

**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

**REPLY COMMENTS OF CONSOLIDATED COMMUNICATIONS HOLDINGS, INC
ON ARBITRAGE ISSUES RAISED IN SECTION XV OF THE NPRM**

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Consolidated Communications Holdings, Inc. (“CCI”) on behalf of its operating subsidiaries, submits these reply comments on the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”),¹ Section XV.

I. Introduction and summary

As indicated in its initial comments, CCI supports the Commission’s proposals to close loopholes that allow for arbitrage and undermine the Commission’s efforts to implement

¹ *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 System, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, FCC 11-13, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (rel. Feb. 8, 2011) (“NPRM”).

intercarrier compensation and universal service reforms immediately. The Commission's proposed reforms should promote investment in advanced communications networks to the benefit of all Americans, while also ensuring that competition proceeds on a level regulatory playing field.

CCI's initial comments urged the Commission to declare unequivocally that all VoIP traffic that uses North American Numbering Plan telephone numbers is subject to the same intercarrier compensation (including access charges) to which circuit-switched traffic is subject. A vast number of the parties filing initial comments also requested that the Commission immediately subject VoIP to switched access charges at the same rates applied to circuit-switched traffic.² Consistent with the arguments that CCI made in its comments, these parties agree that such a policy is the only way for the Commission to be consistent with its preference to "reduce the possibility that carriers with [access charge] obligations will compete directly with providers without such obligations."³ Further, these parties agree that the Commission's ESP exemption does not impede the Commission's legal authority to impose such obligation. In addition, parties recognize that terminating LECs still incur costs when they terminate VoIP originated calls and they are entitled to compensation from IXCs for such services. And the absence of such revenues deprives rural LECs of revenues that they use to invest in expanding the availability of broadband to rural Americans. The record also shows that the alternatives proposed by companies that seek to obtain a regulatory advantage by exempting VoIP traffic from access charges, such as applying a zero rate (such as bill and keep) or a lower rate that is unique to VoIP, will only exacerbate the arbitrage trend the Commission is trying to stem with

² AT&T Comments at p. 25; Cablevision Systems and Charter Comments at pp. 3-4; Windstream Comments at p. 4; PAETEC et al. Comments at pp. 34-38; Cbeyond et al. Comments at p. 2.

³ *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7541 ¶ 44 (2006).

through its reform agenda.

Similarly, to address the arbitrage resulting from the phantom traffic epidemic, CCI urged the Commission to adopt its proposed rule requiring all providers, even those providing VoIP service, to make sure that the CPN of the originating caller is included in the signaling stream and each provider is obligated to pass that information, without alteration, to subsequent providers in the call flow. CCI further requested that the Commission adopt other measures that would require all providers in a call flow to include the appropriate CIC or OCN code to allow terminating carriers to bill the responsible party for any applicable intercarrier compensation. The comments reflect that there is significant support for these proposals throughout the industry.

II. There is Broad Industry Support for Applying Existing Intercarrier Compensation Rates to All Voice Traffic

In its initial comments CCI urged the Commission to apply existing intercarrier compensation rates to all voice traffic including all VoIP traffic that uses the PSTN immediately. CCI demonstrated that such a policy would be consistent with the Commission's policy of implementing the Communications Act on a competitively and technologically neutral basis; that it avoids the imposition of new burdens on carriers and VoIP providers that would be necessary in any system that requires distinguishing VoIP traffic from non-VoIP traffic; that it will reduce arbitrage and intercarrier disputes and finally that it will promote investment in broadband in rural markets. The Commission received comments from a broad cross section of the industry, including RBOCs,⁴ cable television operators,⁵ mid-size incumbent LECs,⁶ CLECs,⁷ rural

⁴ AT&T Comments at p. 25.

⁵ Cablevision Systems and Charter Comments at pp. 3-4.

⁶ Windstream Comments at p. 4.

LECs,⁸ and state commissions⁹ urging the Commission to reach this result.

A. The Comments Endorse the Principle of Competitive Neutrality

While promoting investment and innovation in broadband and VoIP services, the Commission has fashioned a sensible policy that does not provide one set of competitors with a regulatory advantage over competitors providing similar services. Thus, as CCI explained in its initial comments, the Commission has imposed a panoply of Title II regulations on VoIP providers, including, among others, a requirement that they directly contribute to universal service.¹⁰ In applying these Title II requirements to VoIP providers, the Commission explained that it seeks to “promotes the principle of competitive neutrality” by “reduc[ing] the possibility that carriers with [such] obligations will compete directly with providers without such obligations.”¹¹ CCI believes that the same policy should apply with respect to switched access charges.

