

**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
)	

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC. ON SECTION XV

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COMMENTS OF WINDSTREAM COMMUNICATIONS, INC. ON SECTION XV

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively “Windstream”), submits the following in response to the Federal Communications Commission (“Commission”) request for comment on immediate reforms to reduce wasteful arbitrage and increase certainty in intercarrier compensation payments.¹

Windstream has long favored comprehensive, rational universal service and intercarrier compensation reform, with proper mechanisms for the replacement of necessary revenues lost through access charge reductions. However, such reform must be conducted on an integrated basis, managed by the Commission, rather than in an anarchic fashion driven by the very providers that profit from the reductions while availing themselves of the benefits of

¹ *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 an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (rel. Feb. 9, 2011) (“*NPRM/FNPRM*”)

interconnection with the Public Switched Telephone Network (“PSTN”). The Commission should not delay in addressing massive regulatory arbitrage that jeopardizes reliable and affordable telephone and broadband services for consumers and businesses.

While we all travel the path to comprehensive reform, the Commission should act now to end certain interconnected Voice Over Internet Protocol (“VoIP”) providers’ unlawful self-help by confirming that these providers are required to pay approved rates for terminating traffic on the PSTN. The longer the FCC allows this self-help to continue, the more pressure will build for the majority of facilities-based VoIP providers, which do pay jurisdictionalized access charges, to join the arbitrage scheme. Standing by as providers bilk the system and flout the rules impedes rather than advances broadband deployment.

In addition, we commend the Commission for accelerating its consideration of phantom traffic issues, and urge the speedy adoption of the proposed rules to eliminate the mislabeling and nonlabeling of interconnected traffic, another significant disruption to carrier stability. To facilitate the proper billing of traffic, the Commission should make clear that ILECs may invoke the Section 252 negotiation and arbitration process with respect to wireline CLECs with which they exchange traffic.

Finally, the Commission should act promptly to adopt rational rule changes that will eliminate access stimulation, also known as “traffic pumping.” Access stimulation undermines the integrity of the intercarrier compensation system and threatens carriers’ abilities to recover a portion of the costs of constructing and deploying network assets. Such schemes directly harm consumers by producing higher end-user telephone rates.

I. THE COMMISSION SHOULD CONFIRM THAT INTERCONNECTED VOIP PROVIDERS ARE REQUIRED TO PAY APPROVED RATES FOR USING THE PSTN.

Seven years ago, when the Commission initiated its review of the regulatory treatment to be applied to IP-enabled services, including VoIP traffic, it expressed its belief that all traffic utilizing the PSTN should bear its costs.² Since then, however, some increasingly emboldened VoIP providers have claimed that they need not pay access charges for traffic that uses the networks that are built and maintained, at significant cost, by others. The Commission must act now to end such “self-help” by confirming that interconnected VoIP providers must pay approved rates for using the PSTN. Such a confirmation would serve the Commission’s desire for a more rational intercarrier compensation system and the advancement of broadband deployment in high-cost areas. Furthermore, it is consistent with the existing regulatory regime, which subjects interconnected VoIP to the same obligations—including the requirement to contribute to the Universal Service Fund—as other telecommunications providers.

A. Such Confirmation Would Be Consistent with the Commission’s Desire for a More Rational Intercarrier Compensation System and Advancement of Broadband Deployment Throughout Rural Areas.

In light of the Commission’s explicit goal in this proceeding—“eliminating waste and inefficiency and reorienting USF and ICC to meet the nation’s broadband availability challenge”³— the Commission should act immediately to confirm that interconnected VoIP providers must pay approved rates for using the PSTN. There is no meaningful difference between VoIP and other traffic that utilizes the PSTN, and it is irrational to permit VoIP traffic to

² *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863, 4904-05, ¶ 61 (2004) (“*IP-Enabled Services NPRM*”).

