ORIGINAL

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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 96-98
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REPLY COMMENTS OF
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EXECUTIVE SUMMARY

Bill-and-keep would permit, and CPNP would preclude, the steady deregulation of the telecommunications industry over the long term. In a nutshell, that is because bill-and-keep requires a carrier to recover from its ***end users*** costs that CPNP entitles it to recover from ***other carriers*** – and because, although there will always be a need to regulate the rates that even non-dominant carriers charge other carriers, there is never a need to regulate the rates such carriers charge their own end users. For example, if a non-dominant carrier charges an end user a supracompetitive rate for terminating calls, the market itself will correct the problem, because the carrier will lose the customer to a competitor with lower prices. But if the carrier is allowed to recover the costs of the same service from another carrier serving a different customer, no market mechanism can normally deter the first carrier from charging an arbitrarily high price.

Thus, so long as CPNP is the rule – so long as one carrier may recover its ***own*** network costs from ***another*** carrier rather than from its own end users – the only solution to this "terminating access monopoly" is pervasive regulation, even of the smallest upstart carrier. Such regulation is undesirable and, because of bill-and-keep, unnecessary. By requiring carriers to recover their network costs from their own end users rather than from other carriers, bill-and-keep would eliminate any need to regulate non-dominant carriers, because those end users could take their business elsewhere.

Opponents of bill-and-keep, such as AT&T, respond that the deregulatory benefits of bill-and-keep would be limited because the end user rates of ILECs (to the extent they are dominant in given markets) may still require regulation. That argument is unsound on two levels. To begin with, bill-and-keep would permit significant deregulation today, because, among other considerations, non-dominant carriers are already significant

terminators of traffic, as illustrated by the industry's recent experience with ISP-bound traffic and CLEC access charges.

More fundamentally, AT&T's argument on this point is remarkably short-sighted. Because any regime the Commission selects in this proceeding should be built to last, the question is not whether bill-and-keep presents obvious advantages over CPNP *today* (even though it does), but whether it will present such advantages ten and fifteen and twenty years from now. The answer is yes. As the telecommunications world becomes increasingly defined by intermodal competition, and as it becomes increasingly populated by non-dominant carriers, the choice between CPNP and bill-and-keep is, at bottom, a choice between heavy regulation of this industry and very little at all.

Opponents of bill-and-keep also suggest that the costs of unnecessary regulation are low -- that regulation is, in effect, no less capable than market forces of "getting the rates right." This is sophistry. As illustrated by years of unhappy experience with access charges and reciprocal compensation rates, regulation is unpredictable, destabilizing, and inherently incapable of setting accurate intercarrier rates for the recovery of origination and termination costs. That is why the legacy of such regulation is litigation and pervasive arbitrage. Moreover, unlike bill-and-keep, CPNP would permanently mire the Commission in inappropriate judgment calls about whether one class of carriers has higher or lower network costs than another and, accordingly, whether the intercarrier compensation rates of some carriers should be higher or lower than those of other carriers. Those decisions should be left to the market, as bill-and-keep would permit, and should not be left to regulation, as CPNP would require. No carrier should be forced to

subsidize another carrier's choice of technology or network architecture; such choices should be validated (or not) by the choices made by each carrier's own end users.

There is no merit to the time-worn argument that CPNP is more faithful than bill-and-keep to economic principles of cost causation. The premise of CPNP is that the calling party "causes" all the costs of a call. That is demonstrably false: for example, the called party "causes" many of those costs by publicly listing its telephone number and agreeing to take a given call, and the called party's network is free to choose more or less efficient terminating technology. By splitting costs between the calling and the called parties, bill-and-keep is thus *at least* as faithful as CPNP to principles of cost causation. As the Commission has already indicated, there is also no basis for concern that bill-and-keep would cause carriers to specialize in originating traffic or that it would increase the volume of unwanted calls. In any event, if unwanted calls were the problem, the answer would be to regulate them directly, as the Commission has already done.

The defining attribute of bill-and-keep is a default division of financial responsibility, at some point between two networks, for the costs of handling traffic that travels over both networks; in the absence of negotiation, each carrier must recover from its end users, and not from other carriers, all network costs on its side of that point. The DeGraba proposal would establish that point at the end office serving the called party and would then rely on negotiations to produce more efficient outcomes. That approach suffers from two significant shortcomings. First, it would give a comparative bargaining advantage to carriers (such as ILECs) that have many end offices to which other carriers (such as CLECs) must bear the financial burden of providing transport. Second, by requiring carriers to obtain transport to points deep within an ILEC's network, the

DeGraba approach would increase calls for regulatory intervention in the use of an ILEC's transport facilities.

To avoid those problems, Qwest proposes an alternative approach, under which a carrier would bear a default financial obligation to deliver traffic to the "edge" of another carrier's network Designation of the "edge" of a network would vary depending on whether the network is circuit-switched or packet-switched, given the quite different ways such networks operate. The edge of a hierarchical circuit-switched network would be defined as the access tandem serving the called party's end office. In contrast, the "edge" of a packet-switched network would be defined as any technically feasible point, such as a gateway, within a defined geographic area. Because this "edge of the network" approach would sharply limit the number of points to which carriers would bear a default financial responsibility to deliver traffic, it would be more equitable than DeGraba's approach as among carriers, and it would be more likely to produce efficient, negotiated transport solutions, such as the deployment of two-way trunks where justified by traffic volumes. Moreover, by permitting a carrier to relinquish financial responsibility for traffic at the edge of an ILEC's network, it would reduce calls for government intervention in the provision of an ILEC's transport facilities at regulated rates.

There is no merit to the contention that bill-and-keep would increase an ILEC's ability to discriminate against unaffiliated interexchange carriers. The potential for such discrimination is logically independent of the Commission's choice of intercarrier compensation regimes Under bill-and-keep, as under CPNP, existing safeguards such as 47 U.S.C. § 272(e) would suffice to protect competition in the interexchange market. To remove any doubt on this issue, the Commission should simply clarify that, under bill-

and-keep, each ILEC must provide its end users with access to unaffiliated IXCs on the same terms, at the same rates, and with the same quality of service as the access it provides to its own IXC affiliate.

Some commenters oppose bill-and-keep on the ground that, by shifting network costs to end users rather than IXCs, it would reduce the implicit cross-subsidies that smaller ILECs currently receive under the geographic averaging mechanism of 47 U.S.C. § 254(g) That, however, is ultimately just an argument for replacing such cross-subsidies with explicit, competitively neutral funding mechanisms. There is no valid argument for continuing to fund universal service through implicit, competitively skewed subsidy mechanisms based on access charges.

