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

COMMENTS OF THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

On February 9, 2011, the Federal Communications Commission ("Commission") released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM/FNPRM") seeking comment on a broad range of issues relating to modernization of federal universal service funding and intercarrier compensation ("ICC") in light of the nation's increasing focus on promoting widespread availability of broadband service.[1] According to the

[1] *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and*

comment cycle established by the Commission, the Washington Utilities and Transportation Commission ("UTC") submits these comments to address matters specifically raised in Section XV of the NPRM/FNPRM regarding measures that could be taken to reduce incentives for arbitrage opportunities that arise as a consequence of current ICC policies and rates.

The Commission seeks comments on three aspects of ICC reform that it believes could reasonably be addressed in the near future to curb specific arbitrage opportunities in originating and terminating telecommunications traffic. Potential reforms involve (1) clarification or determination of the extent to which interconnected voice over internet protocol (VoIP) is or should be subject to ICC rules, and the appropriate rates for such traffic, if any; (2) potential revisions to the Commission's call signaling rules to address phantom traffic; and (3) access charge rule revisions designed to address access stimulation activities that some companies engage in to game the ICC system through excessive or unduly high rates. The UTC shares the Commission's view that it should address in the near term the unreasonable or untenable conditions that presently exist in the national ICC system and consider comprehensive reform over a longer timeframe.

I. Interconnected VoIP Traffic Should Be Subject to Intercarrier Compensation in the Same Fashion as Applied to Traditional Voice Traffic.

From the earliest days of the establishment of the federal-state access charge compensation regime, certain entities known as enhanced service providers ("ESPs") have enjoyed an exemption from payment of access charges. As the Internet emerged, the

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Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, WC Docket No. 10-90, GN Docket No. 09-51, WE Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13, Released February 9, 2011. (NPRM/FNPRM)

Commission confronted a number of issues, including the proper treatment of internet service providers' ("ISPs") use of telecommunications carriers' networks as a means to originate and terminate interstate and intrastate calls. To avoid imposing excessive costs on a nascent industry segment whose growth might have been hindered in the absence of an exemption, in 1997 the Commission extended the ESP exemption to ISPs:

> We decide here that ISPs should not be subject to interstate access charges. The access charge system contains non-cost-based rates and inefficient rate structures, and this Order goes only part of the way to remove rate inefficiencies. Moreover, given the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to [interexchange carriers] IXCs. [2]

At that time, although the Commission had noble intentions of removing impediments to an emerging ISP market by extending the access charge exemption to ISPs, it created a notable ambiguity regarding application of interstate and intrastate access charges to VoIP service offerings. The Commission extended the ESP exemption to ISPs, but it never reached a determination on the applicability of the nation's access charge systems to VoIP services. As a result, a broad range of emerging and traditional providers began piggy-backing on the ESP/ISP access charge exemption by offering competitive IP-based long distance voice services at prices substantially lower than those offered by traditional long distance providers. Moreover, as VoIP services emerged as competitive alternatives to traditional telecommunications service offerings — whether offered by ISPs, new entrants, or even established telecommunications providers — the ambiguity created by the Commission's hands-off policy with respect to application of access charges to VoIP traffic conveyed a substantial economic advantage to providers of VoIP services over traditional service offerings. Additionally, to the extent incumbent carriers attempted to

[2] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges,* CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16133, ¶¶ 344-345 (1997) (Access Charge Reform Order).

assess access charges on interconnected VoIP providers, many providers refused to pay or otherwise disputed such efforts.

Most importantly, as consumer demand for VoIP service increased, interconnected VoIP providers began reaping an economic windfall as a result of the continued uncertainty concerning scope of the ESP/ISP access charge exemption. Thus, over time, what once was a niche opportunity to provide competitive voice services without incurring access costs has now proliferated to such a degree that the exception risks swallowing the whole: VoIP usage continues to increase in dramatic fashion while traditional access usage has languished or even declined.

