May 18, 2007

Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Chairman Martin:

The Voice on the Net Coalition ("VON Coalition") files this *ex parte* in response to the May 2, 2007 filing by NECA.[1] In its filing, NECA incorrectly equates so-called Phantom Traffic with "access avoidance schemes." NECA's presentation and its suggested solutions are false and misleading. Importantly, despite NECA's urging, the Commission should not carve out IP-enabled services for special consideration among the many compensation issues currently pending. As you accurately recognized at the recent NCTA conference, the provision of competitive VoIP services benefits consumers, and we applaud your commitment to "support regulatory action to promote that entry and the competition it enables." The VON Coalition instead urges the Commission to reach decisions on IP-related issues as part of an omnibus order that proactively fosters a regulatory environment that encourages IP-enabled services and the related benefits enjoyed by consumers, businesses, and government.

A key to the proliferation of Internet use in the 1990s was the Commission's decision to exempt traffic between enhanced service providers ("ESPs") and the PSTN from per-minute access charges.[2] This forward-thinking policy allowed Internet Service Providers ("ISP") to offer flat rates for unlimited use, rather than per-minute billing. Continued ESP access to the PSTN without the imposition of access charges is likely to continue fostering broadband growth and adoption to the benefit of consumers.

[1] Letter from Joseph A. Douglas, Vice President, Government Relations and Corporate Communications, NECA to Ms. Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (May 2, 2007) ("NECA May 2, 2007 *Ex Parte*").

[2] *MTS and WATS Market Structure,* Memorandum Opinion and Order, 97 FCC 2d 682 (1983). ESPs access the PSTN by buying tariffed business services rather than paying per-minute access charges.

Despite this success story, NECA would have the Commission impose economically irrational per-minute fees designed for the legacy PSTN on innovative Voice over IP ("VoIP") providers and their customers. Adopting NECA's proposals or moving forward on any other piecemeal changes to the compensation regime, including the Missoula supporters phantom traffic proposal, in whole or in part, would fundamentally alter the economic relationship between information and telecommunications service providers. Such a drastic change would result in artificially higher prices for consumers and would negatively impact broadband deployment overall.

The VON Coalition is concerned that the Commission's comprehensive intercarrier compensation reform efforts will be delayed and ultimately may fail if the Commission adopts piece-part decisions that negatively and disproportionately affect one segment of the industry without appropriate consideration of the impact on all industry segments, consumers, and the Commission's overall policy objectives.[3] As expressed quite clearly in the ex parte filing made by multiple members of the industry despite NECA's filing, there is no industry consensus regarding the phantom traffic issue and no cost – benefit analysis of the various proposed "solutions." Moreover, a piecemeal approach might temporarily appease some, but it would negatively affect many others, including consumers. Such a result would serve to exacerbate problems created by the current uneconomic compensation structure. Even more, premature action on any IP-enabled services issues could unnecessarily prejudice the outcome of the *IP-Enabled Services, Intercarrier Compensation,* and the *Universal Service* proceedings.

The VON Coalition agrees with NECA that the decline in billable minutes reflects service substitution by customers, and that such substitution represents "fair economic competition and introduction of new, beneficial technology."[4] The Coalition disagrees, however, with NECA's leap from the facts to the un-provable assumption that an unanticipated decline in billable minutes must be due to some sort of "access avoidance technique" that requires "immediate FCC action." NECA's conclusion is baseless and its recommended FCC action is unwarranted. If the FCC were

[3] The Commission has taken a strong view against piecemeal decisions that might "stymie comprehensive reform." For example, when rejecting an SBC forbearance petition, the Commission was concerned that "such relief would . . . require us to prejudge important issues pending in broader rulemakings and otherwise distort the Commission's deliberative process." *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Memorandum Opinion and Order, 20 FCC Rcd 9361 (2005).

[4] NECA, May 2, 2007 *Ex Parte* at 4.

to follow NECA's recommendation and provide a revenue savings bailout for billable minutes lost to competitive services then the FCC would need to look beyond VoIP, which, despite tremendous growth, still represents only a small part of displaced voice minutes. Contrary to what NECA would have the Commission believe, consumer use of other IP technologies such as instant messaging and e-mail is causing a greater reduction in billable voice minutes than VoIP substitution. Just as access charges should not apply to e-mail or instant messaging simply because use of these services reduces the number of billable access minutes that NECA companies collect, the Commission should not apply access charges to VoIP simply because consumers are adopting these new and exciting technologies as more robust ways to communicate.

Moreover, the NECA's filing does not adequately assess implementation costs or customer impacting problems that would result from their proposal. The filing fails to recognize the technological changes that may be responsible for the difficulties NECA seeks to address. In the case of VoIP, technological advancements have made the compensation system, which is fundamentally tied to the North American Numbering Plan ("NANP"), increasingly obsolete.[5] The Commission should not force IP-service providers to invest in new technology by attempting to shoehorn VoIP into the outdated access charge regime. To do so will have the effect of imposing extraordinary costs on new technologies and the consumers who would otherwise benefit from them.

Instead, the Commission should support continued investment in IP-enabled networks, applications, and services by focusing on overall, complete reform. When considering intercarrier compensation reform, the Commission should pay particular attention to the significant value to consumers and the economy added by IP-enabled networks. In contrast to POTS, IP voice is an application just like e-mail, streaming audio, streaming video, and web browsing. IP voice can be combined with other IP-based applications over IP-enabled networks, increasing the reliability and robustness of IP applications and services that ride over these next-generation networks. The benefits of IP-enabled services include cost savings for consumers, reduced operational costs for providers, advanced features unavailable with traditional circuit-switched telephony, increased competition, increased infrastructure investment, accelerated broadband deployment, improvements in emergency services, lower cost

[5] For example, calls originating in IP format are not necessarily associated with a NANP number and, oftentimes, even VoIP calls associated with NANP numbers do not have the geographic relevance they once did. These circumstances lead can lead to terminating provider claims that it is not receiving signaling parameters sufficient to impose access charges.

communications for rural and government users, increased access for persons with disabilities, and increased worker productivity.

VON Coalition members try to maximize the efficiency of IP-based technology and facilitate innovative and sophisticated enhanced features and services for the benefit of consumers. The Commission should ensure that its actions do not deter investment in IP-based networks, applications, or services. As the Commission noted in the *Intercarrier Compensation NPRM*, its decisions should encourage network efficiency and investment, the development of efficient competition, and sustainability of the Universal Service Fund.[6]

The VON Coalition opposes piecemeal resolution of intercarrier compensation issues as argued for in the NECA *Ex Parte* filing, instead, the Coalition urges the Commission to complete its omnibus intercarrier compensation reform proceeding. Such an approach avoids imposing costly but temporary "band-aid" requirements on VoIP providers, protects VoIP consumers from arbitrary price increases, and ensures that new investment in IP-enabled networks, applications, and services is not unnecessarily deterred. Until the Commission establishes a comprehensive compensation scheme that reflects an economically rational unified rate, self-help measures will increase and the very real risk of discrimination abounds.

Respectfully submitted,

/s/

Staci L. Pies
President
The VON Coalition

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell

[6] *Intercarrier Compensation NPRM* at ¶33 ("any new intercarrier compensation approach must be competitively and technologically neutral. Given the rapid changes in telecommunications technology, it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers.")