

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Connect America Fund

A National Broadband Plan for Our Future

Establishing Just and Reasonable Rates for
Local Exchange Carriers

High-Cost Universal Service Support

Developing a 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

WC Docket No. 07-135

WC Docket No. 05-337

CC Docket No. 01-92

CC Docket No. 96-45

WC Docket No. 03-109

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA ON SECTION XV OF
THE NOTICE OF PROPOSED RULEMAKING AND FURTHER NOTICE OF
PROPOSED RULEMAKING**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in response to the Federal Communications Commission’s (FCC or Commission) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) seeking separate comments on Section XV of the NPRM, “Reducing Inefficiencies and Waste by Curbing Arbitrage Opportunities.”¹ Specifically, Section XV of the NPRM seeks comment on “rules intended to curb arbitrage opportunities and thereby reduce inefficiencies and wasteful resources enabled by the current intercarrier compensation system.”² Other sections of the NPRM address “comprehensive intercarrier compensation,”³ and those sections are reserved for comment at a later date.⁴ In these comments, the CPUC addresses the status of Voice over Internet Protocol (VoIP) traffic and the proposals intended to end “phantom traffic.” The CPUC also urges the FCC to adopt measures to prevent “access stimulation,” including the adoption of procedural and substantive rules governing compensation arrangements between competitive local exchange carriers (CLECs) and commercial mobile radio service (CMRS) providers.

¹ *In the Matter of Connect America Fund*, WC Docket 10-90; *A National Broadband Plan for Our Future*, GN Docket 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket 07-135; *High-Cost Universal Service Support*, WC Docket 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket 01-92; *Federal-State Joint Board on Universal Service*, CC Docket 96-45; *Lifeline and Link-Up*, WC Docket 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, rel. Feb. 9, 2011 (hereafter “NPRM”). Section XV runs from paragraphs 603-677.

² NPRM para. 603.

³ *Id.*

⁴ Sections of the NPRM devoted to universal service fund reforms are also reserved for a comment at a later date.

I. INTRODUCTION

California agrees with the FCC's overarching purpose of recalibrating federal support for universal service so that it accommodates a broadband world. We support the proposed objective of migrating federal support from voice service exclusively to broadband and voice services jointly. A necessary step in that direction, as the FCC indicates, is to reform intercarrier compensation (ICC) so that it complements, not frustrates, this refocusing of federal universal service efforts. As the FCC notes, "our universal service rules and our ICC system, designed for 20th century networks and market dynamics, have not been comprehensively reassessed in more than a decade, even though the communications landscape has changed dramatically."⁵

II. DISCUSSION

A. Interconnected VoIP Service

The CPUC supports inclusion of both fixed and nomadic VoIP in the reformed intercarrier compensation regime. As the FCC points out, the telecommunications market is evolving toward broadband and all-Internet protocol (IP) networks.⁶

Interconnected VoIP traffic has grown substantially over the last few years and where such traffic depends on the Public Switched Telephone Network (PSTN) for termination of calls, providers of VoIP traffic should compensate the terminating carrier for use of its

⁵ NPRM para. 8.

⁶ *Id.* para. 609.

network.⁷ As long as intercarrier compensation exists, interconnected VoIP providers should pay their fair share.⁸

That principle applies to all interconnected VoIP traffic. The FCC asks whether it should distinguish between facilities-based “fixed” and “nomadic” interconnected VoIP. If the principle is one of interconnection, and in particular interconnection with the PSTN, then the distinction between these two facilities-based forms of VoIP calling is irrelevant to the question of the fair payment of intercarrier compensation. Both forms rely on interconnection and the availability of the PSTN and its terminating networks for their calls to be completed. It is thus imperative that VoIP traffic be integrated into the current and any reformed intercarrier compensation regime.⁹

The FCC further notes that interconnected VoIP traffic would be subject to the same intercarrier compensation charges as other voice telephone traffic if it were classified as a telecommunications service. “The Commission could determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges –

⁷ In the most recent year for which the FCC provides data, interconnected VoIP subscriptions have increased by 21% and VoIP represents 17% of the residential phone market. *Local Telephone Competition: Status as of June 30, 2010*, at 2, 4.

⁸ The NPRM also seeks comment on a range of alternatives for including VoIP traffic in the ICC regime. (NPRM paras. 615-618.) Although the CPUC recommends that VoIP traffic be integrated into the ICC regime, we take no position on the proposed magnitude of compensation charges that should apply to interconnected VoIP traffic today or during any ICC reform transition. We note, however, that VoIP is a lower cost technology that permits more efficient use of the PSTN, and we reserve the right to comment further on this issue as appropriate.