Although the Commission may lack jurisdiction to impose bill-and-keep for intrastate access traffic, the Tenth Circuit's recent universal service decision underscores the Commission's responsibility to give states incentives to adopt appropriate funding mechanisms on the intrastate side of the ledger. For example, the Commission may condition the receipt of federal universal service funding on a state's willingness to remove implicit subsidies from intrastate access charges. Once those subsidies are eliminated, the states would perceive little advantage in retaining the current access charge regime, and a national consensus would likely develop in support of bill-and-keep for all traffic. Finally, there is no merit to suggestions that the 1996 Act precludes bill-and-keep for all traffic falling within the scope of 47 U.S.C § 251(b)(5). The language of section 252(d)(2) is appropriately understood to permit a choice between ***either*** bill-and-keep *or* a truly cost-based CPNP regime. The Commission is free to choose the regime that better serves the public interest, and that regime is bill-and-keep.

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

In the Matter of	)	
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Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
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REPLY COMMENTS OF
EST C M ONS ITERNA IONAL, C.

Qwest Communications International, Inc. ("Qwest") hereby submits these reply comments in the above captioned proceeding.[1]

INTRODUCTION

Bill-and-keep requires carriers to recover costs from their end users, whereas CPNP entitles them to recover many of those costs from other carriers.[2] As competition develops over time, more and more carriers will become non-dominant, and any need to regulate the rates they charge their end users will disappear, because the market itself will drive end user prices towards cost. But an increase in competition would never reduce the need to regulate critical rates that CPNP, unlike bill-and-keep, would entitle one

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

[2] "Calling party's network pays" ("CPNP") denotes an intercarrier compensation regime in which the calling party's network bears responsibility for all the costs of a call and pays compensation to other carriers involved in the call. As used here, the term is broadly defined to encompass both the current reciprocal compensation scheme for local calls and the traditional access charge regime, under which the calling party's interexchange carrier ("IXC") must compensate the local exchange carriers ("LECs") on either end of a long-distance call "Bill-and-keep," in contrast, is defined to mean any compensation rule that would preclude a carrier from charging another carrier for any of the costs of its own local access facilities.

carrier to charge another That, in a nutshell, is why bill-and-keep is preferable to CPNP. Unlike CPNP, it would eliminate the terminating access monopoly without regulation of non-dominant carriers, it would avoid the destabilizing arbitrage opportunities and litigation that inevitably accompany regulated intercarrier rates, and it would emphasize the role of market forces, rather than regulation, in a carrier's efforts to recover its network costs

Supporters and opponents of bill-and-keep seem to be talking past one another largely because the supporters are approaching the issue from the perspective of the industry over the long term, whereas opponents are focused on the transitory disputes and special interests that tend to characterize a portion of the industry at any fixed point in time. Thus, the parties most opposed to bill-and-keep for LEC-to-LEC traffic are those that have made short-term windfalls by specializing in the termination of traffic at above-cost rates. The parties most opposed to bill-and-keep for access traffic are certain incumbent LECs that have a particular stake in preserving the economically irrational – and ultimately unsustainable – role of access revenues in the funding of universal service. And, more generally, the parties most opposed to bill-and-keep in any setting are carriers such as AT&T that have staked their business plans on the continuation of heavy regulatory intervention in all aspects of the telecommunications industry.

Moreover, although some parties contend that the Commission should continue to have two vastly different regimes for "local" and "long distance" traffic, that anachronistic approach would exacerbate the arbitrage and inefficiency that already beset the telecommunications world. At the end of the day, a call is simply a call, and arbitrage will inevitably thwart any artificial, distance-related distinction among types of calls.

Moreover, as several CLECs observe, the Commission should view with considerable skepticism any suggestion by incumbent LECs that bill-and-keep makes less sense for access traffic than for other kinds of traffic – or that, five years after enactment of section 254, regulators should still postpone the day in which a competitively neutral funding mechanism, rather than the nationwide customer base of conventional IXCs (see 47 U S.C § 254(g)), subsidizes network costs in high-cost areas. The Commission should thus simultaneously adopt bill-and-keep for all traffic within its jurisdiction and encourage the states to do the same.

ARGUMENT

I. Bill-and-keep is preferable to alternative intercarrier compensation schemes, and the policy arguments of its opponents are without basis.

A. Bill-and-keep is the best long-run solution to the terminating access monopoly problem.

There are two serious contenders for the role of unified intercarrier compensation scheme in the long run: a "cost-based" CPNP approach, and bill-and-keep. CPNP would require the government to regulate certain intercarrier rates in perpetuity, whether a given carrier is dominant or not. Moreover, because such regulation is necessarily both imperfect and contentious, it would guarantee a world of arbitrage, litigation, and industry instability. Bill-and-keep avoids those problems, and for that reason alone it is the better choice, particularly over the long term.

1. Bill-and-keep is the optimal solution to the terminating access monopoly in an increasingly competitive world.

The first major advantage of bill-and-keep over CPNP derives from the fact that, whereas there would always be an obvious need to regulate the termination rates that non-dominant carriers charge other carriers, there is never a need to regulate the rates

they charge their end users. Because bill-and-keep would require carriers to recover from ***end users*** costs that CPNP would entitle them to recover from ***other curriers,*** bill-and-keep would eliminate the terminating access monopoly with little or no regulation of non-dominant carriers (and potentially, in some contexts, less regulation of dominant carriers as well). In contrast, CPNP would guarantee permanent, heavy regulation of every carrier, whether dominant or not. That advantage is comprehensively discussed in the attached Declaration of William Rogerson ("Rogerson Decl."), at 8-15.

Here it is important to focus on the severity **and** breadth of the "terminating access monopoly" That term refers not only to the recent efforts by some CLECs to charge IXCs radically above-cost rates for the termination of interexchange traffic, although that is perhaps the most obvious and familiar manifestation of the problem, but more generally to an economic phenomenon that arises whenever two or more carriers must cooperate in the completion of a call. In any given local or long-distance call involving more than one carrier, the terminating carrier typically controls the only line and local switch connecting the called party to the network, and the caller typically lacks any relationship with the terminating carrier. **As** a result, the terminating carrier has strong incentives to extract as high a payment as possible from the carrier with which the caller does have a relationship, and the caller is normally powerless to do much about it.

