Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	CC Docket No. 01-92
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	

COMMENTS OF ALLEGIANCE TELECOM, INC.

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SUMMARY

The initial rules implementing the Telecommunications Act of 1996 ("1996 Act") established an even-handed opportunity for incumbent and competitive local exchange carriers ("LECs") to construct new, efficient networks. For over five years, facilities-based CLECs have designed their networks based on these rules.

At the same time, ILECs have taken every available opportunity to challenge the rules adopted in 1996 in an attempt to further delay the introduction of competition in their monopoly local markets. Because they demanded that reciprocal compensation rates be set above cost in the first round of interconnection agreements, ILECs' reciprocal compensation issues are truly of their own making and motivated by revenue preservation and anticompetitive objectives. Singling out ISP-bound traffic for bill-and-keep would reward ILECs for refusing to embrace the facilities-based competition that Congress intended. It would also send the message that the Commission will reward legacy networks and punish investment in more efficient networks. It is hard to imagine an approach to regulation more at odds with the goals of the 1996 Act.

In spite of this, the Commission proposes to essentially eliminate the existing calling-party's-network-pays ("CPNP") framework. The Public Switched Telephone Network ("PSTN"), like the U.S. Postal Service, provides a service that benefits everyone connected to it. The fact that everyone may benefit from being connected to the network, however, does not justify charging the recipient for a particular call that it receives, regardless of whether the recipient wants to receive the call. Like the CPNP regime, the U.S. Postal Service requires the party sending the mail to pay for the stamp. Mandating bill-and-keep for telecommunications traffic makes about as much sense as making

consumers pay for the postage on the junk mail they receive and would be no more equitable.

The OPP Papers reflect a substantial disconnect between theory and the enormous practical difficulties of implementing bill-and-keep. For example, they contemplate substantial regulator involvement in network planning issues. They also ignore the fact that state authorities regulate intrastate communications and that, absent implementation of bill-and-keep at the state level, huge new opportunities for arbitrage would be created. Bill-and-keep for interstate access traffic would also require a major new program of federal end-user charges to recover the LECs' costs of providing interstate access service. The OPP Papers apparently also envision that the current scheme of interstate access charges would be retained in major respects, especially transport charges.

The proposals in the ***Intercarrier Compensation*** *NPRM*, especially that of mandating bill-and-keep only for ISP-bound traffic, would send exactly the wrong message to the investment community. That message is that the Commission will selectively change its rules to punish facilities-based CLECs for competing successfully under the rules established by the Commission in the ***Local Competition Order.*** Mandating bill-and-keep for ISP-bound and other local traffic would also be unlawful. Moreover, discarding CPNP would require a fundamental reexamination of retail rates, an issue that the Commission has not adequately addressed in the *NPRM*. For all the reasons specified herein. the Commission should retain CPNP and should not force carriers to implement bill-and-keep for local, ISP-bound and/or access traffic.

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Allegiance Telecom, Inc. ("Allegiance") submits these comments in response to the *Intercurrier Compensution NPRM*.[1] For the reasons stated below, the Commission should retain calling-party's-network-pays ("CPNP") as the intercarrier compensation mechanism for the exchange of traffic and should not mandate bill-and-keep for any class of traffic.

I. Introduction

The Telecommunications Act of 1996 ("1996 Act") was intended to promote three types of competitive entry into the local telecommunications markets: facilities-based, resale, and unbundled-network-elements ("UNE")-based entry. Central to the promotion of facilities-based competition is the duty of all local exchange carriers ("LECs") to interconnect their networks and establish arrangements for the transport and termination of traffic. The initial rules implementing the 1996 Act, including rules governing points of interconnection ("POI") and reciprocal compensation, established an even-handed opportunity for incumbent LECs ("ILECs") and competitive LECs

("CLECs") to design and interconnect their networks efficiently. Basing symmetrical reciprocal compensation rates on ILEC costs provides an equal opportunity and incentive for both ILECs and CLECs to become more efficient and earn higher profits. For over five years, facilities-based CLECs have designed their networks based on these rules. The COBAK and BASICS proposals would fundamentally change the rules on which facilities-based CLECs have relied, undermining the regulatory certainty that the Commission has repeatedly stressed it intends to promote.

ILECs have taken every available opportunity to challenge the rules adopted in the 1996 *Local Competition **Order*** in an attempt to delay the introduction of competition in their monopoly local markets. ILECs chose to litigate the "ISP traffic" issue despite the fact that it was they who had insisted upon the inflated reciprocal compensation rates at the heart of their complaints. ILECs' reciprocal compensation issues are truly of their own making and motivated by revenue preservation and anticompetitive objectives. Singling out ISP-bound traffic for bill-and-keep would reward ILECs for refusing to embrace the facilities-based competition that Congress intended. **It** would also send a message that seeking out specialized markets and customers and providing them with better and more efficient service will be punished, simply because the ILECs don't like it. It is hard to imagine an approach to regulation more at odds with the goals of the 1996 Act. The Commission should allow markets to work rather than picking winners by changing the rules in the middle of the game.

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[1] ***Developing a Unified Intercarrier Compensation Regime,*** CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132 (rel. **Apr.** 27, 2001) (***"Intercarrier Compensation** NPRM"* or *"NPRM")*

The Commission's proposal to essentially eliminate the existing CPNP framework would deny CLECs the opportunity to recover their network investment in the same manner that the Commission has historically allowed ILECs to recover their costs. The PSTN, like the U.S. Postal Service, provides a service that benefits everyone connected to it. The CPNP theory is not unique to the telecommunications market and has served multiple markets well. Like the CPNP regime, the U.S. Postal Service still requires the party sending the mail to pay for the stamp. The fact that everyone benefits from being able to receive mail does not justify charging the addressee for a particular communication that it receives, regardless of whether the addressee wants to receive the communication. The same is true for the PSTN. Mandating bill-and-keep for telecommunications traffic makes about as much sense as it would to make consumers pay for the postage on the junk mail they receive and would be no more equitable.

Moreover, discarding CPNP would require a fundamental reexamination of retail rates, an issue the Commission has failed to adequately address in the *NPRM*. The Commission must consider the significant impact on the competitive industry of forcing carriers to recover most costs of terminating traffic from their end users instead of other carriers. While all carriers would need to readjust their pricing and business plans to recover more transport and termination costs from their end users, new entrants would be disproportionately impacted, especially in the current investment climate.

The proposals in the *Intercarrier Compensation NPRM* would not be competitively neutral because bill-and-keep favors carriers with balanced traffic – ILECs. Bill-and-keep assumes that CLECs should have the network architecture, customer base and customer calling patterns of ILECs. Bill-and-keep would favor ILECs because it would allow them to shift their costs of transporting and terminating their customers' traffic to CLECs.

