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 a 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

Comments of the ICORE Companies

The consulting firm of ICORE, Inc. ("ICORE"), on behalf of many small rural local exchange Companies ("RLECs),[1] hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") and Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceedings.[2] These comments are filed in response to Section XV of the NPRM and

[1] ILECs participating in this filing include: Bloomingdale Home Telephone Company (Bloomingdale, IN), Citizens Telephone Company of Kecksburg (Mammoth, PA), Doylestown Telephone Company (Doylestown, OH), Dunbarton Telephone Company (Dunbarton, NH), Fishers Island Telephone Company (Fishers Island, NY), Fort Jennings Telephone Company (Fort Jennings, OH), Hot Springs Telephone Company (Kalispell, MT), Ironton Telephone Company (Coplay, PA), Killduff Telephone Company (Killduff, IA), Lynnville Telephone Company (Lynnville, IA), Middle Point Home Telephone Company (Middle Point, OH), The Nova Telephone Company (Jusson, TX), The North-Eastern Pennsylvania Telephone Company (Forest City, PA), Readlyn Telephone Company (Readlyn, IA), Reasnor Telephone Company (Reasnor, IA), Ridgeville Telephone Company (Ridgeville Corners, OH) Ronan Telephone Company (Ronan, MT), Searsboro Telephone Company (Searsboro, IA), Sully Telephone Association (Sully, IA), Sycamore Telephone Company (Sycamore, OH), and Venus Telephone Company (Venus, PA).
[2] Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (February 9, 2011).

address only matters raised in that section. Further comments shall be filed by the ICORE Companies to address other issues raised in the NPRM and FNPRM.

I. Introduction and Background

These comments address near term changes that the FCC should implement while it reviews comprehensive reform of the intercarrier compensation and universal service regimes. The ICORE companies believe that the actions taken in this portion of the NPRM will set the stage for future changes. For example, rate unification becomes less important as a policy if phantom traffic shortcomings are fixed. Should this Commission conclude, as the ICORE companies believe, that Voice over IP ("VoIP") traffic is subject to existing intercarrier compensation rules, the impact of any rate unification can be mitigated. Carriers have the ability to bill different rates for different types of traffic, so long as the proper information is provided to accurately bill the call. When the rules requiring the proper billing information are insufficient, cheaters will thrive. Not all carriers that deliver phantom traffic are cheaters, and there are likely scenarios where appropriate billing information is inadvertently not passed in the call records. However, cheaters must be punished, and the FCC can take steps to ensure that there are sufficient remedies in place when carriers break the rules.

II. Rules to Address Phantom Traffic

An individual walks into a grocery store and purchases the finest cuts of filet mignon from the butcher's display. Before the customer pays for this purchase, he cuts off the filet mignon price sticker and replaces it with a sticker for hamburger. When the customer is challenged at the cash register, he indicates he doesn't know how this happened, but he is willing

to pay for his hamburger. Sounds ridiculous, but this scenario parallels what many LECs encounter when attempting to bill access charges to carriers delivering phantom traffic. The difference between the free market and regulated market solution to this problem is that the grocer would toss the meat purchaser out to the sidewalk and wouldn't let him in the store again. Unfortunately for LECs, their recourse is to allow the carrier to continue to make purchases without paying for them, or paying for hamburger when they purchase filet mignon. The FCC must act swiftly to remedy this significant problem.

As a provider of carrier access billing services, ICORE has seen firsthand the inadequacy of call records from certain carriers and the difficulty in obtaining compensation for this traffic. In one recent billing dispute, a cable provider delivered 119,967 calls to an RLEC for a total of 793,294 minutes of use. Every one of the 119,967 calls was delivered to the RLEC with the following Calling Party Number, 000-000-0000. Every single call. It would be laughable to blame the access tandem provider for stripping or altering 100% of the call records before delivering the traffic to the LECs. Clearly this problem is originating with the cable company. As part of the dispute process, the cable provider requested copies of the call records which the RLEC used for access billing. Upon reviewing these records, the cable provider identified the calls as "unknown jurisdiction" and stated that it was their company policy to pay based on their statewide average percentage of local usage or PLU. The carrier fails to populate the CPN, and then invokes a "company policy" to avoid paying access charges. Unfortunately the LEC has little recourse in this case, as there is little or no information available to refute the originator's assertions. This is provided as additional support that the FCC must act now to address phantom traffic issues.

