

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

*Missoula Plan Phantom Interim Process and)
Call Detail Records Proposal)*

**CC Docket No. 01-92
DA 06-2294**

COMMENTS OF FEATURE GROUP IP

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EXECUTIVE SUMMARY

The “Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal” (“Interim Proposal”) is merely an attempt to eliminate the ESP Exemption from access charges. It would require access payments to ILECs when they terminate enhanced and/or information service traffic. These access charges would be imposed on ESPs or the carriers that provide service to ESPs based on a rate center association comparison of the calling and called numbers. VoIP traffic that does not have a calling number associated with it would be deemed to be subject to access based on factoring, which functionally penalizes VoIP for not looking like or being provided like traditional telephony in terms of using a NANPA telephone number.

Enhanced and information services, however, are not subject to switched access charges under the current rules and the Commission does not have authority to change the rules to impose access on enhanced and/or information services. Sections 251(b)(5) and (f) and 252(d)(2) cannot be construed to require any traffic other than “telephone toll” to pay “exchange access” charges. Nor can those provisions be read to impose an obligation by a CLEC to pay an ILEC any price for termination of telecommunications that is more than the “additional cost” required by § 252(d)(2), unless the CLEC is providing telephone toll service to an end user.

The Interim Proposal does illustrate the fact that IP-based telephony and traditional telephony, while sometimes substitutable, are provided in different ways. Call control information about the call and the participants to the communication should not have any relevance to the charges, if any, applicable to a VoIP-TDM session because it does not pertain to the additional cost incurred by the terminating LEC. This information is very useful for other purposes, such as interoperation of features, functions and services that use the information in the SS7 CPN parameter (*e.g.*, Caller ID, Call Return) and this is a topic worthy of further effort. It is

essential that the Commission recall that the CPN parameter and information was created not for billing but instead to allow “CPN-based services” to work. And if the Commission wrongly decides to vary charges based on some notion of presence or geographic relevance and to use call control information as the rating engine, then the rating decision should flow from the call set-up and control information generated on the IP side and not TDM/SS7-based information elements that are populated only after the conversion from IP to TDM, and likely do not in fact represent reliable data concerning whatever criteria are allegedly being used. The Commission should reject the Interim Plan as it pertains to applying access charges to IP Telephony. Then, the Commission should encourage the “IP world” and “TDM world” to work together so that the two kinds of networks efficiently interconnect and interoperate as much as is possible. The Interim Plan is an attempt to force the IP world to mimic the TDM world, and it is driven solely by ILECs attempting to expand their access revenue stream by capturing new kinds of traffic. They want to tax this new technology and force it to dumb down in irrational ways. This would be contrary to proper policy.

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NOW COMES UTEX COMMUNICATIONS CORPORATION d/b/a Feature Group IP (“Feature Group IP”) and respectfully submits these Comments on the “Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal” (“Interim Proposal”) in response to the pleading cycle established for this purpose. These comments rely on and add to the comments Feature Group IP filed on October 25, 2006 on the overall Missoula Plan. That prior presentation will not be repeated herein.

ARGUMENT

The Commission cannot and should not adopt the Interim Proposal. Whether implemented on an interim or permanent basis, the specifics and result would directly violate several substantive and policy provisions in the Communications Act relating to new technology and interconnection between the various kinds of carriers and non-carriers that interconnect with the PSTN. It also unreasonably and unlawfully favors legacy systems and technology to the point that it penalizes new technology when the two kinds of networks must interoperate in order to jointly support traffic.

The “Missoula Plan” and the “Interim Plan” purportedly deal with “phantom” traffic issues, yet nowhere do either of these proposals meaningfully or usefully define the term “phantom” or discuss sources and causes. Accordingly, the plans are subject to interpretation. Based on our informed understanding of what is truly meant by the term “phantom,” we believe

there are two different ways to interpret these proposals. The first is that the supporters of these plans are attempting to find a way to undo the Commissions rulings on ESP traffic and create additional sources of revenue by transmuted ESP traffic into “telephone toll” traffic that is subject to access charges. The second interpretation is that the supporters of the plans are trying to find a way to ensure that IXCs do not escape paying exchange access charges by (1) using CLECs as intermediaries, since the Commission has purportedly been unclear on that issue and/or (2) using IP transport in some other manner to disguise traffic legitimately subject to access charges.