Furthermore, an examination of the Central Office Bill-and-Keep ("COBAK")[2] and Bill Access to Subscribers, (Incremental) Interconnection Costs Split ("BASICS")[3] transport models shows that neither is competitively neutral and both would require substantial Commission and state commission involvement in network planning issues. The Commission should not require CLECs to establish a POI in each ILEC local calling area or at each ILEC central office. Such a cookie cutter approach would deprive carriers of the ability to design their networks and their network interconnections in the most efficient manner. The Commission should leave the details of interconnection to negotiation between ILECs and CLECs based on sound engineering principles.

Nor do the intercarrier compensation proposals set forth in the *NPRM* adequately address implementation of bill-and-keep for all instances in which two or more carriers work together to provide service to an end user. Proposing a model based on a few simple call flows and simple network designs provides no assurance that such model could be sustained in the real world where the complexity of current networks and services have resulted in diverse intercarrier compensation arrangements (*e.g.*, 8XX, 900, Directory Assistance Call Completion). As explained in these comments, the OPP Papers do not provide a sufficient basis for forcing carriers to implement bill-and-keep for local traffic, ISP-bound traffic and/or access traffic. These papers reflect a substantial disconnect between theory and the enormous practical difficulties of denying carriers the

2 Patrick DeGraba, *Bill and Keep at the Central Office As the Efficient Interconnection Regime*, OPP Working Paper Series, No. 33 (Dec. 2000) ("COBAK").

federal right to recover their costs from carriers who use their networks to complete calls. For example, the OPP Papers ignore the fact that state authorities regulate intrastate communications and that, absent implementation of bill-and-keep at the state level, huge new opportunities for arbitrage would be created. Bill-and-keep for interstate access traffic would also require a major new program of federal end-user charges to recover the costs of LECs' provision of interstate access service. The OPP Papers apparently also envision that the current scheme of interstate access charges would be retained in major respects, especially transport charges. In any event, precluding a carrier from recovering its costs of transport and termination from the carrier serving the cost causer – ***i.e.***, the customer making the call – would not be deregulatory in any respect.

The proposals in the ***Intercarrier Compensation NPRM,*** especially that of mandating bill-and-keep only for ISP-bound traffic, would send exactly the wrong message to the investment community. That message is that the Commission will selectively change its rules to punish facilities-based CLECs for competing successfully under the rules of the road established in the ***Local Competition Order.*** Mandating bill-and-keep for ISP-bound and other local traffic would also be unlawful. For all the reasons specified herein, the Commission should retain CPNP and should not force carriers to implement bill-and-keep for local, ISP-bound and/or access traffic.

Jay M. **Atkinson.** Christopher C. Barnekov, *A* ***Competitively Neutral Approach to Network*** *Interconnection.* OPP Working Paper Series, No. 34 (Dec. 2000) **("BASICS').**

II. Although the Commission Has Identified Some Appropriate Overarching Goals for Intercarrier Compensation, It Has Omitted the Two Most Important Ones: Regulatory Certainty and Promotion of Facilities-Based Competition

The *Zntercarrier Compensation NPRM* identifies possible goals for this proceeding, including promoting efficiency, making subsidies explicit, eliminating regulatory arbitrage, and avoiding regulatory intervention and the need for allocating common costs.‘ While some of these goals may be appropriate, Allegiance believes that the Commission has failed to articulate the two most important goals: regulatory certainty and encouraging investment in and deployment of competitive facilities. In a series of recent orders, the FCC has sought to create a period of regulatory certainty and stability by adopting rules upon which competitors can rely in seeking capital, building their business plans, and deploying competing network facilities. Amazingly, the *NPRM* ignores these goals. The *CALLS Order,’* *UNE Remand Order*,[6] *CLEC Access Charge Order*,[7] and *Reciprocal Compensation Order*[8] all included regulatory certainty as a justification for the rules adopted by the Commission. While Allegiance does not necessarily agree with the substantive outcomes of each of these decisions, Allegiance fully supports the goal of promoting regulatory stability.

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4 *NPRM* at ¶¶ 31-36.

5 *Access Charge Reform,* CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd. 12962 *(2000)("CALLS Order").*

6 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, 15 FCC Rcd 3696, ¶ 150 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

7 *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Curriers,* CC Docket No. 96-262. Seventh Report and Order, FCC 01-146 (rel. Apr. 27, 2001) ("*CLEC Access Charge Order").*

8 *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) *("Reciprocal Compensation Order").*

The *NPRM* defines "regulatory arbitrage" as "profit seeking behavior that can arise when a regulated firm is required to set different prices for different products or services with a similar cost structure."[9] The Commission itself created the opportunities for regulatory arbitrage in an effort to promote other public policy objectives – *i.e.*, the Enhanced Service Provider ("ESP") exemption from access charges was created to avoid rate shock and encourage the development of new services; above-cost access charges were authorized to fund universal service and defer the cost of the local network to keep local telephone rates affordable. Unlike the ILECs, who were able to construct and expand their networks with the profits generated from captive ratepayers over the past one hundred years, new entrants have had to tap the capital markets to raise the funds necessary to purchase and install the facilities that afford consumers an alternative in local telephone service. Mandating bill-and-keep would deny new entrants the opportunity to generate a return on investment and recover their costs from other carriers who use their networks to originate and terminate calls as the Commission has traditionally allowed ILECs to do.

Allegiance is a prime example of the type of financially stable, strong facilities-based competitor that we believe the Commission, by its policies, should seek to encourage to compete in local telecommunications markets. Allegiance, through its operating subsidiaries, is a facilities-based CLEC that offers small and medium sized enterprises ("SMEs") a complete package of telecommunications and Internet services. Allegiance's operating subsidiaries provide service in 34 markets throughout the United States, are collocated in more than 687 central offices, and have more than 865,000

[9] *NPRM* at n. 18.

access lines in service. Allegiance's revenues for 2000 were $285 million, an increase of 188% over the prior year.

Allegiance invests substantial time and money in evaluating market opportunities and pricing structures, in designing and deploying its network, and in taking the necessary and costly steps to implement its business plan. Allegiance has designed its networks using a "smart build" approach – using a combination of its own network facilities, UNEs, and, where available, fiber leased from third parties. In performing its market analyses and designing its network and business plan, Allegiance necessarily relies on the regulatory structure that is currently in place, including the FCC's POI, transport and termination, and access charge rules. By even proposing a unified bill-and-keep intercarrier compensation mechanism. the FCC has introduced additional uncertainty into the marketplace.

