

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**JOINT REPLY COMMENTS OF  
JAMES VALLEY COOPERATIVE TELEPHONE CO.,  
NORTHERN VALLEY COMMUNICATIONS, LLC,  
AND  
GREAT LAKES COMMUNICATION CORP.**

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James Valley Cooperative Telephone Co. (“JVCTC”), Northern Valley Communications, LLC (“NVC”), and Great Lakes Communication Corp. (“GLCC”) (collectively the “Rural Carriers”), pursuant to the Public Notice released on September 27, 2017 (DA 17-933), hereby respectfully submit these reply comments to refresh the record on intercarrier compensation (“ICC”) reform.

**INTRODUCTION AND SUMMARY**

Before reducing necessary revenue streams to LECs any further, the Rural Carriers urge the Commission to carefully review the record to determine, as a matter of fact, whether its previous reforms resulted in lower retail and wholesale prices, improved service, and/or new and more innovative services for interexchange carrier (“IXC”) and commercial mobile radio service (“CMRS”) customers. The IXC and CMRS commenters advocating for *more* free services have given the Commission no basis in their comments to reach that factual conclusion. Further, the Commission should focus on the effect any new reforms would have on rural carriers and rural end-users, and the means by which the Commission would address high-support budget shortfalls to ensure that rural carriers would still receive sufficient monetary support in order to

remain viable and serve their rural customers with high-quality, reliable telecommunications services. In the event that the Commission decides to enact reforms to reduce any of the remaining rate elements, assuming the record would ever support such a decision, the Rural Carriers ask that the Commission (1) only phase in such changes over a substantial step-down period, as it did with terminating end-office rates, (2) establish a new monetary support mechanism providing supplemental CAF-ICC support to rural carriers and other negatively affected carriers, and (3) establish a default network edge standard that promotes certainty regarding transport obligations and protects rural carriers and end-users from substantial new costs.

#### **I. The Commission Must Carefully Evaluate Commenter Claims and its Prior ICC Reforms**

As NTCA and WTA noted in their comments, “[t]he Commission has consistently expressed its commitment to data-driven decisionmaking”<sup>1</sup> and it recognizes the importance of making “well-informed, economically sound policy” that is “[g]uided by economists and data experts, using data collected by the FCC and from other sources.”<sup>2</sup> Therefore, before introducing any further intercarrier compensation reforms, the Commission must carefully evaluate the effects of its prior reforms and the legitimacy of other commenters’ assertions by determining whether consumers have actually benefitted from these earlier reforms. To that end, the Commission should collect and analyze IXC minutes, revenues, and customer rate history to

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<sup>1</sup> Joint Comments of NTCA – The Rural Broadband Association and WTA – Advocates for Rural Broadband, at 12 (Oct. 26, 2017) (“*NTCA & WTA Comments*”).

<sup>2</sup> *The Importance of Economic Analysis at the FCC*, Remarks of Chairman Ajit Pai at the Hudson Institute, at 4 (Apr. 5, 2017), available at: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0405/DOC-344248A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0405/DOC-344248A1.pdf). See also *Communications Vending Corp. of Arizona v. FCC*, 365 F.3d 1064, 1069 (D.C. Cir. 2004) (the Commission’s “findings of fact” can only be upheld “so long as they are supported by substantial evidence on the record as a whole.”).

determine whether consumers have benefitted from existing reforms and are likely to benefit from any additional reforms.

The comments filed in this proceeding by users of LECs' access services suggest that a complete transition to bill-and-keep for all remaining access rate elements will benefit consumers and the telecommunications industry as a whole, and that a failure to move to a complete bill-and-keep system will subvert innovation and cause economic harm to consumers. But these commenters never support their assertions with concrete, substantiated facts. For example, AT&T claims that, by failing to adopt a complete bill-and-keep framework in 2011, "unscrupulous carriers ... turned to arbitrage using originating charges on 8YY traffic, and to manipulating tandem and transport charges to support arbitrage and access stimulation schemes ... that divert carrier resources and harm consumers."<sup>3</sup> Likewise, Verizon claims that, due to the lack of rate reforms, access stimulation "remains a widespread and growing practice" that allows LECs to "refuse to negotiate more efficient interconnection arrangements, such as direct connections or IP-based interconnections ... further exacerbating the consumer harms caused."<sup>4</sup> In making these statements, AT&T and Verizon do not provide evidence that such circumstances actually exist, nor do they cite any facts substantiating such claims. Indeed, in NVC's and GLCC's experience, these statements are often false; for example, Verizon routes most, if not all, of its traffic to NVC and GLCC via the very type of "IP-based interconnection" it claims LECs engaged in access stimulation do not enter into.

