-ERG	ILEC sought collection of tariffed 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	<i>Tekstar Communications vs. Sprint</i> , 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	<i>Mid-Communications, Inc., dba HickoryTech v. Sprint Communications Company L.P.</i> , Case No. 09-cv-03496	HickoryTech sought collection of tariffed access charges. Sprint alleged traffic pumping.
U.S. District Court, District of Minnesota	<i>Minnesota Independent Equal Access Corporation, v. Sprint Communications Company L.P.</i> , Case No. 10-cv-2550	Onvoy sought collection of tariffed access charges. Sprint alleged traffic pumping.

CTIA TRAFFIC PUMPING TRACKER

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	<i>All-American Tel. Co., et al. v. AT&T Corp.</i> , No. 07-cv-861	CLECs sought collection of tariffed access charges. AT&T alleges traffic pumping.
Oregon		
U.S. District Court, District of Oregon	<i>North County Communications Corporation v. United States Cellular Corp. et al.</i> , 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	<i>North County Communications Corporation v. Allegiance Telecom et al.</i> , 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	<i>Sancom vs. Sprint</i> , CIV 07-4107	Sancom sought compensation for tariffed access traffic. Sprint alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	<i>Northern Valley Communs's vs. Sprint</i> , CIV 08-1003	Northern Valley sought compensation for tariffed access traffic. Sprint alleged traffic pumping.

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State	Case Name/# or Docket #	Summary
U.S. District Court, District of South Dakota, Southern Division	<i>Northern Valley Communications LLC v. AT&T</i> , 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	<i>Northern Valley Communications, LLC v. Qwest Communications Corp.</i> , 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	<i>Splitrock Properties vs. Sprint</i> , CIV 09-4075	Splitrock sought compensation for tariffed access traffic. Sprint alleged traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	<i>Sancom, Inc. v. Qwest Communications Company LLC</i> , 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	<i>Sprint Communications Company L.P. v. Native American Telecom et al.</i> , Case No. 10-4110	Sprint long distance sought refund of tariffed access charges from LEC, alleging traffic pumping.
U.S. District Court, District of South Dakota, Southern Division	<i>Sprint v. Maule et al</i> , 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.

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