

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Dkt. 10-90
)	
A National Broadband Plan for Our Future)	GN Dkt. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Dkt. 07-135
)	
High-Cost Universal Service Support)	WC Dkt. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Dkt. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Dkt. 96-45
)	
Lifeline and Link-Up)	WC Dkt. 03-109

REPLY COMMENTS OF GLOBAL CONFERENCE PARTNERS

Global Conference Partners (“GCP”), by its attorneys, submits these reply comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) above-captioned Notice of Proposed Rulemaking considering rules to address inefficiencies in the intercarrier compensation system.¹ Specifically, GCP’s reply comments address the issue of access stimulation and the FCC’s proposed access rule modifications.

INTRODUCTION AND SUMMARY

GCP supports the Commission’s recognition that revenue sharing arrangements are a legitimate business practice and adoption of the proposed trigger as a reasonable way to tackle

¹ *Connect America Fund, et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, WC Dkt. 10-90, *et al.*, FCC 11-13 (rel. Feb. 9, 2011) (“NPRM”).

this access charge issue. GCP recognizes the complexity of the issue to be resolved in this proceeding. The Commission's proposed rule modifications are supported by the record as a sensible compromise between the competing policy issues of addressing access stimulation and ensuring competitive and consumer friendly services are not stifled by overly aggressive regulations.

The record further supports the need for the Commission to maintain the integrity of its rules and regulations by addressing explicitly in new rules or the implementing order the harmful self-help practices of interexchange carriers ("IXCs") that refuse to pay lawfully owed access charges that are lawfully owed. GCP urges the Commission to ensure that its efforts effectively address all aspects of the access stimulation disputes and that IXCs do not remain free to game the system and engage in protracted litigation strategies while other parties adhere to the FCC's sound policy decisions. Finally, extreme proposals to ban revenue sharing arrangements, outlaw pro-consumer services and set untenable rates should be rejected.

DISCUSSION

I. The Record Shows Cautious Support for the FCC's Approach to Access Stimulation

The record makes clear that no single solution will match each carrier's unique cost profiles without extensive and time-consuming cost analyses which, ultimately, are in no party's interests to pursue. Moreover, with comprehensive reform of the intercarrier compensation system underway, little utility may be gained from complex solutions that require costly and far-reaching undertakings by carriers. A solution to this complex issue must be simple in order to be workable and effective.

For these reasons, GCP believes that the Commission's approach represents a reasonable compromise solution. Significantly, both the United States Telecom Association and Verizon –

entities that are certainly not sympathetic to free conferencing – agree that the FCC’s approach is reasonable.² GCP also believes that the proposed approach is tenable because it permits competitive conferencing services, such as GCP’s, an opportunity to continue to serve the public.

As the record demonstrates and GCP can attest, the market is addressing the excessive rates charged for termination of conferencing traffic through privately negotiated rates and the introduction of rate reductions in High Volume Access Tariffs (“HVA Tariffs”). The HVA Tariffs, implemented already by several competitive local exchange carriers (“LECs”),³ demonstrate that parties generally recognize that rural LECs serving high-volume users do not accurately reflect a key assumption underpinning the FCC’s current rules: *low-volume* traffic patterns of rural areas justify *higher* terminating access rates.

The FCC’s proposed solution goes to the core of this concern by establishing a new, low benchmark rate for LECs that serve high-volume users. By modifying its tariff to reflect the terminating access rate of the nearest Bell Operating Company (“BOC”) or incumbent LEC with the largest number of access lines in the state, a rural carrier with high traffic volumes will have addressed the low volume/high access rate assumption. GCP agrees that this traffic may be more accurately compensated by the high-volume BOC or incumbent LEC access rates.

² Comments of The United States Telecom Association at 11, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of USTelecom”); Comments of Verizon and Verizon Wireless at 40-42, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of Verizon”). Many other commenting parties also support the FCC’s approach. *See, e.g.*, Comments of Cablevision Systems Corporation and Charter Communications at 13-15, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (supports FCC’s proposed rule changes); Comments of Level 3 Communications, LLC at 3, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (supports FCC’s approach with some clarification points); Comments of Neutral Tandem at 4-6, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of Neutral Tandem”) (supports FCC’s approach with some clarification points); Comments of XO Communications LLC at 41-43, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011).

³ *See* Comments of Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone and Northern Valley Communications, LLC at 8-9, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of Bluegrass and Northern Valley”); Comments of Omnitel Communications, Inc. and Tekstar Communications, Inc. at 7-8, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of Omnitel and Tekstar”).

GCP notes that comments of some LECs – who are in the best position to address the necessary cost recovery of access charges – have described the FCC’s proposal as overly aggressive⁴ and that smaller competitive LECs are likely not to enjoy the same scope and scale cost efficiencies as the BOCs and large incumbent LECs. Thus, GCP urges the FCC to consider carefully the rate reduction under the FCC’s proposal and ensure that it does not go too far in addressing the alleged “arbitrage” issue.