Similarly, the IXC commenters mischaracterize many of the purported facts that they use to reach their self-serving policy conclusions. For example, in arguing that transport rates should be reduced to zero, both AT&T and Verizon rely on a "mileage pumping" argument, claiming

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<sup>3</sup> Comments of AT&T Services, Inc., at 12, 14 (Oct. 26, 2017) ("*AT&T Comments*").

<sup>4</sup> Comments of Verizon, at 4, 7 (Oct. 26, 2017) ("*Verizon Comments*").

that certain carriers engage in a new form of access stimulation that “exploit[s] the per-minute per-mile transport rate structure by applying the benchmark transport rates to excessive transport mileage.”<sup>5</sup> They use NVC’s transport route as an example, and assert that NVC “has inflated its billed transport miles by structuring its operations to use an inefficient 192-mile transport route” for the purpose of “billing [IXCs] for excessive mileage.”<sup>6</sup> This is a complete misrepresentation. After the 1996 Act was passed, JVCTC, an ILEC, created NVC, a CLEC, which built its network and located its end offices in Aberdeen (which is over 150 miles from SDN’s CEA tandem switch in Sioux Falls) in 1999. That is *six years before* NVC entered into the access stimulation business. NVC was created in 1999 to provide competitive services in Aberdeen and its surrounding service territory, which it has been doing since its inception, winning many customers from the incumbent LEC and competing with various other carriers. NVC chose Aberdeen as its home long before it expanded its services to include high-quality, high-volume services to conferencing service providers. NVC cannot move Aberdeen closer to Sioux Falls; the map is the map. This is but one example of how the commenters have mischaracterized those few pseudo-factual allegations included in their arguments to mislead the Commission into handing them free service from the carriers who carry and complete their customers’ long-distance calls.<sup>7</sup>

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<sup>5</sup> *Id.* at 7; *see also AT&T Comments* at 14 (“In the absence of [bill-and-keep] rules, some carriers have sought to force sending carriers to use inflated and inefficient transport options.”).

<sup>6</sup> *Verizon Comments* at 7; *see also AT&T Comments* at 14 (“For example, in one case, a carrier elected to locate an access stimulation scheme in rural South Dakota, over 190 miles away from the nearest tandem switch. The carrier has for years billed over 190 miles of tariffed, per-mile, per-minute transport charges on its billions of minutes of access stimulation traffic, leading to excessive and unreasonable transport charges.”).

<sup>7</sup> While AT&T did not file the comments in this docket, on November 16, 2017, it filed a similar misstatement in an effort to distract from the fact that it was withdrawing its legally and factually defective petition for forbearance in WC Docket No. 16-363 before it could be formally denied next month. In that letter, AT&T (and certain other IXCs and associations of carriers that

Just as importantly, the commenters do not explain or substantiate how the Commission's 2011 terminating end-office-related ICC reductions resulted in *any* benefits to consumers, how consumers are actually being harmed by the Commission's decision in 2011 to not implement a complete bill-and-keep structure, or how any new reforms would benefit consumers or the telecommunications industry in ways that build upon the alleged previous, but wholly unsubstantiated, benefits. Despite having a *six-year window* to accumulate data and evidence supporting their assertions, the commenters fail to show that consumers' rates decreased as a result of the *Connect America Fund Order*,<sup>8</sup> or that IXC and LECs employed new technology that improved the telecommunications network and/or consumer satisfaction because of these reduced intercarrier compensation expenses. Likewise, they do not use the available data or any economic forecast to show how—or how many—consumers would benefit from a decision to initiate bill-and-keep for transport and tandem switching services.

