

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

In the Matter of )  
 ) CC Docket No. 01-92  
Developing a Unified Intercarrier )  
Compensation Regime )

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (“NCTA”) hereby submits its comments on the “phantom traffic” proposal submitted by the Missoula Plan proponents.<sup>1</sup> NCTA is the principal trade association for the cable television industry. Cable operators are providing state-of-the-art telephone service to over eight million American homes and are rapidly making these services available nationwide. Like all facilities-based providers that terminate telecommunications traffic, cable operators have a strong interest in ensuring that the traffic they receive is properly labeled so that appropriate termination charges can be collected. As explained in these comments, NCTA believes the Commission should address concerns about unidentified or mislabeled traffic by equalizing rates for terminating traffic so as to eliminate opportunities for rate arbitrage and by adopting rules that are more narrowly tailored than those proposed by the Missoula Plan proponents.

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<sup>1</sup> Public Notice, *Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, CC Docket No. 01-92, DA 06-2294 (rel. Nov. 8, 2006); Industry Standard for the Creation and Exchange of Call Information (“Missoula Phantom Traffic Proposal”), attached to Ex Parte Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 6, 2006).

## INTRODUCTION AND SUMMARY

In the *Intercarrier Compensation FNPRM*, the Commission sought comment on whether existing mechanisms provide sufficient information for carriers to bill appropriate terminating compensation rates when two carriers exchange traffic through a transit arrangement.<sup>2</sup> In response, many local exchange carriers (LECs) argued that they were receiving significant quantities of traffic that did not have sufficient information to bill other carriers properly and that new rules were needed to address this “phantom traffic” problem.<sup>3</sup> In particular, LECs identified two types of problems – insufficient information to identify the originating carrier and insufficient information to determine which rate (e.g., reciprocal compensation, intrastate access, interstate access) to bill.<sup>4</sup>

On November 6, 2006, the proponents of the Missoula Plan filed a proposal that purports to resolve issues related to phantom traffic.<sup>5</sup> The Missoula Phantom Traffic Proposal includes both interim rules to be adopted immediately and permanent rules to be effective upon the

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<sup>2</sup> *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4743-44, ¶ 133 (2005) (*Intercarrier Compensation FNPRM*). A transit arrangement is one in which two carriers exchange traffic through a third party, typically an incumbent LEC, rather than directly connecting their networks. *Id.* at 4737, ¶ 120.

<sup>3</sup> *See, e.g.*, Proposed Rules for Proper Identification and Routing of Telecommunications Traffic, attached to Ex Parte Letter from Karen Brinkmann, Latham & Watkins, Counsel for Midsize Carrier Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Dec. 5, 2005).

<sup>4</sup> *Id.* at 2; *see also* Ex Parte Letter from Donna Epps, Vice President-Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 1, 2006).

<sup>5</sup> *See* Missoula Phantom Traffic Proposal. The Missoula Plan is an intercarrier compensation reform proposal advanced by a coalition of incumbent LECs and their affiliates, as well as two other carriers. *See* Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, at 2 (filed July 24, 2006) (attaching the Missoula Plan) (Missoula Plan). NCTA previously filed comments in this docket explaining why adoption of the Missoula Plan by the Commission would not serve the public interest. *See* Comments of the National Cable & Telecommunications Association, CC Docket No. 01-92 (filed Oct. 25, 2006) (NCTA Comments).

Commission's adoption of the Missoula Plan.<sup>6</sup> The interim rules would: (1) establish new signaling rules for all telecommunications providers; (2) extend the negotiation and arbitration requirements of the *T-Mobile Order*<sup>7</sup> to competitive LECs (CLECs); (3) establish elaborate new enforcement procedures; (4) establish new reporting requirements for transit providers; and (5) apply certain billing and reporting standards to CLECs and wireless providers for the first time.<sup>8</sup>

As explained below, cable operators would benefit from rules that promote proper labeling of telecommunications traffic. But NCTA believes the interim rules proposed in the Missoula Phantom Traffic Proposal are far more burdensome than is warranted. Specifically, there is no evidence in the record to demonstrate the size of the phantom traffic problem, the cost of the proposed solution, or whether the proposed rules will significantly reduce the problem. Consequently, there is no way that the Commission can conclude that the benefits of this proposal will outweigh the costs.

