

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Petition for Waiver of Embarq Local )  
Operating Companies of Sections 61.3 and ) WC Docket No. 08-160  
61.44-61.48 of the Commission's Rules, )  
and Any Associated Rules Necessary to )  
Permit it to Unify Switched Access )  
Charges Between Interstate and Intrastate )  
Jurisdictions )

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COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

To the Commission:

**I. INTRODUCTION**

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits comments in the above-captioned proceeding.<sup>1</sup> ITTA members are mid-size local exchange carriers (LECs) that provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to 30 million access lines in 45 states. ITTA has participated extensively in earlier phases of the Commission's long-running effort to reform its intercarrier compensation rules, most recently with comments on a petition filed by AT&T (Docket No. 08-152)<sup>2</sup> and an *ex parte* comment on a proposal

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<sup>1</sup> *Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and Any Associated Rules Necessary to Permit it to Unify Switch Access Charges Between Interstate and Intrastate Jurisdictions*, WC Docket No. 08-160 (filed Aug. 1, 2008) (Embarq Petition); *Public Notice*, DA 08-1846 (rel. Aug. 5, 2008).

<sup>2</sup> *Petition of AT&T for Interim Declaratory Ruling and Limited Waiver: Comments of the Independent Telephone & Telecommunications Alliance*, WC Docket No. 08-152 (filed Aug. 21, 2008).

submitted by a group of industry entities (Docket Nos. 01-92, 04-36).<sup>3</sup> In brief, and as stated previously, ITTA agrees that comprehensive reform is urgently needed and that, absent comprehensive reform, interim steps must be taken. Whether permanent or interim, however, any reform efforts must provide carriers serving high cost rural areas an opportunity to recover revenues lost due to rate reductions. In so doing, the Commission must also recognize the unique need of these carriers to recover costs associated with providing carrier-of-last-resort (COLR) service through access charges. In addition, reform efforts must not carve out traffic between the public switched telephone network (PSTN) and Internet protocol (IP) communications media for special treatment. ITTA members serve rural areas, are subject to end-user rate regulation premised on the existence of access charges, and incur demonstrably higher costs as a result of fulfilling COLR mandates.

## **II. DISCUSSION**

Current regulation has created substantial arbitrage opportunities in the existing intercarrier compensation system. This arbitrage threatens universal service, undermines broadband deployment, distorts competition, fosters disputes, and perpetuates significant administrative burden and expense for carriers attempting to operate under the current rules. Embarq's waiver request is a thoughtful and creative response to the dual needs of ensuring the viability of networks serving high-cost and rural areas while simultaneously limiting potential adverse effects on consumers. Embarq's proposal is a rational response required in light of the distinct business conditions faced by mid-sized LECs.

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<sup>3</sup> *Developing a Unified Intercarrier Compensation Regime; Proper Routing and Compensation for Termination of Telecommunications Traffic; IP-Enabled Services: Ex Parte of the Independent Telephone & Telecommunications Alliance*, CC Docket No. 01-92, WC Docket No. 04-36 (filed Aug. 14, 2008).

Importantly, Embarq's proposal ensures that its end-users do not suffer to pay for the benefits that inure to entities paying lower access charges.

Federal and state regulators have required, and continue to require, ITTA members to rely on switched access revenues for cost recovery and support for retail rate regulation and the COLR obligations imposed, in practice, only on incumbent LECs for the purpose of achieving universal service. However, competition and changes in technology are steadily weakening the incumbent LEC's ability to collect switched access revenues. At the same time, the existing pricing structure gives some entities incentives to obscure their use of PSTN facilities to avoid paying compensation for the use of LEC networks. As a result, the current system is approaching a crisis that will affect customers in rural areas as ITTA members will no longer be able to rely on switched access revenue to provide a reasonable opportunity to recover costs imposed by end-user rate regulation and COLR mandates. Moreover, this cost-recovery crisis arises at a time when the imperative to deploy costly broadband-capable networks is at its greatest.

ITTA members primarily serve high cost rural areas and are particularly sensitive to the need to ensure adequate support for networks deployed in areas with low population densities. Areas served by ITTA members are at risk as access revenues decline, due both to arbitrage (*i.e.*, phantom traffic) or natural trends tending toward diminished use of switched access. Stable and adequate revenues are necessary to provide certainty for carriers' underlying investment and expansion strategies. Since ITTA members have fewer customers over which to distribute local exchange costs, as compared to the Nation's largest carriers, ITTA members rely heavily upon other

mechanisms for cost recovery, including access compensation. There is little, if any, question that a comprehensive reformulation of intercarrier compensation must be constructed in order to meet the needs of mid-sized carriers serving rural America.

Unification of switched access rates is crucial to controlling destructive arbitrage incentives. Further, Embarq's proposal recognizes that unification should not be set at a "one-size-fits-all" rate that would blanket all study areas. Rather, as proposed by Embarq, unified rates should recognize and reflect the unique needs and dynamics of a particular study area. Ultimately, any unified rate for interstate and intrastate access must provide reasonable recovery of the costs LECs incur when providing access services. A rate that is excessively low will prevent adequate cost recovery.