⁹ The NPRM also asks whether the proposed focus on interconnected VoIP is too narrow or whether the FCC should consider ICC obligations associated with other forms of VoIP traffic, as well. (NPRM para. 612.) While the CPUC believes this issue is on the horizon in the transition to IP-networks, our comments are focused on the FCC’s current definition of what constitutes interconnected VoIP with the PSTN and do not take a position on this question at this time. We do, however, reserve the right to comment on this issue at a later date.

intrastate access, interstate access, and reciprocal compensation – as other voice telephone service traffic....”¹⁰ Notwithstanding this, the FCC acknowledges that it has not yet addressed the statutory classification of interconnected VoIP.¹¹ Accordingly, the FCC asks whether it can include VoIP traffic in the intercarrier compensation regime without classifying interconnected VoIP traffic as a telecommunications service, and whether it needs to clarify jurisdictional issues associated with that traffic.¹²

Although the FCC may be able to achieve this outcome without classifying VoIP, the CPUC believes that the classification of interconnected VoIP traffic would be useful in resolving these issues. As the FCC states, “[m]ost fundamentally, the long-term approach to intercarrier compensation reform also must be consistent with the exchange of traffic on an IP-to-IP basis.”¹³ However, as we have stated in the past, the CPUC has serious concerns about the classification of interconnected VoIP services as “information services.”¹⁴ Such a classification, in our view, “appears to cast in doubt a host of federal and/or state regulations pertaining to public safety, universal service funding, regulatory fees, law enforcement, consumer protection, and number portability.”¹⁵ Indeed, the CPUC recently instituted a Rulemaking to add California providers of interconnected

¹⁰ NPRM para. 618.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* para. 527.

¹⁴ See our views in Comments of the CPUC (filed Nov. 26, 2008), in response to *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, FCC 08-262, rel. Nov. 5, 2008, at 3-8.

¹⁵ *Id.* at 4-5.

VoIP service to the category of voice service providers who are required to fund California's universal service programs, tentatively concluding that for those purposes the definition of "telephone corporation" in California law includes interconnected VoIP service providers.¹⁶ The FCC's most recent Local Telephone Competition report "demonstrates that interconnected VoIP service subscribership has continued to increase while subscribership to traditional wired telephone services has declined."¹⁷ Customers themselves clearly do not consider their VoIP subscriptions as anything other than telephone service.

Finally, as we have also previously noted, "the classification of IP-PSTN traffic as an 'information service' raises questions about the interconnection rights of the providers of such services."¹⁸ Our concern earlier and now is that the classification of IP/PSTN traffic as information services may "provide telecommunications providers with a basis to deny interconnection to VoIP or IP-enabled service providers," an ironic outcome in the context of efforts to reform the intercarrier compensation regime, and a result that "would neither enhance competition nor place the voice providers on a level playing field."¹⁹

¹⁶ *CPUC Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs*, Rulemaking (R.)11-01-008 (filed 1/13/11), *mimeo*, at 27.

¹⁷ *Local Telephone Competition: Status as of June 30, 2010*, at 1.

¹⁸ Comments of the CPUC, at 8 (filed Nov. 26, 2008).

¹⁹ *Id.* at 8.

B. Phantom Traffic

As the NPRM states, the current disparities in intercarrier compensation rates give “service providers an incentive to misidentify or otherwise conceal the source of traffic to avoid or reduce payments to the terminating service provider.”²⁰

We support the FCC’s proposal to amend its rules to “require that the calling party’s telephone number be provided by the originating service provider and to prohibit stripping or altering call signaling information.”²¹ And we agree that these new rules be extended, as the FCC proposes, “to all traffic originating or terminating on the PSTN, including, but not limited to, jurisdictionally intrastate traffic and traffic transmitted using Internet protocols.”²² As we stated in our November 2008 comments, we favor prohibiting the stripping or altering of the call signaling information, “including jurisdictionally intrastate traffic.”²³

C. Access Stimulation

The CPUC applauds the FCC for taking steps to prevent “access stimulation.” While we have no comments at this time on the specifics of its proposals, including the

²⁰ *Id.* para. 620.

²¹ *Id.* para. 626. We have stated we favor this in our Comments of the CPUC (filed Nov. 26, 2008), at 16.

²² *Id.* para. 629

²³ Comments of the CPUC (filed Nov. 26, 2008), at 16. *See also*, Comments of the People of the State of California and the California Public Utilities Commission (filed Oct. 25, 2006) *re Developing a Unified Intercarrier Compensation Range*, CC Docket 01-92, DA 06-1730, at 4-5.

proposed trigger mechanism,²⁴ we urge the FCC to act quickly to adopt measures to address this form of arbitrage.