Nor is there evidence to support the imposition of significant new requirements on competitive providers. In that sense, the Missoula Phantom Traffic Proposal is similar to the rest

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<sup>6</sup> Missoula Phantom Traffic Proposal at 1. At this time, NCTA focuses its comments on the "interim" rules contained in the Missoula Phantom Traffic Proposal because these potentially have the most significant impact on cable operators. We note, however, that the proposed permanent rules include special provisions applicable to VoIP-originated traffic. Because disputes regarding the proper rate to charge for VoIP-originated traffic stem from uncertainty as to regulatory classification of such traffic, not from inadequate labeling, we do not believe phantom traffic rules are the appropriate vehicle for resolving these issues.

<sup>7</sup> *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005) (*T-Mobile Order*). In the *T-Mobile Order*, the Commission adopted new rules requiring wireless carriers to submit to the negotiation and arbitration provisions of Section 252 upon request of an incumbent LEC and establishing interim rates to apply while such negotiations are pending. *Id.* at 4864-65, ¶ 16. The Commission adopted these new rules in response to persistent disputes between wireless carriers and rural ILECs regarding the appropriate compensation for calls from wireless customers to LEC customers. *Id.* at 4858-60, ¶¶ 6-8.

<sup>8</sup> Specifically, the proposal would establish a Commission rule requiring CLECs and wireless carriers to comply with the Multiple Exchange Carrier Access Billing (MECAB) standards developed by the Ordering and Billing Forum (OBF) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB standards apply when two incumbent LECs are involved in delivering a toll call to or from an interexchange carrier. *See* Missoula Phantom Traffic Proposal at 12.

of the Missoula Plan in that it would make it more difficult and more expensive for competitors to provide service.<sup>9</sup> As NCTA explained in its initial comments on the Missoula Plan, the better approach to dealing with phantom traffic is to equalize termination rates so that the same rate applies for terminating all types of traffic and to adopt new signaling requirements (as part of an order addressing all transit-related issues).<sup>10</sup>

**I. THE RECORD DOES NOT DEMONSTRATE THAT THE BENEFITS OF THE MISSOULA PHANTOM TRAFFIC PROPOSAL OUTWEIGH ITS SIGNIFICANT COSTS.**

The phantom traffic proposal submitted by the Missoula proponents includes numerous new requirements, particularly for competitive providers. In addition to new signaling rules (for all providers), the proposal includes reporting requirements (for transit providers), it would extend the negotiation and arbitration provisions of the *T-Mobile Order* to competitive LECs, apply certain billing and reporting standards to CLECs and wireless providers for the first time, and establish an entirely new set of enforcement procedures.<sup>11</sup>

It is clear that implementing all of these new rules could be quite burdensome. At a minimum, many companies that exchange traffic likely will need to undertake systems upgrades to comply with the new requirements.<sup>12</sup> The additional reporting obligations imposed on transit providers also will be costly.<sup>13</sup> Although cable operators would not bear these transit reporting costs directly, NCTA is concerned that cable operators and other providers that rely on transit

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<sup>9</sup> NCTA Comments at 8.

<sup>10</sup> NCTA Comments at 22-31.

<sup>11</sup> Missoula Phantom Traffic Proposal at 2.

<sup>12</sup> See, e.g., Comments of Cavalier Telephone, *et al*, CC Docket No. 01-92 (filed Oct. 25, 2006) at 33 (expressing concern regarding significant cost of systems upgrades that would be needed to comply with the Missoula proposal).

<sup>13</sup> See, e.g., Comments of Verizon, CC Docket No. 01-92 (filed Oct. 25, 2006) (Verizon Comments) at 37 (estimating “a few hundred million dollars” in implementation costs).

service provided by incumbent LECs will be forced to bear these costs through increased rates for transit services and records.

