

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

COMMENTS OF NEUTRAL TANDEM

Neutral Tandem respectfully submits these comments in response to Section XV of the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“*NPRM*”) released on February 9, 2011 (FCC 11-13) in the above-listed dockets. In Section XV, the Commission invites parties to comment on: (1) the appropriate intercarrier compensation obligations for VoIP traffic; (2) the Commission’s proposed rules to address “phantom traffic”; and (3) the Commission’s proposed rules to reduce “access stimulation.”

As discussed below, the Commission’s treatment of intercarrier compensation obligations for VoIP traffic should be consistent with the Commission’s stated intention to reduce or eliminate compensation distinctions based on the type of traffic being delivered.¹ In other words, the

¹ *NPRM* ¶ 7.

Commission should apply the same intercarrier compensation rules to VoIP traffic that it applies to other traffic.

With respect to “phantom traffic,” Neutral Tandem supports the adoption of rules that require originating carriers to provide sufficient information to enable proper billing of intercarrier compensation charges. Neutral Tandem also supports rules requiring intermediate carriers to pass on all information they receive from the originating carrier, and precluding such carriers from stripping away any information that has been provided.

With respect to “access stimulation,” Neutral Tandem supports the adoption of rules to address this issue. Neutral Tandem’s comments are focused on the proposed rules applicable to competitive local exchange carriers (“CLECs”). Neutral Tandem generally supports the Commission’s proposed rules, with two modifications. ***First***, the Commission’s rules should clarify that a CLEC’s total charges for delivering access traffic to IXCs should not exceed the charges of the largest RBOC or ILEC in the applicable state on a per-minute basis. ***Second***, Neutral Tandem agrees with Comptel that CLECs already charging in accordance with the proposed benchmark should not be required to refile their tariffs.

I. The Commission should treat VoIP traffic like any other traffic for intercarrier compensation purposes.

Throughout the *NPRM*, the Commission recognizes that the existence of an intercarrier compensation regime under which charges vary based on “the classification and type of service providers involved,” even though “the function of originating or terminating a call does not change,” has contributed to many of the current intercarrier compensation problems facing carriers today.² As applied to VoIP traffic, the Commission recognized that this issue, and particularly the fact that the Commission has not determined the proper classification of VoIP

² *NPRM* ¶¶ 7, 495.

traffic for intercarrier compensation purposes, “has led to numerous billing disputes and litigation and may be deterring innovation and the introduction of new services.”³

Application of these fairly straightforward principles leads to the proper policy result – the Commission should treat VoIP traffic in the same manner as it treats other traffic for intercarrier compensation purposes. Otherwise, originating and terminating carriers will continue to have incentives to classify traffic and make network routing and investment decisions based on traffic classification and intercarrier compensation distinctions, as opposed to making those decisions based on efficient network management and investment. Neutral Tandem therefore believes that the Commission should clarify that the intercarrier compensation regime applicable to other forms of traffic applies to VoIP traffic as well.

II. The Commission’s proposed rules regarding “phantom traffic” should provide a reasonable approach to the issue.

As the NPRM recognizes, the issue of “phantom traffic” arises largely as a result of the “current disparity of intercarrier compensation rates,” which “gives service providers an incentive to misidentify or otherwise conceal the source of traffic to avoid or reduce payments to the terminating service provider.”⁴ In other words, “phantom traffic” is largely a symptom of problems with the current intercarrier compensation system, and it largely would be resolved if the Commission eliminated intercarrier compensation distinctions based on the type of traffic being delivered between the originating and terminating carriers.

Neutral Tandem recognizes, however, that rules specifically aimed at addressing “phantom traffic” are appropriate. Neutral Tandem also agrees that “phantom traffic” can be an issue of

³ NPRM ¶ 604.