Numerous comments filed on arbitrage issues identified in the NPRM, also emphasize the need for the Commission to remain consistent and apply this same analysis to access charges.¹² CCI agrees that “[d]iscriminating in favor of one technology distorts competition between providers of IP voice services and circuit-switched voice services.”¹³ Treating VoIP and other PSTN traffic differently for intercarrier compensation purposes would be arbitrary because

⁷ PAETEC et al Comments at pp. 34-35; Cbeyond et al. Comments at p. 2.

⁸ NECA, NTCA, OPASTCO, WTA, ERTA et al. at p. 5.

⁹ Pennsylvania Commission Comments at p. 4, Ohio Commission Comments at p. 7.

¹⁰ CCI Comments at p. 8, n.15.

¹¹ *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7541 ¶ 44 (2006).

¹² Cbeyond et al. Comments at pp. 4-5 (“The FCC’s intercarrier compensation rules should not favor one from of voice service over another based on the technology used to provide the service.”)

¹³ *Id.* at p. 5.

“VoIP traffic terminating on the circuit switched network uses the same network components, and the terminating carrier incurs exactly the same costs as it does when terminating a call that originated instead as a circuit switched call.”¹⁴ There is no sound basis for applying access charges to one type of calls while exempting the other.

Despite the obvious problems associated with disparate regulatory treatment of VoIP and non-VoIP calls, some parties maintain that the Commission should grant VoIP a preference and exclude VoIP traffic from the intercarrier compensation rules currently applicable to circuit-switched traffic, based on the unsupported claim that application of access charges would harm investment and innovation.¹⁵ But the Commission has already rejected the notion that applying similar requirements to both VoIP and circuit-switched voice services would frustrate the FCC’s “policies of encouraging the development of IP-based services and promoting the deployment of broadband infrastructure.”¹⁶ The Commission instead found that it does “not believe that those policies are best advanced by giving one class of providers an unjustified regulatory advantage over its competitors.”¹⁷ The same principle applies to the imposition of switched access charges.

B. Commenters Agree that Neither the ESP Exemption Nor Section 251(g) Impede the Application of Existing Intercarrier Compensation Rates to VoIP Traffic

In its initial comments, CCI urged the Commission to find that the limited access charge

¹⁴ Windstream Comments at p. 4; *see* Pennsylvania PUC Comments at p. 3 (“‘traffic is traffic’ no matter in what protocol it is initiated.”).

¹⁵ *See* VON Coalition Comments at p. 4; Sprint Comments at p. 6; Verizon Comments at pp. 3-4.

¹⁶ *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, 15660 ¶ 22 (2010) (“*Nebraska/Kansas VoIP USF Order*”).

¹⁷ *Id.*

exemption granted to ESPs did not preclude the application of tariffed access charges to VoIP traffic delivered to terminating carriers by IXCs. This is consistent with Commission precedent that established that the “exemption” applies only to ESP “providers” and does not exempt traffic from any applicable compensation regime. Indeed, the Commission clearly articulated that there is no “exemption” that gets passed along to telecommunications carriers who happen to provide services to an enhanced service provider.¹⁸ Other parties support this view of the ESP exemption.¹⁹ A minority of participating parties urge a contrary (and erroneous) view of the exemption, and also claim that pursuant to the D.C Circuit’s analysis in *WorldCom v. FCC*,²⁰ § 251(g) bars the Commission from imposing access charges on VoIP traffic because there was no pre-1996 Act intercarrier compensation obligation on VoIP traffic.²¹ Both arguments are without merit.

1. Commenters Agree That The ESP Exemption Does Not Apply to VoIP Traffic

Those parties that urge the Commission to shield VoIP traffic from access charge liability perpetrate an overbroad reading of the ESP exemption. But these parties, including Sprint for instance,²² offer little substance to explain their reliance on the ESP exemption. That likely results from the fact that it is plain that the ESP exemption was never intended to exempt carriers

¹⁸ *Northwestern Bell Tel. Co. Petition for Declaratory Ruling*, 2 FCC Rcd 5986, 5988 (1987), at ¶ 21, *vacated as moot*, 7 FCC Rcd 5644 (1992). (“End users that purchase interstate services from interexchange carriers do not thereby create an access charge exemption for those carriers.”)