³ *NPRM/FNPRM* at ¶ 1.

free-ride on the network. Furthermore, VoIP providers' self-help activities produce only negative effects: threatening universal service and carriers' ability to maintain affordable end-user voice rates by removing essential funds from the system; hindering broadband deployment in high-cost areas; and—if the self-help continues—altogether undermining efforts for comprehensive, rational reform.⁴ Anything short of a confirmation that interconnected VoIP providers are required to pay the same jurisdictionalized intercarrier compensation charges as other voice telephone traffic would only exacerbate the current problems, because terminating providers are unable to verify the claims of originating providers.

1. There is no meaningful difference between IP-originated traffic and other traffic terminating on the PSTN.

There is no rational basis for treating VoIP and other PSTN traffic differently for intercarrier compensation purposes. 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. The primary difference between PSTN and VoIP traffic is that VoIP traffic originates on an IP network, rather than a circuit switched network. From a customer's perspective, VoIP providers' voice services may appear virtually identical to the ones offered by traditional wireline providers, and in fact, such services are marketed as substitutes for switched telecommunications services.

⁴ Particularly in the access charge context, “[a]voidance of market disruption pending broader reform is, of course, a standard and accepted justification for a temporary rule.” *Competitive Telecomm. Ass’n v. FCC*, 309 F.3d 8, 14 (D.C. Cir. 2002) (upholding Enhanced Extended Loop restrictions designed in part to preserve special access revenues).

2. VoIP providers' "self-help" activities are threatening broadband deployment in high-cost areas.

Despite the functional similarities between circuit-switched and interconnected VoIP traffic, some VoIP providers now are disputing their obligation to pay approved access charge rates for IP/PSTN traffic.⁵ This unlawful "self-help" produces cascading, toxic effects: threatening universal service and carriers' ability to maintain affordable end-user voice rates by removing essential funds from the system; hindering broadband deployment in high-cost areas; and—if it continues—altogether undermining efforts for comprehensive, rational reform and threatening the viability of companies serving consumers in high-cost areas. Windstream favors rational reform of the current system, but such reform must be made in the context of the rulemaking in this docket and at the Commission's direction. Therefore, it is crucial that the Commission act promptly to end this destructive self-help by confirming that interconnected VoIP providers are required to pay approved rates for using the PSTN.

The Commission has long recognized that its universal service policies are linked to the ability of carriers of last resort to offer affordable communications services, which is largely dependent on a combination of multiple sources of revenue, including end-user rates and access charges.⁶ Permitting interconnected VoIP providers to evade lawful access charges essentially cuts one leg off the stool that supports affordable service and places much greater stress on the remaining legs—universal service support and local rates. No statutory goal is served by undermining the ability of carriers of last resort to continue to offer affordable, comparable, and

⁵ See *NPRM/FNPRM* at ¶ 610.

⁶ See *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962, 12965-74, ¶¶ 5-28 (2000) (*CALLS Order*) (discussing the history of the Commission's regulations governing intercarrier compensation and universal service).

universal service and to maintain the critical infrastructure on which all telecommunications—including VoIP services—rely.

Carrier self-help is undermining broadband investment, most significantly in high-cost areas. Access charges continue to provide important revenue streams that support telecommunications facilities in high-cost areas. These facilities provide the groundwork for incremental investment and deployment that is necessary to achieve the national goal of ubiquitous broadband availability. And by reducing intercarrier compensation revenue streams, VoIP self-help will make it more difficult for carriers of last resort, such as Windstream, to continue to provide voice and broadband services they have already deployed and to invest in additional broadband deployment.

Indeed, the companies that stand to lose the most from VoIP self-help activities are those that have demonstrated the greatest commitment to broadband deployment in high-cost areas. In particular, Windstream has invested nearly \$700 million over the past four years, and over the next two years Windstream, in addition to its planned level of spending, will spend \$241.7 million (\$60.4 million of its own money to complement \$181.3 million in broadband stimulus grants) to deploy broadband in high-cost areas in 13 states. These and other similar investments will be undermined if selected service providers, with no interest in deploying broadband to high-cost areas, are allowed to free-ride on other providers' networks.

