TURN AND FACE THE STRANGE

INSIDE THE FCC'S CAF ORDER

By **Phil** Josephson

"The more things change, the more they stay the same." – French Proverb

In November, 2011, the FCC issued its massive decision and Order, known as the CAF Order. By this Order, the FCC attempts to reform the intercarrier compensation and universal services systems in an effort to sever the interplay of the two over time. Lofty objectives for a government agency, and time will tell if the FCC can be effective in meeting such goals, especially with regard to intercarrier compensation. In most likelihood, the rules will change but the eventual outcome will be the same, as with most all government "changes."

Intercarrier compensation consists of access charges and reciprocal compensation. These two forms are the only two methods of intercarrier compensation. The applicable intercarrier form depends on different factors, such as the classification of the applicable service and the type of provider that is the interconnecting party. Access charge rules govern payments that interexchange and CMRS (commercial mbile radio service) carriers make to local exchange carriers to originate and terminate long distance calls. The reciprocal compensation rules govern the compensation between telecommunications carriers for the transport and termination of local traffic. Of course, both of these rules have been the key for years of intercarrier disputes and opportunities for arbitrage – areas the FCC attempts to address and rectify in the CAF Order.

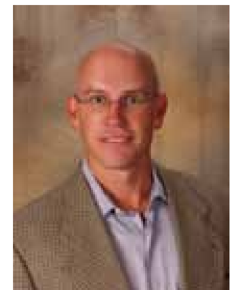
The CAF Order changes the access system to a reciprocal compensation system at the federal level. This "bill and keep" methodology requires carriers to recover their network costs through charges to their end users rather than from competing carriers. According to the FCC, bill and keep best advances its goals of accelerating migration to all IP networks, facilitates IP-to-IP connections and promotes deployment of new broadband networks by providing certainty and predictability to investors.

In changing the access charge system, the FCC seeks to address and reform the high termination access charges in order to address two problem areas, phantom traffic and access stimulation. These problems, in the FCC's view, have led to wasteful arbitrage, which in turn costs carriers and consumers hundreds of millions of dollars each year. The first, phantom traffic, refers to traffic which makes it difficult for terminating networks to bill for termination. The FCCs solution to address this problem is to expand the scope of the FCCs call signaling rules and to require telecommunications carriers and providers of interconnected VoIP service to include the calling party's numbers in all call signaling and to require intermediate carriers to pass this signaling information in unaltered form. This is to enable providers that terminate interconnected VoIP traffic to receive full call information, which will prevent this traffic from terminating without compensation.

The second problem, access stimulation, is the practice by carriers of artificially inflating their traffic volumes to increase intercarrier compensation payments. For example, a LEC with high call volume operations, such as free conference calling, could earn excess revenue from LECs that are required to pay high access charges to terminate calls. The FCC hopes that their change to the rules will address this practice while not placing burdens on companies that do not engage in such access stimulation.

The CAF Order also addresses the outstanding issue of whether VoIP providers should pay intercarrier compensation. With the Order, there is now a clear payment obligation for VoIP traffic exchanged in TDM between a LEC and other carriers. Going forward, the FCC will establish default charges instead of applying the existing intercarrier compensation framework. The default charge for toll VoIP-PSTN traffic will equal interstate rates applicable to non-VoIP traffic, and the default rate for other VoIP-PSTN traffic will be applicable reciprocal compensation rates. The FCC believes that with these changes, all carriers that originate and terminate VoIP calls will be on level footing in their ability to obtain compensation for this traffic.

The CAF Order is big, encompassing and overdue. The results of the Order remain to be seen but it is doubtful that the Order will achieve its intended effects. Over time, providers will adjust to the new methodologies and rules, and they will adjust their business models, pricing and service offerings accordingly, though their reliance on the channel will remain vital and essential. Perhaps the way providers will generate profits will change slightly; however, they will continue to generate profits from the end users, despite the FCC's goals and efforts to save consumers money.



Philip Josephson is the founder of Sterling Business Law. Philip and the firm deliver corporate legal and business advisory services to clients across the United States. Philip holds a Finance degree and a J.D. from the University of Miami, an M.B.A. from Columbia University; is a member of the Florida Bar, the Arizona Bar, and the Federal Communications Bar. He can be contacted at pjosephson@sterlingbusinesslaw.com.