Recognizing that it has never directly addressed an issue that has led to uncertainty and dispute among carriers concerning access charge payments, the Commission now seeks comment on the appropriate ICC structure that should be prospectively applied to interconnected VoIP traffic. Potential approaches include:

1. immediate adoption of bill-and-keep compensation,
2. adoption of a separate and specific VoIP intercarrier compensation rate,
3. prospective application of intercarrier compensation after ICC reform measures are adopted,
4. immediate application of existing intercarrier compensation at existing interstate and intrastate access and reciprocal compensation rates, and
5. other potential approaches including AT&T's suggestion to apply interstate access charges to all VoIP traffic including instances where intrastate access rates exceed interstate levels.

The UTC supports the fourth option – requiring interconnected VoIP providers to be

subject to existing interstate and intrastate access charges. All of the other options merely perpetuate an inequitable economic advantage to VoIP providers by establishing different rates, or a subset of existing access rates, for VoIP traffic while continuing to apply all access charges to traditional traffic to the disadvantage of traditional long distance providers and their customers. Notwithstanding the Commission's intent to implement comprehensive long-term reforms to intercarrier compensation, the UTC does not believe it is appropriate in the meantime to perpetuate a distinction between interconnected VoIP and traditional long distance traffic with respect to each service's use of incumbent carrier networks to originate or terminate long distance traffic. In the Access Charge Reform Order, the Commission suggested:

> We decide here that ISPs should not be subject to interstate access charges. The access charge system contains non-cost-based rates and inefficient rate structures, and this Order goes only part of the way to remove rate efficiencies. *Moreover, given the evolution in ISP technologies and markets since we first established access charges in the early 1980s, it is not clear that ISPs use the public switched network in a manner analogous to [interexchange carriers].*[3]

The UTC respectfully submits that the reverse is true. That is, despite almost fourteen years of uncertainty regarding application of access charges to VoIP traffic, there is no evidence suggesting that VoIP providers use the public switched network in any manner that differs materially from traditional long distance carrier's use of the public switched network. Accordingly, it is no longer appropriate to sustain an access charge policy ambiguity that is increasingly undermining the federal and state access charge regime.

Previous Commission rulings concerning the obligations of VoIP service providers, including interconnected VoIP providers, support the elimination of distinctions between VoIP and traditional service providers. In its *VoIP 911 Order*, the Commission determined that interconnected VoIP services should be required to provide reliable 911 emergency calling

[3] Id at para. 345 [emphasis added].

capabilities to their customers.[4] Thus, public safety concerns about the emergence of VoIP services and consumers' expectations with respect to use of such services for emergency purposes were addressed by requiring VoIP service offerings to meet the same requirements applied to traditional voice services. The Commission also imposed requirements under the Communications Assistance for Law Enforcement Act ("CALEA") on interconnected VoIP providers. CALEA is another public safety requirement that recognizes the dramatically increasing use of VoIP service offerings by consumers.[5] Finally, the Commission established federal universal service obligations on providers of interconnected VoIP services, requiring them to contribute in virtually the same manner as traditional telecommunications providers to the federal universal service fund ("FUSF").[6]

Thus, for E911, CALEA, and for FUSF purposes, the Commission has required VoIP providers, particularly interconnected VoIP providers, to meet certain regulatory obligations applying to telecommunications services and the UTC sees no continuing basis for maintaining a distinction in the form of an exemption for access charge purposes. Here, the essential question is whether the underlying basis for the access charge exemption, to avoid "potentially detrimental effects on the growth of the still-evolving information services industry,"[7] remains valid. The UTC believes it does not.

