

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Petition of Sprint for Declaratory Ruling Regarding)
Application of CenturyLink's Access Tariffs To)
VoIP Originated Traffic Pursuant to Primary) WC Docket No. 12-105
Jurisdiction Referral)

REPLY COMMENTS OF VERIZON¹

INTRODUCTION

In the *USF-ICC Transformation Order*,² the Commission for the first time adopted intercarrier compensation rules that apply to PSTN-VoIP traffic. The *Order* leaves no doubt that the new rules are prospective only and that the *Order* does not address intercarrier compensation for PSTN-VoIP traffic for prior periods, during which there were no governing rules. Having established prospective intercarrier compensation rules for PSTN-VoIP traffic, the Commission should continue to clarify the VoIP regulatory landscape by reaffirming that VoIP is exclusively interstate for jurisdictional purposes and confirming once and for all that VoIP is an information service. No commenter offers any valid contrary arguments.

DISCUSSION

A. There were no governing rules for PSTN-VoIP intercarrier compensation before the *USF-ICC Transformation Order* established prospective new rules.

Before the *USF-ICC Transformation Order*, the FCC had never established what intercarrier compensation, if any, was due on PSTN-VoIP traffic. The Commission made this

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc., and Verizon Wireless (“Verizon”).

² See *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*USF-ICC Transformation Order*” or “*Order*”).

clear more than once leading up to the *USF-ICC Transformation Order*, including in the *National Broadband Plan*³ and in the *USF-ICC Transformation NPRM*.⁴ As the Commission explained in the *USF-ICC Transformation NPRM*:

The Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic. ...

[T]he Commission has declined to explicitly address the intercarrier obligations associated with VoIP traffic. Given this lack of clear resolution, ... disputes increasingly have arisen among carriers and VoIP providers regarding intercarrier compensation for VoIP.⁵

Commenters that argue that tariffed switched access charges have always applied to traffic that originates in IP ignore the Commission's explicit statements that it had never established what rules, if any, applied to that traffic.⁶ Cox's assertion, for example, that "the Commission has unambiguously held that VoIP-PSTN traffic is subject to access charges" cannot be squared with the Commission's statements.⁷

Attempting to support their position, commenters focus on the Commission's conclusion in the *Time Warner Cable Declaratory Ruling* that "providers of wholesale telecommunications services enjoy the same rates as any 'telecommunications carrier'" under Sections 251(a) and (b) of the Act, regardless of whether the end-user service involved is VoIP.⁸ But that focus is

³ See *Connecting America: The National Broadband Plan*, at 142 (FCC 2010), <http://download.broadband.gov/plan/national-broadband-plan.pdf> ("*National Broadband Plan*").

⁴ See *Connect America Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*USF-ICC Transformation NPRM*" or "*NPRM*").

⁵ *Id.* ¶¶ 608, 610 (internal citations omitted).

⁶ See, e.g., AT&T Comments at 5-8; CenturyLink Comments at 21-25; Cox Comments at 4-7.

⁷ Cox Comments at 5.

⁸ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as*

misplaced.⁹ The Commission made clear in that order that its decision did not turn on and did not affect the intercarrier compensation treatment of VoIP traffic.¹⁰ And as discussed above, the Commission has continued to make clear that before the *USF-ICC Transformation Order* it had never answered the question of what intercarrier compensation obligations, if any, apply to VoIP-PSTN traffic.

Similarly, commenters arguing that the *USF-ICC Transformation Order* speaks to intercarrier compensation obligations for PSTN-VoIP traffic before December 31, 2011 ignore the Commission's unambiguous statements that the *Order* established prospective intercarrier compensation rules and did not address the past.¹¹ Throughout the order, the Commission refers to its new "prospective" intercarrier compensation framework.¹² The Commission has explained that, "in exercising its authority to adopt a transitional framework for VoIP intercarrier compensation, the Commission was not restricted to adopting precisely the same charges that might have applied previously."¹³ And it is hard to find a more direct statement than this one: "This Order does not address intercarrier compensation payment obligations for VoIP-PSTN traffic for any prior periods."

Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶ 9 (2007) ("*Time Warner Cable Declaratory Ruling*").

⁹ See, e.g., AT&T Comments at 6-8; CenturyLink Comments at 23-25.

¹⁰ See *Time Warner Cable Declaratory Ruling*, ¶ 17 n.52.

¹¹ See, e.g., CenturyLink Comments at 14-18; Cox Comments at 4-7.

¹² See, e.g., *USF-ICC Transformation Order*, ¶ 933: "Under the new intercarrier compensation regime, all traffic – including VoIP-PSTN traffic – ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, *we adopt a prospective intercarrier compensation framework for VoIP traffic.*" (emphasis added).

¹³ *Connect America Fund, et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, ¶ 38 (2012).

B. VoIP is jurisdictionally interstate.

The Commission has already found in the *Vonage Order* that VoIP services are subject to its exclusive federal jurisdiction.¹⁴ There, the Commission concluded that applying traditional state telephone company regulation to VoIP providers “outright conflicts with federal rules and policies governing” those communications.¹⁵

Nevertheless, some still assert otherwise, and as a result, confusion persists. The Commission should eliminate that confusion by reaffirming that all VoIP services are practically inseverable¹⁶ and therefore interstate for jurisdictional purposes.

The Iowa Utilities Board (IUB) claims that this would be contrary to its 2011 decision requiring Sprint to pay intrastate access charges on VoIP traffic. Sprint’s appeal of that decision is pending before the Eighth Circuit.¹⁷ While it is understandable that the IUB would not want the Commission to issue a declaratory ruling that undermines the IUB’s defense of its order on appeal, the IUB’s decision – rendered before the *USF-ICC Transformation Order* – conflicts with federal law because VoIP is inherently interstate for jurisdictional purposes.