3. Creating a separate category for VoIP will worsen, not eliminate, harmful arbitrage.

The self-help that is wounding the Commission's chances for comprehensive reform must be eliminated by a confirmation that interconnected VoIP providers are required to pay the same intercarrier compensation charges as other voice telephone traffic. Anything short of that

likely will only exacerbate the current problems. In particular, if the Commission were to institute a VoIP-specific regime that offered lower rates, many more companies would assert, as some do today, that more of their traffic is VoIP-originated and therefore the VoIP-specific rate would apply.⁷ Carriers terminating the traffic likely would not be able to verify such claims alleging increases in VoIP traffic: Most carriers do not provide any evidence that their traffic is in fact VoIP-originated, and terminating carriers lack the ability to verify these claims. Therefore, the creation of a VoIP-specific intercarrier compensation regime would only worsen the existing arbitrage and would prevent the Commission from achieving its stated goals.⁸

B. The Existing Regulatory Regime Supports Subjecting Interconnected VoIP Traffic to the Same Intercarrier Compensation Charges as Other Traffic on the PSTN.

In addition to its clear policy benefits, a clarification by the Commission that interconnected VoIP traffic is subject to the same intercarrier compensation charges as other traffic that uses the PSTN is entirely consistent with the existing regulatory regime. The Commission has clearly expressed its opposition to network free-riding, and has determined in a variety of other, related areas that interconnected VoIP providers should be subject to the same obligations as other telephone service providers. In addition, state commissions and courts are rejecting VoIP providers' self-help attempts and making clear that VoIP is subject to appropriate

⁷ *NPRM/FNPRM* at ¶ 616.

⁸ There is also no justification for creating a separate regime only for nomadic interconnected VoIP. Though nomadic interconnected VoIP presents a slightly more complex scenario than fixed because the origination point cannot be readily determined, FCC rules governing emergency location databases and relative-use factors (such as those already commonly used in access tariffs and billing arrangements) can always be used to approximate location. Ultimately, the burden should be on the originating provider to demonstrate that a call is not subject to intrastate access charges.

intercarrier compensation charges. Finally, there are no regulatory impediments to speedy Commission action. The Commission does not have to find that interconnected VoIP is a “telecommunications service,” and the enhanced service provider exemption clearly does not apply to interconnected VoIP.

1. Commission precedent supports payment of access charges by all providers of voice services terminating on the PSTN.

In 2004, when the Commission initiated its review of the overall regulatory treatment to be applied to IP-enabled services, including VoIP traffic, it signaled its opposition to network free-riding and expressed its belief that all traffic utilizing the PSTN should bear its cost:

As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.⁹

At the time, numerous parties, including Verizon and SBC (now AT&T), confirmed that the “existing rules” are “sensible and clear” in requiring that all providers of voice services that cross the PSTN to pay access charges,¹⁰ and the vast majority of carriers have consistently paid approved access charges with respect to interconnected VoIP traffic that utilizes the PSTN.

⁹ *IP-Enabled Services NPRM* at ¶ 61 (2004).

¹⁰ See Comments of the Verizon Telephone Companies, WC Docket Nos. 04-36 and 04-29, at 45 (May 28, 2004) (stating that “existing rules governing the payment of access charges are sensible and clear” that “[w]hen providers of VoIP and other IP-enabled services allow their customers to engage in a real-time voice conversation with customers of other carriers located on the PSTN, they are using the local exchange carrier’s switching facilities to originate or terminate a call and should pay access charges.”); Comments of SBC Communications Inc., WC Docket No. 04-36, at 67 (May 28, 2004) (noting that VoIP carriers’ payment of access charges “is already required by the Commission’s existing rules, under which any providers that use ILEC local exchange switching facilities, including information service providers, are subject to the baseline obligation to pay access charges unless specifically excepted.”). See also, e.g., Comments of CenturyTel, Inc., WC Docket No. 04-36, at 15 (stating that “VoIP providers cannot deliver their

