

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for our Future)	WC 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
)	

**INITIAL COMMENTS OF
THE INDIANA UTILITY REGULATORY COMMISSION
ON SECTION XV**

Introduction

The Indiana Utility Regulatory Commission (Indiana Commission) respectfully submits these initial comments regarding Section XV of the Federal Communications Commission's (FCC or Commission) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking on Reform of the Universal Service Fund (USF) and Intercarrier Compensation (USF/ICC NPRM). The Indiana Commission applauds the FCC's acknowledgment, through the issuance of this NPRM, that the current USF and intercarrier compensation regime can be significantly improved. Furthermore, the issues encompassed in these initial comments have been among the most challenging of the dysfunctionalities perpetuated by ad hoc piecemeal regulatory reform, and the Indiana Commission supports the Commission's determination to undertake comprehensive reform.

Phantom Traffic

In the USF/ICC NPRM, the FCC proposes to supplement its existing call signaling rules.¹ The new rules would prohibit carriers originating or terminating any traffic on the public switched telephone network (PSTN) from stripping or otherwise removing the calling party's telephone number or information needed by the terminating carrier to identify and bill for this traffic. Increasingly, terminating carriers receive traffic that lacks all the information needed to properly bill for this traffic. Traffic that lacks sufficient information to facilitate proper billing is known as phantom traffic. Originating carriers are motivated to obfuscate a call's origin due to different intercarrier compensation rates determined by the nature of traffic (e.g., less expensive reciprocal compensation versus more expensive access charges) and by jurisdiction. Inability to properly bill for terminating traffic can affect the revenues received by carriers to which they are otherwise entitled.

While not waiving any states' exclusive statutory jurisdiction with regard to intrastate traffic, the Indiana Commission supports the FCC's efforts to address the issue of phantom traffic. The proposed changes to the FCC's call signaling rules should lead to more accurate identification of originating providers and ensure the receipt of information necessary for accurate billing. Such improved accuracy can reduce the amount of unidentifiable and unbillable traffic and lead to more accurate and comprehensive billing, resulting in additional revenue to which terminating carriers are currently entitled.

Additionally, the reduction or elimination of phantom traffic should permit the FCC, industry, and the states to make better informed decisions going forward regarding the intercarrier compensation and universal service reforms contemplated in other sections of the USF/ICC NPRM. The FCC's proposed rule changes might also lead to more comprehensive and accurate information about network and infrastructure capacity needs and constraints.

The Indiana Commission recommends that the FCC allow for remedies for existence of phantom traffic that could include the option for carriers that are receiving phantom traffic to refuse to terminate that traffic for noncompliant carrier after a proceeding before the applicable state commission.

Access Stimulation

The FCC also proposes a number of rules to address situations where carriers are engaged in both access stimulation and access revenue sharing.² Access stimulation, also known as traffic pumping, is broadly defined as "an arbitrage scheme employed to take advantage of intercarrier

¹ USF/ICC NPRM Appendix B.

² See, e.g., USF/ICC NPRM, para. 659.

compensation rates by generating elevated traffic volumes to maximize revenues.”³ Access revenue sharing occurs when a rate-of-return ILEC or a CLEC enters into an arrangement with a third party (including either an affiliate or a non-affiliated entity) that will result in a net payment of intercarrier compensation to the other party over the life of the agreement.⁴

State commissions have weighed in on the issue of traffic pumping through the adoption of a National Association of Regulatory Utility Commissioners (NARUC) resolution last fall. In addition to outlining and acknowledging the serious problems with traffic pumping, such as cost to carriers and consumers in the hundreds of millions of dollars annually and growing, the resolution urged the FCC to move quickly to limit or prohibit traffic pumping.⁵

While not waiving any states’ exclusive statutory jurisdiction over intrastate traffic, the Indiana Commission applauds the FCC’s efforts to address the issue of traffic pumping. In response to the FCC’s desire for information about states’ efforts to curb traffic pumping, the Indiana Commission is not aware of any access stimulation/traffic pumping or access revenue sharing schemes currently underway in Indiana, nor has the Indiana Commission received any complaints on these issues.⁶ The lack of evidence of traffic pumping in Indiana may be due in significant part to the fact that Indiana has already moved to a policy of intrastate access rates mirroring interstate access rates.⁷

However, several of the FCC’s proposed rule changes have the potential to affect the intrastate access filings of some Indiana companies under certain circumstances:

- (1) establishing a trigger that could preclude some ILECs from participating in the NECA tariffs and require them to file their own interstate tariffs⁸;
- (2) changing the types of carriers whose interstate rates and charges (NECA, RBOC, or other ILEC) would act as a cap on CLEC tariffed

³ USF/ICC NPRM, para. 636.