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do not even pay access charges) claim, again without any factual basis, that “access stimulating carriers have made [the] choice” to have their high-volume customers offer their services via the access-stimulating LECs' networks. AT&T Communications, Inc. et al., Comment Letter on Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), at 1 (Nov. 16, 2017). But Great Lakes' and NVC's networks have been built, many years ago, in rural areas, for reasons having nothing to do with access stimulation. Great Lakes' founder was born and raised in northwest Iowa, where Great Lakes is based. NVC serves customers in areas near its parent company JVCTC's service territory. And the notion that AT&T can force these customers to move their high-volume services to urban areas more hospitable to AT&T and other IXCs, or alternatively have the LECs *pay* access charges, has no legal support whatsoever. *See id.* Indeed, just this month the Commission rejected the discriminatory principle underlying AT&T's suggestion that the Commission can or should treat access-stimulation traffic differently than any other type of call. *See In re AT&T Corp. v. Iowa Network Servs., Inc.*, Mem. Op. & Order, FCC 17-148, ¶¶ 17-22 (rel. Nov. 8, 2017) (rejecting various AT&T arguments for why access-stimulation traffic should be treated differently than any other access traffic, including the notion that AT&T can pick and choose what type of traffic it deems to be “legitimate”). Neither AT&T nor the Commission has the authority to discriminate based on the type of traffic they favor or disfavor. AT&T can no more discriminate against calls to its competitors than it can anoint itself with the authority to label traffic as “legitimate.”

<sup>8</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) (“*Connect America Fund Order*”).

Just as importantly, they make no attempt to acknowledge the foreseeable harmful effects of implementing such a proposal. For example, the IXC commenters complain about the “billions of minutes” of traffic that their customers initiate that are associated with access stimulation.<sup>9</sup> But none of these commenters ever consider the negative effect on the public interest if, as they hope, these services are eliminated. These commenters simply ignore the harm to the public that they explicitly want to cause. But why should we ignore the harm to these consumers who freely, willingly make these billions of minutes of phone calls?

Indeed, notwithstanding the empty rhetoric, there is good reason to believe that these carriers suffer no harm, and even profit, from these high-volume services. For example, in its pending collection action against AT&T, NVC learned that, between March 2013 and June 2016, AT&T collected \$50 million for NVC-bound traffic, including substantial revenues from its wholesale carriage of NVC’s traffic for other carriers, producing a net profit of \$30 million for AT&T, which AT&T has failed to show that it passed on to consumers.<sup>10</sup>

As noted above, AT&T’s and Verizon’s (and many other IXCs’) customers have come to rely upon these conferencing and related high-volume services. In fact, according to NVC’s call records, 1,110,969 Americans used NVC’s high-volume customers’ services in October 2017. During that same month, 819,523 Americans used GLCC’s customers’ high-volume services. Commenters like AT&T and Verizon are asking the Commission to eliminate those services, but paradoxically all in the name of public interest. That is not reasoned decisionmaking; it is pure profit-making for the IXCs. It is understandable why they would want to sell unlimited calling

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<sup>9</sup> See, e.g., *AT&T Comments* at 14 (claiming that carriers involved in access stimulation have billed IXCs like AT&T for “billions of minutes of access stimulation traffic”); *Verizon Comments* at 7 (claiming that “some carriers continue to bill billions of access stimulation minutes every year”).

<sup>10</sup> See *N. Valley Comm’cns, LLC v. AT&T Corp.*, No. 1:14-CV-01018-RAL, Motion Hearing Transcript, at 44:17-49:20 (Jan. 23, 2017), attached as **Exhibit A**.

plans that their customers barely use, but the Commission must consider the adverse effect on the public interest if it eliminates the services that are enabled via access stimulation, which Americans use every day in volumes that speak volumes. Given the Commission's fealty to "well-informed, economically sound policy" that is "[g]uided by economists and data experts," the IXC's' and CMRS providers' unsubstantiated request for free services from LECs lack any factual basis to support the conclusion that any reform would yield any net benefit to consumers (as opposed to the commenters' executives, employees, and, if anything is left, their shareholders).