While GCP supports the Commission’s proposed trigger and tariff requirements, the record indicates the Commission may be better served by crafting a rule that follows the basic framework of the HVA Tariffs, so that as a LEC’s traffic volumes rise above the assumptions of rural traffic volumes, the rates are reduced down to BOC rates. In this way, the rule would not be “all or nothing” like the current proposed rule, but would more accurately reduce access rates only when traffic volumes rise.

By addressing the root of the problem (*i.e.*, the mismatch between the low rate and the higher traffic volumes), parties will have clear guidance and be free to operate under the confines of the new rules. This is vitally important because, as set forth in GCP’s initial comments, free conferencing has had a democratizing effect on conference services and delivers a number of public interest benefits that would otherwise be lost entirely if the FCC swings too far toward regulation of LECs.⁵

II. The Record Supports Adoption of a Rule to Curb IXC Self-Help Abuse.

As GCP explained in its initial comments, the IXCs’ “self-help” refusals to pay legitimate access charges harm consumers and competitive providers and should be addressed in the FCC’s

⁴ *See, e.g.*, Comments of Bluegrass and Northern Valley at 10-12.

⁵ *See* Comments of Global Conference Partners at 3-10, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011).

regulations. A number of parties support such a rule.⁶ As explained by Pac-West, “[t]he primary means by which IXCs exert pressure on smaller carriers is the non-payment of access charges rather than paying and disputing according to the terms of the tariff. . . .”⁷ This pressure forces businesses to stop network expansion, lay off employees, and decrease investment in their services to the detriment of consumers. As IXCs operate within the confines of the Communications Act and have an explicit obligation to act in a “just and reasonable” manner,⁸ FCC regulations should reflect that duty by ensuring payments for lawful access charges are made.

Moreover, the FCC must clarify that equal protection is available to LECs who follow the prescribed rules. Suggestions that the statutory “deemed lawful” status should not be afforded to all LECs who file lawful tariffs should be dismissed.⁹ Instead, the FCC’s proposal extends the required notice period for revised tariffs from seven or fifteen days to at least sixteen days,¹⁰ which will ensure the FCC has sufficient time to review the newly filed tariffs of competitive LECs with revenue sharing arrangements. In no way does this alter the ability for a tariff properly filed to obtain the “deemed lawful” protections afforded to carriers in the

⁶ See, e.g., Comments of PAETEC Holding Corp, MPower Communications Corp. and U.S. Telepacific Corp., and RCN Telecom Services, LLC at 14-20, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of PAETEC, *et al.*”); Comments of Pac-West Telecomm, Inc. at 17-19, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of Pac-West”); Comments of Bluegrass and Northern Valley at 27-35; Comments of Coalition for Rational Universal Service and Intercarrier Reform at 7, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of Coalition for Rational USF/ICC Reform”).

⁷ Comments of Pac-West at 17.

⁸ 47 U.S.C. § 201(b).

⁹ See Comments of AT&T Inc. at 20, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of AT&T”); Comments of CenturyLink at 51-52, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (“Comments of CenturyLink”); Comments of Verizon at 41. Cf. Comments of Omnitel and Tekstar at 19-20.

¹⁰ NPRM, Appendix C at 242, proposed rule 47 C.F.R. § 61.26(g)(2) (adding requirement that a competitive LEC engaging in “access revenue sharing” must “file the revised interstate access tariffs. . . on at least sixteen (16) days’ notice”).

Communications Act.¹¹ To implement such a loophole would empower IXCs to exploit this vulnerability to the detriment of carriers who otherwise follow the rules.¹²

III. Extreme Proposals Should Be Summarily Rejected

Some parties in the record have proposed very extreme solutions aimed at punishing parties and squelching competition in the conferencing market, rather than directed to the alleged access stimulation issue. For example, AT&T, Sprint and CTIA propose applying the reciprocal compensation rate of \$.0007/minute to all traffic that they deem the product of traffic stimulation.¹³ This rate, however, is divorced from the realities of the competitive LEC's operating costs and is likely confiscatory if access rates are intended to at least recover the carrier's costs of providing service.¹⁴ Moreover, such a low rate goes far beyond what is necessary to address access stimulation and is far less than what the largest BOCs charge for terminating access.¹⁵

¹¹ 47 U.S.C. § 204(a)(3).

¹² GCP agrees that the FCC is required to undertake a forbearance analysis pursuant to Section 10 of the Communications Act, 47 U.S.C. § 160, in order to forbear from enforcing the statutory provisions found in Section 204(a)(3). *See, e.g.*, Comments of Independent Telephone and Telecom Alliance at 25-29, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011). While GCP believes that the FCC's proposal would not meet the forbearance standard, the FCC has not sought such an analysis in the NPRM. Moreover, GCP agrees that prohibiting a LEC that complies with the FCC's rules from being afforded the protections of Section 204(a)(3) is punitive. *See, e.g.*, Comments of PAETEC, *et al.* at 25; Comments of Bluegrass and Northern Valley at 23-26; Comments of EarthLink, Inc. at 16, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011); Comments of Free Conferencing Corporation at 43-49, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) ("Comments of Free Conferencing").