That terminating monopoly problem would thus require pervasive rate regulation of a carrier's termination rates ***even if*** the other carrier were entitled to pass the high costs of termination back, in the form of higher rates, to the particular calling parties that place the calls at issue. ***See*** Rogerson Decl. **9-12.** But the problem is even worse than that, because various regulatory obstacles typically preclude ILECs (for local calls) and IXCs

(for long-distance calls) from passing such costs back to a specific calling party. *See, e g.*, 47 U.S.C.§ 254(g) The calling party thus normally lacks any interest in affecting the rates the terminating carrier charges for local or long-distance calls. *See* Rogerson Decl 9, 12-13.[3] Indeed, those same regulatory obstacles deprive a calling party of any incentive to object when a **LEC** charges an **IXC** arbitrarily high rates for *origination* as well *See id.* at 13-14. In short, because the existing regime insulates LECs from any pressure *by their own end users* to lower above-cost intercarrier rates, **CPNP** does not create the price signals needed to ensure rational correspondence between prices and cost. The Commission has traditionally turned to rate regulation to address that problem: regulation under section 251(b)(5) of transport and termination rates for local traffic, and regulation under section 201 of access charges for interexchange traffic.

Bill-and-keep would eliminate, at the source, the very need for regulation of intercarrier termination charges. Some commenters observe that bill-and-keep would not immediately eliminate the need for regulation of all termination charges, because, until competition develops, dominant carriers may still have the ability and incentive to charge their end users more than the economic cost of the services they provide. *E.g.*, AT&T Comments **17.** Even in the short term, that argument misses the key points that CLECs are already significant terminators of traffic; that, where they are, they hold a monopoly over terminating access, and that bill-and-keep would thus dramatically reduce the extent to which this Commission would need to regulate them, since there would be no need to

[3] Under **CPNP**, even **if** ILECs and IXCs *were* permitted to pass these costs back to calling parties, it is unlikely that calling parties would be sufficiently motivated by (or even attentive to) inefficiently high termination rates that they would withhold calls to end users of particular carriers and thereby exert indirect pressure on those carriers to lower those rates to efficient levels *See* Rogerson Decl. 8-12.

regulate the rates they charge their own end users (as distinguished from the rates they charge other carriers).

The argument for CPNP, and against bill-and-keep, becomes even weaker when analyzed within the long time horizon that this Commission should consider when deciding the best way to bring long-term rationality to the field of intercarrier compensation. The premise of the 1996 Act, and of the Commission's regulatory philosophy as a whole, is that facilities-based competition will succeed over the long term in providing an ever-growing number of consumers with an expanding set of telecommunications alternatives to incumbent LECs. The parties may dispute the details of that inexorable trend, but even today, and even in the residential sector, competition is more widespread than industry pessimists would have this Commission believe. Wireless services, for example, are already available as an alternative to landline telephony for most Americans. "While most wireless customers may not be willing to 'cut the cord' just yet in the sense of canceling their subscription to wireline telephone service, it is indisputable that wireless service has significantly changed the way Americans communicate . . . For some, wireless service is no longer a complement to wireline service but has become the preferred method of communication."[4] Moreover, in a world in which cable modem service has leapt out to an early head start over DSL as the predominant broadband technology for residential subscribers (in part because of regulatory disparities), an increasing number of consumers can be expected to choose the

[4] *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Sixth Report, FCC 01-192 (rel. July 17, 2001), at 32.

cable modem platform as the source for all of their telecommunications needs, including voice telephony.[5] And, of course, such forms of intermodal competition merely supplement the statutory rights CLECs enjoy to an ILEC's own network under the 1996 Act.[6]

It is against this backdrop that the Commission should review AT&T's claim (Comments 17) that bill-and-keep would have no effect on the need to regulate termination rates and would simply change (from carriers to end users) the identities of the parties that must pay such rates. As AT&T appears to recognize, its position rests on the premise that competition is futile and that incumbent LECs will retain the same market position in ten, fifteen, or twenty years that they have today. If that premise is false – and all indications are that it is false – the advantages of bill-and-keep over CPNP become dramatically apparent. In a competitive world populated by non-dominant carriers, the choice between bill-and-keep and CPNP is, quite literally, a choice between continued heavy regulation of this industry and very little regulation at all.

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[5] *See* Remarks of FCC Chairman Michael K. Powell, "'Digital Broadband Migration' Part II" (Oct 23, 2001) (http://www.fcc.gov/Speeches/Powell/2001/spmkp109.html), at 3-4 (noting "the real competitive choices that have been introduced through alternate platforms, particularly wireless and cable telephony services," and predicting that "[a] great deal of competition . . . , particularly for residential consumers, will come from other platforms such as cable and wireless systems").

[6] *See Local Telephone Competition. Status as of December 31, 2000* (Industry Analysis Div. May 2001), at 1 (reporting a "29% growth in CLEC market size during the *second half* of the year 2000") (emphasis added); *id* at 2 (reporting that, over the course of the year 2000, the number of UNE loops that ILECs provided to other carriers increased "by 62%, to a total of about 5.3 million," in addition to the 6.8 million lines resold to CLECs)

2. Regulation is incapable of getting intercarrier rates "right."

Opponents of bill-and-keep further suggest that regulation is just as capable as the market of fixing an appropriate price to recover the costs of termination (or, in the case of access traffic, the costs of origination as well) Those opponents both overestimate the ability of regulation to "get the price right" and underestimate the social and economic costs of getting the price wrong. AT&T, for example, contends that any arbitrage problem associated with CPNP "is *easily solved* simply by strict application of the existing requirement of cost-based prices." AT&T Comments 8 (emphasis added).

These opponents appear unaware that regulators have tried and failed for many years to produce prices for origination and termination services that are accurately structured to reflect the "costs" of providing those services, and the result has been litigation, arbitrage, and regulatory uncertainty. Indeed, one need look no further than the Fifth Circuit's recent decision rejecting the *6.5%* X-factor justification in the ***CALLS Order,*** or the D.C. Circuit's rejection of the Commission's prior rationale for the same X-factor, to recall how impossible it is to achieve regulatory certainty in this area so long as one carrier may charge another for its own origination or termination costs.[7] And, as discussed in Qwest's opening comments (at 12-15), the fault lies not in the regulators but in the type of regulatory question at issue.