Before deciding whether the Commission should modify its long-standing, sensible, and fair regime for tandem switching and transport rates, it should look at more than just the unverified, self-serving statements made by carriers that simply want free service from other carriers that they need to generate their own revenues. Thus, the Commission should collect and analyze the relevant data regarding 2011-2017 revenues and rates for IXC's and CMRS providers, the fees imposed on consumers (and any change in fees) during that time period, and any network improvements that have occurred as a result of the Commission's existing reduction in terminating access rates. By performing such a data-driven analysis, the Commission will be following its commitment to well-informed, economically sound decisionmaking. The current record supplied by the commenters advocating for free service is barren of the facts the Commission would need, and thus the Commission must solicit that specific data to meet its commitment to well-informed, economically sound decisionmaking. And, more importantly, the Commission can better evaluate the degree to which consumers and the telecommunications



industry as a whole have actually benefitted from the Commission's earlier rate reductions, and whether such benefits are likely to accrue from any further reform.<sup>11</sup>

## **II. Rural Carriers and Rural End-Users Will Be Harmed by Further Reform**

As explained above, the IXC and CMRS commenters fail to support their assertions that bill-and-keep will benefit consumers. More importantly, though, they do not even acknowledge the harm that such a proposal would have on rural carriers and, worse, their rural consumers. Thus, beyond simply assuming the benefits of its prior and proposed ICC reforms, the Commission should also focus on the likely negative effects such reforms would have on rural carriers and rural end-users, who will be the most heavily affected if a complete bill-and-keep framework is instituted.

For years the Commission has maintained regulatory policies designed to protect rural carriers and end-users from being economically harmed by ICC regulations, adopting a “no flash cuts” policy to ensure rural carriers will be able to serve end-users in the aftermath of certain telecommunications reforms without raising the end-users’ fees or bankrupting the carrier.<sup>12</sup> Indeed, the Commission reaffirmed the importance of this policy in its *Connect America Fund Order*.<sup>13</sup> There, the Commission paid particular attention to rural carriers and end-users and the effect its partial bill-and-keep plan would have on them, noting the important role rural carriers

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<sup>11</sup> As explained by other commenters, the Commission also should not further reduce the tandem switching and transport rates of carriers, like CEA providers, that do not serve end users, and thus have no other means of recovering the costs of providing their services. *See, e.g.*, Comments of South Dakota Network, LLC, at 7-8 (Oct. 26, 2017); *see also* Comments of Peerless Network, Inc., et al., at 23-25 (Oct. 26, 2017). (JVCTC is a member of SDN, and thus has a direct interest in the Commission's treatment of that issue.)

<sup>12</sup> *See, e.g.*, *Connect America Fund Order*, ¶ 870.

<sup>13</sup> *See id.* The Commission also embraced this policy when it initiated its benchmark regime for CLEC access charges in 2001. *See In re Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, ¶ 40 (2001).

play in the nationwide communications industry and that these carriers might not be able to invest in, improve upon, or limit the cost of rural area service if bill-and-keep were to be employed with no monetary support mechanisms or exceptions for these entities.<sup>14</sup>

Consequently, the Commission went on to adopt a recovery mechanism for rural ILECs that was intended to ensure the implicit support from access charges necessary to provide service in rural areas would become explicit support.<sup>15</sup>

Much like the bill-and-keep policies enacted via the *Connect America Fund Order*, the bill-and-keep framework discussed here would have a major impact on rural carriers and their ability to serve end-users in a cost-effective and efficient manner. As multiple commenters noted, any further rate reductions for transport and tandem switching services would have a direct effect on rural carriers' revenue streams, effectively cutting off a principal means by which these rural carriers are able to keep costs low for their rural end-users. For example, Peerless Network, Inc. ("Peerless") and various other carriers joining its comments emphasized how critically important it is that further ICC reforms do not undermine rural carriers, the investments made in rural networks up to this point, or rural consumers.<sup>16</sup> Similarly, NTCA and WTA noted that:

[B]y eliminating even *more* ICC revenues and/or *increasing* costs by forcing RLECs to bear the cost of transport would only exacerbate the harms noted above and place rural carriers in the untenable position—presuming they could survive such revenue cuts at all—of having to (a) forgo critical investments in enhanced and expanded service, (b) further raise rates for rural consumers, or (c) both.<sup>17</sup>

The negative effect on rural carriers and their customers would be material. For example, if we eliminated JVCTC's switched access revenue from October 2017—assuming the

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<sup>14</sup> *Connect America Fund Order*, ¶ 870.

<sup>15</sup> *Id.* ¶ 863.

<sup>16</sup> Comments of Peerless Network, Inc., et al., at 26 (Oct. 26, 2017).

<sup>17</sup> *NTCA & WTA Comments*, 9.