With respect to contributions required of VoIP providers to the FUSF, the Commission's reasoning is just as important here with respect to the application of access charges, particularly intrastate access charges that enable recovery of some costs associated with the public switched

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[4] *E911 Requirements for IP-Enabled Service Providers,* WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, May 19, 2005, FCC 05-116.
[5] *Communications Assistance for Law Enforcement and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Further Notice of Proposed Rulemaking, August 5, 2005, FCC 05-153.
[6] *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, June 21, 2006, FCC 06-94.
[7] Access Charge Reform Order, ¶ 343 (footnotes omitted).

network. Alarmed by the effect of VoIP generally on the health of the federal universal service fund, in its *Universal Service Contribution Methodology* proceeding, the Commission concluded:

> We require providers of "interconnected VoIP services," as defined by the Commission, to contribute to the federal USF under the existing contribution methodology on an interim basis. As described above, the number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue. At the same time, the USF contribution base has been shrinking, and the contribution factor has risen considerably as a result. We therefore find that extending USF contribution obligations to providers of interconnected VoIP services is necessary at this time in order to respond to these growing pressures on the stability and sustainability of the Fund.[8]

In reaching this conclusion, the Commission suggested:

> We believe that it is appropriate to require USF contributions from interconnected VoIP providers because this approach is consistent with important principles that the Commission has established in its implementation of section 254 of the Act. Specifically, the Commission has previously found it appropriate to extend universal service contribution obligations to classes of providers that benefit from universal service through their interconnection with the PSTN. In addition, in the Universal Service First Report and Order, the Commission established competitive neutrality as a principle to guide the development of universal service policies.[9]

The impetus and rationale for requiring contributions from VoIP providers for FUSF purposes is equally applicable to recovery of costs at the state level. Given the explosive growth of low-cost VoIP service offerings, fueled in part by the economic advantage of the access charge exemption, VoIP usage has increased dramatically while traditional access usage has stagnated or even declined despite the fact that interconnected VoIP providers rely on incumbent local exchange carriers to originate or terminate calls. Accordingly, just as it was appropriate to require VoIP providers to comply with E911 and CALEA, and contribute to the federal universal service fund ("FUSF"), the UTC believes it is entirely appropriate to apply existing interstate and intrastate access charge rates to interconnected VoIP traffic. Such traffic uses existing ILEC

[8] Id at 34.
[9] Id. (footnotes omitted).

networks in exactly the same fashion as traditional long distance services and the fact that VoIP providers utilize a different technological platform for their portion of an interconnected VoIP call is irrelevant to the manner in which such calls utilize ILEC network facilities. Accordingly, interconnected VoIP traffic should not be any less immune from application of access charges than it is from contributing to the FUSF.

The simple fact is that the Commission's long-held assumption that VoIP constitutes a niche segment requiring protection in the marketplace is no longer valid. In Washington State, declining billable usage for incumbent carriers has or is leading to a contemporaneous reduction in billable intrastate access charge revenues for many of the state's LECs.[10] As the Commission grapples with longer term revisions aimed at lowering intercarrier compensation rates, it should recognize that one way to assist state regulators in reducing access charge rates is to increase the universe of traffic to which access charges apply. In other words, by increasing the scope of usage to which access charges apply, the denominator used to derive interstate and intrastate access rates would increase because the level of billable usage is increased significantly. At the state level, this could produce lower intrastate access charges. A number of issues addressed elsewhere in the NPRM/FNPRM concern the appropriate steps for long-term comprehensive reform of intercarrier compensation, including the role of state commissions with respect to their responsibility for setting intrastate access charges. Among the possible long term reforms contemplated by the Commission for reducing interstate and intrastate access charges are changes to the federal-state framework currently used to set such rates. One proposal is that the Commission require intrastate access charge rates to be reduced to interstate levels and then

[10] Docket UT-100562, Policy Statement to Review State Universal Service Policies, Comments of the Washington Independent Telecommunications Association, Table 3, June 6, 2010.

reduce all rates over a reasonable timeframe.[11] One way to assist state commissions in reducing intrastate access charges would be to resolve the interconnected VoIP access charge ambiguity and thereby enable states to broaden the base on which such charges apply. In doing so, the present gap between interstate and some intrastate access charge rates could be narrowed in a way that dovetails with the longer-term intercarrier compensation reforms under consideration.