"Getting the rates right" is impossible enough on several levels even when the Commission has answered all the basic methodological questions. *See* Rogerson Decl. 14-15, 18-20. First, as the experience in the states has shown, regulators acting in good

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[7] *See Texas Office of Public Util. Counsel* v. ***FCC,*** 265 F.3d 313, 328-29 (5th Cir. 2001); *United States Tel Ass'n v.* ***FCC,*** 188 F.3d 521 (D.C. Cir. 1999).

faith can and do disagree profoundly in the application of a single methodology – TELRIC – to any given rate element.[8] Second, regulators cannot, and should not, be expected to keep pace on a monthly basis with the latest price-reducing developments in termination rates. *Id.* at 5, 14-15. And, even if they could, the industry's inability to predict what regulators will do itself tends to skew the market Bill-and-keep would altogether eliminate that problem by specifying a single, predictable, and permanent solution to the recovery of termination costs

Third, simply as a matter of practical necessity, CPNP narrows the options available for the recovery of termination costs. CPNP all but requires some variant of per-minute pricing because, as a practical matter, that is the only feasible way to enable a terminating carrier to allocate responsibility for termination among the multiplicity of other carriers that deliver traffic to any given subscriber of the terminating carrier ' Bill-and-keep, in contrast, would permit carriers to experiment with various combinations of usage-sensitive and flat-rated charges on the subscribers with whom they have a steady, ongoing relationship – an option that is infeasible under CPNP. This distinction between the two approaches is quite significant, because, as discussed in Qwest's opening comments (at 12-15), no per-minute rate can accurately reflect the costs of providing

[8] *See, e.g , In the Matter of Joint Application by SBC Communications, Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma,* Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, 191 (rel. Jan. 22, 2001) ("TELRIC-based pricing can result in a range of rates, which is wide enough to encompass" "significantly different" rates in different states)

[9] Indeed, in curtailing the use of the flat-rated PICC on IXCs in favor of an increased subscriber line charge, the Commission itself indicated that direct end user charges allow for more "straightforward, economically rational pricing structure[s]" than do intercarrier charges. *Access Charge Reform,* Sixth Report and Order, 15 FCC Rcd 12962, 12991-92, ¶ 78 (2000) *("CALLS Order")* (eliminating the residential and single-line business Presubscribed Interexchange Carrier Charge).

termination services. From an economic perspective, the costs to be recovered are the extremely lumpy costs (unassociated with any particular call) of assuring adequate capacity to accommodate traffic during peak load periods.[10] When the market is permitted to decide how those costs should be recovered (as, for example, in the unregulated retail plans offered by wireless carriers), the result is a range of different solutions, most of which involve some element of flat-rated pricing. Again, for the network costs at issue here, that is an option available only under bill-and-keep, not under CPNP.

Even more fundamentally, CPNP would require the Commission and the states to continue playing a heavy regulatory role in the resolution of disputes among different categories of carriers about whether and how each such category should be treated differently in the intercarrier compensation calculus. Such disputes already abound within the industry. For example, CLECs and ILECs argue about whether, as AT&T contends, a CLEC should be able to "charge higher 'tandem' switching rates when it terminates calls from a switch in its efficient, single-layer switching architecture that serves a geographic area comparable to a tandem switch in the incumbent's legacy two-layer switching architecture." AT&T Comments iii. At the same time, CLECs and ILECs argue about whether carriers that specialize in terminating traffic to a specific kind of customer – such as ISPs – incur lower termination costs and should be compensated less *See ISP Reciprocal Compensation Order* ¶ 93. Similarly, LECs and CMRS

[10] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic,* Order on Remand and Report and Order, CC Docket. Nos. 96-98, 99-68, FCC 01-131, at ¶ 76 (rel Apr 27 2001) (*"ISP Reciprocal Compensation Order"*).

providers argue about whether the latter incur higher termination costs than the former See, *e.g, NPRM* ¶¶ 104-05; AT&T Wireless Comments 22-23.

Unlike bill-and-keep, CPNP compels the Commission to resolve such disputes. And, to resolve them, the Commission must make intrusive, value-laden comparisons among incommensurable network architectures and technologies and the costs they generate in handling particular kinds of traffic. Such comparisons are inevitably inexact, transitory, controversial – and unnecessary. Indeed, the Commission could avoid such comparisons altogether by moving to a bill-and-keep regime. Under bill-and-keep, the Commission would no longer need to ask whether CLECs have achieved unusual efficiencies by specializing in a single class of customers. Nor would it need to decide whether CLECs should be paid more than ILECs for termination at the central office on the theory that "CLEC networks may use long-loops or fiber rings in place of the tandem switches deployed by ILECs," and "delivery of a call to the CLEC central office may often be the functional equivalent" – for pricing purposes – "of delivering a call to the ILEC tandem office." Focal Comments 45. These cross-technology comparisons are arbitrary and, ultimately, deeply inimical to any truly deregulatory approach to telecommunications. More fundamentally, no carrier should be compelled to subsidize, through another carrier's origination or termination rates, that second carrier's choice of network architecture. That second carrier should have its choice validated – or not – based on the willingness of its own end users to support it by paying rates to that carrier.

3. The regulatory inaccuracies inherent in CPNP have significant market-distorting consequences.

Contrary to the position of CPNP's champions, the arbitrage consequences of not "getting the price" right under CPNP are considerable and ultimately quite harmful to the

industry. As the ISP experience has shown, an entire segment of the telecommunications industry can grow up in reliance on a gap between termination rates and costs, and the cost of making the necessary regulatory correction is further industry instability. In a competitive environment, so long as CPNP is the rule, such arbitrage opportunities will be unavoidable, because carriers will always look for ways to exploit the inevitable inaccuracies in government-imposed intercarrier rates. And the effects of such distortions will be particularly severe where – as is the norm under current regulation – the originating carrier or IXC lacks authority to pass artificially high intercarrier termination rates back to the specific end users that originate the calls *See, e.g.*, 47 U.S.C.§ 254(g); *see generally* Rogerson Decl. 13-14.

The ISP example illustrates the consequences of such regulatory distortion. Above-cost termination rates produced not just an artificial subsidy for heavy dial-up Internet usage, but a wealth transfer from ILECs (the originating carriers paying the above-cost rates) to CLECs (the terminating carriers that received those rates). Because the states did not permit the ILECs to pass that burden back specifically to the end users who made ISP-bound calls (indeed, the states generally barred the ILECs from responding to the increased traffic by raising their rates at all), those end users received no price signals to use the ILECs' networks efficiently. This Commission wisely recognized that it makes no sense to subsidize heavy use of the Internet by artificially disadvantaging one class of carriers (and their shareholders or rate-payers) to the benefit of another. *See ISP* ***Reciprocal*** *Compensation Order* ¶¶ 66-76. Moreover, correcting the problem disrupted business plans that were based on gaming the regulatory system, and that in turn caused further economic dislocation. Contrary to the inexplicable position

taken by Time-Warner Telecom (Comments 10-11), the underlying culprit here was the regulatory problem, not the correction And there would have been no such problem, and thus no need for subsequent correction, if the government had chosen bill-and-keep from the outset.