Commission had lowered these rate elements to bill-and-keep—JVCTC’s 2,597 phone customers would need to pay \$20.08 more per month for their phone service for JVCTC to make up the lost access revenue. An additional \$240 in service fees per year to each and every customer is material to these rural consumers. And all for what? So that AT&T, Verizon, and other access-services-users can simply pocket the money? There is *no* evidence they have done anything else with the free terminating services they have been receiving. Inter-carrier compensation revenues have played a key part in rural carriers’ ability to build 21st Century networks that will be ready for an all-IP world. NVC and JVCTC, for example, have invested over \$4,500 per customer in plant investment and expenses between 2012 and 2016. Between 2013 and 2016, GLCC invested approximately \$3,300 per customer in plant investment and expenses. Those significant network improvements, which redound directly to the consumers’ benefit and achieve the Act’s goal of universal service, could not have happened without the companies’ inter-carrier compensation revenues.

Consequently, if the Commission were to flash-cut to bill-and-keep, these Rural Carriers’ consumers would likely be forced to lose or downgrade their service. Ultimately, then, the Commission’s reforms would leave rural carriers decimated, essentially eliminating them from the marketplace and creating a more regressive, rather than progressive, telecommunications market, which is inimical to the goals of the 1996 Act.

Thus, if the Commission were to immediately adopt a complete bill-and-keep framework, it would be effectively forcing the hand of rural carriers across the country to deprive consumers of access to “advanced telecommunications and information services” at reasonably comparable rates, to which they are statutorily entitled.<sup>18</sup> Any such transfer from rural LECs to nationwide

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<sup>18</sup> See 47 U.S.C. § 254(b)(3).

IXCs and CMRS providers is directly antithetical to Congress's directive for the Commission to provide for universal service to all of the country's telecommunications customers, rural and urban alike.

Indeed, the potential issues described above are likely just a few of the problems a complete transition to bill-and-keep would have on rural carriers and consumers. The Commission should have a clear understanding of the consequences of any further intercarrier compensation reform before implementing it, especially the effects on the rural carriers and rural end-users who heavily rely on the current rate structure in order to keep service at an effective and affordable rate. Accordingly, the Rural Carriers recommend that the Commission weigh the positive and negative effects these reforms will have on *all* interested parties before proceeding. On this record, the Commission has *no* basis on which to find, as a matter of fact, that it can change its current policy.

### **III. Any Further Reductions Should Be Implemented Over a Substantial Transition Period**

The Commission has previously employed a transition period when rates have been reduced for certain carriers, concluding that such periods provide carriers with "sufficient time to adjust to marketplace changes and technological advancements, while furthering [the Commission's] goal of promoting a migration to [the new reforms]."<sup>19</sup> Indeed, if the Commission were to enact further intercarrier rate reductions, it would be eliminating a substantial source of revenue that the affected carriers have been relying upon for decades. Thus, if the Commission decides to proceed with further reforms, it should only do so after a substantial transition period, thereby avoiding a shock to the telecommunications market and

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<sup>19</sup> *Connect America Fund Order*, ¶ 802.

allowing all negatively affected carriers to properly adjust to the new requirements that will be imposed on them.

The Commission is familiar with enacting a transition period as a consequence of its decisions to institute a bill-and-keep structure for certain rates. In the *Connect America Fund Order*, the Commission recognized the major impacts its rate reductions would have on various LECs and their end-users. There, the Commission decided to adopt a six-year transition period for price cap carriers and CLECs, and a nine-year transition period for rate-of-return carriers, holding that a faster step-down period would violate the Commission's commitment to avoiding flash cuts and would force carriers and end-users to face severe marketplace deviations for which they were not prepared.<sup>20</sup>

As the Rural Carriers have made clear, the revenue streams of rural carriers and smaller carriers would be negatively affected by a complete transition to bill-and-keep, and if these carriers are not given time to prepare for this transition they will likely have no choice but to immediately raise end-user rates and/or discontinue some or all of their services. If any rate reductions are implemented, affected carriers need to be given time to prepare for this major revenue reduction and to formulate a plan to ensure they keep end-user fees low and their networks in working order. Accordingly, if the Commission decides to adopt any further transition to bill-and-keep, it should only do so after providing a transition period similar to that given via the *Connect America Fund Order*.

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<sup>20</sup> *Id.* at ¶¶ 800-02.