⁴ USF/ICC NPRM, Appendix C, proposed rule 47 CFR §61.3(aaa).

⁵Resolution Supporting Expeditious FCC Action on Traffic Pumping Schemes, Adopted by the NARUC Committee of the Whole on November 17, 2010.

⁶ USF/ICC NPRM, para. 675.

⁷ See, IURC Cause No. 37200, 37905, 39369, 40785, and 42144.

⁸ USF/ICC NPRM, para. 662.

interstate rates (“CLEC benchmarking”)⁹, which would effectively require some CLECs to charge lower interstate access rates;

- (3) prohibiting certain costs from being included in an interstate revenue requirement¹⁰ and;
- (4) increasing the length of the FCC tariff review period and extending the earliest possible effective date for the affected interstate tariff.¹¹

It is possible that any of these types of changes could have an impact on the process or requirements for filing intrastate access tariffs in Indiana, given that most Indiana ILEC intrastate access tariffs generally mirror an interstate access tariff, and those of some CLEC tariffs do, as well. Accordingly, the Indiana Commission is concerned about any changes in federal access charge policy because of its immediate effect in Indiana due to mirroring. However, pending Indiana Commission proceedings and actions¹² addressing possible changes to filing and procedural requirements for intrastate access tariffs limit the Indiana Commission’s ability to provide specific input at this time. Nevertheless, the Indiana Commission is closely monitoring these and other FCC proposals¹³ that might affect intrastate access tariffs in Indiana. Furthermore, the Indiana Commission asks that the FCC take careful consideration of the potential impact on states that mirror, like Indiana, when adopting its new traffic stimulation rules.

Intercarrier Compensation Obligations for VoIP Traffic

Also in this USF/ICC NPRM, the FCC seeks comment on the issue of intercarrier compensation for Voice-Over-Internet Protocol (VoIP) traffic. In particular, the FCC asks if intercarrier compensation should only apply to Interconnected VoIP traffic, which is exchanged with PSTN, or if it should also apply to other types of VoIP traffic as well. The FCC also seeks comment on the appropriate timing for specifying the intercarrier compensation obligations applicable to interconnected VoIP and the magnitude of that compensation.

⁹ USF/ICC NPRM, para. 665.

¹⁰ USF/ICC NPRM, paras. 663 & 664.

¹¹ USF/ICC NPRM, para. 666.

¹² See, Indiana Commission Cause Nos. 43977 and 44004. See, also, *Indiana Commission Emergency Rulemaking*, Indiana Commission RM # 11-02.

¹³ See, e.g., *In the Matter of Electronic Tariff Filing System (ETFS), Notice of Proposed Rulemaking*, WC Docket No. 10-141 (FCC 10-127: rel. July 15, 2010).

The FCC recognizes that VoIP traffic is substantial and growing.¹⁴ The popularity of VoIP technology is due in part to the flexible and robust method it uses in transporting voice calls. VoIP technology switching equipment is very scalable in handling a relatively low number of telephone lines but also to a much larger number of lines. VoIP telecommunication traffic can be easily transported over the same facilities as broadband-based information traffic, such as e-mail and website traffic.

Indeed, with the emergence and the proliferation of smart phones that run on advanced 4G wireless networks, as well as the continuing importance of wireline ISPs, VoIP is positioned to become “just another application” that uses a wireless or a wireline broadband connection. These advantages indicate that VoIP could become one of the most important protocols, if not the premiere protocol, for the offering of voice telephone calling services in the future. However, there is much uncertainty with how VoIP traffic should be treated with regard to intercarrier compensation.