The type of arbitrage opportunity created by excessive ***intercarrier*** rates should be distinguished from the quite different arbitrage opportunities that arise when regulation sets an above-cost ***retail*** rate for a service offered by a dominant carrier, a competitive carrier offers the same service at an unregulated rate, and the market actors choosing between those two services ***are the same ones*** *who* ***must pay the rate.*** In that context, those market actors (typically end users) receive immediate price signals that cause them to choose the cheaper service, and that dynamic automatically begins moving industry prices towards costs

That is not the case here: When a regulator sets ***intercarrier*** termination rates too high, it is often the case that *no* relevant market actor will receive appropriate price signals, and arbitrary intercarrier wealth transfers may persist without any market correction whatsoever. That is what was so pernicious about above-cost reciprocal compensation rates in the ISP-bound traffic context. Because the typical originating carrier (an ILEC) was barred from passing back to particular end users the termination rates charged by a CLEC serving an ISP, no end user had any incentive to avoid ISPs served by CLECs that charged above-cost rates, and the only mechanism for correcting the problem was a purely regulatory one. Such distortions will always be a threat so long as government engages in the precarious exercise of making one carrier pay for another's network costs.

B. Bill-and-keep is consistent with principles of cost-causation.

As explained in William Rogerson's Declaration (at 25-28), bill-and-keep is at least as consistent as CPNP with economic principles of cost causation. Indeed, the very premise of CPNP is that the calling party is responsible for all of a call's costs and that the called party is responsible for none. That premise is obviously false: the called party is capable of precluding costs from being incurred simply by declining to take a call or choosing to terminate it, and the called party's network has continuous opportunities to pick more or less efficient terminating technology. The supposed economic advantage of CPNP is illusory on another level as well, because regulatory restrictions preclude carriers in a wide range of circumstances from passing the costs of specific calls back to the individual calling parties that supposedly "cause" them.

In questioning the economic foundation of bill-and-keep, most opponents attack a straw man: the notion, upon which arguments for bill-and-keep do *not* rest, that the calling party and the called party evenly share exactly the same benefit on any given call. *E g* , Time-Warner Telecom Comments 6. The question is not whether each party shares *benefits,* but whether each is a causer of *costs* in the sense that each stands in a position to preclude certain costs from being incurred. The answer to that question is undoubtedly yes. each carrier can take measures to lower the costs of termination, and each end user can take measures – from hanging up to requesting an unlisted number – to avoid cal · related costs.

Second, and more fundamentally, the argument for bill-and-keep is not that it perfectly assigns costs to the parties that cause them, but that its method of allocating costs is at least as efficient as CPNP's alternative method and that it is preferable to

CPNP in the other respects discussed above (namely, an increased reliance on market forces rather than regulation in the recovery of each carrier's network costs, the elimination of arbitrage opportunities, and the preservation of long-term industry stability) There can be no credible argument that CPNP somehow does a better job than bill-and-keep of allocating costs: with respect to any given call, CPNP inaccurately presumes that the calling party must pay for 100% of the call, even though, by answering the telephone and permitting the call to continue, the called party is responsible for a significant percentage of the costs that are incurred.

Proponents of CPNP contend that this deficiency will be sorted out if every called party perceives an obligation to settle accounts by placing a commensurate number of calls back to the original calling parties. *E.g.*, AT&T Comments 23. But that is no answer at all. Many calls are made between parties without any kind of ongoing relationship, and there is no reason to believe that, even where parties do make an effort to call each other back, the resulting costs will be borne with anything approaching proportionality. In sum, the principle of cost-causation is not remotely a strike against, and if anything is further support for, the adoption of bill-and-keep over CPNP. **See** Rogerson Decl. 25-28.

C. There is no basis for concern that bill-and-keep would induce carriers to specialize in originating traffic or would increase the number of unwanted calls.

In the ***ISP Reciprocal** Compensation **Order,*** the Commission soundly repudiated its previous concern that bill-and-keep would give carriers uneconomic incentives to specialize in the origination of traffic. As the Commission observed there, "[a] carrier must provide originating switching functions and must recover the costs of those

functions from the originating end-user, not from other carriers. Originating traffic thus lacks the same opportunity for cost-shifting that reciprocal compensation provides with respect to serving customers with disproportionately incoming traffic." *ISP Reciprocal Compensation Order* ¶ 73.

That analysis is correct. In contending otherwise, a few CLECs argue that bill-and-keep would enable carriers specializing in origination to undersell the rates that other carriers charge their own subscribers. *E.g.*, Time-Warner Telecom Comments 11. The CLECs' argument is that those other carriers must charge their subscribers not just for the origination costs of any given call, but for the termination costs of that same call as well. This argument is without merit. If bill-and-keep is the intercarrier compensation rule, a carrier operating in a competitive environment will succeed in charging its end users only for the portion of network costs for which it is legally responsible. By hypothesis, that will not include the costs of terminating a call on another carrier's network. As a result, there would be no regulatory incentive for a carrier to specialize in originating traffic, because the price it could successfully charge for performing that service would need to cover the quite significant costs of origination plus some significant portion of transport, and those would be the same costs that other, competing carriers would need to recover as well. *See* AT&T Wireless Comments 27-28.

Some CLECs contend that current ILEC retail rates are designed to recover both the origination and the termination costs of all (non-access) calls originating on the ILEC's network. *E.g.*, Time-Warner Telecom Comments 23-25; **see** *also* Focal Comments 10-11. That contention, which the Commission has already rejected, is both inaccurate and irrelevant to the merits of bill-and-keep. As a factual matter, the

Commission has repudiated similar claims by the same CLECs "that ILEC end-user rates are designed to recover from the originating end-user the costs of delivering calls to ISPs " *ISP Reciprocal Compensation Order* ¶ *88* As the Commission observed, "most states have adopted price cap regulation of local rates," and thus "rates do not necessarily correlate to cost in the manner the CLECs suggest." *Id.* at n. 174. That is not only true but an understatement Even apart from the typical inability of ILECs to raise local rates to accommodate the growth of ISP-bound traffic, the use of price caps renders nonsensical any effort to draw a close correspondence between an ILEC's current retail prices and the specific functions that are performed in the disposition of local calls.

In any event, even if ILEC rates were currently structured such that some CLECs would specialize in originating traffic if exempted from an obligation to cover termination costs, that fact could not logically support an argument against bill-and-keep. Unlike the low termination rates (and sharing of intercarrier revenues) that CLECs could offer ISPs before the Commission stepped in this past April, the lower retail rates charged by the CLECs for originating traffic would not reflect an arbitrary carrier-to-carrier wealth transfer or any other irrational subsidy. They would reflect only the underlying cost of providing the portion of the service for which those CLECs would be responsible under bill-and-keep. To the extent that ILECs respond to those low rates by reducing their own rates to compete for the same customers, that would be an obvious benefit of bill-and-keep, not a disadvantage.