Without addressing the totality of the regulatory issues nor the complexity of a real-world solution, the proposals in the *NPRM* would undermine regulatory certainty because they would fundamentally overhaul the Commission's "rules of the road" governing intercarrier compensation and interconnection. Were the FCC to adopt either COBAK or BASICS, it would alter the rules of the game significantly and potentially force facilities-based CLECs to redo not only their market entry analyses and business plan strategies, but also their existing interconnection arrangements and network architecture. For instance, under COBAK or BASICS, the industry would essentially move from a default rule of a single POI per LATA selected by the CLEC to a default rule that requires multiple POIs per LATA for the CLEC's originating traffic (at each ILEC central office) and one or maybe more POIs per LATA for the ILEC's originating traffic (at each CLEC central office). As explained in Section VI herein, such a requirement could impose a substantial burden on facilities-based CLECs. In short, if the bill-and-keep proposals in the *NPRM* were adopted, CLECs would have to start over. Whether they would be able to obtain the capital necessary to implement the radical changes required under bill-and-keep is highly questionable. As James Henry, the managing general partner of a New York investment fund focused on telecommunications, observes:

> [I]nvestors need to feel like there's a firm regulatory foundation beneath their feet before they feel comfortable enough to invest. They don't feel that way [in regard to the telecom sector]. Certainly the regulatory issue is one that's foremost in people's minds."[10]

Investor skittishness caused by regulatory uncertainty creates a vicious cycle. If there is less investment. fewer firms will be able to enter, or remain in, the market, thus impeding the very competition the 1996 Act was designed to promote.

The Commission can solve the "problems" cited in the *NPRM* by further revisions to and enforcement of its current unified CPNP intercarrier compensation mechanism.[11] The Commission should not abandon the CPNP regime and "rules of the road" on the basis of theoretical analyses that ignore public policy goals, statutory limits on the Commission's jurisdiction, the realities of implementing interconnection, the interdependency of retail and intercarrier compensation rates, and the problems inherent in transitioning from the current system to one that is based on a radically different financial premise. The Commission's failure to consider regulatory certainty as part of

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[10] Peter S. Goodman, *Bells Stand to Benefit from New FCC Chairman's Neutrality, Economists Say*, The Washington Post, 2 (May 2,2001) (available at http://www.washtech.com/news/telecom/9487-1.html).

[11] Although Allegiance believes the Commission's characterization of the current system is not entirely accurate, *e.g.*, the "billing party's'' network pays in the context of a long distance call, Allegiance uses CPNP to refer to the existing regime to be consistent with the *NPRM*.

its *NPRM* renders the ***Intercarrier** Compensation NPRM* proposal to force carriers to implement bill-and-keep fatally flawed.

Facilities-based local competition will not happen overnight, but with the right conditions and legal requirements, market forces will break through the stone walls of monopolies to allow facilities-based competition to take root and flourish. As Senator Hollings recently noted, rather than comply with the 1996 Act that they helped to write, the RBOCs have repeatedly questioned its constitutionality, appealed the Commission's orders to the Supreme Court, and litigated their obligations under the Act before every state public service commission.[12] Allegiance urges the Commission to retain the CPNP regime and its transport and termination pricing rules rather than abandon them as a means to placate the ILECs and large IXCs. Enforcement of the current CPNP regime would be consistent with the goal of promoting regulatory certainty and encouraging further deployment of competitive facilities. Radically changing the legal requirements in the middle of the transition to competitive markets would not.

III. Because CPNP and the Intercarrier Compensation Rules that Implement It Further Important Policy Goals, If the Commission Believes CPNP Is "Broken," It Should Fix It, Not Abandon It

A. Various and Sometimes Conflicting Public Policy Goals May Result in Opportunities for "Regulatory Arbitrage"

The Commission is concerned that "arbitrary" regulations are creating inefficiencies, unnecessary costs, and opportunities for "gaming" the current CPNP intercarrier compensation system. Allegiance submits that the current CPNP regime has served, and can serve, both telecommunications markets and the public well. As technologies and market conditions change, so too must regulations, but that does not justify discarding the theoretical basis for the regulations. If CPNP is "broken," the Commission should fix it in order to promote regulatory certainty and facilities-based competition, rather than reverse course and mandate bill-and-keep.

Each of the Commission's existing intercarrier compensation regimes has been designed to further numerous policy goals. Sometimes, the rules have other adverse consequences but those are tolerated in order to meet the public policy goal. For instance. the interstate access charge system that replaced the Bell settlement system and the Exchange Network Facilities Agreement ("ENFIA") was adopted in **1983** to serve many public policy goals but still left room for carriers to engage in what the Commission now terms "regulatory arbitrage." First, it maintained the -'contribution" long distance carriers made to keep local rates affordable. By doing so, however, the rules implicitly encouraged businesses to purchase special access services that, at least in part, permitted them to avoid making such contributions to local rates. Second, ENFIA established the principle that the Commission, rather than carriers, should determine the rates and rate structure for switched access charges. Because the rates were initially established under rate-of-return regulation, however, the rules created incentives for carriers to gold-plate their networks and disincentives for carriers to become more efficient. Similarly, the **ESP** exemption from access charges was adopted to preserve and promote the fledgling enhanced services provided "via telecommunications." At the same time, the exemption encourages entities to structure offerings as enhanced services in order to avoid paying access charges.

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[12] *Hearing **on** Local Telephone Competition and U.S. Manufacturing* before the Senate Commerce, Science, and Transportation Committee, 107th Cong., Opening Statement of Chairman Hollings (June 19,

In a regulated industry, it is economically rational for an entity to structure its business to take advantage of existing regulations. In the past, the Commission has encouraged new market entrants to use "regulatory arbitrage" to place pricing pressure on incumbents. "Regulatory arbitrage" by Other Common Carriers ("OCCs") brought down inflated long distance rates.[13] Similarly, CLECs that have focused on serving customers with in-bound local traffic have helped to bring down inflated, ILEC-set reciprocal compensation rates to rates close to the cost-based proxy rates set by the Commission in 1996.[14] Although it may have taken over five years and large traffic imbalances to get local compensation rates right, that is no justification for throwing out a historical preference, and statutory requirement, for basing rates on costs and starting over with a system that ignores costs and shifts the obligation to pay from the service consumer to the service provider.

In part because it believes that large payment flows are skewing competition and placing pressure on retail rates, the Commission searches for justification in the Act to impose bill-and-keep notwithstanding large traffic imbalances between two carriers.[15] Congress intended the 1996 Act to promote price, service, quality, and technological innovation through competition in communications markets. Specialization and niche

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2001).

