Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) appreciates the Commission's decision to refresh the record on issues related to intercarrier compensation.[1] The reforms adopted by the Commission in 2011 have reduced arbitrage and increased competition in the marketplace for voice services.[2] Now is the time for the Commission to consider additional reforms that will eliminate lingering inefficiencies and distortions in the marketplace and provide strong incentives for carriers to complete the transition to an all-Internet Protocol (IP) network.

I. INTERCARRIER COMPENSATION REFORM SHOULD ENCOURAGE COMPANIES TO COMPLETE THE IP TRANSITION WITHOUT PENALIZING COMPANIES THAT ALREADY OPERATE IP-BASED EQUIPMENT

As the Commission recognized in the *CAF Order*, rationalization of the intercarrier compensation regime is a critical element of the ongoing transition to an all-IP environment.[3] In particular, the Commission's 2011 reforms fully incorporated voice over IP services into the intercarrier compensation regime and started the process of phasing out revenue streams tied to

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1 Public Notice, WC Docket No. 10-90, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, DA 17-863 (rel. Sept. 8, 2017) (*Notice*).

2 *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*CAF Order*).

3 *Id*., 26 FCC Rcd at 17669, ¶ 9 (Prior to reforms, intercarrier compensation regime was "fundamentally in tension with and a deterrent to deployment of IP networks.").

the use of legacy Time Division Multiplexing (TDM) equipment, with the hope that such policies would encourage carriers to more quickly install new IP-based equipment.[4]

Six years later, while incumbent LECs state that they are very interested in transitioning to IP, many of them still require cable operators to exchange a substantial portion of voice traffic through highly inefficient TDM-based arrangements. As a result, NCTA members still spend millions of dollars every year converting IP-based voice traffic to TDM solely so that it can be exchanged with incumbent LECs. By eliminating ambiguities in the rules, the Commission can reduce the financial incentives for incumbent LECs to perpetuate these legacy arrangements and encourage them to move toward more efficient IP-based traffic exchange.

From NCTA's perspective, the overarching objective of the next phase of the Commission's intercarrier compensation reforms should be providing incentives for completing the transition to an all-IP environment. The completion of that transition will enable the Commission to rely more heavily on a market-based regime, and less on prescriptive government rules, to determine the arrangements that service providers establish to govern the exchange of VoIP traffic. Indeed, cable operators already have made meaningful inroads in negotiating agreements with various service providers for the exchange of voice traffic in IP format, but more work remains to be done.

The more immediate question presented by the *Notice* is what changes to the remaining elements of the legacy system for intercarrier compensation the Commission should undertake to eliminate incentives for incumbent LECs to retain legacy interconnection and traffic exchange arrangements and move to efficient IP-based arrangements. As we explain below, the services in

[4] *Id*. at 18044, ¶ 1010 ("We anticipate that the reforms we adopt herein will further promote the deployment and use of IP networks.").

question, such as transit and tandem-switched transport, remain highly regulated because they are not subject to the discipline of marketplace forces to the same degree as retail services. Accordingly, until the transition to an all-IP environment is complete, the Commission should implement reform related to these elements with an eye toward ending anticompetitive practices and encouraging the phase out of legacy network arrangements.

II. TRANSIT AND TANDEM-SWITCHED TRANSPORT RATES SHOULD CONTINUE TO BE REGULATED

One of the defining goals of the Commission's regulatory regime for voice traffic is that every customer should have the ability to reach every other customer connected to the switched network. To achieve that objective, the Commission has long recognized that it was critical not only that telecommunications carriers connect with each other, but also that they have the right to exchange traffic through indirect interconnection arrangements, *i.e.*, through transit and tandem-switched transport services.[5] Because of the monopoly position they occupied in the marketplace at the time competition was introduced, the largest incumbent LECs tend to be the leading providers, and in many areas the only providers, of such services.

The continuing role that incumbent LECs necessarily will play in enabling indirect interconnection in TDM among other carriers provides them with obvious opportunities to exploit this position to their competitive advantage by assessing unreasonable charges on competitors. Some of these providers have taken the position that TDM-based tandem transit service is not subject to the Communications Act – and unless a specific state has asserted jurisdiction over transit service and transit rates, they offer transit only on an unregulated

[5] *Id*. at 18115, ¶ 1313. As noted in the *CAF Order*, transit service (for non-access traffic) and tandem switched transport (for access traffic) involve the same network functionality, but for traffic types that were historically subject to disparate regulatory regimes. Going forward, they should be treated the same for compensation purposes.