Cox, meanwhile, would have the Commission disregard the *Vonage Order* in this context, claiming that “voice calls terminated to another competitor’s network do not present the same difficulties of severability and classification that the VoIP-originated calls in [*Vonage*] did.”¹⁸ But the *Vonage Order* did not exclude calls that terminated on another competitor’s

¹⁴ See *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶¶ 15-37 (2004) (“*Vonage Order*”).

¹⁵ *Id.* ¶ 31; see also *id.* ¶¶ 20-22 (identifying the federal rules and policies with which state regulation conflicts).

¹⁶ See *id.* ¶¶ 29-32.

¹⁷ See IUB Comments at 2-3.

¹⁸ Cox Comments at 7.

network, and Cox’s argument ignores the multi-part analysis set forth in the *Vonage Order*. The Commission should in turn ignore Cox’s argument.

As Verizon discussed in its comments, the Commission held in the *Vonage Order* that VoIP is practically inseverable for jurisdictional purposes because the characteristics of that service “preclude any practical identification of, and separation into, interstate and intrastate communications.”¹⁹ Among other things, the Commission found Vonage’s service was integrated because it offered consumers any-distance calling without distinguishing between “local” and “long-distance” minutes of use,²⁰ and because it offered a “suite of integrated capabilities and features” with any-distance calling, including “multidirectional voice functionality” and “online account and voicemail management” that allowed customers to access their accounts from an Internet webpage to configure service features, play voicemails through a computer, or receive or forward them in e-mails with the message attached as a sound file.²¹ It held that the standard for determining jurisdiction is not whether it is technologically possible to carve out a purely intrastate service. Instead, the question is whether a “practical means to separate the service” exists and whether compelling providers to do so would conflict with federal policy.²² The Commission found that directing Vonage to undertake these changes and bear these costs would conflict with the Commission’s policies that promote innovative services in general, and the development and deployment of broadband in particular. And the Commission made clear that its conclusions were not limited to Vonage’s service, but applied to other VoIP services as well.²³

¹⁹ *Vonage Order*, ¶ 14.

²⁰ *See id.* ¶ 27.

²¹ *Id.* ¶ 7.

²² *Id.* ¶ 23; *see also id.* ¶ 37.

²³ *See id.* ¶ 25 n.93.

Neither the IUB, Cox, or any other party makes a serious effort to rebut these conclusions. The *Vonage Order* confirms that all VoIP services are practically inseverable and therefore interstate for jurisdictional purposes. The Commission should end the lingering confusion in this area by reaffirming its holdings.

C. VoIP is an information service.

Among the commenters, only NECA seriously asserts that VoIP is not an information service, claiming that the presence of a net protocol conversion does not render VoIP an information service.²⁴ NECA is wrong; the Commission has explained that a service that enables “an end-user to send information into a network in one protocol and have it exit the network in a different protocol clearly ‘transforms’ user information” and therefore “constitute[s]... information services under the 1996 Act.”²⁵

But the analysis is not limited to whether there is a net protocol conversion and its legal effect. Notwithstanding and independent of the net protocol conversion, as Verizon has explained, VoIP meets the Communications Act’s statutory definition of “information service”:

the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.²⁶

VoIP is an information service because it “offers customers a suite of integrated capabilities and features that allow[] the user to manage personal communications dynamically”²⁷ and to

²⁴ See NECA, *et al.* Comments at 4.

²⁵ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 104 (1996) (subsequent history omitted).

²⁶ 47 U.S.C. § 153(24).

²⁷ *Vonage Order* ¶ 7; see also *id.* ¶ 25 n.93.

“generate, acquire, store, transform, process, retrieve, utilize, or make available information via telecommunications.”²⁸

The old tariffed access charge regime did not apply to information services or information service providers.²⁹ As Verizon has explained, the Act’s text and Commission precedent make clear that VoIP is an information service and not a telecommunications service. And at least three federal district courts have found that VoIP services are information services.³⁰ The Commission has had the question of VoIP’s regulatory classification before it for many years, and it should confirm once and for all that VoIP is an information service.

²⁸ 47 U.S.C. § 153(24).

²⁹ See *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, ¶¶ 5-7 (2004). See also *USF-ICC Transformation Order* ¶ 957 (“the access charges imposed on information service providers were different from those paid by IXCs”); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, ¶¶ 341-48 (1997) (subsequent history omitted) (holding that Internet access service providers, among other information service providers, should not be required to pay interstate access charges to local phone companies); FCC Commissioner Kathleen Q. Abernathy, “Developing a New Paradigm for Communications Regulation,” Keynote Address, New Jersey Telecommunications Summit, (May 20, 2005), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-259428A1.pdf (“The FCC’s rules apply access charges to telecommunications services, but not to information services.”).

³⁰ See *PAETEC Commc’ns Inc. v. CommPartners, LLC*, No. 08-cv-0397, 2010 U.S. Dist. Lexis 51926, *7 (D.D.C. Feb. 18, 2010); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 461 F. Supp. 2d 1055, 1081-83 (E.D. Mo. 2006), *aff’d*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 555 U.S. 1099 (2009); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003), *aff’d*, 394 F.3d 568 (8th Cir. 2004).

CONCLUSION

The Commission should address Sprint's Petition by reaffirming that VoIP is an inherently inseverable, interstate service for purposes of jurisdiction and by confirming once and for all that VoIP is an information service.

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