[13] *Access Charge Reform,* CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, ¶ 180 (1997) ("The unitary rate structure has facilitated the growth of small IXCs to compete with larger carriers. . . . We have recently concluded that no carrier is dominant with respect to domestic, interexchange service. . . . to the extent that we designed the interim rate structure to facilitate the growth **of** small IXCs in competition with AT&T, we find that such protective rules are no longer necessary.") *("Access Charge Reform Order").*

[14] *See,* NPRMat ¶ 67 (citing CC Docket No. 99-68, ***Ex*** *Parte of Allegiance Telecom, Inc., et al.* at 1, Attachment B (October 20, 2000) (comparing initial reciprocal compensation rates with greatly reduced rates that have been established more recently in several states)); *see also, Reciprocal Compensation* ***Order*** at ¶ 75.

[15] NPRMat ¶¶ 73-77.

marketing is part of competition. Thus, the Commission should not begin with the premise that traffic imbalances, and resulting payments under CPNP, between competitors are undesirable. If the Commission believes that such rates or rate structures for intercarrier compensation. or distinctions between classes of traffic, are undermining the development of competition, the Commission should make adjustments to its current rules within the framework of CPNP. For example, if the Commission determines that peak pricing or bifurcated call set up and duration charges are more efficient for Section 251(b)(5) traffic than the current per minute pricing structure and the efficiencies outweigh the transaction costs, it could modify its pricing methodology accordingly. If the Commission believes current intercarrier compensation mechanisms are inconsistent with retail prices, the Commission should examine whether it is retail prices, and not intercarrier compensation mechanisms, that are inefficient and inhibiting competition.

B. Targeted Revisions to the Rules Implementing CPNP Would Meet the Commission's Goals for This Proceeding

In 1996, the Commission adopted rules requiring that rates for reciprocal compensation be symmetrical and based on the ILEC's forward-looking costs. The Commission noted that its rules would provide the proper incentives to both ILECs and CLECs.[16] In a departure from these findings, the Commission expressed concern in the *Reciprocal Compensation Order* that reciprocal compensation rates reflect only "the ILEC's average costs of transport and termination" and not the "costs incurred by any particular carrier for providing service to a particular customer."[17]

[16] *Local Competition Order* at ¶ 1086.

[17] *Reciprocal Compensation Order* at ¶ **76.**

The Commission's reversal is puzzling for a number of reasons. First, the costs of providing service to a particular customer have never served as the standard for setting rates. This is true for retail services as well as UNE and access services. For example, Section 254(g) requires interexchange carriers to charge no more in rural areas than they do in urban areas and many states have similar policies governing geographically averaged local service rates. Second, and more importantly, the statute prohibits such particularized carrier-by-carrier rate setting. Section 252(d)(2)(B)(2) shall not be construed "to authorize the Commission or any State commission to engage in any rate regulation proceeding *to establish with particularity* the additional costs of transporting or terminating calls, or to require *carriers tu maintain records* with respect to the additional costs of such calls."[18] It was partly because of this prohibition that the Commission used "the incumbent LEC's cost studies as proxies for reciprocal compensation."[19]

ILECs insisted on above-cost reciprocal compensation rates in negotiating and arbitrating the first generation of interconnection agreements. If the rates had been cost-based from the start, the opportunities for any alleged "arbitrage" that the Commission seeks to eliminate would have been greatly diminished. The ILECs sought regulatory relief **or** simply refused to pay CLECs the high reciprocal compensation rates they had insisted upon and have, although belatedly, taken action to set those rates correctly.[20] Basing the rates on ILEC costs gives the ILEC the incentive to get the rates right.

18 47 U.S.C. § 252(d)(2)(B)(2) (emphasis added).

19 *Local Competition Order* **at ¶ 1086.**

20 ***See*** note 14, *supra*.

Moreover, using symmetrical rates based on ILEC costs encourages ILECs to become more efficient and reduce their costs, as evidenced by what happened during the transition from rate-of-return regulation to price cap regulation. As the Commission noted when it implemented price cap regulation for AT&T, the "attractiveness of incentive regulation lies in its ability to replicate more accurately than rate of return the dynamic. consumer-oriented process that characterizes a competitive market."[21] Incentive regulation provides strong incentives to cut costs and operate efficiently.[22] Implicit in the switch to price cap regulation from rate of return regulation was the recognition that it is futile for regulators to "police" costs, and that carriers would lower their rates if given the proper incentives.

The Commission crafted the proper regulatory framework for reciprocal compensation in its *Local Competition Order* by determining that rates should be symmetric and based on the ILEC costs. The "ISP traffic" situation did not arise because of this framework, but because of increasing public demand for access to the Internet, a demand that CLECs stood ready to meet. The Commission has acknowledged that carriers incur costs to terminate ISP traffic[23] (costs that the originating carrier avoids when it delivers its traffic to another carrier to terminate) and there is no basis for denying carriers the opportunity to recover those costs. As the Commission noted in the *Local Competition Order,* "a symmetric compensation rule gives the competing carriers correct incentives to minimize its own costs of termination because its termination

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[21] Peter W. Huber, *et al., Federal Telecommunications Law* at § 9.5.2.2. (2d ed. 1999), *quoting, Policy and Rules Concerning Rates for Dominant Carriers,* Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3094, ¶ 442 (1989).

[22] *Federal Telecommunications Law* at § 9.5.2.2.

[23] *Reciprocal Compensation Order* at ¶ 90.

revenues do not vary directly with changes in its own costs."[24] The changes the Commission is now contemplating would, in effect, punish the efficient carrier, and reward the inefficient one.

IV. Bill-and-Keep Would Not Be Competitively Neutral

For a number of reasons, bill-and-keep would favor ILECs. As already noted, bill-and-keep would essentially send the message to the competitive industry that success will be punished. In addition, singling ISP-bound traffic out for bill-and-keep treatment would create a windfall for ILECs and send the message that businesses that provide the public with access to the Internet are undesirable telecommunications customers. As recognized in the *Intercarrier Compensation NPRM*, ILECs currently recover from their end users the reciprocal compensation payments they make to CLECs.[25] Obviously, under bill-and-keep, ILECs would no longer make those payments to CLECs but would continue to recover those payments in the local rates paid by their end users. Thus, bill-and-keep would not be competitively neutral because it would create a windfall for ILECs.

More fundamentally, bill-and-keep for any class of traffic would not be competitively neutral because recovery of costs from end users would favor ILECs. With over 95% of the local exchange market and a diverse customer base, ILECs will have opportunities to recover costs across broad classes of customers. Because many state commissions have established incentive or price-cap-type regulation plans for ILECs' local rates, ILECs could have substantial flexibility to structure the end-user rate increases that would be required if the Commission mandated bill-and-keep. CLECs, on

[24] *Local Competition Order* at ¶ 1086.

the other hand, have less diverse customer bases and a much smaller share of the local market. While an ILEC may be able to spread the cost increase over a diverse customer base and insulate its ISP rates from substantial increases, CLECs may not be able to match the ILEC rates because of their limited customer base. Although CLECs may have more flexibility to set rates than ILECs (because state commissions generally do not regulate CLECs' local rates), they are nevertheless effectively constrained by the ILEC rate in order to remain competitive. Mandating bill-and-keep could therefore place CLECs at a competitive disadvantage if the rate the ILEC charges to ISPs does not permit the CLEC to recover all of its increased costs.

