

February 25, 2008

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime,
CC Docket No. 01-92

Dear Ms. Dortch:

CTIA – The Wireless Association® (“CTIA”) submits this *ex parte* in qualified support of the “phantom traffic” presentation filed in this docket by USTelecom on February 12, 2008 (“USTelecom Position”).¹ The USTelecom Position proposes a limited set of call signaling rules to address wireless and wireline carriers’ difficulties identifying the originating carrier associated with a call. The USTelecom Position is similar to USTelecom’s March 16, 2006 phantom traffic proposal, which CTIA also largely supported,² and is superior to the burdensome, costly and overly regulatory phantom traffic proposals submitted by other parties.³

Additional traffic identification requirements, however, will have minimal impact unless rural incumbent local exchange carriers (“RLECs”) also address the real culprits. Although the USTelecom Position, citing the *T-Mobile Order*,⁴

¹ Phantom Traffic: USTelecom’s Proposal for Common-Sense Call Signaling Rules (Feb. 2008), attached to letter from Glenn Reynolds, Vice President, Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Feb. 12, 2008) (“USTelecom Position”).

² See A USTelecom Proposal for Commission Action on Phantom Traffic (Feb. 16, 2006), attached to letter from Jeffrey S. Lanning, Associate General Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Mar. 16, 2006); letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Apr. 19, 2006) (“CTIA Supporting Letter”). CTIA opposed a modified proposal submitted by USTelecom on March 30, 2006, which would have imposed significant costs on originating carriers and their customers with minimal or no corresponding benefits. See letter from Jeffrey S. Lanning, Associate General Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Mar. 30, 2006).

³ See, e.g., Letter from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Nov. 6, 2006) (attaching Industry Standards for the Creation and Exchange of Call Information (“Missoula Phantom Traffic Proposal”).

⁴ *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855 (2005) (“*T-Mobile Order*”).

correctly recognizes that “the 1996 Act favors negotiated agreements . . . to establish the terms and conditions for exchanging traffic,”⁵ the failure of many RLECs to utilize the authority granted by the *T-Mobile Order* to negotiate with wireless providers traffic exchange arrangements incorporating traffic allocation factors cause much of the jurisdictional ambiguity of which the RLECs complain. Significantly, negotiated agreements based on traffic allocation factors satisfactorily address the interests of both parties within the framework of the current interconnection regime. Moreover, the modest call signaling rules advanced by USTelecom address only part of the underlying problem. Challenges to the identification of the originating carrier and jurisdiction of interconnected calls are also created by: (1) some originating RLECs’ decisions to use intermediate tandems; (2) some RLECs’ lack of Signaling System 7 capabilities; and (3) RLECs’ occasional misrouting of intraMTA traffic through interexchange carriers.⁶

Although CTIA supports the majority of the USTelecom Position, further clarification is required. The USTelecom Position states that

[t]he N-1 carrier is responsible for performing a local number portability (LNP) query before passing the call to the local network of the N carrier. The Commission should clarify that the originating carrier is the N-1 carrier on a non-IXC call, and that an IXC handing traffic to a non-IXC is the N-1 carrier of IXC-carried calls.⁷

CTIA supports the first sentence but requests that “N-1 carrier” be defined as “the last carrier in the call chain with a retail relationship with the caller” to pinpoint the LNP query responsibility when more than three carriers are involved in completing a call.

One other aspect of the USTelecom Position requiring clarification relates to a “Proposed Rule” stating that the Commission “should extend the principle of the *T-Mobile* decision . . . and provide incumbent local exchange carriers the ability to invoke the 251/252 negotiation/arbitration process with other carriers with which they exchange traffic.”⁸ CTIA has no quarrel with the Commission restating its decision in the *T-Mobile Order* to enable incumbent LECs the ability to invoke negotiation and arbitration processes with wireless carriers, but the USTelecom Position also states, apparently as a rationale for the Proposed Rule, that

⁵ USTelecom Position at 1.

⁶ See Comments of CTIA - The Wireless Association® at 2-3, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92 (Dec. 7, 2006) (“CTIA Comments”).

⁷ USTelecom Position at 10.

⁸ *Id.* at 11.

In *T-Mobile*, the Commission recognized that it was appropriate to apply the obligations of §251(b)(5) in a symmetrical manner in order to best facilitate negotiated arrangements. . . . That Order's policy and legal analysis are equally applicable *with respect to other service providers*.⁹

To the extent that the italicized phrase is intended to extend the *T-Mobile Order* to provide service providers other than incumbent LECs the ability to invoke the Section 251/252 negotiation/arbitration process with wireless providers, CTIA objects. Competitive LECs ("CLECs") and other competitors have equal bargaining power with wireless providers and are in general regulatory parity in terms of interconnection rights and obligations. Wireless carriers, ISPs, CLECs, and other competitors have exchanged traffic for years largely without the need for regulation. Encouraging CLECs and other competitors to coerce wireless and other providers into traffic exchange negotiations thus cannot serve the public interest.¹⁰ The italicized language should be modified to be consistent with, and no more expansive than the *T-Mobile Order*. The Commission should also clarify, on reconsideration of the *T-Mobile Order*, that it did not create a new right permitting ILECs to demand direct interconnection with wireless carriers, but, rather, that the *T-Mobile Order* only declared that ILECs, like other requesting carriers, have the right to request traffic exchange arrangements on the most efficient basis (either direct or indirect) with them.¹¹

CTIA notes one additional qualification to its support of the USTelecom Position. Although CTIA supports USTelecom's proposed rule that every originating provider must transmit, where feasible, the telephone number received from or assigned to the calling party, the calling party number ("CPN") should not be treated as necessarily dispositive of wireless call jurisdiction. CTIA opposes the National Exchange Carrier Association, Inc. ("NECA") proposal to base jurisdictional determinations for CMRS calls, and thus intercarrier billing for those calls, on the originating and terminating telephone numbers.¹² The originating and terminating telephone numbers of CMRS calls are inherently unreliable identifiers of the parties' locations. Moreover, use of telephone numbers as a "default" determinant of CMRS call jurisdiction, as NECA proposes, will weaken carriers' incentives to negotiate

⁹ *Id.* (emphasis added).

¹⁰ See Reply of CTIA - The Wireless Association® at 3, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (July 11, 2005).

¹¹ CTIA Supporting Letter at 3.

¹² See NECA Petition for Interim Order at 16-19, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (Jan. 22, 2008).

jurisdictional factors in traffic exchange agreements.¹³ Accordingly, although CPN should, when feasible, be transmitted by the originating provider and subsequent carriers in the call chain, carriers should not be authorized to use originating and terminating telephone numbers as a default determinant of wireless call jurisdiction for billing purposes.

Finally, CTIA reiterates that the phantom traffic issue is an artifact of the current dysfunctional, discriminatory and regressive intercarrier compensation regime. Adoption of CTIA's Mutually Efficient Traffic Exchange proposal or similar meaningful reforms would resolve the phantom traffic problem and other ongoing intercarrier compensation disputes in a more holistic manner. The USTelecom Position is only a second-best remedy, and the Commission should avoid new requirements that impede broader reform of the intercarrier compensation system or that require costly investments in systems that will be mooted by meaningful reform.¹⁴

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Paul Garnett
Paul Garnett

CTIA-The Wireless Association®

cc: Ian Dillner
Scott Deutchman
Scott Bergmann
Chris Moore
John Hunter
Al Lewis
Dana Shaffer
Deena Shetler
Marcus Maher
Randy Clarke
Victoria Goldberg
Jeremy Miller

¹³ *Id.* at 17.

¹⁴ *See* CTIA Comments at 2-4.