The second interpretation is the only one that merits any serious consideration and response. There is no reason to impose access on an entirely new class of customers and traffic in order to solve a perceived problem related to a different class of customers and traffic. The long-standing ESP Exemption – which Congress essentially codified in the 1996 amendments – cannot be eliminated in a way that results on imposition of exchange access charges on traffic that is not “telephone toll.” Sections 251(b)(5) and (f) and 252(d)(2) cannot be construed to require any traffic other than “telephone toll” to pay “exchange access” charges. The Interim Proposal does not solve the underlying causes of the purported problem – since they just shore up and expand the access charge regime through blunt and overbroad rules.

Indeed, the Interim Proposal effectively obfuscates the nature of any real or perceived problem. If you strip out the pieces of the plans that have any real relevance, the core “phantom” traffic issue becomes essentially a discussion of how to deal with certain ESP traffic. The proponents would have the Commission treat all traffic for which their systems do not recognize valid CPN (what “valid” means is a further point in need of clarification) as phantom traffic. This approach does not consider the technical and policy causes of most of this traffic. Instead, it

assumes that all non-valid CPN traffic must be fraudulent traffic on which access must be paid, by someone, anyone, even if that someone has no duty to pay the charge.

Feature Group IP has some experience in the “no CPN” debate, and can shed some light on the nature and causes of what the ILECs label phantom traffic. Based on that experience, Feature Group IP is working on a proposal that will provide solutions that are more reasonable and would solve the real issues that exist as a result of the differing means by which IP-based Telephony and traditional circuit switched telephony are supported and the information that should be available across both kinds of networks. These proposals will be submitted to the Commission for its consideration by the end of the year.

There are two separate parts of the a logical analysis of the supposed phantom traffic issue: (1) the kinds of traffic deemed to be “phantom” because of the lack of calling party number and (2) the nature or source of said traffic. Although the ILECs argue that “phantom” traffic is traffic for which there is no “valid” CPN, they do not ever really define what “valid” is.¹ Feature Group IP can state however, that AT&T representations to us in our dealings on this issue have cited three methods of classifying traffic as “phantom”²:

- * Calls with no information or all zeros in the CPN parameter;
- * Calls with “non-local”³ CPN traversing “local” interconnection trunks; and
- * Calls with CPN that does not trace back to an assigned and active NANPA number per the LERG.

If this represents how ILECs characterize “phantom” traffic, three reasons explain the lack of CPN:

¹ This, of course, begs the question of whether the CPN information in the SS7 IAM parameter should be the basis for wholesale rating. Feature Group IP believes it can not.

² Note that the above all relate to the use of SS7 signaling.

³ There is also a dispute over what “non-local” means.

1. Equipment or System Deficiencies: Since ILEC networks are distributed and heterogeneous by nature, some equipment and systems have differing levels of functionality and reliability. In technical tests conducted with AT&T we have seen firsthand that not all of AT&T's switches were able to record information in the CPN parameter that was in fact sent by Feature Group IP.

2. New technology: Many VoIP customers are using accounts that are not tied directly to any existing LEC wireline network, but rather are based on computing devices, some of which are nomadic or mobile. Many of these services have not been assigned a NANP number and therefore the LEC that first receives the PSTN leg of a call session cannot fill the SS7 CPN field with a 10 digit NANP number.

3. True fraud (representing telephone toll traffic as ESP traffic): An IXC whose traffic is subject, under current Commission policy, to access charges could, in theory, utilize VoIP technology to fraudulently disguise the nature of the traffic they are sending. UTEX has no direct knowledge of any such fraud and believes that it actually represents a small percentage of the entire universe of the traffic deemed to be "phantom." Nevertheless, we acknowledge the technical possibility. But after many pages complaining about IXC fraud the Missoula proponents offer an appendix dealing with VoIP-originated traffic, which is not the source of the alleged problem related to access avoidance. The appendix demonstrates that the Interim Proposal is really just an artful request for repeal of the ESP exemption, since it clearly and unambiguously results in ESP traffic paying access charges, both when there is CPN and when there is "no CPN." When the phantom traffic issue is dissected as above, the proposed solution fails to pass the policy test.