Bill-and-keep also favors carriers with balanced traffic – ILECs. In the *Local Competition **Order**,* the Commission accepted the ILEC argument that bill-and-keep was not appropriate, or consistent with the statute, unless traffic was balanced because where traffic is out of balance, carriers would not be able to recover their costs of terminating traffic originating on another carrier's network.[26] In now proposing to require bill-and-keep precisely because ISP-bound traffic is out of balance in favor of CLECs, the Commission is reversing course to deny CLECs the ability to recover their costs **of** terminating traffic originating on the ILECs' networks. Only ILECs can reasonably expect to have balanced traffic because only ILECs have ubiquitous networks and a monopoly share of the customer base. In effect, the *NPRM* assumes that all carriers have, or should have, the traffic patterns of ILECs, a situation that is unlikely to occur until CLEC networks mature and serve more than a negligible share of the existing

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25 *NPRM* at ¶ 37.

26 *Local Competition **Order*** at ¶ 1112.

customer base. Therefore, the pricing scheme envisioned in the ***Intercarrier Compensation*** *NPRM* inherently favors ILECs.

Finally, bill-and-keep is not competitively neutral because as envisioned by the implementation proposals set forth in the *NPRM*, it would require CLECs to duplicate the ILECs' network architecture. For example, BASICS, would require CLECs to rearrange their networks so that they have POIs within each ILEC "local calling area." Under this approach, CLECs would be required to install unnecessary facilities to deliver traffic to ILECs rather than installing the facilities necessary to allow them to operate in the most efficient manner.

V. COBAK's, BASICS', and the *NPRM's* "Policy Analyses" Do Not Provide a Sufficient Basis for Adopting Bill-and-Keep

The Commission surmises that adopting a unified regime of bill-and-keep will eliminate, or at least greatly reduce, opportunities for arbitrage and at the same time reduce Commission regulation of carriers. In fact, the bill-and-keep proposals in the *NPRM* suffer from serious flaws, are not competitively neutral, would require extensive new federal regulations to implement, would violate the Commission's historic policy of recovering costs in the manner in which they are incurred, would produce new opportunities for regulatory arbitrage, and would create major transition problems for the entire industry.

A. The Theoretical Premises of COBAK and BASICS Suffer from Significant Flaws

The premises underlying the COBAK and BASICS proposals are fundamentally flawed. The fact that they directly contradict each other should put the Commission on notice that that they are flawed.

Both COBAK and BASICS ignore the interrelationship between their proposed intercarrier compensation schemes and retail rates. This is ironic since one of the ILECs' main complaints about the current rules is that the outflow of reciprocal compensation payments is placing pressure on their flat-rated local revenues.[27] For example, although COBAK eliminates all originating access charges, it ignores the resulting impact on end user rates and the difficulties facing regulators in resolving the revenue loss problem. Under bill-and-keep, consumers would see yet another special charge appear on their phone bills, in addition to all of the special charges that have been added since the 1996 Act (*e.g.*, universal service, PICCs, and number portability). Since ILECs' interstate access revenues recover costs assigned to the interstate jurisdiction, ILECs would undoubtedly look to the Commission to make up that lost revenue. As explained below, the Commission would need to establish a major new program of federal end user charges in order to permit ILECs to recover from end users their costs of providing interstate access service and would have to regulate those charges to ensure that they are reasonable.

Contrary to its claim,[28] COBAK[29] would exacerbate concerns about the ILEC terminating access monopoly. It is not reasonable to assume that the interconnecting carrier has the option of building its own transport facilities to all of an ILECs' central offices. Nor is it reasonable to assume that a third-party provider is available to provide CLECs transport to every ILEC central office. As the Commission argued before the

27 *NPRM* at ¶ 17.

28 COBAK at iv.

29 As noted above, Allegiance takes issue with the theoretical rationale underlying the COBAK proposal – *i.e.*, that both parties benefit from participating in a call so both parties should split the cost of the call. *NPRM* at ¶ 23. That is like saying that because both parties benefit from correspondence sent through the mail, both parties should split the cost of postage.

Supreme Court, "it would be economically impracticable for even the largest prospective competitor to duplicate completely the functions of an incumbent LEC's entire network."[30] Nor would it be "efficient" for each LEC to install a DS1 to every end office where the traffic is minimal.[31] Further, the Commission cannot grant unlimited access to the switch and central office, which is still the ILEC's property. Thus, COBAK would work to further entrench the ILEC terminating monopoly.

Nor does bill-and-keep eliminate cost allocation and assignment difficulties. Assigning cost recovery burdens based on "assumed" benefits is far less scientific than assigning cost recovery based on cost-causation. Although COBAK assumes that the calling and called parties benefit equally from a telephone call, COBAK does not assign each party an equal share of the transport costs involved in completing the connection.[32]

BASICS' incremental cost allocation is also questionable because rather than evaluating the real-life scenario of two networks needing to interconnect to accommodate customers that have switched from one network to the other, it appears to assume the incremental cost of interconnection is driven solely by the addition of new subscribers to the PSTN. BASICS is based on a few simplistic assumptions using linear networks and simple calling models that do not reflect the realities of today's telecommunications networks or services.

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30 *Verizon Communications, Inc. v. FCC,* Nos. 00-511, 00-555, 00-587, 00-590, 00-602, Brief for Petitioners FCC and the U.S., 2 (filed Apr. 2001).

31 The RBOC proposal to remove high-capacity transport facilities from the list of network elements priced **at** TELRIC rates would also render such a requirement uneconomic. ***See*** *Joint Petition of SBC, BellSouth and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport*, CC Docket No. 96-98 (filed **Apr.** 5, 2001).

32 COBAK at ¶¶ 55, 59.

The proliferation and popularity of products designed to screen unwanted calls[33] appear to flatly contradict the assumption underlying both COBAK and BASICS that the calling and called parties both cause the costs of a call and benefit equally from it. Furthermore, the existence of products such as toll-free 8XX service and foreign exchange service shows that the market is already working within the current CPNP intercarrier compensation regime to account for instances in which the called party may benefit as much as, if not more than, the calling party from a particular communication. The PSTN, like the U.S. Postal Service. is a network that benefits those connected to it. In that sense, everyone benefits from it. But like the CPNP regime for the PSTN, the U.S. Postal Service still imposes a default rule that the party sending the mail pays for the stamp which covers the costs of delivering the mail to the recipient. Requiring the recipient of mail to pay one-half the postage is the postal equivalent of the COBAK and BASICS proposals – it makes no sense.