#### IV. Supplemental Monetary Support for Negatively Affected Carriers

As noted above, the Commission’s “no flash cuts” policy has served as a means by which it can protect rural carriers and end-users during times of rate reform.<sup>21</sup> In furtherance of this policy, the Commission has on several occasions enacted monetary support and revenue replacement mechanisms for carriers in the face of new rate regulations, recognizing that ICC rates and revenues are “an implicit subsidy because they are set to recover the cost of the entire local network, rather than the actual incremental cost of terminating or originating another call.”<sup>22</sup> If the Commission does eventually receive the evidence necessary to conclude that it is in the public interest to completely transition to a bill-and-keep system, the Commission should adhere to its “no flash cuts policy” and should provide negatively affected carriers—including rural carriers—with monetary support to ensure they will be able to survive any reform transition. Therefore, before lowering any rates, the Commission should determine where monetary support would come from and how it would be distributed among interested parties.

The Commission has employed explicit monetary support mechanisms as an integral and essential part of intercarrier compensation reform since 2001, when it replaced the Carrier Common Line revenue stream with Interstate Common Line Support.<sup>23</sup> Since then, it has employed a similar monetary support tool as a result of several different regulatory transitions. For example, when the Commission decided to institute a bill-and-keep system for terminating end-office charges in its *Connect America Fund Order*, it noted that such a transition would only be successful if negatively affected carriers received some sort of financial assistance during the

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<sup>21</sup> See *supra* notes 10-11 and accompanying text.

<sup>22</sup> *Connect America Fund Order*, ¶ 870.

<sup>23</sup> See *In re Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd. 19613, ¶ 128 (2001).

transitional phase, albeit only for incumbents.<sup>24</sup> Accordingly, the Commission established a recovery mechanism “designed to provide predictability to incumbent carriers that had been receiving implicit ICC subsidies, to mitigate marketplace disruption during the reform transition, and to ensure [its] intercarrier compensation reforms do not unintentionally undermine [its] objectives for universal service reform.”<sup>25</sup> This mechanism ultimately allowed carriers to recover a portion of their lost revenues through a combination of end-user Access Recovery Charges and the Connect America Fund.<sup>26</sup> Indeed, without this assistance, no one knows whether the negatively affected carriers would have been able to continue to provide efficient and affordable service to their end-users.

The revenues lost by rural carriers as a result of the Commission’s 2011 reforms would only be compounded if the Commission decides to completely transition to a bill-and-keep system. Thus, the only way to keep these rural carriers afloat in the face of any such transition would be by supplementing their monetary support from certain federal funds. It is unlikely, however, that the Commission’s existing subsidy mechanisms would be able to provide the necessary support, as these existing funds are not even able to sufficiently support the Commission’s present obligations. NTCA and WTA have clearly shown that “the high-cost USF is demonstrably insufficient to meet outstanding universal service commitments, let alone [able] to provide new transition payments.”<sup>27</sup> And, along with NTCA and WTA, the Rural Carriers believe there is evidence that this trend will continue, as the average budget “haircut” for rural

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<sup>24</sup> *Connect America Fund Order*, ¶ 858. For CLECs, the Commission merely noted that they “are free to recover reduced revenues through end-user charges.” *Id.* at ¶ 850. Because FCC-eliminated ICC revenues are lost revenues for ILECs and CLECs alike, any revenue replacement mechanisms the Commission makes available for LECs affected by any further ICC rate reductions should be available to both ILECs and CLECs.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at ¶ 849.

<sup>27</sup> *NTCA & WTA Comments*, 7; *see also id.* at 7-11.

carriers that continue to receive actual cost recovery from the USF have increased from 4.5 percent to 14 percent in a little over one year's time.<sup>28</sup>

There is no question that further rate reductions will require negatively affected carriers to receive additional monetary support in order to offset lost revenues and, based on the evidence noted above, it does not appear that existing funding mechanisms will be able to provide the necessary support. Thus, the Commission should develop a solution to this problem before taking any further action to reduce rural carriers' ICC rates, which, on the current record, would merely serve the bottom line of the IXC commenters (but not their end-users). Indeed, if the Commission fails to undertake its commitment to engage in fact-driven policy-making in this docket, its reform efforts will prove to be more damaging than they are helpful, exacerbating universal service problems and further disrupting the stability of the rural telecommunications market.