⁴ NPRM ¶ 620.

particular concern when “the originating and terminating networks are not directly connected, as is the case when calls are delivered via tandem transit service[.]”⁵

As a leading provider of tandem transit service, Neutral Tandem supports the Commission’s proposals to: (1) require originating carriers to provide the calling party’s telephone number; and (2) prohibit the stripping or altering of call signaling information. Neutral Tandem believes that the Commission’s proposed rules should provide a reasonable approach to the “phantom traffic” issue, while the Commission continues to work on overall intercarrier compensation reform.

III. The Commission’s proposed rules regarding CLEC access charges should be modified in a way that will strengthen IXCs’ protection against arbitrage.

Neutral Tandem recognizes that access stimulation is an important issue in the industry. Neutral Tandem supports the adoption of rules to address this issue. Neutral Tandem’s comments are focused on the proposed rules applicable to CLEC access charges.

Neutral Tandem has no objection to using the existence of a “revenue sharing” agreement between a CLEC and its customers as a trigger for application of the proposed CLEC access rules. Level 3 and other IXCs have long complained that the use of such arrangements by certain carriers has increased the IXCs’ costs and led to unjustified access billing, particularly in the context of CMRS-originated traffic.⁶

Ultimately, however, the issue is not whether revenues are being shared between CLECs and their customers. The issue is whether, as a result of such arrangements, or for any other reason, IXCs are experiencing increased access charges. If an IXC is not being charged any more on a per-minute basis for the delivery of its traffic as a result of revenue sharing arrangements, then it

⁵ *NPRM* ¶ 621.

⁶ *NPRM* ¶ 659 & n.1024.

has no basis to complain about the existence of such arrangements.⁷ Thus, Neutral Tandem agrees with the Commission that revenue sharing arrangements should not be declared *per se* unreasonable under Section 201 of the Act.⁸

The Commission's proposed rules appear to be aimed at addressing this fundamental issue, namely ensuring that IXCs' costs do not increase as a result of any revenue sharing arrangements between CLECs and their customers. Neutral Tandem believes that these rules could be strengthened in two ways:

First, the Commission's rules should clarify that a CLEC's total charges for delivering traffic should not, on a per-minute basis, exceed the charges of the RBOC or ILEC against whose rates the CLEC is required to benchmark. As discussed above, the Commission's goal with respect to this issue should be to ensure that the IXC's total access charges do not increase as a result of a CLEC's revenue sharing arrangements. The current rules require CLECs to benchmark against the RBOC or ILEC's rates, but it is not clear that the rules require the CLECs' total charges to be at or below the RBOC or ILEC's rates, on a per-minute basis. Neutral Tandem believes that some CLECs may nominally mirror the benchmark rates, but then apply certain rate elements (such as distance-sensitive transport charges) in a manner that increases IXCs' access costs on a per-minute basis irrespective of the terms of the CLECs' tariffs. Clarifying that CLECs' total charges cannot exceed the benchmark on a per-minute basis will encourage the continued development of competition in the access market, while at the same time ensuring that IXCs' access costs are not increased.

⁷ Of course, if the IXC has opted not to receive such traffic via direct interconnection with the access provider, the IXC's costs may increase as a result of the need to route the traffic through a provider with which the IXC is directly connected. But any such increase would be a result of the IXC's choice regarding interconnection.

⁸ *NPRM* ¶¶ 661.

Second, Neutral Tandem agrees with Comptel that the Commission should clarify that CLECs who already comply with the benchmarking rules are not required to refile their tariffs. Requiring such refiling would impose unnecessary burdens on CLECs that already are complying with the letter and spirit of the Commission's proposed rules, without providing any corresponding benefit as a result of such refiling.

Respectfully submitted,

NEUTRAL TANDEM, INC.

Richard L. Monto
Senior Vice President & General Counsel
NEUTRAL TANDEM, INC.
550 W. Adams St.
Chicago, IL 60654

/s/ John R. Harrington
John R. Harrington
JENNER & BLOCK LLP
353 N. Clark St.
Suite 4500
Chicago, IL 60654

COUNSEL FOR NEUTRAL TANDEM, INC.