There is, finally, no empirical basis for the argument that bill-and-keep would increase the number of unwanted calls by companies that place more calls than they receive, such as telemarketers As an initial matter, it is obviously not the case that, as

AT&T contends, bill-and-keep would make "every call a collect call " AT&T Comments 33 To the contrary, as the Commission has explained, carriers under a bill-and-keep regime – and thus the customers of those carriers – would need to cover the costs of each call's origination as well as a substantial share of transport costs as well. *See ZSP Reciprocal Compensation Order* ¶ 73. There is no empirical basis for concluding that the volume of telemarketing calls would significantly increase if the costs of a call were split between originating and terminating carriers rather than, as now, borne entirely by the originating carrier. *See also* Rogerson Decl. 30-31.

Even if bill-and-keep were likely to increase the number of unwanted calls, the appropriate solution is not to reject bill-and-keep itself but to address the problem of unwanted calls directly. First, the market has already produced a number of caller identification and call blocking technologies that shield subscribers from unwanted calls, and such market responses can be expected to become even more effective over time. *See* Qwest Opening Comments 39. In any event, even if the market could not be trusted to solve this problem, the appropriate regulatory response would be to enforce direct restrictions on the ability of telemarketers to place calls to nonconsenting individuals. Indeed, the Commission now follows exactly that approach. As AT&T itself observes (Comments 32-33), there are already highly effective restrictions on the kinds of telemarketing calls that can be placed to the subscribers of any wireless service "*or any [other] service* for which the called party is charged for the call." 47 C.F.R. § 64.1200(a)(1)(iii) (emphasis added) Moreover, the Commission and a number of states independently require telemarketers to place called parties on a "do not call" list upon request. *See* 47 C.F.R. § 64.1200(e)(2)(iii).

11. An efficient bill-and-keep regime would allocate default financial responsibility for transport at the "edge of the network."

The defining characteristic of bill-and-keep is a default division of financial responsibility for the costs of handling traffic at some point between two interconnecting networks, in the absence of negotiation, each interconnecting carrier – whether it is an ILEC, CLEC, wireless provider, or IXC – must recover from its end users, and not from the other carrier, all network costs on its side of that point." Qwest has called that point the "financial point of interconnection," or "financial POI." It is to be distinguished from the place where two networks actually interconnect, which Qwest has called the "physical POI " As an example of the difference between these two points, the physical POI between an originating LEC and an IXC in a long-distance call is today the POP, but the financial POI is, in effect, the loop side of the end office switch, since the IXC bears financial responsibility for all costs from that point.

At bottom, two basic variables define the major differences among bill-and-keep proposals. (1) the mechanism for identifying financial POIs in each network, and (2) the mechanism for determining the placement and types of physical transport links between the two networks These two variables are obviously related, as DeGraba's proposal

[11] Under current Commission regulations, each carrier is required to designate at least one physical POI in every LATA that it serves for the receipt of terminating traffic. The Commission should retain that approach under bill-and-keep and should clarify that, where a carrier makes only one physical POI available in a LATA, it is responsible for all network costs incurred on its side of the POI (*i.e.*, this designated physical POI also serves as the carrier's financial POI). Although LATAs are the creatures of an obsolescent regulatory regime, they remain a readily available – if imperfect – means of dividing up the country for these purposes.

illustrates [12] DeGraba would address the first issue (the designation of financial POIs) by requiring a carrier, in the absence of negotiations, to provide transport in any LEC-to-LEC call all the way to the end office serving the called party. Put another way, it would automatically place the financial POI for the call at that end office, and it would require the terminating carrier to recover from its own end users the costs of all "local access facilities" (*i.e.*, terminating switching and the loop) on its side of that point. The DeGraba proposal would then address the second issue (the deployment of efficient transport facilities between the two networks) by relying on negotiations against the backdrop of the specified default outcome. The premise of the DeGraba approach is that the very inefficiency of the default outcome – *i.e.*, each carrier's obligation to provide transport to the other carrier's end office over one-way transport facilities – would induce each carrier to negotiate an efficient, mutually advantageous transport solution, such as the use of two-way trunking.

In that respect, DeGraba's designation of the end office as the default dividing line for financial responsibility would not result (and is not intended to result) in ***physical*** points of interconnection anywhere near the end office. It would, however, have quite significant effects on the relative bargaining power of the two interconnecting carriers In particular, DeGraba's approach would disadvantage those carriers that have fewer "end offices" than the carriers with which they must interconnect, because their transport burden under the DeGraba regime would be greater than that of the other carriers. That

[12] "The DeGraba proposal" denotes the December 2000 white paper written by Patrick DeGraba and issued by the Office of Plans and Policy. ***See*** Patrick DeGraba, "Bill and Keep at the Central Office as the Efficient Interconnection Regime," OPP Working Paper #33 (2000) ("*DeGraba*").

fact presents significant competitive concerns, since ILECs typically have many more end offices in a given locale than do CLECs. Moreover, because DeGraba's default rule would require CLECs to obtain transport deep within an ILEC's network, it would generate calls for intrusive government intervention in an ILEC's provision of its transport facilities at regulated rates to help CLECs meet their transport obligation.

Those defects in DeGraba's approach – the asymmetry of obligations as between ILECs and CLECs, and the potential for undue regulation of transport within an ILEC's network – can be resolved by adopting a different approach to the placement of financial POIs. In Section III.A, below, Qwest proposes such an approach, under which financial responsibility would be allocated (by default) at the "edge" of an interconnecting carrier's network. In a circuit-switched ILEC network, that generally means the access tandem serving the called party's end office,

That default designation of financial POIs, however, is only a first step. The ultimate goal of any sensible transport solution is the creation of conditions under which any two carriers will make use of efficient transport arrangements – and, in particular, two-way trunks between their networks wherever justified by traffic volumes. Requiring interconnecting carriers to specify financial POIs for any given call does not ***by itself*** produce efficient two-way transport arrangements between the carriers' networks, because (among other considerations) the financial POI in carrier X's network for traffic flowing in one direction would seldom coincide with the financial POI in carrier Y's network for traffic flowing in the opposite direction. As discussed below, the question is whether, in the spirit of DeGraba, the Commission should rely on intercarrier

negotiations against the backdrop of financial POI default rules to produce efficient two-way trunking arrangements.

A. The default dividing line for financial responsibility in the transport of telecommunications traffic should be drawn at the edge of the other carrier's network.

There are several advantages to a default rule that designates the financial POI for a given call at the edge of the other carrier's network. The term "edge of the network," which is defined more precisely below for different types of networks, can be roughly described as the set of points within a carrier's network where interconnection with other networks is technically feasible and where it is efficient for that carrier to manage a high volume of traffic bound for, or originating from, end users distributed over a broad geographic area. The edge of a carrier's network is thus to be distinguished from points deep within a carrier's network architecture, such as an end office (in a hierarchical circuit-switched network) serving a small number of end users distributed over a confined area.