A. FCC Rules must require passing of Calling Party Number on Intrastate Calls

Accurate billing starts with the passing of accurate information to the party rendering the bill. No matter how good the downstream systems are, the old "garbage-in, garbage out" analogy holds true. As the Commission notes, with only certain exemptions, providers using SS-7 signaling are currently required to pass the CPN on all interstate calls[3]. This requirement should be extended to intrastate traffic, whether it is local or toll. The ICORE companies fully expect that legal minds will address the Commission's authority to order such a rule change, but no one can argue with the common sense of such an approach. If companies are already required to provide CPN for interstate calls, what reason would they have to argue that this should not extend to intrastate calls? None, except to have an ongoing ability to deliver traffic as if it originated from 000-000-0000 and dispute the access invoices.

This same requirement should immediately extend to providers of interconnected VoIP services. This is sound public policy. As more and more traffic is migrating to interconnected VoIP, the more important this policy becomes. The Commission has already extended obligations like contributing to the universal service fund and providing 911 service to interconnected VoIP providers. At this time, the Commission could simply require the passing of CPN by all providers, and recognize that should CPN be replaced through technological advances, then this new identifying information shall be passed in its place.

B. Enforcement must include real financial remedies.

The FCC can set all the rules it wants, but without enforcement and penalties, these rules will be ineffective. One need review just a few of the phantom traffic cases in regulatory and

[3] See 47 C.F.R. §64.1601

legal venues to identify a handful of violators that show up as "repeat offenders". Unfortunately, a provider that disguises its traffic faces very little financial risk. They might incur legal fees and then simply pay the charges that they should have paid to begin with. The FCC, and to the extent required, state commissions, should allow for the tariffing of additional compensation in cases where phantom traffic is willful or repeated in nature. This could be as simple as including treble damages based upon the degree and frequency of violations. By including this in a tariff, all parties that purchase (or try to avoid purchasing) access service are placed on notice that damages can apply in addition to access charges.

III. Intercarrier Compensation Obligations for VoIP Traffic

It is indisputable that the Public Switched Telephone Network ("PSTN") is often used to originate or terminate calls that use Internet Protocol. For a terminating provider, a call that originates from a VoIP subscriber is indistinguishable from a call that originates from the PSTN. The Commission must take action now to require VoIP providers to compensate other carriers in the same manner used by traditional providers. VoIP providers argue that access charges do not apply to VoIP originated traffic. As the Commission points out in the NPRM, it has "never addressed whether interconnected VoIP is subject to intercarrier compensation rules…"[4]. While LECs have billed terminating access charges for such traffic, VoIP providers hide behind the FCC's indecision as proof that intercarrier compensation does not apply to VoIP. The result has been billing disputes and litigation[5].

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[4] NPRM @ ¶ 608
[5] NPRM @ ¶ 608, and footnote 913.

A. Commission Indecision is not a Free Pass for VoIP providers.

While it is true that the FCC has not ruled on the applicability of access charges on VoIP traffic, this does not mean that VoIP providers can avoid paying appropriate intercarrier compensation on their traffic. Consider the cases in which the FCC has reached conclusions regarding the proper treatment of IP-enabled traffic by ruling on the classification of the services provided. The Commission classified as an "information service" Pulver.com's free service that did not provide transmission and offers a number of computing capabilities[6]. Next, the Commission found that certain "IP-in-the-middle" services are "telecommunications services" where they: (1) use ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originate and terminate on the public switched telephone network (PSTN); and (3) undergo no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology[7]. Armed with these decisions, VoIP providers imply that the Commission does not require access charges to be paid on VoIP originated traffic because it undergoes a net protocol conversion.

This IP-PSTN conversion is no different than the analog to digital conversion from decades past. The ICORE companies contend that access charges were not disputed based on the analog to digital net protocol conversion, and the FCC should take steps to ensure that access charges are paid.

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[6] *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Order and Opinion, 19 FCC Rcd 3307 (2004) (*Pulver.com Order*).

[7] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*); *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7297, para. 18 (2006) (*Prepaid Calling Card Order*).

B. Interconnected VoIP is a substitute for telecommunications and should be treated accordingly.

The exchange of traffic between PSTN and Interconnected VoIP providers is not special, nor should it be the beneficiary of special treatment. The Commission is correct that consumers are in fact treating VoIP as a substitute for traditional voice telephone service[8]. Providers of interconnected VoIP service are positioning themselves in the market as a substitute for voice service. For example, magicJack tells consumers they can "Never pay a phone bill again",[9] and offers unlimited local and toll calling for as low as $1.67 per month. How can any provider offer service at this price and stay in business. The answer is simple – they cannot be paying access charges to complete these calls. According to their website, "local and long distance calls to the United States, Canada, Puerto Rico, and the US Virgin Islands are Free"[10]. If magicJack traffic is treated as exclusively local, then they could pay as little as $0.0007 per minute of use for call completion. The retail rate divided by this $0.0007 yields a break-even of 2,375 minutes per line per month. Given the high level of minutes to reach break-even, this business plan might be viable. However, if magicJack were required to pay even $0.01 per minute for access – far below the rate charged by RLECs – it could only deliver 166 minutes before access expense equals total revenue received. The ability of magicJack to offer such deeply discounted services is due to a regulatory advantage, not a result of operating efficiencies. While this Commission expresses concerns that conference call providers face an unfair disadvantage when access stimulation occurs[11], it should be ***more*** concerned that Common Carriers are at a disadvantage when compared to interconnected VoIP providers.