"commercial" basis, at prices significantly exceeding rates for comparable services provided under interconnection agreements. The persistence of these unreasonably high TDM transit rates raises consumer costs, frustrates competitive entry, and distorts the market.

The Commission should address this problem by expressly declaring that Section 251(c) requires incumbent LECs to offer TDM transit services to indirectly interconnecting carriers, and to do so at just and reasonable rates. Numerous state commissions and courts have reached this conclusion and none have held otherwise.[6] The Commission should clarify that such charges are within the scope of its existing intercarrier compensation reforms and begin placing them on a path towards bill-and-keep, which will encourage the transition to IP-based network arrangements.

The Commission should reject calls from the large incumbent LECs to deregulate the provision of transit, tandem switching, and transport services. Such an approach would simply encourage LECs (and their affiliates and business partners) to delay the IP transition so as to retain revenues from these services. Instead, the better approach to facilitate the IP transition would be to gradually phase down the rates for those services as contemplated in the *CAF Order*. The Commission has already established that bill-and-keep should apply to tandem-switched transport in the situation where a price cap carrier owns both the tandem and end office switches.[7] It should now extend that mandate to transit services and service arrangements between affiliated terminating carriers and tandem owners – and make clear that the mandate is not limited to situations where the terminating carrier is itself a price cap LEC, but encompasses CLECs, CMRS providers, and VoIP providers affiliated with the price cap LEC that owns and

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[6] *See CAF Order* at ¶1311 n.2367.

[7] *Id*., 26 FCC Rcd at 17943, ¶ 819. Rates for rate-of-return carriers are capped at interstate levels.

operates the relevant tandem. Moreover, such "affiliated" relationships should include not only arrangements between entities that are corporate affiliates, but also any arrangement under which a terminating service provider receives compensation from the tandem operator for traffic routed to the terminating provider. Such arrangements today continue to create incentives to engage in traffic stimulation schemes and other forms of arbitrage and therefore regulation continues to be warranted.

III. THE COMMISSION SHOULD ENSURE THAT NETWORK EDGE RULES ARE NOT USED TO FRUSTRATE THE IP TRANSITION

Among the questions raised in the *Notice* is whether changes are warranted in how the Commission defines the "network edge" for purposes of identifying the rights and obligations of carriers in a bill-and-keep arrangement.[8] The Commission's response to this question must address the appropriate regulation during the current transition period in which at least one party in many traffic exchange arrangements will still rely on TDM-based technology without losing sight of the ultimate goal of implementing a market-based regime to govern the more efficient IP-based traffic exchange at the end of the transition.

From NCTA's perspective, there is no need for the Commission to define the network edge when two providers are exchanging voice traffic in IP format. Arrangements for the exchange of IP voice traffic primarily should be market-based. Given that there already are well-established market-based arrangements by which providers exchange IP-based Internet traffic, and many providers have entered into commercial arrangements for the exchange of IP-based voice traffic, the exchange of voice traffic in IP should not require the type of comprehensive regulation that has governed TDM-based traffic exchange.

[8] *Notice* at 1-2.

Until the marketplace arrives at a point where all voice providers have migrated to all-IP networks, the Commission should take care not to unduly disrupt the stable arrangements that all parties currently depend on for the exchange of TDM-based voice traffic. In particular, the Commission should continue to ensure that competitive providers have the flexibility to decide where on an incumbent LEC's TDM network they would prefer to interconnect and exchange traffic.[9] The Commission should not compel competitors to exchange voice traffic at any particular location on the network or at locations that may not be used today for the exchange of voice traffic. At the same time, the Commission also must ensure that incumbent LECs are not able to use the network edge rules as an excuse to shift unreasonable transport costs to competitors, which only serves to diminish the incentives of the incumbent LECs to migrate to more efficient IP-based arrangements.

[9] 47 U.S.C. § 251(c)(2)(B); *CAF Order*, 26 FCC Rcd at 18116, ¶ 1316.

CONCLUSION

The Commission should continue to take steps that encourage carriers to complete the transition to all-IP networks. When that goal is reached, the Commission will be able to rely more extensively on market forces and less on the type of prescriptive rules that traditionally have governed the exchange of TDM-based voice traffic. Until such time, however, the Commission should continue to regulate transit and tandem-switched transport arrangements and should ensure that network edge rules are not used to frustrate efficient interconnection arrangements among carriers.

Respectfully submitted,

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