The Commission must also recognize that COBAK and BASICS directly contradict each other. COBAK alleges that the incremental costs of interconnection are likely to be difficult to estimate.[34] BASICS, on the other hand, assumes that the incremental cost of interconnection can be determined and split between existing network(s) and new interconnecting networks equally.[35] Such fundamental differences in "theory.' show that there is no basis at all for moving forward with either proposal and that bill-and-keep should not replace CPNP.

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33 ***See,*** *e.g.*, Verizon Call Intercept Description (Control Your Incoming Calls for Fewer Unwanted Interruptions at Home) (available at http:/iwww.bellatlantic.com/foryourhome/MDIProductsiCIX-01/index.html); SBC's Privacy Manager Description (stop unwanted calls before your phone rings) (available at http:l/www1.ameritech.com/sb/site/page/1,3002,2129,00.html).

34 COBAK at ¶ 69

35 BASICS at ¶ *36*.

B. The Bill-and-Keep Proposals in the *NPRM* Incorrectly Assume that All LECs Have, Or Should Have, the Networks and Calling Patterns of ILECs

COBAK's default transport rule is fundamentally flawed because it defines transport costs based on historic ILEC network architecture, *e.g.*, "transport facilities consist of inter-office trunks and tandem switches."[36] As discussed in Section VI, this definition results in significant competitive disparities when implemented in today's local markets.

BASICS' default rule grants huge advantages to established networks, *i.e.*, those of the ILECs. By splitting the incremental costs of interconnection equally between carriers,[37] the cost per subscriber for the established network with a larger customer base is far less than the cost per subscriber for the new network with the smaller customer base. The advantage to incumbents does not stop there, either. Once two networks are interconnected and a third joins. BASICS dictates that the first two networks together bear one-half of the incremental costs of interconnection and the third network alone bears the other half.[38] BASICS thus discourages multiple competitors from entering a market, contrary to the goals of the 1996 Act.

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36 COBAK at ¶ 23.

37 BASICS at ¶ 36.

38 BASICS at ¶ 41. It is unclear whether BASICS would require all three parties, the ILEC, interconnected CLEC, and the new CLEC, to get together to negotiate the "incremental" cost of interconnecting the third network. If so, this could impose substantial new negotiating costs on CLECs.

C. The Staff Papers Fail to Address the Enormous Difficulties of Implementing the Transition from Current Practice to Bill-and-Keep

Unlike the proponents of BASICS, which was constructed "*tabula rasa*, with a blank whiteboard,"[39] the Commission is not starting with a clean slate. The Commission is constrained by the Act and the dual federal-state regulatory scheme established therein. It is also continuing its efforts, which began decades ago, to move intercarrier compensation to cost-based rates that would exist in competitive markets. Finally, it is, or at least should be, balancing numerous policy goals, including regulatory certainty. the promotion of facilities-based competition, efficient interconnection of networks, competitive neutrality. and universal service.

Although Congress gave the Commission broad authority to implement the local competition provisions of the 1996 Act. it did not change the dual federal-state regulatory scheme. As the Supreme Court made clear, Section 2(b) of the Act still limits the Commission's jurisdiction to act where it attempts to regulate services over which it has "not explicitly been given rulemaking authority."[40] This includes the jurisdiction to set the actual rates for the exchange of Section 251(b)(5) traffic and to regulate intrastate exchange access. As the Supreme Court found, the 1996 Act entrusts to state commissions the task of establishing rates under Sections 251 and 252. This means that states "will apply" the Commission's standards and "implement'' the Commission's methodology to determine "the concrete result in particular circumstances."[41] The Commission has previously acknowledged that it has no authority to set intrastate access

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39 BASICS at ¶ 3.

40 *AT&T v Iowa Utils. Bd.*, 525 U.S. 366, 381 & n.7 (1999).

41 *Id* at 377-79.

rates.[42] State commissions retain the authority to regulate intrastate access charges. The Act does not give the Commission authority to impose a rate of zero for the exchange of Section 251(b)(5) traffic or for intrastate access traffic. If the Commission cannot adopt a rate of zero for the exchange of all classes of traffic, it will succeed in creating new opportunities for "regulatory arbitrage."

If the Commission were to mandate bill-and-keep for traffic within its jurisdiction, it would need to establish new federal end-user charges that are consistent with the historical preference for basing rates on cost, and closely regulate them, in order to assure they are reasonable and affordable. These end-user charges would include charges to recover jurisdictionally interstate network costs that are currently recovered from IXCs in access charges. **At** a minimum, this would entail all of the separations, accounting, and cost allocation steps involved in the current scheme, and might involve more complicated rules depending on how the federal end-user charges were implemented. Further, the Commission would need to prescribe the manner of recovery from end users of the costs of providing "information access."

These new end-user charges would create a certain firestorm of criticism from consumers. Even if IXCs reduced their long distance rates to reflect lower access charges, which the Commission cannot ensure absent wholesale reregulation of IXCs, consumers would see a host of new federal charges appearing on their phone bills. Consumers are not likely to understand or appreciate that the new charges are appropriate

42 *MTS and WATS **Market Structure,*** Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC Rcd 2d 224, ¶ 38 (1980) ("The present statute does not empower us to establish access service compensation arrangements for all interexchange services. Any arrangement we prescribe necessarily must be confined to interstate and foreign communications. That prescribed arrangement could be used as a model for intrastate interexchange access service compensation arrangements ***f the states chose to follow it.")*** (emphasis added).

because the government has determined that the calling and called parties share equally in the "benefits" of participating in a call. The Commission's experience in establishing the SLC and PICC would be mild in comparison to that of establishing major new federal end-user charges to recover the costs of interstate access and "information access." Imposing on end users the costs of providing information access would also fulfill the often heard, but to date erroneous, claim that the Commission intends to impose access charges on usage of the Internet.

Mandating bill-and-keep on the federal level would also require new programs to prescribe and administer recovery of the costs of interconnection. BASICS assumes that intra-network costs can be separated from the incremental cost of interconnection and that the incremental costs of interconnection are largely capacity-driven.[43] It also assumes a fully-provisioned network such that any subscriber can always complete a call to any other subscriber.[44] The Commission would have to adopt default rules for carriers to apply in the event they cannot agree on separating intra-network costs from the costs that are "incremental" to interconnection. Defining such rules could embroil the Commission and state commissions in technical network planning issues. Contrary to the assumptions in the *NPRM*, bill-and-keep would not be deregulatory but would require sweeping new regulatory programs.

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43 *NPRM* at ¶ 28.

44 *NPRM* at ¶ 62.