Furthermore, in light of the substantial similarities between circuit-switched and interconnected VoIP traffic, the Commission since 2004 has determined that VoIP services must comply with numerous common carrier obligations, including the Communications Assistance for Law Enforcement Act,¹¹ E911 requirements,¹² USF contributions requirements,¹³ rules governing the use of Customer Proprietary Network Information (CPNI),¹⁴ disability access regulations,¹⁵ telephone number portability rules,¹⁶ and the discontinuance obligations that apply

services without utilizing and relying upon the critical telecommunications infrastructure, including broadband infrastructure, built and maintained by incumbent LECs. Thus, under the Commission's rules and precedent, all telecommunications service providers that utilize the PSTN, regardless of technology, should be subject to the same obligations to pay for access to the PSTN.”).

¹¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, ¶ 8 (2005) (*CALEA First Report and Order*) (determining that providers of interconnected VoIP services are subject to the Communications Assistance for Law Enforcement Act (CALEA)), *aff'd*, *American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

¹² *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257, ¶ 24 (2005) (requiring interconnected VoIP providers to supply 911 capabilities for services that utilize the PSTN).

¹³ *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538, ¶¶ 38-39 (2006) (establishing universal service contribution requirements for interconnected VoIP providers).

¹⁴ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, ¶¶ 54-59 (2007) (extending the application of CPNI rules to interconnected VoIP providers).

¹⁵ *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11291-97, ¶¶ 32- 43 (2007) (extending disability access provisions to interconnected VoIP providers).

to domestic non-dominant telecommunications carriers under Section 214 of the Communications Act of 1934, as amended.¹⁷

Most recently, the Commission ruled that states may extend their universal service contribution requirements to nomadic interconnected VoIP providers. In reaching this decision, the Commission noted that VoIP providers benefit from universal service policies and programs, because their customers value the ability to place calls to and receive calls from other users of the PSTN.¹⁸ In addition, the Commission stated that it does not believe that the development of IP-based services and the promotion of broadband deployment “are best advanced by giving one class of providers an unjustified regulatory advantage over its competitors.”¹⁹

Consistent with this Commission precedent, state commissions and courts have rejected VoIP providers’ attempts to shed costs by disputing their obligations to pay approved access charge rates for IP/PSTN traffic. State public utilities commissions have repeatedly rejected VoIP providers’ claims that they need not pay intrastate access charges. Most recently, the Iowa

¹⁶ *In re Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Organization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19540, ¶ 17 (2007) (extending to interconnected VoIP providers the obligation to contribute to shared numbering administration costs).

¹⁷ *IP-enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039, 6040, ¶ 2 (2009) (extending to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under Section 214).

¹⁸ *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*, Declaratory Ruling, 25 FCC Rcd 15651, 15654, 15658, ¶¶ 6, 16 (2010).

¹⁹ *Id.* at 15660 ¶ 22

Utilities Board (“IUB”) this year required Sprint to pay Windstream Iowa Communications, Inc. for more than one year of withheld access charges for VoIP traffic.²⁰ The IUB noted that its conclusion is consistent with FCC statements opposing network free-riders.²¹ Likewise, in entering judgment in favor of CenturyLink last month, a federal judge made clear that he saw through Sprint’s “obfuscation” and “smoke and mirrors,” and found that Sprint had no lawful basis for stopping its payment of access charges as required by agreements in place for nearly five years.²² The judge described Sprint’s defense against failing to pay access charges for VoIP traffic as “founded on post hoc rationalizations developed by its in-house counsel and billing division as part of Sprint’s cost-cutting efforts,” and described the carriers’ witnesses as “not at all credible.”²³

If the Commission further delays confirmation that interconnected VoIP providers are obligated to pay approved rates for using the PSTN, it will be rewarding companies for engaging in aggressive self-help that has no legitimate legal justification and is motivated solely by a desire to cut costs by free-riding on the substantial network investments made by others. Such a result serves no Commission goal and no public benefit. Indeed, it undermines carriers’ ability to provide and deploy new broadband services, and harms competition. The Commission should act quickly to eliminate these harmful self-help practices.