#### **V. Establishing A Network Edge Default Definition**

The Rural Carriers understand that the Commission is also interested in refreshing the record on issues related to the network "edge." This issue will need even more particularized attention if the Commission moves forward with reforms regarding transport and tandem switching rates. While the Rural Carriers understand and agree with the Commission's decision to let states individually define their own network edges in the first instance, the Commission should provide guidance for states to follow by adopting a default rule that can be applied where the states decline to act. As will be explained in more detail below, the Rural Carriers believe that a complete transition to bill-and-keep will only be possible if the Commission establishes a network "edge" default that is formatted so as to respect rural carriers and protect them from

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<sup>28</sup> See Budget Control Mechanism for Rate of Return Carriers, available at <http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx>.



being subject to new costs. Accordingly, the Rural Carriers propose that, in the event any transition is made, the Commission should adopt a network edge default, taking into consideration the need for certainty and rural carrier protection.

Defining the network edge is critical to the success of any ICC reforms. Certainly, if the Commission were to completely transition to a bill-and-keep system and not reform the standards pertaining to the network edge, IXCs and other carriers would have an incentive to compel rural carriers and other providers to deliver and receive traffic only at central locations or large population zones. Indeed, T-Mobile has proposed just this type of requirement in its own comments to the Commission.<sup>29</sup> As NTCA and WTA note, by allowing carriers to engage in such self-help mechanisms, the Commission would be indirectly encouraging the “transfer [of] significant transport costs to rural carriers and their small, rural consumer bases, greatly undermining the Commission’s universal service policies in other respects.”<sup>30</sup> Thus, the network edge regulations will need to be changed in the event bill-and-keep is established, for without such change the rural carriers and their end-users will not be adequately protected and will bear the brunt of the costs associated with completing calls that other carriers’ customers voluntarily chose to make to the terminating LECs’ end-users.

There is precedent for the Commission to establish a default that protects these rural carriers. When the Commission originally adopted the “rural transport rule” to define the network edge for purposes of delivering non-access traffic between rural LECs and CMRS providers, it did so to ensure that the universal service mission of rural carriers would not be

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<sup>29</sup> See Comments of T-Mobile, USA, Inc., at 8 (Oct. 26, 2017) (“The IP transition will succeed in the United States only if carriers are able to efficiently exchange all traffic at a few POIs across the nation.”).

<sup>30</sup> *NTCA and WTA Comments*, 19-20.

undermined by massive, new transport costs.<sup>31</sup> As NTCA and WTA note, this rule has provided “some degree of certainty regarding transport obligations” and has “protect[ed] rural consumers from a ‘piling on’ of transport costs.”<sup>32</sup> The “certainty” and “protection” afforded by the Commission’s rural transport rule are the types of guideposts that the Commission should maintain when issuing any guidance in defining the network edge default.

Without a default definition of network edge that protects rural carriers, the IXC’s and larger carriers will be able to control the marketplace and, inevitably, the rural carriers and smaller providers. This is not the type of telecommunications network envisioned by the Commission, nor is it the type that will promote reliable, low-cost service. Thus, if the Commission moves forward with its transition to a complete bill-and-keep framework, it should reaffirm and incorporate those guideposts established in its rural transport rule and create a network edge default that discourages self-help by larger carriers and protects rural carriers and their end-users.

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The Rural Carriers urge the Commission to move cautiously before proceeding with any further rate reforms, acting only after it has evaluated any success of its prior reforms using a data-driven analysis, and whether there is any likelihood that further ICC rate-reductions will result in a net benefit to consumers that can justify the necessary increased cost on rural consumers. The Commission should consider how a complete transition to bill-and-keep would affect rural carriers and end-users and first resolve existing USF budget shortfalls before proceeding further. At the same time, it should be thinking about how these proposed reforms would affect the millions of consumers who make the billions of minutes of calls to conferencing

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<sup>31</sup> See *Connect America Fund Order*, ¶¶ 998-99.

<sup>32</sup> *NTCA and WTA Comments*, 20-21.

services that the IXC and CMRS provider commenters are trying to eliminate. If, after taking the above steps, the Commission still believes further ICC reforms will result in a net benefit to the public interest, the reforms should include a substantial step-down period and establish a network edge default that creates certainty with respect to transport obligations and that protects rural carriers and end-users. Without such a transition period and default, the reforms will cause more harm than good and undermine the Commission's mandate of providing affordable universal service to all Americans.

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Respectfully Submitted,



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