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[8] NPRM @ ¶ 612.
[9] See magicJack website at http://www.magicjack.com, visited March 27, 2011.
[10] See magicJack website at http://www.magicjack.com/6/faq/, visited March 27, 2011.
[11] "..access stimulation harms competition by giving companies that offer a 'free' service a competitive advantage over companies that charge their customers for the service" See NPRM @ ¶ 638

C. The Enhanced Service Provider Exemption does not apply to interconnected VoIP providers.

Providers of VoIP services have argued that they are enhanced services and as such exempt from access charges through the Commission's ESP exemption. However, this exemption allows enhanced service providers to purchase local business access lines from intrastate tariffs as end-users, or to purchase special access connections, and thus avoid paying carrier-to-carrier access charges[12]. The analysis of access charge applicability to VoIP services does not include any entity purchasing local business lines from a LEC to avoid paying access charges. They deliver traffic to other LECs, call it VoIP, and then dispute the charges when they are billed. The Commission must act now to rule this practice to be a violation of FCC rules.

IV. Rules to Address Access Stimulation

A. Trigger Mechanisms.

In establishing any trigger mechanism, the FCC must exercise caution that it does not implement restrictions which would inadvertently restrict RLEC growth opportunities. Concepts like that adopted by the Iowa Utilities Board should be avoided because they unreasonably restrict the economic development opportunities in rural markets. When an RLEC provides service to only 400 access lines, entry of a large business customer can easily double access minutes. Any company serving large urban markets can easily absorb new businesses without ever approaching any usage thresholds. Both a small rural and large urban provider would have to build network to accommodate the needs of the new business customer. However, only the

[12] *See, e.g.*, *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2632-33, para. 13 (1988) (*ESP Exemption Order*); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16133, para. 345 (1997) (*Access Charge Reform Order*).

RLEC would be required to reduce the access rates that it charges as a result of the increased usage and investment.

B. Access Stimulation and Rate of Return Companies.

The ICORE companies believe that the FCC has already adequately addressed the issue of access stimulation for Rate of Return Companies. If an RLEC stays in the NECA tariff and then has a high volume customer enter their service territory their incremental settlement per minute declines. Additional access billing beyond the settlements paid out to the NECA companies means that the NECA pool will have over-earned. Such overearnings are subject to refund. It is hard to argue that this process is insufficient.

It is now the norm for tariff filings made pursuant to 47 CFR 61.39 to be suspended and investigated, thus denying the filing LEC from obtaining deemed lawful status. When treated this way, the LEC has the potential of refunds when traffic grows beyond historic levels. Forcing companies to migrate from either the NECA pool or from 61.39 tariffs to use 61.38 for tariffs is punitive and creates additional tariff filings for small companies. Perhaps a better compromise would be to treat 61.39 tariff filing as a one-way street – similar to conversion to cost based settlements from average schedules. Once a company files a 61.39 access tariff it is not allowed to reenter the NECA pool. Since 61.39 is similar in many ways to price cap regulation, the FCC could provide companies that file these tariffs to subsequently enter price cap regulation two years later.

C. Access Stimulation and Price Cap Companies.

In the NPRM, the FCC concludes that access stimulation is not a problem for companies subject to price cap regulation. The low level of complaints against price cap carriers is "not

surprising given the low level of price cap LEC interstate access rates relative to other carrier types".[13] Perhaps this is the case, but another possible reason is that the interexchange carriers that have filed these complaints are quite often the long distance affiliates of price cap regulated RBOCs. Should the FCC take action to further regulate against access stimulation among RLECs and CLECs, it shouldn't do so without addressing price cap carriers. Either a similar trigger mechanism should apply to all price cap carriers, or the FCC should expressly rule that these carriers are not subject to these restrictions. Without addressing this section of carriers, the FCC will fall short of implementing a comprehensive solution to access stimulation.

V. Conclusion

When viewed in consolidation, the issues the Commission is addressing in this section are critically important to small rural LECs. While rate of return LECs already face significant barriers to high volume business activities, many VoIP providers do not pay access charges and others fail to provide the limited amount of information required to render an accurate access charge bill. It is time for this Commission to exercise its authority to require all carriers that use the public switched telephone network to pay for that usage.

Respectfully Submitted,
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[13] NPRM @ ¶ 642.

Your submission has been accepted

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