²⁰ *Sprint Communications Company L.P. v. Iowa Telecommunications Services, Inc.*, Docket No. FCU-2010-001, Order (Iowa Utilities Board, rel. Feb. 4, 2011), *app. for reconsideration and stay denied* March 25, 2011 (“*Sprint v. Iowa Telecom*”). *See also, e.g., Palmerton Tel. Co. v. Global NAPS South, Inc.*, Docket No. C-2009-2093336 (Pa. Pub. Util. Comm., rel. Feb. 11, 2010).

²¹ *Sprint v. Iowa Telecom* at 36.

²² *Central Telephone Co. of Virginia, et al. v. Sprint Communications Co. of Virginia, Inc., et al.*, Civ. No. 3:09cv720, Memorandum Opinion, at 11, 48 (E.D. Va. 2011).

²³ *Id.* at 3.

2. The requirement to pay appropriate rates is warranted even if the Commission does not find that VoIP is a telecommunications service.

In confirming that VoIP providers are required to pay approved rates for IP/PSTN traffic, the Commission does not have to find that interconnected VoIP is a “telecommunications service.” Numerous past Commission decisions demonstrate that the agency may rely on its ancillary authority to impose Title II obligations on IP/PSTN services without making a decision as to the statutory classification of these services.²⁴ Thus, even if the Commission continues to decline to classify interconnected VoIP as a “telecommunications service,” it should confirm that VoIP providers must pay approved intercarrier compensation rates for traffic that utilizes the PSTN.

3. The ESP exemption does not apply to interconnected VoIP.

The “Enhanced Service Provider exemption” is not and has never been applicable to interconnected VoIP services. The Commission has made clear that the ESP exemption exempts only an actual provider of enhanced (or information) service from paying access charges with respect to the connection between the provider and its own customers.²⁵ This exemption was

²⁴ See *supra* notes 11-17.

²⁵ See *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2631, ¶ 2 (1988) (“*ESP Exemption Order*”). The special compensation rules associated with ISP-bound traffic are also inapplicable because the calls are terminated to voice end user customers, and thus are not one-way calls placed to an ISP. *High-Cost Universal Service Support*, WC Docket No. 05-337, et al., Order on Remand & Report & Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶ 24 (2008) (“*Second ISP Remand Order*”). See also *Northwestern Bell Tel. Co. Petition for Declaratory Ruling*, 2 FCC Rcd. 5986 at ¶ 21, 1987 WL 344405, *vacated as moot*, 7 FCC Rcd 5644 (1992) (Under the ESP Exemption, “enhanced service providers are treated as end users for purposes of our access charge rules. End users that purchase interstate services from interexchange carriers do not thereby create an access charge exemption for those carriers.”).

designed for information service providers that use the telephone network in the same manner as other businesses use it—to allow their customers to reach them so they can sell their products.

The ESP exemption was not intended to apply to providers serving as conduits allowing the providers' customers to make or receive calls to and from others. With respect to VoIP traffic in particular, the PSTN end user is not the customer of the information service provider and is not receiving an information service. When a call originates or terminates on the PSTN, it looks to the PSTN subscriber precisely like any other PSTN-based call; on the PSTN leg of the call, then, the information service provider has the same obligation to pay access charges as any other user of a carrier's local switching facilities.