While it is clear that the proposed interim obligations will be costly to implement, the Missoula Plan proponents have provided virtually no information to show that such burdensome rules are needed or that their benefits will outweigh these costs. For example, the record contains no hard data quantifying the phantom traffic problem, no affidavits from any technical, operational, or financial experts discussing the problem or demonstrating the effect of these new requirements, and no evidence that the benefits of implementing all of the requirements of the Missoula Phantom Traffic Proposal would outweigh the substantial costs.

Similarly, there is no evidence to support the proposal to extend to CLECs the negotiation and arbitration requirements adopted in the *T-Mobile Order*. In particular, there is no evidence to suggest that ILECs have had any difficulty negotiating agreements with CLECs. By way of comparison, the Commission developed an extensive record regarding disputes between rural ILECs and wireless providers before it adopted the *T-Mobile Order*.<sup>14</sup>

The proposal also would apply new Commission rules to CLECs and wireless providers regarding the joint provision of access service. At present, when an ILEC and a non-ILEC cooperate in delivering long distance traffic to an interexchange carrier, the interconnection agreement between the two LECs typically addresses the exchange of records that should take place. Competitive LECs generally have every incentive to provide appropriate records in these situations so that they can collect access charges from the interexchange carrier. There is no

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<sup>14</sup> *T-Mobile Order*, 20 FCC Rcd at 4858-60, ¶¶ 6-8.

evidence in the record of any problems with respect to this issue and therefore no basis for additional Commission rules.

Finally, the proposal contains elaborate new enforcement mechanisms. As with the other elements of the proposal, there is no evidence in the record that demonstrates that existing enforcement procedures are inadequate, or that any of the proponents have even attempted to use the existing mechanisms.<sup>15</sup>

Adoption of the proposed interim rules in the absence of a more robust record would be particularly troublesome because the proposed rules would require the Commission to become deeply involved in complex operational matters that generally are handled through industry groups, such as the Alliance for Telecommunications Industry Solutions (ATIS). Although there may be circumstances where Commission involvement in these sorts of details is warranted, the record in this case is inadequate to support this type of intervention. Indeed, as ATIS explained in its comments, the industry already is fully engaged in dealing with these issues.<sup>16</sup>

In short, while the Missoula Phantom Traffic Proposal would impose significant burdens on telecommunications providers, it is completely unsupported by the type of factual information that must form the basis for new Commission rules.<sup>17</sup> Given the state of the record, the Commission cannot adopt the Missoula Phantom Traffic Proposal.

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<sup>15</sup> Comments of CTIA – The Wireless Association, CC Docket No. 01-92 (filed Oct. 25, 2006) (CTIA Comments) at 39-40.

<sup>16</sup> Comments of the Alliance for Telecommunications Industry Solutions, CC Docket No. 01-92 (filed Oct. 25, 2006) at 3-5.

<sup>17</sup> See, e.g., *AT&T v. FCC*, 86 F.3d 242 (D.C. Cir. 1996) (vacating and remanding FCC decision because record was insufficient to satisfy “substantial evidence” standard under Administrative Procedure Act); *NCTA v. FCC*, 2004 WL 335201 (D.C. Cir. 2004) (remanding FCC decision that “merely states unsupported conclusions” and therefore offers no reasoned basis for rule change) (unpublished opinion).

## **II. EQUALIZING TERMINATION RATES IS THE KEY TO SOLVING PHANTOM TRAFFIC, BUT LIMITED SIGNALING RULES WOULD BE HELPFUL AS WELL.**

Notwithstanding the holes in the record, it is clear that the main source of the phantom traffic problem is the disparate rates that LECs impose for termination of different types of traffic and the potential this creates for disputes regarding the proper rate to be charged.<sup>18</sup> The record makes equally clear that the ultimate solution to this problem is equalizing termination rates so that there no longer is any economic advantage associated with characterizing traffic in a particular way, thereby eliminating (or at least dramatically reducing) the opportunity for rate arbitrage.<sup>19</sup> To the extent that the Missoula Plan fails to equalize termination rates and relies instead on burdensome phantom traffic rules to help sort traffic into artificial regulatory categories, it addresses the problem in precisely the wrong way.<sup>20</sup>

