Before the
Federal Communications Commission
Washington, DC 20554

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

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

Gerard J. Waldron
Mary Newcomer Williams
Darrin Hurwitz
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel.: (202) 662-6000
Fax: (202) 662-6291

Kathleen Wallman
KATHLEEN WALLMAN, PLLC
9332 Ramey Lane
Great Falls, VA 22066

Counsel to TDS Telecommunications Corp.

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SUMMARY

TDS Telecommunications Corp. (TDS) offers residential and business telecommunications services through its facilities-based incumbent local exchange carrier (ILEC) subsidiaries (TDS Telecom) and competitive local exchange carrier (CLEC) subsidiaries (TDS MetroCom) to over nine hundred rural and suburban communities across the United States. TDS understands that telecommunications is the lifeblood of today's economy, in rural and urban areas alike, and TDS is committed to offering its customers high-quality, evolving telecommunications services. Toward that end, TDS has invested significant resources in deploying advanced network facilities. The availability of these facilities and services plays a critical role in promoting economic growth and development in the rural and suburban markets TDS serves by providing businesses, telecommuters, and residents with efficient connectivity to merchants, suppliers, customers, clients, and colleagues. In the absence of continuing investment in and expansion of these facilities, rural Americans risk being left behind as the broadband revolution takes hold in more populous areas and commercial and social transactions increasingly migrate to the Internet.

TDS's investment in and provision of services to its customers is supported by revenues derived from subscriber charges, intercarrier compensation, and, for its rural ILECs, universal service support. Recent and anticipated technological and market changes, as well as public policy priorities such as promoting efficiency and minimizing regulatory arbitrage, appear to require some restructuring of these cost recovery mechanisms. That restructuring process must include mechanisms to preserve – for both ILECs and CLECs – ongoing and balanced revenues from all of these sources.

TDS, which brings to this debate the unique perspective of a mid-sized rural ILEC and facilities-based suburban CLEC, recognizes that the market is evolving and that the TDS LECs must adapt to market changes and foster new revenue sources. TDS likewise asks the Commission, as it considers restructuring intercarrier compensation, to recognize that intercarrier compensation revenues play a significant role in supporting the provision of valuable telecommunications services in smaller communities at reasonable and competitive rates. Any regulatory action that dramatically reduces intercarrier payments – in a market that may not function effectively due to factors such as regulatory interconnection obligations and growing market power exercised by Bell operating companies controlling interconnection tandems and unbundled network elements – requires corresponding regulatory steps to ensure reasonably predictable and balanced revenues from all network users over a sustained period. Some measure of long-term revenue *stability* is necessary if TDS and other carriers serving rural and suburban markets are to continue to invest in robust telecommunications networks used to provide services, such as broadband Internet access, that are essential to the economic growth and success of their communities. Long-term *balance* among revenue sources is necessary to ensure that, consistent with long-standing public policy goals, TDS and other carriers can continue to deploy advanced telecommunications services in rural areas at rates that are reasonable and reasonably comparable to rates in urban markets.

Consistent with these priorities, TDS offers these comments – addressing both rural ILEC and suburban CLEC concerns – to promote the goal of rationalizing and simplifying the intercarrier compensation regime while preserving cost recovery mechanisms for carriers serving rural and suburban markets. The comments offer recommendations concerning (1) the appropriate structure of a reformed intercarrier compensation system (including network

interconnection requirements), and (2) appropriate mechanisms to provide revenue stability and enable ongoing investment in rural and suburban telecommunications infrastructure while maintaining reasonable subscriber rates. Specifically, in addition to its participation in the Rural Alliance and support for the Rural Alliance comments filed today in this docket, TDS supports the following positions:

- Before undertaking comprehensive, structural intercarrier compensation reform, the Commission should first (1) establish mechanisms to enforce existing intercarrier compensation obligations and eliminate "phantom" unbillable intercarrier traffic, and (2) stabilize the Universal Service Fund (USF) by reforming the contribution mechanism.

- Structural intercarrier compensation reform should (1) ensure fair recovery of network costs from all network users, (2) preserve distinct compensation mechanisms for local and interexchange traffic, and (3) transition carriers to unified rates based on network costs.

- Bill-and-keep proposals that call for eliminating most intercarrier compensation payments would (1) destabilize carrier revenue streams, thereby threatening the quality of services provided to consumers in rural and suburban markets and eliminating incentives to invest in local telecommunications infrastructure; (2) distort network usage; and (3) encourage ongoing regulatory arbitrage.