One key advantage of designating the financial POI at the edge of the network is that it would limit the number of points in an ILEC's network to which other carriers would have a financial obligation to transport traffic, and it would therefore remove the anticompetitive asymmetry (discussed above) inherent in the DeGraba approach. Moreover, by removing that asymmetry, it would ensure that each carrier has roughly equal incentives to negotiate efficient transport solutions (including the deployment of two-way trunks), since neither carrier would be systematically much worse off or much better off than the other in the event that negotiations break down. That would greatly alleviate any theoretical concern that ILECs might avoid good faith negotiations, and

make themselves slightly worse off in the short term, in the hope that, by making CLECs *much* worse off, they could drive them from the market altogether *See* Rogerson Decl 7-8. Finally, because a range of transport options is typically available for carriers that interconnect at the edge of others' networks, sparing an interconnecting carrier from an obligation to deliver traffic to multiple points deep within each network would significantly reduce the circumstances in which there would be calls for regulatory intervention in the rates that ILECs may charge an interconnecting carrier for transport using the ILEC's facilities *See id.* at 17-18.[13]

To identify the "edge" of a carrier's network for purposes of dividing financial responsibility between interconnecting carriers, the Commission must first distinguish between two different types of network architecture. In the hierarchical circuit-switched architecture that characterizes the networks of the major ILECs, the "edge" is typically the location of a higher-order switch such as an access tandem. In a "flat" packet-switched architecture, by contrast, the "edge" could include any node in the local network where interconnection is technically feasible.

This distinction reflects the fundamentally different ways in which traffic is routed over these two types of networks. As the Internet backbone illustrates, hot potato routing – the delivery of a call to the closest technically feasible point on another carrier's

[13] Because Qwest's approach would permit interconnection at the edge of an ILEC's network, it would significantly reduce and perhaps eliminate the circumstances in which an interconnecting carrier could be said to have been "impaired," under 47 U.S.C. § 251(d)(2), by the denial of access to an incumbent LEC's transport facilities at regulated rates. *See generally Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Supplemental Order Clarification, 15 FCC Rcd 9587 ¶¶ 12-17 (2000) (noting context-specific character of "impairment" analysis under section 251 (d)(2)).

network – is generally an efficient transport solution for a packet-switched network, because the individual packets constituting that call can follow any number of routes within that network to their final destination and, by definition, will not tie up a given "circuit."[14] As observed in Qwest's opening comments (at 30), however, it would not be similarly efficient to permit a carrier to drop a call off anywhere in a typical circuit-switched network, because such networks require both predictability of transmission paths and conservation of the available circuits occupied by circuit-switched traffic.

For these reasons, the dividing line of financial responsibility -- *i.e.*, the financial POI – should vary depending on whether a given network is circuit-switched or packet-switched. For packet-switched networks, the financial POI is appropriately placed at any technically feasible point, such as a gateway, within a defined geographic area. (As discussed in note 11, above, the relevant area is probably best defined, given current conventions, as a LATA.) The upshot of this approach is that, if carrier A drops off traffic at any given gateway on carrier B's packet-switched network, carrier B must recover from its end users -- and not carrier A – the costs it incurs in handling those calls on its side of that point.

The approach proposed here requires somewhat greater elaboration when applied to a traditional circuit-switched network. In that context, an appropriate financial POI is any point in the carrier's network corresponding to the access tandem serving the called party's end office (or, in the event the carrier has no such tandem, to the end office itself). For example, suppose that carrier A – which could be an IXC, a wireless carrier, or a

[14] *See generally* Michael Kende, "The Digital Handshake: Connecting Internet Backbones," OPP Working Paper #32 (2000)

LEC – drops off traffic at carrier B's access tandem at the edge of the latter's circuit-switched network, and suppose that carrier B's end user is served by an end office subtending that tandem. In that event, carrier B must recover from its end user, and not from carrier A, all costs associated with that traffic on its side of that point, including tandem switching, end office switching, and transport between the end office and the tandem. Now contrast the following situation: An ILEC has two access tandems – Tandem A and Tandem B – in a LATA. A CLEC wishes to interconnect with the ILEC *only* at Tandem B. Under the approach described here, the CLEC is free to choose that option, and it will pay none of the costs beyond its side of Tandem B for traffic to end users served by an end office subtending Tandem B. It will, however, bear financial responsibility for the additional network costs of delivering to Tandem A any traffic to end users served by an end office subtending Tandem A but not Tandem B. Because it would be generally inefficient to route such calls through two tandem switches, the originating carrier should receive appropriate price signals to deliver them to the tandem serving the relevant end office. Finally, it bears emphasizing that these outcomes are merely defaults; carriers are of course free to negotiate alternative allocations of financial responsibility if they wish.

B. Carriers are likely to negotiate efficient two-way trunking solutions without extensive regulatory intervention beyond the designation of the financial POIs.

An identification of financial POIs in a given carrier's network is a critical component of an efficient transport solution, but it does not complete the inquiry. Networks do not exactly coincide, and one carrier's financial POI for traffic moving in one direction will be separated – whether by a matter of inches or miles – from the other

carrier's financial POI for traffic moving in the other direction. Somehow that gap must be bridged, for otherwise – if they simply follow the default rules for financial POIs – carriers will deploy inefficient one-way trunks to other carriers' networks.

Before addressing whether regulatory specificity is needed to meet that objective, it is important to restate the efficient and desired outcome: the deployment of two-way trunks between the respective networks wherever justified by traffic volumes. Given the financial POI rules described above, detailed additional regulation may well be unnecessary to achieve that outcome. Any two carriers have a shared interest in reducing their aggregate costs by deploying a single, efficient two-way trunk, rather than two inefficient and redundant one-way trunks, for the traffic between their two networks. Of course, each carrier has an individual, self-interested incentive to avoid paying as much of the cost of that trunk as possible. But, given each carrier's background obligation to interconnect with other carriers, *see* 47 **U.S.C.** § 251(a)(1), and given that the default outcome is the construction (to the disadvantage of both carriers) of separate one-way trunks, each carrier would have a strong incentive to agree to share the costs of a single two-way trunk so long as *some* traffic flows in each direction between the two carriers.

Indeed, negotiations are more likely to succeed in producing efficient transport solutions under the approach proposed here than under the DeGraba proposal. Because carriers would be free to relinquish financial responsibility at the edge of another carrier's network, the default outcome would no longer disproportionately benefit carriers, such as large incumbent LECs, that have many end offices to which other carriers, such as CLECs, would bear the financial responsibility for delivering traffic. Qwest's approach would thus give ILECs added incentives to negotiate transport solutions in good faith,

because impasse would no longer make other carriers systematically worse off than ILECs *See* Rogerson Decl. 7-8. In sum, designation of financial POIs at the edge of the network may well be enough to ensure fair and efficient two-way trunking solutions, without further regulation, for most intercarrier interconnection.