¹⁹ See PAETEC Comments at pp. 34-35; Independent Telephone & Telecommunications Alliance Comments at pp. 12-13; AT&T Comments at pp. 27-28, CenturyLink Comments at p. 15; Cox Comments at p. 10; Ohio Commission at p. 8.

²⁰ 288 F.3d 429, 433-34 (2002).

²¹ See e.g., Sprint Comments at p.

²² Sprint Comments at p. 4.

that provide telecommunications services (such as Sprint) from paying access charges when they deliver VoIP traffic to terminating LECs.

Sprint's claim that the ESP Exemption applies to VoIP traffic delivered by interexchange carriers to the customers of other carriers is baseless. The ESP exemption "was never intended to apply to a situation in which an entity is delivering calls to an ILEC for termination to the ILEC's customers on the PSTN."²³ Further, the Commission reaffirmed the ESP exemption after enactment of the Telecommunications Act of 1996 in the 1997 *Access Reform Order* because it concluded that "it is not clear that ISPs use the public switched network in a manner analogous to IXCs."²⁴ This does not apply to VoIP traffic where "VoIP providers use the PSTN in the same way, and for the same purpose, as any traditional voice provider."²⁵ Indeed, the ESP exemption does not apply because the carriers delivering traffic to terminating LECs "are acting not as information service providers purchasing local business lines for their own use, but as wholesale providers of telecommunications services that deliver traffic to ILECs."²⁶

2. Sprint's Claim that Section 251(g) Does Not Apply to VoIP Traffic is Misguided

Nor is there any merit to Sprint's claim that pursuant to the D.C Circuit's interpretation of section 251(g) the Commission's is prohibited from imposing existing access charges on VoIP traffic.²⁷ Sprint claims that because "there was 'no pre-Act obligation relating to intercarrier compensation' for IP-to-PSTN traffic, the Commission cannot mandate application of section

²³ AT&T Comments at p. 27.

²⁴ *Access Reform*, 12 FCC Rcd 15982, 16133 ¶ 345 (2007).

²⁵ CenturyLink Comments at p. 15.

²⁶ AT&T Comments at p. 28.

²⁷ *See* Sprint Comments at p. 6.

251 (g) access charges to that traffic.”²⁸ This argument is flawed.

First, Sprint misreads the D.C. Circuit’s decision regarding the scope of § 251(g) in *WorldCom v. FCC*.²⁹ The statutory analysis of § 251(g) in *WorldCom* never centered on whether the underlying technology (ISP bound calls) existed before 1996. Rather, the court was focused on the text of § 251(g) which is, by its very terms limited to services provided “to interexchange carriers and information service providers.”³⁰ Thus, the D.C Circuit’s rejection of the Commission’s attempt to claim jurisdiction under § 251(g) to set the rate for ISP-bound traffic was predicated on the fact that “LECs’ services to other LECs, even if en route to an ISP, are not ‘to’ either an IXC or to an ISP.”³¹ The switched access services of terminating LECs such as CCI, however, are quite clearly provided to IXCs. When VoIP calls are carried by a telecommunications carrier from one exchange to another in order to be delivered to the called party, they are clearly interexchange services and the carrier is, at a minimum, acting as an IXC.³²

Second, the D.C. Circuit’s statutory analysis of § 251(g) never addressed whether dial up ISP traffic existed before the 1996 Act. Nor would it have been salient, as dial-up ISP traffic had

²⁸ *Id.*

²⁹ 288 F.3d at 433-34.

³⁰ 47 USC § 251(g); *WorldCom*, 288 F.3d at 433-34.

³¹ *WorldCom*, 288 F.3d at 434.

³² See *Petition of UTEX Communications Corporation for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act and PURA for Rates, Terms, and Conditions of an Interconnection Agreement With Southwestern Bell Telephone Company*, Docket No. 26381 Arbitration Award at pp. 45-46 (Tex. P.U.C. Sep. 23, 2010), (Texas Commission held that a an interexchange carrier passing VoIP traffic between exchanges is subject to the appropriate federal or state access charges and the “mere fact that [the provider] does not want to be an IXC ... is not controlling for purposes of assessing access charges.”).

existed for years prior to the 1996 Act.³³ The same can be said of VoIP. It is simply incorrect as a factual matter to claim that VoIP did not exist prior to 1996. For instance, on March 5, 1996, the American Carrier's Telecommunication Association ("ACTA") filed with the Commission a petition urging the Commission to classify VoIP telephony as a telecommunications service.³⁴ Included with that petition is a Washington Post Article, dated before the 1996 Act was signed into law on February 8, 1996, indicating that VoIP telephony had at that time been available for over a year.³⁵