II. AMENDED RULES TO ELIMINATE “PHANTOM TRAFFIC” ARE LONG OVERDUE.

Windstream praises the Commission for accelerating its consideration of phantom traffic issues and supports the Commission's proposed rules. As the Commission observes, the mislabeling or nonlabeling of interconnected traffic continues to be a significant drain on carrier revenues.²⁶ Windstream has learned through its own intercarrier experiences that phantom traffic unfortunately extends well beyond unintentional traffic mislabeling due to network anomalies. As perpetrators of phantom traffic continue to refine their access avoidance routing schemes, carriers such as Windstream are compelled to devote significant resources toward detecting these schemes as well as pursuing, often in vain, due compensation through multiple venues and jurisdictions. In addition, the access charge avoidance perpetuated by phantom

²⁶ See *NPRM/FNPRM* at ¶¶ 623-24.

traffic schemes provides a competitive advantage to the bad actors vis-à-vis carriers that are properly paying for the use of other carriers' network.²⁷

The Commission in its proposed call-signaling rules correctly addresses inclusion and accuracy of the charge number of the party originating the call (“CN”), in addition to the calling party number (“CPN”). It is critical that the Commission make clear that scheming carriers cannot disguise jurisdiction on billing records by failing to provide or manipulating the CN, a practice Windstream sees frequently today. To further facilitate the proper billing of traffic, the Commission also should make clear that ILECs may invoke the Section 252 negotiation and arbitration process with respect to wireline CLECs with which they exchange traffic.

A. The Proposed Rules Appropriately Address the Importance of Correct Signaling Information in the Charge Number (“CN”) Parameter.

Windstream commends the Commission for addressing issues relating to the CN, not just the CPN, in its proposed call signaling rules. As the Commission correctly notes, standard industry practice provides that the CN is included in billing records in place of CPN when the CN parameter is populated.²⁸ In effect, pursuant to industry standards, the CN, when present, “trumps” the CPN in the billing record. Thus, it is critical that the Commission’s rules clarify

²⁷ While investigating a significant reduction in terminating long distance minutes from one particular interexchange carrier (“IXC”) with a national marketing presence, Windstream discovered that the IXC purposefully diverted its traffic away from its direct connection to the appropriate Windstream tandem switch and masked the identity of its traffic by re-routing it first through a carrier that claimed to be an Enhanced Service Provider, then through a CLEC and then finally through the LATA tandem switching office of yet another third party carrier. Upon being confronted with the routing scheme by Windstream, the IXC claimed that it needed to engage in this conduct to remain competitive with other IXCs that were similarly avoiding access charges.

²⁸ See *NPRM/FNPRM* at ¶ 631. See also *Telcordia Technologies, Generic Requirements for Exchange Access Automatic Message Accounting (AMA) (FSD 20-25-0000)*, at page 5-44 (Table 5-2, Case No. 6).

that populating the SS7 CN field with information other than the charge number to be billed is prohibited, as is altering or stripping signaling information in the CN.

This Commission action is consistent with how the agency has previously addressed CN issues in the context of pre-paid long distance calling card platforms. In the *Calling Card Platform Order*, the Commission prohibited carriers that serve prepaid calling card providers from passing the telephone number associated with the platform in the CN field in the SS7.²⁹ The Commission noted that industry standards allow for the use of CN to populate carrier billing records, and found that “this approach properly balances the need for accurate intercarrier billing records with the need of some carriers to use CN for their own retail billing purposes.”³⁰ The Commission’s proposed amendments to its rules here would properly confirm that the rationale of the *AT&T Calling Card Order* extends to all types of traffic in which the CN is inappropriately altered at an intermediate step in the transmission of a long distance call.

Adopting rules that also address the CN will block some of the major phantom traffic schemes that Windstream faces. For example, in one common scheme, the calling party’s interexchange carrier (“IXC”), in order to mask the true originating point of a call, “launders” the call through a competitive local exchange carrier (“CLEC”) located either in the same exchange as the terminating local exchange carrier (“LEC”) or in a neighboring exchange within the local calling area of the terminating LEC’s customer. In this scheme, the IXC purchases a local business telephone line (typically a Primary Rate Interface (“PRI”) line) from the CLEC, and then delivers all of its long-distance traffic to the CLEC, which then dumps the traffic on the

²⁹ *Regulation of Prepaid Calling Card Services*, WC Docket 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7302, ¶ 34 (2006) (“*Calling Card Platform Order*”).