VI. The Commission Should Not Mandate Interconnection in Each ILEC Local Calling Area and Should Not Adopt the COBAK or BASICS Default Transport Rules

The FCC has established "rules of the road" that address an ILEC's financial obligation to deliver its originating traffic to the POI[45] selected by the CLEC, rather than charging the CLEC for such facilities. The first rule is that the CLEC is entitled to select a single "technically feasible" POI in a LATA for the exchange of traffic with the ILEC.[46] The second rule is that each LEC bears the burden of delivering telecommunications traffic originated by its customers to the POI and recovers such costs in the rates charged to its end users.[47] The proposals in the *NPRM* would fundamentally and radically alter these rules that LECs have operated under for five years.

A. The Act Grants CLECs the Right to Select the POI for the Exchange of Traffic

The Commission asks how carriers should select POIs.[48] The Act answers that question. The Act grants CLECs, not ILECs, the right to select the POI for the exchange of traffic. Under Section 251(c)(2)(B), an ILEC must provide interconnection at "any technically feasible point" within its network selected by the CLEC. By contrast, there is nothing in the Act that imposes any similar requirement on CLECs. In its *Local Competition* ***Order,*** the Commission rejected a proposal advanced by Bell Atlantic to impose Section 251(c)(2) interconnection obligations on CLECs:

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[45] Allegiance notes that in practice, the term POI means different things to different carriers. Some carriers use the term POI to define the point at which one carrier's facilities end and the other carrier's facilities begin. Others use the term POI to define the point where the obligation to **pay** for the transport shifts from one carrier to the other. Allegiance believes that the *NPRM* makes clear that the Commission is concerned with the point where the transport obligation changes, and therefore uses "POI" in the second context.

[46] *See, e.g. NPRM* at ¶ 72 and n. 91.

[47] 47 C.F.R. §§ 51.703(b), 51.709(b).

> we reject Bell Atlantic's suggestion that we impose reciprocal terms and conditions on incumbent LECs and requesting carriers pursuant to section 251(c)(2). Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. The obligations of LECs that are not incumbent LECs are generally governed by sections 251(a) and (b), not section 251(c). Also, the statute itself imposes different obligations on incumbent LECs and other LECs (i.e., section 251(b) imposes obligations on all LECs while section 251(c) obligations are imposed only on incumbent LECs).[49]

Indeed, the Commission may not impose a reciprocal Section 251(c)(2) interconnection obligation on CLECs unless it finds that: (1) CLECs "occupy a position in the market for telephone exchange service within an area that is comparable to the position occupied" by the ILEC; (2) CLECs have "substantially replaced" ILECs; and **(3)** imposing a reciprocal obligation on CLECs is consistent with the public interest and the purpose of Section 251.[50] Because the Commission has not even sought comment on these issues in the *NPRM*, it may not entertain the notion of requiring CLECs to provide ILECs interconnection at any technically feasible point.

CLECs do have a duty to negotiate in good faith, to interconnect directly or indirectly with ILECs, and to establish arrangements for the transport and termination of traffic exchanged with ILECs. Allegiance submits that it and many other CLECs have met that duty and established multiple POIs per LATA where traffic patterns warrant notwithstanding the Commission's single POI per LATA default rule. The fact is, interconnection of two networks is a very technical matter. **A** CLEC has the incentive to establish additional POIs to increase network efficiency and reliability. Because the CLEC must rely in part upon the ILEC to provide service to its customers, the CLEC has

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48 *NPRM* at ¶ 72.

49 *Local* ***Competition Order*** at ¶ 220 (footnotes omitted).

50 47 U.S.C. § 251(h)(2).

an interest in ensuring that the weakest link in the chain – the ILEC facilities over which the CLEC has little, if any, control – does not adversely affect the CLEC's ability to provide high quality service to its customers. Where a CLEC establishes a single POI in a LATA when it enters a market and its traffic volumes subsequently increase to the point that the single POI becomes a bottleneck, the CLEC will have to establish additional POIs to relieve the bottleneck, or face the prospect of having its customers' calls blocked or delayed. Similarly, if the ILEC does not have adequate facilities available at the single POI to accommodate the CLEC's forecasted growth, the CLEC will have to establish additional POIs to avoid such facility restrictions.

ILEC and CLEC local network planners address issues such as these on a regular basis. Because the network planners are most familiar with the network architecture, traffic volumes, and forecasts, Allegiance submits that the establishment of additional POIs should be left to the discretion of the network planners from both companies, consistent with sound engineering principles, and not determined in the abstract by federal regulators not familiar with individual carriers' networks or traffic patterns. In evaluating the need for new or additional POIs, sound engineering principles dictate a case-by-case analysis under which carriers consider factors such as the current network architecture. the current and forecasted levels of traffic flowing through the existing POI, the location(s) from which traffic is flowing, the remaining capacity at the existing POI, and the demand placed upon that POI. Any attempt by the Commission to promulgate rules governing such technical and localized decisions would be futile. Disputes over the establishment of additional POIs in a LATA are being addressed adequately by state commissions in interconnection arbitrations throughout the country.[51] The Commission's current rule is working, and it should not abandon that rule.

B. The Commission Should Not Abandon Its Second "Rule of the Road" Regarding LECs' Transport Obligations

Regardless of whether the Commission alters its first rule of the road, the "division" of transport responsibilities envisioned under both COBAK and BASICS will render a single POI per LATA meaningless. The second existing rule of the road, which is incorporated in both Rules 51.703(b) and 51.709(b), is that each LEC bears the burden of delivering telecommunications traffic originated by its customers to the POI selected by the CLEC and recovers such costs in the rates charged to its end users.[52] Both COBAK and BASICS fundamentally alter LECs' transport responsibilities so as to make a single POI meaningless. The Commission has previously found that "the 1996 Act bars consideration of costs in determining 'technically feasible' points of interconnection'' and that prohibition "cannot be undone through an interpretation that such considerations are implicit."[53] The COBAK and BASICS default transport rules ignore the Commission's interpretation of the Act.

Under COBAK, the calling party would be required to pay not only for originating switching, but also for all transport, intra-exchange and inter-exchange, to the

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51 *See, e.g., Petition by Level 3 Communications, LLC for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. 000907-TP, Final Order on Petition for Arbitration, Order No. PSC-01-1332-FOF-TP, 25 (FL PSC June 18, 2001) (rejecting BellSouth request for one POI per local calling area or transport compensation because BellSouth did not submit cost data to substantiate its claim of higher costs using a single POI per **LATA);** *Petition by AT&T Communications of the South Central States, Inc. and TCG Ohio for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252,* Case No. 2000-465, Order, 6 (KY PSC May 16, 2001) (finding AT&T has the right to establish a single POI per LATA but must establish another POI when the amount of traffic passing through a BellSouth access tandem switch reaches a DS-3).