Third, Sprint's construction of § 251(g) to preclude the Commission from applying its pre-Act access charge regime to VoIP calls is undermined by the fact that the Commission has already found that certain types of IP traffic, including types of VoIP, are subject to the same access charge regime that governs circuit-switched traffic and that has been in effect since 1983.³⁶ Thus, Sprint's proposed construction of § 251(g) to hinge on the existence of the voice

³³ See e.g., *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 87, 120 ¶¶ 63 (1996) (discussing "dial up access to the Internet" and considering whether the FCC should direct Universal Service funds to support Internet access services for rural customers that had to make long distance toll calls to reach ISPs); Comments of America Online Inc., CompuServe Inc., GE Information Services, Inc., and Prodigy Services Company, *In the Matter of End User Common Line Charges*, CC Docket 95-72, at pp. 1-2 (filed June 29, 1995) (describing provision of "online information database and Internet access services" including "a range of Internet services, including the World Wide Web.").

³⁴ *The Provision of Interstate and International Interexchange Telecommunications Service Via the "Internet" by Non-Tariffed, Uncertified Entities, Petition For Declaratory Ruling, Special Relief, And Institution of Rulemaking Against: VocalTec, Inc.; Internet Telephone Company; Third Planet Publishing Inc.; Camelot Corporation; Quarterdeck Corporation; and Other Providers of Non-Tariffed, and Uncertified Interexchange Telecommunications Services*, RM 8775, Petition of, America's Carriers Telecommunication Association ("ACTA") (filed March 4, 1996).

³⁵ *Id.* at Attachment 1, Mike Mills, It's the Net's Best Thing To Being There; With Right Software, Computer Becomes a Toll-Free Telephone, Washington Post (Jan. 23, 1996).

³⁶ See *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290, 7297 ¶¶ 18-19 (2006) *aff'd in part and vacated in part sub nom Qwest Svcs. Corp v. FCC*, 509 F.3d 531 (D.C.

transmission technology underlying particular call would plainly be inconsistent with the numerous Commission decisions requiring payment of access charges for calls made using IP-enabled services such as VoIP. For example, the Commission has subjected calls made using phone-to-phone VoIP technology to access charges.³⁷ The Commission similarly imposed an access charge obligation on prepaid calling card calls that use IP technology to transport at least part of the call, even though such IP technology was not prevalent prior to the 1996 Act.³⁸

Thus, neither the ESP exemption nor § 251(g) preclude the Commission from declaring that VoIP traffic is subject to the same existing intercarrier compensation rates currently applicable to circuit-switched traffic.

C. Comments Support the Proposition that a Bill-and-Keep Regime or other Unique Rate for VoIP Traffic is Unworkable and Will Incentivize Increased Arbitrage

Those parties that propose the Commission adopt a two-tiered scheme that grants VoIP traffic an unjustified preference above all other traffic urge that the Commission immediately apply a default rate of zero (*i.e.*, bill-and-keep)³⁹ or a VoIP specific rate (such as recip. comp or \$.0007),⁴⁰ to VoIP traffic exchanged with the PSTN. These companies fail to acknowledge that such a regime will perpetuate, rather than eliminate, the escalation of arbitrage.

Contrary to the position of T-Mobile and others that favor a unique rate for VoIP traffic,⁴¹ a default bill-and-keep regime will perpetuate and exacerbate arbitrage problems, rather than

Cir. 2007). *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 ¶ 1 (2004) (“*IP In the Middle Order*”).

³⁷ *IP In the Middle Order*, 19 FCC Rcd at 7457 ¶ 1.

³⁸ *See Regulation of Prepaid Calling Card Services*, 21 FCC Rcd at 7297 ¶ 18-19.

³⁹ *See e.g.* CTIA Comments at p. 3; Google Comments at p. 8; T-Mobile Comments at p. 2; VON Coalition Comments at p. 3.