³⁰ *Id.*

terminating LEC's network, either directly or more typically indirectly, through a LATA tandem switch. The traffic laundering occurs when that CLEC inputs into the CN field of the billing record a telephone number local to the terminating exchange, rather than the ultimate originating exchange of the call.³¹ When challenged by the terminating LEC, the CLEC asserts that because its business customer (the IXC) bought a local circuit (the PRI), any traffic from that business customer originates locally, even though the call was actually originated elsewhere. Under the proposed rules, the CLEC's false input of a CN that represents the local terminating exchange rather than the caller's actual billing telephone number would be prohibited.

In another example uncovered by Windstream, a nomadic VoIP customer with a Little Rock, Arkansas telephone number originates a call while physically located in Little Rock. The call is placed to a LEC telephone number in Charlotte, North Carolina. The nomadic VoIP provider delivers the call through either a LEC or a wireless carrier³² located in Charlotte, and that LEC or wireless carrier populates the SS7 CN field with a telephone number local to Charlotte, not the calling customer's billing telephone number. Under the proposed rules, delivery of this call with the incorrect CN appropriately would be considered improper.

³¹ The CPN is the telephone number that appears on end users' Caller ID. When no CN is present in the billing record, the CPN is used by terminating local exchange carriers to determine the originating point of a call and assign the proper jurisdictional compensation to that call. In past years, carriers have altered the CPN to mask the caller's originating location and minimize intercarrier expense. However, as end user complaints about incorrect Caller ID numbers have triggered an increasing number of LEC investigations into traffic routing schemes, an increasing number of perpetrators of phantom traffic schemes have changed tactics and instead have begun to alter the CN in the billing record while preserving the correct CPN.

³² At least one Commission wireless licensee has attempted to claim status as a Commercial Mobile Radio Service (CMRS) provider for purposes of the Commission's reciprocal compensation rules (47 C.F.R. § 51.701(b)(2)) on a seemingly national basis, despite the fact that its only transmission locations authorized by the Commission are located hundreds, if not thousands, of miles away from the market in question.

Similarly, where a CLEC originates a long-distance call that is routed through an ILEC's tandem switch for termination to an unaffiliated ILEC, the tandem switch provider's delivery of a CN representing the interconnection trunk between the CLEC and the tandem switch provider, rather than the calling party's billing telephone number, would be prohibited by the proposed rules.

By focusing on both the CN and CPN in its proposed rules, the Commission is indicating that it will not tolerate scheming carriers that defy intercarrier compensation obligations by originating or passing on incorrect or incomplete signaling information. There is no legitimate business justification for entering misleading CNs into SS7 streams.

B. To Enable Proper Billing, the Commission Should Make Clear that ILECs May Invoke the Section 252 Negotiation and Arbitration Process With Respect to Wireline CLECs.

In 2005, the Commission in the *T-Mobile Order* declared that ILECs may demand negotiations under Section 252 of the Act to reach commercial agreements with wireless carriers that are connecting indirectly,³³ but it is not apparent that ILECs can make similar demands of wireline CLECs. Windstream urges the Commission to close this gap by extending the principle of the *T-Mobile Order* and making clear that ILECs may invoke the Section 252 negotiation and arbitration process with respect to wireline CLECs with which they exchange traffic. The problem of phantom traffic is particularly acute when a CLEC responsible for originating traffic has no interconnection agreement with a terminating ILEC, but instead is able to use that ILEC's call termination services by handing the traffic to an intermediate transiting carrier (without the necessary call information) and relying on industry practice against blocking calls.

³³ See *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Memorandum Opinion & Order, 20 FCC Rcd 4855 (2005) (*T-Mobile Order*).