52 47 C.F.R. §§ 51.703(b), 51.709(b).

53 *Local Competition Order* at ¶ 199.

called party's end office. As the Commission explains, "DeGraba's Rule 2 means that the calling party's network must either construct transport facilities to the called party's central office, or purchase transport facilities or services from another carrier, including possibly the called party's network."[54] The main theoretical rationale underlying COBAK is that both parties should split the costs since both parties benefit.'' Contrary to its basic premise, however, the cost for a call is borne disproportionately by the calling party under COBAK's default transport rule. The Commission acknowledges that COBAK's default transport rule is inefficient, but argues that it should prevent free-riding and encourage negotiation.[56] In reality, the default rule shifts a disproportionate share of the transport costs to new entrants who have smaller networks and for this reason will remove any incentive whatsoever for ILECs to negotiate.

Because COBAK does not appear to require ILECs to provide CLECs such transport on a shared basis," the Commission can be sure that ILECs would force CLECs to pay for a dedicated facility." Contrary to the Act and sound engineering principles, the proposed default rule would foist inefficient costs on new entrants by forcing them to mirror the legacy ILEC network. Unlike ILECs, who have ubiquitous facilities

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54 *NPRM* at ¶ 23.

Si NPRMat ¶ 23.

56 *Id.* at ¶¶ 30, 47.

57 Even if the Commission were to require ILECs to provide the transport to the central office on a shared basis, COBAK would not be competitively neutral. As discussed herein, because COBAK is based on the ILEC's historical network architecture, it preserves an ILEC's ability to recover its transport costs from its competitor while denying the CLEC the equivalent opportunity.

58 For instance, BellSouth has proposed in interconnection arbitrations and in a Florida rulemaking that CLECs be required to pay for a dedicated facility to each of BellSouth's local calling areas regardless of the amount of traffic that would be carried on that facility. *See, e.g., Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP (Phase II), BellSouth Telecommunications Inc.'s Brief of the Evidence, 15-17 (filed Aug. 10, 2001) (available at

throughout their service areas, CLECs must construct or lease facilities to reach each ILEC central office. As the Commission well knows, deploying facilities can be an expensive and time consuming process. **A** CLEC would not be able to justify the cost of building facilities to carry a minimal amount of traffic from its switch to each and every ILEC central office. In contrast, the costs to the ILEC of carrying the traffic for additional mileage over its existing ubiquitous network is minimal, and today CLECs pay that cost through reciprocal compensation. Requiring CLECs to install a dedicated facility to each and every ILEC central office would create a barrier to entry by fundamentally altering the economics of a CLEC's network design decisions.

Another claimed benefit of COBAK is that it should lead to more efficient retail rates and thus more efficient network usage.[59] It is hard to imagine how requiring CLECs and IXCs to duplicate the ILECs' networks will promote more efficient use of PSTN resources.

Just as CLECs bear the costs of serving their customers, ILECs should bear the burden of serving their customers in a competitive market. Adopting the COBAK default rule would essentially impose the cost of interconnecting different network designs solely on CLECs. This is because the COBAK proposal discriminates in favor of the ILECs' historic hub-and-spoke network architecture. It ignores the fact that CLEC networks may use long loops or fiber rings in place of the tandem switches deployed by ILECs. Unlike the ILEC that has a relatively short transport obligation after receiving traffic at an end office, the CLEC may have to backhaul traffic all the way across its network to **a**

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http:llwww.psc.state.fl.uslpscldocketsiindex.cfm?event=documentFilings&docket=000075&requestTimeout=240).

[59] *NPRM* at ¶ 24

customer after accepting the traffic at its switch or POI. When it adopted its pricing rules in 1996, the Commission correctly found that delivery of a call to the CLEC central office may often be the functional equivalent of delivering a call to the ILEC tandem office. Unless the CLEC is somehow compensated for the use of its long loops or fiber rings, the CLEC would often be undercompensated in a COBAK arrangement. The Commission should not use the ILECs' historic network design – and the location of their central offices that were established prior to the introduction of local competition – as the basis for interconnection requirements. It would be much easier for the ILEC to carry its traffic over its ubiquitous network to a single facility that is connected to the CLEC central office than it would be for the CLEC to carry its traffic to each and every ILEC central office over facilities it would have to build or purchase. Rules implementing the COBAK proposal would undermine congressional and Commission intent to promote competition and innovation in network design.

Under BASICS, the new market entrant would be obligated to compensate the ILEC for a share of the incremental costs of interconnection. BASICS therefore purportedly introduces more efficiencies into the allocation of transport costs between interconnecting networks. The fact that ILECs openly defy the Commission's current "rules of the road" demonstrates that BASICS' proposal for parties to "split" the "incremental cost of interconnection," and COBAK's inefficient default rule, which is designed to encourage negotiations, will not work in practice. Interconnection at a single POI per LATA has been required by Commission rules (and affirmed by numerous Commission and federal court orders) for five years, yet none of the ILECs offer it voluntarily. In conformance with the Commission's Texas 271 Order, SWBT supposedly modified its interconnection offers in Kansas and Oklahoma to provide CLECs the option of interconnecting at a single POI per LATA. Although SWBT provided a single POI per LATA option in the contract, it argued that CLECs seeking a single POI should bear any additional cost associated with SWBT taking its traffic to the POI in another exchange. The Commission rejected SWBT's argument:

> we caution SWBT from taking what appears to be an expansive and out of context interpretation of findings we made in our SWBT Texas Order concerning its obligation to deliver traffic to competitive LEC's point of interconnection. In our SWBT Texas Order, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however. consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.[60]

Further. even though it modified its template for interconnection in Kansas and Oklahoma in order to receive Section 271 authority, SBC's generic interconnection agreement still requires that the CLEC establish a POI at each tandem (in Ameritech, Nevada Bell, Pacific Bell and SNET territory) or in each exchange area (in SWBT territory).[61]

Like SBC, Qwest did not offer a single POI per LATA until it was effectively forced to do so in its state Section 271 proceedings.[62] Verizon's template interconnection

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60 *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern* ***Bell*** *Communications Services, Inc. d/b/a Southwestern Bell Long Distance for* ***Provision*** *of In-Region, InterLATA Services in Kansas and Oklahoma, CC* Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, ¶ 235 (rel. Jan. 22,2001) (footnotes omitted).

61 SBC 13-State Agreement, Appendix NIM, §2.1 (available at https://clec.sbc.com/unrestr/interconnect/multi/index.cfm).

62 *Qwest Communications Announces Landmark Initiative to Open Local Communications Markets*, Press Release (Sept. 19, 2000) (available at