¹³ Comments of AT&T at 15-17; Comments of Sprint Nextel Corporation at 8, 18-19, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) ("Comments of Sprint"); Comments of CTIA – The Wireless Association at 7, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011).

¹⁴ Comments of Core Communications, Inc. at 14, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (rate of \$.0007 would amount to a regulatory taking); Comments of Free Conferencing at 34-35.

¹⁵ *See* Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report*, CC Dkt. 98-202, Table 7-10 at 7-18 (rel. Dec. 30, 2010) (AT&T and Verizon have total access charge per conversation minute rates of \$.0159 and \$.0168 (*i.e.*, for both originating and terminating access)).

Adoption of such an extreme proposal is likely to have a devastating effect on free conferencing and the public interest benefits that it provides,¹⁶ while, at the same time, not addressing the access stimulation issue any more effectively than the Commission's proposed rules. Essentially, the extreme proposals would charge the equivalent of no access charge for all parties engaged in any form of revenue sharing, creating an unjustifiable disparity of treatment between one-to-one calls, where the full access charge applies, and conference calls where many communicate with one another. Such disparate treatment cannot be rationalized.¹⁷ As PAETEC, *et al.* observed,

When the end user callers pay their IXCs the same averaged long distance rates to reach the bridge, and the IXCs pay only the below-average [rural] BOC rates to the [competitive] LEC, the IXCs actually realize a benefit: they pay nothing more than they would pay to complete an equal number of garden variety long distance calls into the same area, and because the terminating access rates are actually *below* the national average, the IXCs get to retain the surplus and are therefore better off than if the calls weren't made at all. This is no less true even where the LEC is involved in a revenue sharing arrangement that results in a 'net payment' to the conference call provider.¹⁸

¹⁶ See Comments of Coalition for Rational USF/ICC Reform at 6-7 (free conference calling has become a vital tool for many users).

¹⁷ Moreover, the reciprocal compensation rate is applicable for ISP-bound traffic and is intended as payment for the exchange of local traffic, not the termination of interstate exchange access traffic. NPRM, at ¶ 53 ("reciprocal compensation would apply to calls that begin and end within the same local calling area"). As such, ISP-bound reciprocal compensation has no relation to the adequate compensation owed for terminating a call to a conference service. See also, Comments of North County Communications at 6, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (ISP-bound rate of \$.0007 is not appropriate because ISP-bound calls were engaged for hours or days at a time, justifying a lower rate, whereas conference calling follows normal voice traffic lengths).

¹⁸ Comments of PAETEC, *et al.* at 30.

Worse still, AT&T's extreme proposal would impose mandatory detariffing and a prohibition on revenue sharing.¹⁹ Such regulation is patently excessive and would result in proscription of an entire industry segment rather than address the rural LEC access stimulation situation. Despite pronouncements from AT&T (and others), the FCC has never suggested that its ultimate goal is to end entirely "free" business models that rely on revenue sharing. In fact, once the access stimulation issue is addressed, there is no possibility that IXCs will face excessive rates for terminating calls to a conference bridge. Therefore, the NPRM approach correctly permits revenue sharing to continue so long as the access revenues do not reflect above-average rates on the access fees earned. As Neutral Tandem put it, "[i]f 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 has no basis to complain about the existence of such arrangements."²⁰

Further, the Commission should reject Sprint's argument that calls to conference services are not access traffic.²¹ While Sprint cites two adjudications in which a LEC had failed to follow the parameters of its access tariff and, thus, traffic did not qualify for access charges, it fails to recognize that the corollary of both decisions is also true – when the requirements of the LEC access tariff are followed, then the access tariff applies to such traffic.

Finally, some carriers assert that revenue sharing arrangements between free conference providers and their LEC vendors violate the proscription of Section 254(k) against a

¹⁹ Comments of AT&T at 12-15. AT&T also asserts that the traffic of some competitive LECs serving high-volume traffic may exceed that of the state's largest incumbent LEC, but it offers no evidence in support of these bare allegations. *Id.* at 17.

²⁰ Comments of Neutral Tandem at 4-5.

²¹ Comments of Sprint Nextel at 9-10.

noncompetitive service subsidizing a competitive service.²² GCP agrees with Omnitel and Tekstar that these claims are flatly wrong.²³ Free conferencing providers are wholly distinct entities and are not affiliated with LECs. Thus, Section 254(k) has no application since there can be no subsidizing between distinct and unaffiliated parties.

CONCLUSION

For the foregoing reasons, GCP urges the Commission to ensure competitive conferencing services available today continue to afford consumers with innovative and costs effective solutions. GCP supports the Commission's proposed trigger approach to revenue sharing arrangements, but recommends that the FCC instead consider tariffs based on high-volumes. In any event, the Commission must address the self-help practices of IXCs to ensure the integrity of the Commission's regulations is maintained.

Respectfully submitted,



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²² Comments of CenturyLink at 34; Comments of USTelecom at 7-8.

²³ Comments of Omnitel and Tekstar at 31-33.