To date, VoIP has not been classified as either a telecommunication or an information service. This lack of classification has led to confusion and litigation about what, if any, intercarrier compensation is – or should be - associated with the exchange of VoIP traffic. It is appropriate to address VoIP traffic together with phantom traffic and traffic pumping because like these other network pathologies, the current confusion over how to classify VoIP has given rise to asymmetric regulation and arbitrage. Historically, the Internet Protocol (IP) technology on which VoIP depends has been used to transport information services (such as e-mail and website traffic). Such services are exempted from existing intercarrier compensation rules. However, VoIP is clearly functionally equivalent to voice calling service offered over circuit-switched networks, which for all protocols other than VoIP is subject to intercarrier compensation charges. The lack of clarity on the classification of VoIP and the resulting issues with non-discriminatory intercarrier compensation treatment clouds the accurate assessment of VoIP technological advantages relative to traditional circuit-switched technology.

Until the FCC settles the question of intercarrier compensation obligation for VoIP traffic, the true comparative technological merits of VoIP cannot be fairly weighed against traditional circuit-switched technology. So long as the FCC is silent on the nature of VoIP, some carriers will choose to use VoIP not because it is technologically superior but because of the opportunity for arbitrage offered by claiming that VoIP traffic is not obligated to pay intercarrier compensation, while circuit-switched calls must do so. Indeed, some traditional carriers still have undepreciated investment in circuit-switched technology. The writing off of these investments is only prudent if VoIP is, in fact, technologically superior, and if that superiority shortened the remaining technological life – and perhaps the remaining economic life, as well –

¹⁴ *Local Telephone Competition: Status as of December 31, 2009*, various Figures, Tables, and Charts. FCC: Industry Analysis and Technology Division, Wireline Competition Bureau (January, 2011).

of the circuit-switched investment. The FCC must move quickly to settle the nature of intercarrier compensation for VoIP traffic in order to bring certainty and allow VoIP to compete on its technological merits and not on merely on artificial advantages (arbitrage) related to the historical treatment of IP traffic.

The Indiana Commission supports the concept that VoIP is functionally equivalent to traditional circuit-switched voice product offerings that are required to pay intercarrier compensation. Accordingly, the FCC should immediately “determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges – interstate access and reciprocal compensation – as other voice telephone service traffic.”¹⁵ While not waiving states’ exclusive jurisdiction to set intrastate access charges, the Indiana Commission does not oppose the FCC encouraging states to adopt that same policy. To level the playing field immediately, and consistent with these recommendations and reservations, the FCC should require VoIP providers to pay the same intercarrier compensation charges as providers of traditional voice offerings. Once the same requirements are place on both circuit-switched voice calls and VoIP, carriers will choose the technology to use based on the ability of that technology to efficiently and effectively handle calls.

If and when the FCC decides to reform the overall intercarrier compensation regime of current access charges and reciprocal compensation, the FCC should apply the same regulatory treatment to functionally equivalent services - like calling provided over circuit-switched networks and calling via VoIP.


Conclusion

The Indiana Commission appreciates the opportunity to offer its comments to the FCC on its USF/ICC NPRM proposals for policy change to address the issues of Phantom Traffic, Traffic Stimulation and Intercarrier Compensation for VoIP. All of these issues have the potential to have impacts, some positive and some negative, in the states. The Indiana Commission urges the FCC to carefully consider any changes in policy that could impinge upon the jurisdiction and purview of state commissions. States continue to have an important role to play in the implementation of telecommunication policy and are uniquely positioned closest to the ground where the implications of policy are felt. As part of this role, the Indiana Commission looks forward to working with the FCC as it moves forward in this and other proceedings related to the implementation of the National Broadband Plan.

¹⁵ USF/ICC NPRM, para. 618.

Respectfully submitted this 25th day of March, 2011.

INDIANA UTILITY REGULATORY COMMISSION



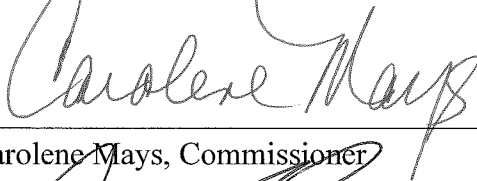
James D. Atterholt, Chairman



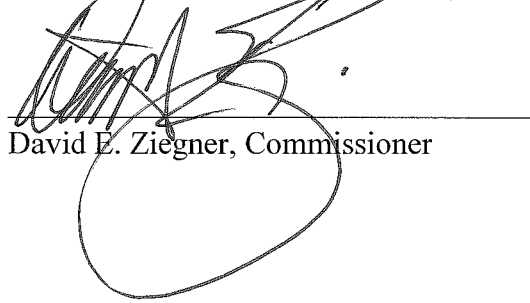
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Carolene Mays, Commissioner



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