⁴⁰ *See Comcast Comments at p. pp. 4-5; Verizon comments at p. 3-4.*

⁴¹ *See e.g.*, n. 39-40 *supra*.

resolve them. Use of a VoIP-specific rate (including a rate of zero) would perpetuate arbitrage for two reasons. First, there is no industry standard to identify and distinguish VoIP-originated or terminated traffic from other traffic. Second, a VoIP-specific rate lower than the TDM rate would give carriers an incentive to classify (or misclassify) the traffic as VoIP to get the benefit of that rate. This point was emphasized at the Commission's intercarrier compensation workshop held on April 6.⁴²

In fact, a host of carriers, including ILECs such as CCI, Windstream, Frontier, and others, and CLECs such as EarthLink, PAETEC, and others, have acknowledged that there is no industry standard or practical means of distinguishing interconnected VoIP traffic from TDM traffic and that one is unlikely to be adopted anytime soon.⁴³ Frontier, for example, states that it: "cannot identify whether the traffic it receives originates as either VoIP traffic or traditional switched access traffic nor is there a simple technical solution that would enable it to do so."⁴⁴ Thus, any plan in which VoIP traffic is subject to a lower rate than TDM traffic is unworkable.

Because there is no way for terminating LECs to "distinguish 'IP-originated' traffic from other types of traffic terminating on their networks," any rule that imposes a distinct rates just for VoIP traffic "will encourage providers to assert virtually all their traffic qualifies," thus exponentially increasing "the number of billing disputes and self-help refusals to pay."⁴⁵ Further, CCI agrees with NECA that by perpetuating arbitrage, the Commission will "effectively render[] moot any further efforts by the Commission to implement an organized and comprehensive set of

⁴² See Statement of Paul Gallant, at 2:05:00 of archived video of April 6 Intercarrier Compensation Workshop available at <http://beta.fcc.gov/event/universal-service-fundintercarrier-compensation-reform-workshop>.

⁴³ See e.g. Windstream Comments at p. 7; Frontier Comments at p. 5; EarthLink Comments at p. 3; PAETEC Comments at p. 31.

⁴⁴ Frontier Comments at p. 5.

⁴⁵ NECA et al. Comments at p. 14.

ICC reforms.”⁴⁶ The impact of continued arbitrage on the prospects for the Commission’s proposed reform of intercarrier compensation and universal service is aptly explained as a “death spiral.”⁴⁷ In this spiral, IXCs and VoIP providers will increasingly route interexchange traffic using “unlawful access avoidance schemes,” such as claiming circuit-switched traffic is VoIP, in order to obtain the benefit of a lower (or zero) rate for such traffic.⁴⁸ As collected revenue on circuit-switched access minutes continue to decrease over time as the result of migration of minutes to such arbitrage schemes, “the cost of providing switched access services to paying providers has to be spread across a dwindling bucket of compensated minutes,” thereby leading to increased rates.⁴⁹ These steady increases in rates would, of course, only heighten the incentive for IXCs and VoIP providers to engage in arbitrage schemes to re-rate traffic unilaterally to zero or lower cost models in an effort to avoid paying access charges.⁵⁰ This scenario would jeopardize the orderly transition that the Commission seeks to shift gradually away from minute of use charges and to implement its Connect America Fund. For these reasons, a zero rate, bill and keep, or any other rate that does not require the application of existing intercarrier compensation rates to VoIP traffic, is untenable.

D. Rural ILECs Incur Costs in Terminating Interconnected VoIP Traffic that the Act Requires Be Recovered and are Integral for Expansion of Broadband to Rural Americans

The Commission has established and maintained the principle that LECs must be

⁴⁶ *Id.*

⁴⁷ Rural LEC Comments at p. 7.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

permitted to recover the costs for the use of their networks by other service providers.⁵¹ A number of parties, however, in an attempt to obtain for VoIP services, a regulatory preference over other voice services, claim that LECs incur no costs in terminating VoIP traffic.⁵²

Despite the claims of Google and T-Mobile,⁵³ LECs incur real costs to terminate long distance calls to end users. Whether someday those costs will vanish in an all IP-world is debatable. But regardless, that world does not yet exist. Many customers, particularly those in rural America, continue to rely on circuit switched networks for making telephone calls. LECs such as CCI are entitled to recover the costs they incur for such functions from the IXC that serve the customers making the calls. When these calls are originated as VoIP, LECs such as CCI are still terminating the calls on circuit-switched networks and still incur usage sensitive costs. While the Commission is correct to promote the transition to an all IP network, LECs, especially rural LECs that still rely on access revenue for broadband investment, will not have sufficient revenue to invest in IP technology and broadband if they are prohibited from recovering the TDM-related costs they incur today. The Commission must allow rural carriers to continue to receive such access charges until they are replaced with the Commission's revised universal service mechanism covered elsewhere in the NPRM.⁵⁴ Until such time as the Commission's revised universal service system is in place, access charge revenue will "remain an essential universal service mechanism that funds the PSTN, enabling universal voice service

⁵¹ *Access Charge Reform Order*, 12 FCC Rcd at 15991 ¶ 21 and 16137 ¶ 356.