- If the Commission were to take the radical step of destabilizing carrier revenue streams by adopting a predominantly bill-and-keep regime, at a minimum the Commission should (1) preserve compensation for origination of 8XX-number, toll-free calls; and (2) eliminate the requirement for incumbent local exchange carriers to provide equal access to long distance carriers.

- Structural intercarrier compensation reform should not have the effect of significantly reducing or eliminating a substantial revenue stream for local exchange carriers. The Commission should adopt mechanisms to ensure that revenue streams for both ILECs and CLECs remain stable in the wake of intercarrier compensation reform. One option is the proposal of the Expanded Portland Group (EPG) for a bulk-billed access charge payable by all carriers based on number usage and payable to carriers who have lost access revenues and meet a specific benchmark for subscriber charges.

- Network interconnection rules for rural ILECs (RLECs) should continue to require interconnection at a negotiated meet point on the RLEC's network for each contiguous group of RLEC local exchanges within a LATA. For all

> other carriers interconnecting with Bell operating companies and other non-rural ILECs, the default network interconnection arrangement should be a single point of interconnection (POI) on the ILEC's network within each LATA.

These recommendations are consistent with the Commission's stated goals of promoting the efficient use of and investment in telecommunications networks; preserving universal service without overburdening the USF; promoting competitive and technological neutrality in regulatory regimes; and reducing administrative complexity. TDS's recommendations also support broader policy goals such as widespread broadband deployment nationwide and economic growth and development in traditionally underserved and underdeveloped areas. The success and vitality of the communities served by TDS depend to a significant extent on TDS's continued deployment of advanced telecommunications facilities and services. If TDS were forced to curtail investment in these areas as an unintended consequence of dramatic changes in the intercarrier compensation system, these communities could experience significant economic impairment and even population decline as they suffer a worsening geographic "digital divide" and become less attractive places to live.

We urge the Commission to give TDS's concerns and recommendations serious consideration as the Commission undertakes the challenging task of reforming intercarrier compensation.

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COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corp. (TDS) offers residential and business telecommunications services through its facilities-based incumbent local exchange carrier (ILEC) subsidiaries (TDS Telecom) and competitive local exchange carrier (CLEC) subsidiaries (TDS MetroCom) to over nine hundred rural and suburban communities across the United States.[1] TDS submits these comments in response to the *Further Notice of Proposed Rulemaking*[2] to urge the Commission to adopt intercarrier compensation reforms that will sustain the infrastructure investment that carriers like TDS have made to provide high-quality telephone and data services to all Americans, including consumers living in smaller and medium-sized markets. Preserving infrastructure investment in rural and suburban markets is consistent with telecommunications policy goals supporting the deployment of evolving services throughout all markets, as well as broader national policy goals favoring widespread broadband deployment and economic growth and development in small communities.

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[1] Within TDS' corporate structure, "TDS Telecom" refers both to the parent company of TDS's entire landline operations (including CLECs) as well as to its specific ILEC subsidiaries. For purposes of these comments, however, we use "TDS Telecom" to refer only to the family of ILEC subsidiaries. We use "TDS MetroCom" to refer to the family of CLEC companies, and "TDS" to refer to the combined ILEC and CLEC companies.

[2] Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33 (rel. Mar. 3, 2005) (*FNPRM*).

TDS brings to this proceeding the unique perspective of a mid-sized rural and suburban telephone service provider operating as an ILEC in 28 states and as a facilities-based CLEC in four states. Combined, the TDS Telecom and TDS MetroCom family of companies serve over 1.1 million residential and business customers in diverse markets. From this perspective, TDS offers principles and solutions for a simplified and rationalized intercarrier compensation regime that will preserve the provision of high-quality and advanced telecommunications services by both incumbents and competitive carriers serving rural and suburban communities.

Specifically, TDS urges the Commission (1) to promote enforceability of existing and future intercarrier compensation obligations and eliminate unbillable "phantom traffic"; (2) to reject bill-and-keep proposals and instead adopt structural intercarrier compensation reforms that preserve compensation for local and interexchange traffic, including originating access; (3) to adopt unified intercarrier compensation rates that allow carriers to recover a reasonable portion of network costs from other carriers using the local network; (4) to implement transition and revenue replacement mechanisms to ensure that consumers are protected from rate shock and that rural and suburban carriers, both ILECs and CLECs, retain the ability to invest in their networks and to provide evolving services to consumers at rates that remain reasonable, competitive, and reasonably comparable to urban rates; and (5) to preserve existing interconnection rules for rural ILECs (RLECs) and CLECs, including rules permitting CLECs to interconnect with non-rural incumbent carriers at a single point of interconnection (POI) on the ILEC's network within each LATA.