It represents an economic rather than technical approach to solve a mostly perceived (vs. actual) problem. In manufacturing, there are two primary ways to improve quality: (1) screen for defects at the end of the process and (2) eliminate the underlying causes of defects throughout the process. The former does yield a higher quality end product, but is economically inefficient and does not address the root cause of the problems. Essentially, the proposal screens for quality “problems” after the fact, rather than identifying and correcting the underlying causes of the perceived “problems.”

The basic causes of the majority of “phantom traffic” are primarily technical in nature and can be eliminated with a technical solution. The Proposal opts instead to “fix” the problem by looking at call detail information after the fact and then calculating statistical ratios that then yield access charges. This will not reduce the amount of “phantom traffic” on the networks. It merely provides a right to assess access charges. If call detail is important, then it needs to be the right information and it needs to be used for proper purposes.

It does not represent a solution that is in keeping with the letter or intent of the rules or the statute. The proponents are attempting to reclassify ESP traffic into switched access. The Proposal repeals the ESP Exemption – applicable to non-carriers – based on a claim that carriers are abusing the rules. Further, by ignoring readily available technical solutions that would yield better interconnection, better interoperation and better information, the proposal would force new entrants and competitors to “dumb down” their systems merely so the ILECs do not have to correct internal inconsistencies and deployment errors within their own networks. Both of these situations contradict the Commission’s Light Regulatory Touch policy, its policy of encouraging deployment of new technology, the policy that regulators should support innovation and competition and the policy of discouraging carriers from earning non-cost based revenues from

intercarrier compensation. Let's be frank. This is all about protecting the incumbents from competition and the revenue loss flowing from alternative applications and services made available as a result of technological advancement. This is the mirror image of ISP Reciprocal Compensation, except while we are still addressing predominately terminating traffic, the money will now go the other way, and the price will vastly increase. If the ILECs need more money, they should get it from their customers – and not interconnecting carriers or the interconnecting carriers' customers – just like the Commission told CLECs they should do when they serve ISPs.

If ILECs are truly concerned about not receiving access compensation from IXCs for telephone toll traffic the answer is decidedly not imposing access on non-IXCs. An entity claiming to be an ESP should be able to certify that status to the carrier providing PSTN connections. If the certification is later found to be false, the IXC falsely claiming ESP status should be required to pay the access charges to all LECs involved – including the LEC providing the PSTN connections – and the Commission should impose forfeitures and revoke any regulatory certifications allowing the IXC to provide telecommunications service. This result is simpler and more targeted since the remedy for the problem does not create a bigger problem with regard to entities other than the one claimed to be the problem.

CONCLUSION

The Interim Proposal uses the wrong tool and the wrong information and punishes the wrong participants for alleged transgressions committed by others. The proponents of the proposal are not in fact attempting to enforce the current rule. Instead, they seek interim implementation of a new rule that will impose non-cost based switched access charges on customers that do not provide telephone toll service and therefore cannot be subjected to the


exchange access charge regime. Using CPN as the rating engine – with the result that traffic with CPN pays access and traffic without CPN pays access – is simply the wrong way to go.

Good policy would solve the technical problem. Good policy would base prices on cost and eliminate implicit subsidies rather than expanding them. Good policy would encourage innovation and deployment of new technology and innovative services. Bad policy would allow the incumbent legacy network owners to capture the value generated by new technology implemented by others and retard competitive entry in those places where there is little or no competition.

The Interim Proposal is bad policy.
The proposal is ill-advised and moves in the wrong direction for all the wrong reasons. It should not be adopted.

Respectfully Submitted,

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**Federal Communications Commission**

The FCC Acknowledges Receipt of Comments From ...
UTEX Communications Corporation d/b/a Feature Group IP
...and Thank You for Your Comments

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