⁵² *See* T-Mobile Comments at p. 10.

⁵³ *See* Google Comments at p. 7; T-Mobile Comments at p. 10.

⁵⁴ *See* CenturyLink Comments at p. 9; *see also* Windstream comments at p. 6. ("Access charges continue to provide important revenue streams that support telecommunications facilities in high-cost areas.").

and broadband investment in much of America.”⁵⁵

III. Comments Support the Adoption of the Commission’s Proposed Signaling Rule and Additional Measures to Reduce Arbitrage from Phantom Traffic

In its initial comments, CCI supported the Commission’s proposed requirement that all providers, including VoIP providers, take steps to include CPN in the signaling stream to enable all providers in the call flow to identify the jurisdiction of the call in order to bill any applicable intercarrier compensation. While CCI supported this proposal, it urged the Commission to consider additional measures to combat phantom traffic because CPN alone is often not sufficient to ensure that terminating carrier can ascertain the identity of the responsible carrier for billing intercarrier compensation. Many other parties raised the identical concern.

For example, filed comments show that there is general agreement among the commenting parties that the originating party is not always responsible for terminating compensation and that additional information, such as the CIC code, is needed so that terminating carriers can bill the appropriate party.⁵⁶ The Nebraska Rural Independent Carriers, for example, emphasize this fact and urge the Commission to require carriers to populate the CIC code in the SS7 signaling stream.⁵⁷ This sentiment is not unique to terminating LECs either; Sprint, for example, requests that the Commission require that interexchange traffic be sent with the appropriate CIC code and to require tandem providers to pass the CIC code (or OCN for local calls) to the terminating LEC.⁵⁸

Most carriers filing comments on phantom traffic issues agree with the general proposition that CCI espoused in its initial comments: that the CIC code (for IXCs) or the OCN

⁵⁵ *Id.*

⁵⁶ *See* Rural LEC Commenting Group Comments at pp. 11-12.

⁵⁷ *See* Nebraska Rural Independent Carrier Comments at p. 21.

⁵⁸ *See* Sprint Comments at p. 26.

code (for LECs) is necessary to identify the party that is responsible for payment of intercarrier compensation party in cases where the responsible party is not directly interconnected with the terminating LEC.⁵⁹ Further, many tandem providers indicate they can and do provide such information. Verizon, for example, states that pursuant to industry standards the EMI records it provides identify the carrier responsible for payment.⁶⁰ In addition, Hypercube states that it “is able to pass on more complete billing information than a terminating carrier may receive directly from an originating provider.”⁶¹ If these providers can pass along the relevant CIC or OCN code to facilitate billing by indirectly interconnected terminating LECs, then other intermediate or tandem providers should be able to do the same.

Some tandem providers make general claims that their tandem switches cannot identify the financially responsible party.⁶² But in making such claims, AT&T for instance, avoids explaining whether it has the ability to pass the CIC code or OCN code in its signaling stream or in the EMI records generated by its tandem switch.⁶³ The Commission should seek further information from AT&T and other tandem providers that claim their switches are not capable of passing CIC codes or OCN codes. AT&T obviously has the ability to bill carriers for the tandem/transit services it provides and it should be able to provide terminating providers the same ability to bill upstream providers. As major incumbent in 22 states, responsible for

⁵⁹ See Blooston Rural Carriers Comments at p. 10; GVNW Comments at p. 5; Nebraska RIC Comments at p. 21-22; NECA et al Comments at p. 21; PAETEC Comments et al at p. 8; Rural LEC Group Comments at p. 11; Sprint Comments at p. 26; TCA Comments at pp. 6-7; TDS Comments at p. 9; Toledo Telephone Comments at p. 6; Washington UTC Comments at p. 10.

⁶⁰ Verizon Comments at p. 46.

⁶¹ Hypercube Comments at p. 22.

⁶² See e.g. AT&T comments at p. 25.

⁶³ *Id.*

handling billions of minutes, neither AT&T, nor other intermediate providers, should be permitted to escape their obligation to assist terminating providers identify upstream providers and bill for lawful intercarrier compensation.

IV. Conclusion

The Commission should adopt the proposals recommended by CCI in its initial and reply comments in order to provide the industry and courts clear guidance regarding intercarrier compensation disputes and to fulfill the Commission's goals of expanding deployment of broadband in rural markets.

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