The Commission has ample statutory authority to order originating wireline CLECs to negotiate with terminating carriers concerning compensation for indirectly (or directly) terminating interconnected traffic. Section 201(a) of the Act gives the Commission plenary authority to establish interconnection rules, and with respect to local calls subject to section 251(b)(5) reciprocal compensation, the subject of any interconnection agreement to be negotiated, there is no dispute that Section 251 gives the Commission authority to adopt rules requiring all LECs to negotiate compensation-related arrangements for that traffic.³⁴

Furthermore, the policy justifications that underlay the *T-Mobile Order* are clearly present here. In the *T-Mobile Order*, the Commission expressed concern that its prior interpretation of section 251(b)(5) of the Act created asymmetrical obligations—requiring ILECs to interconnect with wireless providers but not requiring wireless providers to enter into reciprocal compensation arrangements with ILECs—and did not encourage wireless providers to engage in negotiations with ILECs to establish reciprocal compensation arrangements.³⁵ The Commission, therefore, modified its interpretation of Section 251(b)(5) to ensure that ILECs have the same ability to compel negotiations and arbitrations with wireless providers as wireless carriers have with ILECs.³⁶ In the case of wireline CLECs, ILECs face the same disproportionate negotiation obligations with the CLECs today as ILECs had with wireless providers prior to the *T-Mobile Order*, and wireline CLECs have the same disincentives to

³⁴ See *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 378 (1999) (holding that “[t]he FCC has rulemaking authority to carry out the ‘provisions of [the Communications] Act,’ which include §§ 251 and 252, added by the Telecommunications Act of 1996.”) (quoting 47 U.S.C. § 201(b)).

³⁵ *T-Mobile Order*, 20 FCC Rcd at 4864.

³⁶ *Id.*

engage in negotiations as wireless providers did. Thus, the same policy grounds support extending the principle of the *T-Mobile Order* to ILEC-wireline CLEC negotiations.

III. THE COMMISSION SHOULD ACT NOW TO ADDRESS ACCESS STIMULATION.

Windstream is pleased that the Commission has set forth concrete proposals to address access stimulation, also known as “traffic pumping.” Providers engaging in access stimulation improperly charge intercarrier compensation rates designed to fairly compensate low-volume, high-cost carriers for their costs of terminating traffic, when they are actually extremely high-volume, low-cost carriers. The Commission should act promptly to adopt rational rule changes that will eliminate this damaging arbitrage practice.

Facilities-based providers rely on their ability to charge and collect payments for the use of their facilities. Access stimulation, however, undermines the integrity of the intercarrier compensation system and threatens carriers’ abilities to recover a portion of the costs of constructing and deploying network assets. Such schemes directly harm consumers by producing higher telephone rates. The issue of access stimulation has been pending before the Commission for more than three years,³⁷ and there is widespread industry agreement that this problem must be addressed. Windstream urges the Commission to move quickly to adopt effective reforms to eliminate traffic pumping.

³⁷ See *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17989, ¶ 1 (2007) (proposing revisions to tariff rules to ensure that rates remain just and reasonable even if a carrier experiences or induces significant increases in access demand).

IV. CONCLUSION

Windstream has long favored comprehensive, rational universal service and intercarrier compensation reform, with proper mechanisms for the replacement of necessary revenues lost through access charge reductions. However, such reform must be conducted on an integrated basis, managed by the Commission, rather than in an anarchic fashion driven by the very providers that profit from the reductions while availing themselves of the benefits of interconnection with the PSTN. Massive regulatory arbitrage should not be allowed to jeopardize reliable and affordable telephone and broadband services for consumers and businesses. While we all travel the path to comprehensive reform, the Commission should act now to end interconnected VoIP providers' unlawful self-help and eliminate phantom traffic and access stimulation schemes, which are draining the intercarrier compensation system and undermining broader reform.

Respectfully submitted,

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