Embarq's proposal maintains implicit support in the access charge regime, limiting impacts on end-users and enabling Embarq to provide reasonably comparable services to high-cost rural areas at rates reasonably comparable to those offered in lower-cost suburban and urban areas. Similarly, ITTA members often cannot reasonably look to their end-user customers alone to bear the cost of COLR mandates. The amounts (in the form of SLC increases) proposed by some would be so high as to be unfair to those customers that choose a COLR as their provider, and biased with respect to competition in the market. Moreover, universal service will survive if, and only if, explicit support is created to reasonably balance the needs of carriers and consumers, particularly consumers in rural areas that are more dependent on support levels that are eroding as a result of suburban and urban competition. Finally, while the Commission arguably can change the manner in which revenues regulated by state commissions are realized (for example, through an access recovery mechanism rather than access charges *per se*), the

Commission cannot unilaterally reduce those revenues without violating section 2(b) of the Act.

The Commission's treatment of intercarrier compensation must account for the realities of the marketplace and prior determinations of the Commission in two additional, yet critical, regards. As ITTA previously has noted, reciprocal compensation should not apply to dial-up ISP-bound traffic,<sup>4</sup> which most of the time is not terminated locally by the ISP but, rather, is transported (usually by a different provider) to a distant server. Such traffic is, therefore, best characterized as interstate traffic rather than local telecommunications traffic (indeed, if it were local traffic it would be subject to the jurisdiction of the relevant state commission and not the Commission). Similarly, virtual network exchange (VNXX) traffic must not be treated as local traffic, even when it is used for information access rather than voice traffic. The Commission has long determined the jurisdiction and classification of a call by reference to the physical end points rather than the numbers dialed, and this practice should continue.

A critical first step toward intercarrier compensation reform must be the affirmation that entities choosing to use the PSTN must pay for that use in the same way as others who terminate traffic there. As a threshold issue, ITTA supports the proposition that access charges apply to IP-originated traffic that terminates on the PSTN. There is no reason for interconnected-VoIP providers to be free of obligations that apply to others who use identical termination services provided by LECs. Certainly, the Commission has

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<sup>4</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation of ISP-Bound Traffic: Ex Parte of ITTA*, CC Docket Nos. 96-98, 99-68 (filed Apr. 28, 2008; May 1, 2008).

not hesitated to impose “social” obligations on VoIP providers, including CALEA, E-911, and USF contributions.<sup>5</sup> Furthermore, there is no technically feasible way to identify and treat separately PSTN traffic that was originated in Internet Protocol. It all looks the same, because it has been converted to TDM and delivered via SS7. The imperative to affirm obligations attached to tangible benefits must compel the Commission to order unequivocally that interconnected-VoIP providers are obligated to pay access charges in accordance with the Commission’s rules when those providers use the PSTN. This position is not only consistent with principles of equity and regulatory parity, but also necessary to ensure that the PSTN is maintained by all who rely upon that network for provision of their services.

For some competitors, the Commission has not been clear enough in affirming the obligations of interconnected VoIP providers to contribute to the cost of the PSTN through interstate and intrastate terminating switched access. This has encouraged arbitrage and short-changing of LECs that are providing terminating switched access for VoIP providers. Absent Commission action in this regard, LECs will be compelled to

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<sup>5</sup> See, e.g., *Universal Service Fund Contribution Methodology*, WC Docket No. 06-122; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *1998 Biennial Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, *Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size*, CC Docket No. 92-237, *Number Resource Optimization*, CC Docket No. 99-200, *Telephone Number Portability*, CC Docket No. 95-116, *Truth in Billing Format*, CC Docket No. 98-170, *IP-Enabled Services*, WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) at para. 2, and *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 (2005) at para. 8.

continue to provide services without lawful compensation. The Commission has already stated,

[W]e 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.<sup>6</sup>

The Commission must reject the patently false assertion by some providers that applying access charges would impose legacy regulation on new IP technologies. The VoIP providers making this assertion are looking for special treatment to gain competitive advantage.

As IP-based competition grows and IP-originated traffic becomes a greater percentage of switched access, a commitment to competitive neutrality must ensure that providers of one type of traffic do not find favor or advantage over providers of another solely because regulatory processes have not kept pace with market evolution. As the Commission has stated previously, a “primary objective with respect to the formulating of access charge rules has been to assess access charges on all users of exchange access, irrespective of their designation as carriers, non-carrier service providers, or private customers.”<sup>7</sup> Where various offerings rely upon common infrastructure, mechanisms to assure support for those underlying elements must be in place. Appropriate regulation must provide a level playing field by imposing similar obligations not only upon

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<sup>6</sup> *IP-Enabled Services: Notice of Proposed Rulemaking*, WC Docket No. 04-36, 19 FCC Rcd 4683, FCC 08-28, at para. 61 (2004).

<sup>7</sup> *Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Sub-elements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4254, FCC 91-186, at para. 54 (1991).

providers of similar services, but upon all who avail themselves of similar benefits from common sources, in order to ensure that regulation does not inadvertently favor one technology or provider over another.

The termination of traffic upon a LEC network utilizes functions and facilities whose deployment and implementation consumes financial resources and on-going personnel costs to ensure reliable operability. Notions that only LECs, who are the carriers responsible to terminate traffic on the PSTN, should be obligated to shoulder terminating costs without rational cost-recovery must be rejected. Moreover, in any network environment, the cost of social obligations, including COLR obligations, must be borne by all who benefit from and rely upon use of the underlying network facilities. Accordingly, the Commission must take necessary action to affirm clearly that access charges apply to interconnected VoIP traffic.

### III. CONCLUSION

ITTA supports access rate unification in a manner that minimizes impacts on end-user consumers. Embarq's petition addresses these needs in a thoughtful and creative manner that ensures that end-users, especially in rural America, do not suffer for the benefits that may inure to carriers that would pay lower access charges.

Respectfully submitted,

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