D. North County Decision

The NPRM also specifically asks for “comment on the impact, if any, of the Commission’s recent North County decision.”²⁵ The CPUC is constrained in commenting on this issue as this case arose in California, and North County Communications’ complaint against MetroPCS California filed here at the CPUC was dismissed without prejudice to its refiling pending the outcome of federal proceedings.²⁶ Depending on the outcome of the appeal of the FCC’s *MetroPCS Review Order* in the D.C. Circuit, specific issues on which the FCC seeks comment may come before the CPUC again. These include whether the \$0.0007 rate is reasonable, whether the pricing methodology applicable to reciprocal compensation under Part 51 of the FCC’s rules should apply to such traffic, and whether carriers may only assess a charge under section

²⁴ NPRM para. 659.

²⁵ *Id.* para. 673, citing *North County Communications Corp. v. MetroPCS California, LLC*, Memorandum Opinion and Order, 24 FCC Rcd 3807 (Enf. Bureau), *petition for reconsideration 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) (*MetroPCS Review Order*).

²⁶ See CPUC Decision (D.) 10-06-006. http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/119014.PDF. The CPUC also recently dismissed similar complaints filed by Pac-West Telecomm, Inc. against a group of CMRS carriers seeking compensation for the termination of certain telecommunications traffic originated by the CMRS providers’ customers. See CPUC D.11-03-034 (issued Mar. 29, 2011). http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/132790.PDF.

20.11²⁷ after an agreement has been signed. Thus, the CPUC refrains from providing specific recommendations on these issues. However, the CPUC strongly urges the FCC to adopt procedural and substantive rules governing CLEC-CMRS compensation arrangements by establishing a procedure by which CLECs can trigger requests for arbitration of interconnection agreements with CMRS providers, or otherwise implement a compensation arrangement for these carrier types. The CPUC's primary concern is in seeing that this and similar intercarrier compensation disputes are adjudicated in the appropriate forum.²⁸

The CPUC dismissed North County Communications' complaint in part because we saw an open federal question of whether there is an obligation to pay termination charges at all in the absence of an interconnection agreement. We note that in its Respondent's brief filed in the D.C. Circuit, the FCC stated that by adopting Rule 20.11(b), it has already determined that reasonable compensation is owed.²⁹ It is encouraging that the FCC has indicated that CLECs are entitled to some compensation

²⁷ Rule 20.11(b) (2) provides that “[a] commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.” In the absence of an interconnection agreement, North County claimed that MetroPCS violated this rule by failing to pay it compensation for terminating intrastate traffic on its network.

²⁸ Similar disputes have also arisen in the context of CLEC-CLEC intercarrier compensation, where one CLEC has no way of compelling another CLEC to enter into an interconnection agreement. We further note that in the case of *AT&T Communications of California v. PacWest Telecomm, Inc.*, Case No. 08-17030 (9th Cir. 2008), involving CLEC to CLEC ISP-bound traffic similar to that discussed here in that it is largely unidirectional, the FCC recently filed an amicus brief in which it clarified that its intercarrier compensation rules apply to CLEC to CLEC ISP bound traffic. See FCC's Amicus Brief in Case No. 08-17030 (filed Feb. 2, 2011), at 22. The CPUC urges the FCC to clarify these issues in an order, as well.

²⁹ *MetroPCS California, LLC v. FCC*, Case No. 10-1003 (D.C. Cir. 2010), FCC's Respondent's Brief (filed May 27, 2010), at 26, 34.

for the termination of CMRS traffic, even if asymmetric; the FCC should clarify this point in an order. However, the rules the FCC would have the States apply in setting a “reasonable rate” are still largely undefined. The CPUC notes, for example, that the FCC also stated in its brief that “...if a state were to set the charge for the intrastate component of interconnection ‘so high as to effectively preclude interconnection,’ the state would be inviting federal preemption.”³⁰

The CPUC accordingly recommends that the FCC provide guidance on what factors should be considered in setting a “reasonable rate” for such arrangements, including how to deal with access stimulation in setting a reasonable rate. The CPUC also urges the FCC to clarify whether carriers may assess a reasonable rate in the absence of an interconnection agreement, which would apply until the FCC set up an arbitration process that CLEC-CMRS and CLEC-CLEC carriers are able to implement.

III. CONCLUSION

The CPUC supports the FCC’s objective of recalibrating federal support for universal service so that it accommodates a broadband world. The CPUC also supports the FCC’s efforts to reform and address the many problems in the current ICC regime. The CPUC urges the FCC to act quickly to adopt reforms necessary to curb arbitrage opportunities, particularly as to phantom traffic. The CPUC further urges the FCC to include interconnected VoIP traffic in the ICC regime and adopt procedural and

³⁰ *Id.* at 36, n. 32, citing *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, para. 228 (1994).

substantive rules governing CLEC-CMRS traffic, consistent with the recommendations set forth in these comments.

Respectfully submitted,

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