A significantly more interventionist option would be to promulgate detailed, nationally uniform regulations comprehensively establishing how networks must interconnect in specified circumstances, when two-way trunks should be required, how financial responsibility for those trunks should be allocated among the intercarrier carriers, how routing should be determined, and so forth. *See, e.g.*, AT&T Wireless Comments **42-44.** As in other contexts, however, it is far easier to add regulations incrementally once the need for them becomes apparent than it is to rescind regulations that, in hindsight, may not be strictly necessary The Commission should thus adopt a market-oriented approach based on the placement of financial POIs at the edge of the network, study how well the market responds to the imperative for negotiation, and only then consider whether a more interventionist approach is necessary.

One context in which narrowly targeted regulatory intervention might arguably be necessary is where the traffic volume between carrier A's end office and carrier B's network is heavy enough to justify a direct trunk group that bypasses carrier A's tandem switch For example, if that direct trunk group runs through the tandem location (and not through the tandem switch itself), it may be necessary to require carrier B to segregate the traffic destined for carrier A's high-volume end office so that it can be placed on the direct trunk group. The potential problem in such cases is that, if these direct-trunking disputes are viewed in isolation, carrier B may appear to have too small an incentive to

deviate from its default option of simply delivering all traffic on an unsegregated basis to the tandem switch. On the other hand, carriers normally negotiate a broad range of issues in combination, and it is unlikely that carrier B would permit negotiations to break down altogether, and thereby incur an obligation to underwrite the entire cost of inefficient one-way trunks, simply to avoid an efficient solution to direct trunking needs.[15]

C. Appropriate implementation of bill-and-keep would eliminate concerns about ILEC discrimination against unaffiliated IXCs.

AT&T (Comments 48-51) and WorldCom (Comments 24-27) express concern that bill-and-keep would increase an ILEC's ability to discriminate – with respect to both quality of service and pricing of local access – against unaffiliated IXCs in favor of the ILEC's own long-distance affiliate. That concern is misplaced. *See* Rogerson Decl. 21-24. Any ability of ILECs to engage in price or non-price discrimination is independent of the intercarrier compensation regime the Commission adopts. And any such ability can in any event be adequately addressed through regulations prohibiting such discrimination. *See id.* This is why the Commission has long imposed structural separation requirements

[15] Many calls involve three carriers: the originating carrier, the terminating carrier, and a carrier that provides transport services in between. An IXC is a transport service provider that has an independent relationship with the calling party. It would be subject to the rules discussed in this section, and it would be responsible for recovering from its own subscribers all costs between the financial POI of the originating carrier and the financial POI of the terminating carrier In contrast, a "transiting" carrier is a transport service provider that does *not* have an independent relationship with the calling or called party Such a carrier essentially serves as a subcontractor to the originating carrier, helping the latter meet its responsibility to deliver calls to the terminating carrier's network. As discussed in Qwest's opening comments (at *25* n. 14), a transiting carrier is entitled to be paid by the originating carrier for performing that service.

for non-BOC dominant LECs that offer long-distance services and why Congress added for BOCs the more specific safeguards set forth in 47 U.S C. § 272(e).[16]

In challenging bill-and-keep on the ground that it would permit discrimination against stand-alone IXCs, therefore, AT&T and WorldCom attack a straw man: they appear to assume that, in transitioning to bill-and-keep, the Commission would overlook the need to retain appropriate safeguards against discrimination. Of course, the Commission would not overlook that need, and in any event the statutory safeguards set forth in section 272(e) would remain in force. To remove any doubt on this issue, the Commission should simply clarify that, under bill-and-keep, each ILEC (to the extent that it is dominant in the access market) must provide its end users with access to unaffiliated IXCs on the same terms, at the same rates, and with the same quality of service as the access it provides to its own IXC affiliate.

With respect to pricing, this means that, until it is deemed non-dominant in the provision of access services, an ILEC must have a standard menu of rates (which could be flat-rated or usage-sensitive or some combination of the two) for local services, and that menu cannot vary depending on an end user's choice of IXCs.[17] With respect to quality of service, this non-discrimination imperative means, among other things, that

[16] The Commission recently sought comment on whether it should relax structural separation requirements for non-BOC ILECs. *See In the Matter of 2000 Biennial Regulatory Review, Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules,* Notice of Proposed Rulemaking, CC Docket No. 00-175, FCC 01-261 (rel. Sept. 14,2001).

[17] As AT&T appears to acknowledge (Comments 50), its concern about anticompetitive "price squeezes" by dominant LECs would be no more valid under a bill-and-keep regime than it is under the existing access charge regime. *See* Rogerson Decl. 24; *see also Southwestern Bell Tel. Co. v. FCC,* 153 F.3d 523, 548 (8th Cir. 1998) (affirming Commission determination that IXC price squeeze concerns "are unwarranted because adequate safeguards are in place to prevent such an occurrence").

each ILEC must agree to route any tandem-switched traffic bound for its own IXC affiliate through the same end office-to-tandem trunks that it uses to route tandem-switched traffic bound for an unaffiliated IXC. And, just as ILECs typically divert overflow access traffic from direct trunk groups onto tandem-switched transport facilities en route to any IXC, they should be required to ensure that those same facilities are available to handle overflow traffic from direct trunk groups destined for unaffiliated IXCs. *See* Rogerson Decl. 22.

III. The adjustments bill-and-keep would require to end user rates and universal service are not "disadvantages" of bill-and-keep, but steps in the right direction.

A number of carriers and states oppose bill-and-keep on the ground that it would increase end user rates, particularly the rates charged by the independent LECs operating in high-cost areas. *E.g.*, NTCA Comments **12-13.** Reduced to its essentials, this is simply an argument to postpone the day in which universal service subsidies will be explicit and competitively neutral rather than, as now, implicit and inefficient.

Although bill-and-keep would lead to rate increases for some services, it would also lead to at least commensurate rate reductions for other services. Today, consumers end up paying for access charges through higher IXC rates, and, as a group, they would do at least as well if those charges were imposed on them directly rather than, as now, indirectly through their IXCs. Put another way:

> [S]hifting the recovery of [access] costs from carriers to end users should not, on average, increase the total costs faced by end users. This is so because carriers that currently pay inter-carrier charges, like long-distance carriers, pass these costs on to end-user customers in the form of higher rates. Thus, although a customer may see an increase in the bill he receives from his LEC, he should see a corresponding decrease in other charges, such as lower charges from his long-distance carrier.