



will also preempt the proliferation of wasteful and unnecessary disputes..

## II. DISCUSSION

The lack of clearly imposed Commission policy regarding access obligations incurred by IP-enabled voice traffic that terminates on the PSTN has encouraged inappropriate arbitrage and the resultant loss of otherwise recoverable revenues for network owners. These outcomes are particularly discouraging as the Commission, most recently within the context of the National Broadband Plan (NBP), continues to affirm its commitment to overall intercarrier compensation (ICC) reform. The foundation of ultimate ICC processes will be stronger if the Commission resolves long-pending issues as first steps toward fundamental reform.<sup>2</sup>

ITTA has consistently urged the Commission to affirm the proposition that carriers terminating IP-enabled voice calls on their networks are entitled to compensation. The bedrock of access compensation is the axiom that entities choosing to use the PSTN must pay for that use. There is no reason why interconnected-VoIP providers should be free of obligations that apply to others who use identical termination services provided by local exchange carriers (LECs). Indeed, the Commission has enunciated this principle, stating,

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 equally among those that use it in similar ways.<sup>3</sup>

<sup>2</sup> In addition to access obligations for IP-enabled voice traffic, the Commission should seize the complete evidentiary records concerning phantom traffic and access stimulation, and resolve those matters imminently, as well.

<sup>3</sup> *IP-Enabled Services: Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28, at paras. 33, 61 (2004).

The Commission reflected this finding when it ordered that access obligations apply to calls originating in IP format before being converted to circuit-switched format for termination on the PSTN.<sup>4</sup> The Commission must clarify, amplify, and affirm that these principles apply to all IP-enabled voice traffic that terminates on the PSTN.

The Commission should reject access avoidance practices. The lack of clear Commission protocol to date has emboldened some providers to implement “self help” payment practices and has been implicated in numerous disputes.<sup>5</sup> These sort of disputes consume carrier and public resources, and reflect, at best, a need for Commission clarification, or, at worst, patent arbitrage aimed at avoiding payment for use of services received.

---

<sup>4</sup> *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges: Order*, WC Docket No. 02-361, FCC 04-97(2004).

<sup>5</sup> Various administrative and judicial proceedings have arisen out of disputes relating to the treatment of IP-enabled voice traffic vis-à-vis intercarrier compensation. These include, but are not limited to: *Pac-Bell d/b/a SBC v. MCI Metro Access Transmission*, California Public Utilities Commission, Proceeding No. 05-05-027 (closed August 24, 2006); *AT&T v. Global NAPS*, California Public Utilities Commission, Proceeding No. 07-11-018 (closed Feb 4, 2008); *Vycera v. Global NAPS California*, California Public Utilities Commission, Proceeding No. 06-05-006 (Dismissed July 2008); *Southern New England Telephone v. Global Naps*, U.S. District Court Connecticut, No. Civ.A. 304CV2075JCH, 2005 WL 2789323 (Filed Dec. 7, 2004; closed July 7, 2008); *Blue Ridge Telephone Company, Citizens Telephone Company, Plant Telephone Company, and Waverly Hall Telephone v. Global NAPs, Inc.*, Georgia Public Service Commission Docket No. 21905-U (April 8, 2008); *3Rivers v. CommPartners*, Montana Public Utilities Commission, Montana District Court, CV 08-68-M-DWM (filed May 21, 2008); *Comcast IP Phone v. the Missouri Public Utility Commission*, Missouri District Court (Jan. 18, 2007); *AT&T v. Level 3, Big River Telephone Company, KMC Data, KMC Telecom, et al.*, Missouri Public Service Commission File No. TC-2010-0107 (filed Oct. 2, 2009; pending as to Level 3); *Frontier Telephone of Rochester, Inc. v. USA Datanet Corp.*, 386 F.Supp.2d 144 (W.D.N.Y. Aug. 2, 2005).

From a broader perspective, the Commission's prior actions reflect the firmness of policy that imposes equivalent obligations on like providers. The Commission has found that interconnected VoIP services are "increasingly being used as a substitute for traditional telephone service."<sup>6</sup> Toward this end, the Commission has not hesitated to impose "social" obligations on VoIP providers, including CALEA, E-911, and USF contributions.<sup>7</sup> The Commission must affirm the pecuniary obligations that attach to tangible benefits IP-enabled voice service providers receive. 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.

---

<sup>6</sup> *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis*, CC Docket No. 95-116, *Numbering Resource Optimization*, CC Docket No. 99-200: *Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, FCC 07-188, at para. 28 (2007).

<sup>7</sup> *See, i.e., 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*, FCC 06-94, at para. 2 (2006); 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*, FCC 05-153, at para. 8 (2005).

The Commission should order that all VoIP traffic terminating to the PSTN is subject to terminating access payment obligations. In addition, all PSTN originated traffic, regardless of whether it will terminate on a TDM or IP platform, should be subject to originating access charges. This would, moreover, be a rational interim action along the way to comprehensive ICC reform. In “leveling the playing field” and applying access charges to all IP-PSTN and PSTN-IP traffic, the called and calling telephone numbers should be used as a reasonable proxy for geographic location. Absent Commission action, there arises the possibility, if not the probability, that carriers sending traffic to or from the PSTN will self-declare *all* traffic as VoIP, thereby avoiding the payment of any access charges, including those at reduced rates as may be ordered by the Commission. This selective “self-help” would undermine carriers that rely upon ICC for cost recovery, and undermine National goals aimed to maintaining robust networks throughout the Nation.

### III. CONCLUSION

The Commission should affirm clearly that intercarrier compensation obligations arise out of all IP-enabled voice traffic that originates or terminates on the public switched telephone network (PSTN). Doing so will not only secure recoverable revenues, but will also preempt the proliferation of wasteful and unnecessary disputes that divert carrier resources from more important tasks.

Respectfully submitted,



Joshua Seidemann

Vice President, Regulatory Affairs

Independent Telephone & Telecommunications Alliance

1101 Vermont Avenue, NW, Suite 501

Washington, DC 20005

202-898-1519

[www.itta.us](http://www.itta.us)

Filed: August 12, 2010