Accordingly, the UTC urges the Commission to resolve the uncertainty concerning application of access charges to interconnected VoIP. The current ambiguity has had the effect of undermining intrastate access charge revenues and rates for incumbent carriers. Before attempting to disturb the federal–state role in overseeing and proscribing such rates, the Commission should eliminate once and for all the uncertainty concerning interconnected VoIP and clearly affirm that such traffic is fully subject to federal and state access charges .

II. Meaningful Rule Revisions Are Necessary to Address Phantom Traffic.

The Commission also proposes to amend the Commission's rules concerning call delivery information requirements of telecommunications carriers as a means to address the phantom traffic issue.[12] Although the scope of phantom traffic is unknown, it is indisputable that an incentive exists for carriers to engage in disguising or altering call delivery information in a manner that makes it difficult or impossible for terminating carriers to properly bill access charges for such traffic. Accordingly, the UTC supports the Commission's proposal to address gaps or inadequacies of existing call signaling requirements by establishing a clear policy that all telecommunications traffic, including VoIP traffic, sent for termination to any carrier on the public switched network must include all information that is necessary and relevant to allow

[11] NPRM/FNPRM, at para. 42.
[12] NPRM/FNPRM beginning at ¶ 625.

terminating carriers to bill appropriately for such traffic.

Appendix B to the NPRM/FNPRM reflects the Commission's proposed amendments to Part 64 of its rules concerning call signaling requirements of all carriers.[13] Among the changes is a requirement that when traffic is handed from a local exchange carrier to an interexchange carrier, the signaling related to that traffic should be populated with the calling party number (CPN) and the charge to number (CN) if different from the CPN. The UTC supports these rule changes. However, based on input from representatives of smaller incumbent telephone companies operating in Washington State, the UTC believes additional call signaling requirements are appropriate. Specifically, the Commission should require carriers to populate in the signaling system seven (SS7) fields the originating carrier's operating company number (OCN) and carrier identification code (CIC), or if SS7 is not used, sufficient information delivered by whatever protocol is used, to allow terminating carriers to bill the appropriate carrier for termination of the traffic.[14] Additionally, any intermediary carrier must be required not to remove or alter in any manner any of the identifying information needed for billing purposes. Finally, upon adoption of the proposed rules, the UTC urges the Commission to make clear to all carriers that failure to comply with all call signaling requirements to allow for proper billing of terminating traffic may result in swift action and potential penalties concerning the scope of noncompliance.

The UTC recommends the Commission consider one additional measure concerning proposed revisions to its call signaling rules. The incumbent local exchange carriers in Washington State have brought to our attention situations in which it appears that an

[13] NPRM/FNPRM, Attachment B.

[14] The UTC understands that the OCN and CIC fields are optional fields used in SS7 call signaling streams. Because they are currently optional, some carriers populate the fields and some do not. A requirement that the fields be populated by all carriers would greatly assist terminating carriers in properly identifying and billing carriers to whom access charges lawfully apply.

intermediate carrier may be populating the CN with what appears to be a local number (local or extended area service) even though the CPN is clearly a remote location that would ordinarily be a long distance call to which access charges would apply. While UTC has not yet had the opportunity to do a thorough investigation, it has been presented with specific call record detail examples that appear to establish that this is occurring. Consequently, the UTC suggests that where the Commission requires the CN to be populated for billing purposes, it should also make clear that a company may not intentionally populate the CN with a telephone number for which access charges would not apply as a means to avoid incurring access charges on a call that would otherwise be subject to such charges. Such a result appears to be the Commission's intent and is necessary to dissuade any carriers that may be inclined to continue to "game" the intercarrier compensation system.[15]

[15] See NPRM/FNPRM at ¶ 631.

Conclusion

The UTC supports the Commission's efforts to adopt new policies reflecting the nation's increasing focus on broadband services. We are pleased that the Commission is considering changes to the intercarrier compensation system that appropriately recognize the similarities between traditional telecommunications and interconnected VoIP traffic. The UTC supports harmonization of the compensation regime applying to both forms of traffic, as well as the Commission's proposed revisions to its call signaling rules.

Respectfully submitted this __ day of April, 2011

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