Although equalizing termination rates is the most important step the Commission can take in addressing the phantom traffic issue, NCTA explained in its initial comments that there also is a need for terminating carriers to be able to identify originating carriers, both today and under any reform plan that retains terminating compensation.<sup>21</sup> Like other companies that terminate traffic, cable operators have faced problems with companies that fail to send accurate signaling information or otherwise try to avoid paying termination charges.<sup>22</sup> Identifying these

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<sup>18</sup> NCTA Comments at 26; Comments of General Communication Inc., CC Docket No. 01-92 (filed Oct. 25, 2006) (GCI Comments) at 20-21; Comments of Feature Group IP, CC Docket No. 01-92 (filed Oct. 25, 2006) at 6-7.

<sup>19</sup> NCTA Comments at 27; GCI Comments at 21; Comments of Time Warner, Inc., CC Docket No. 01-92 (filed Oct. 25, 2006) at 11; CTIA Comments at 38.

<sup>20</sup> GCI Comments at 21.

<sup>21</sup> NCTA Comments at 27-28.

<sup>22</sup> See, e.g., *Cox California Telecom v. Global NAPS California*, Case No. 06-04-026, Proposed Decision of ALJ Bemserfer (Cal. PUC Nov. 17, 2006).

companies and pursuing payment represents a drain on resources that could be put to better use serving customers.

NCTA believes limited Commission regulation, as opposed to the extensive set of rules proposed by the Missoula Plan proponents, could be helpful in addressing these problems. Specifically, the Commission can facilitate the ability of carriers to address this issue by expanding its existing rules<sup>23</sup> to require that originating providers populate the Calling Party Number (CPN) and the Charge Number (CN) parameters in the SS7 signaling stream for all calls and by requiring transit providers to pass all signaling information that they receive to downstream carriers. In combination with existing records provided by most transit carriers, these requirements should help terminating carriers identify and bill companies that are sending traffic.<sup>24</sup> This more narrow approach is advocated by NCTA as well as CTIA, Verizon and Qwest.<sup>25</sup> In the absence of any evidence that the more complicated and burdensome interim rules proposed by the Missoula Plan proponents would be more effective, the Commission should adopt this more narrow set of rules.

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<sup>23</sup> See 47 C.F.R. § 64.1601(a).

<sup>24</sup> Call detail records from the transit provider are essential to identifying the originating carrier when CPN or CN is not provided. In many cases, the transiting carrier only will provide the records at a price that exceeds the rate the terminating carriers charges for terminating the call, thereby making it uneconomic for the terminating carrier to pursue collection of terminating compensation from the originating carrier. The Commission should make clear that transit carriers must provide these records at rates that do not exceed the cost of providing them.

<sup>25</sup> NCTA Comments at 27; see also Ex Parte Letter from Donna Epps, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Apr. 4, 2006); Ex Parte Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Apr. 19, 2006). As noted above, however, NCTA does not believe the record supports extension of the *T-Mobile Order* negotiation and arbitration requirements to CLECs and at this time we do not support that aspect of the Verizon proposal. See Ex Parte Letter from Donna Epps, Vice President-Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 13 (Nov. 1, 2006).

NCTA also explained that the issues related to phantom traffic are merely a subset of the larger set of issues surrounding the use of transit services.<sup>26</sup> Rather than addressing phantom traffic in isolation, NCTA believes the Commission can better promote facilities-based competition by clarifying the rights and obligations of parties to transit arrangements in a more comprehensive manner.

### **CONCLUSION**

For all the reasons explained herein, the Commission should not adopt the phantom traffic proposal submitted by the Missoula Plan proponents. Instead, the Commission should undertake the reforms proposed by NCTA in this proceeding, including equalizing termination rates and establishing ground rules for transit arrangements.

Respectfully submitted,

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<sup>26</sup> NCTA Comments at 28.