I. TDS BRINGS A UNIQUE PERSPECTIVE TO THE INTERCARRIER COMPENSATION DEBATE

As noted above, TDS approaches the intercarrier compensation issues at stake in this proceeding from a unique perspective: as an ILEC operating in 28 states offering local and long distance voice service and high-speed data service to mostly rural customers, and as a CLEC offering a similar range of local, long distance, and data services in suburban business and residential markets in five states. TDS believes that this perspective can benefit the Commission as it seeks to develop fair and balanced intercarrier compensation policies.

A. TDS Telecom (ILECs)

TDS Telecom has 111 telephone company subsidiaries operating as ILECs, serving over 700,000 access lines in rural and suburban communities. Approximately 72% of TDS Telecom's residential customers live in rural areas, while the other 28% reside in suburban communities. Most business customers can be described as small to medium-sized businesses or small office/home office customers. TDS Telecom has invested substantially in constructing a modern network to provide a variety of advanced calling services to its customers. In recent years, TDS Telecom has continued to upgrade and expand its network, bringing broadband services to its customers via digital subscriber line (xDSL) and fiber.

TDS Telecom takes very seriously its commitment to provide high-quality telecommunications services at reasonable rates throughout its service areas. In respected third-party surveys, subscribers have rated TDS Telecom at levels higher than customers of almost every other telephone company on all dimensions, from overall satisfaction to customer care to reliability of service. TDS Telecom's ability to continue to upgrade its network to benefit its rural and suburban customers depends on the certainty of TDS Telecom's receiving intercarrier

compensation (including originating and terminating access charges and reciprocal compensation), as well as obtaining substantial support from the Universal Service Fund (USF).[3]

TDS Telecom works to provide this level of service at a time when ILECs, and RLECs in particular, face significant market challenges. These include growing competition from wireless and other wireline providers such as cable companies, industry-wide decline in the use of second lines, and expanding use of new technologies such as Voice over Internet Protocol (VoIP) (which offer ILECs both opportunities for innovation and new sources of competition). For rural consumers to avoid a crippling geographic "digital divide" and realize the benefits of new telecommunications options in their communities, local ILECs must remain strong and capable of investing in rural telecommunications infrastructure.

B. TDS MetroCom (CLEC)

TDS MetroCom serves over 400,000 access lines, both residential and business, in Wisconsin, Michigan, Illinois, Minnesota, and, to a limited extent, North Dakota. TDS MetroCom commenced operations in 1997 and operates as a full-service, facilities-based carrier serving residential and business end users in mostly suburban markets. As in TDS's ILEC markets, TDS MetroCom positions itself as an integrated wireline communications provider offering local, long distance, high-speed Internet access, and other services primarily through its own facilities-based networks. Like TDS Telecom, TDS MetroCom has been rated at or near the top of every service category in a survey conducted by the same respected independent research firm.

[3] Access charges and reciprocal compensation account for approximately 29% of TDS Telecom's annual ILEC revenue, while universal service support provides an additional 19%.

To compete successfully in its markets, TDS MetroCom has invested significantly in facilities and infrastructure, including state-of-the-art switches, dozens of collocations, and hundreds of fiber-optic route miles. TDS MetroCom continues to invest and is currently deploying or considering deploying fiber-to-the-premises technology in select markets to allow for faster Internet connectivity as well as to accommodate voice services and cable-like video programming. These investments have allowed TDS MetroCom to provide efficient, competitively-priced, leading-edge telecommunications services in markets that, prior to TDS MetroCom's entry, had not seen rapid deployment of emerging technologies.

TDS's CLEC operations face similar trends to those impacting the TDS ILECs. Past and proposed future mergers involving Bell operating companies (BOCs), along with increased cable, wireless and VoIP usage, are substantially affecting the CLEC business. TDS MetroCom, which relies on intercarrier compensation to offset investments in a highly efficient network, specifically has seen a steady decrease in reciprocal compensation minutes as end users have moved to broadband Internet access and increasingly use wireless service for local calls. Changes in intercarrier compensation that would further reduce reciprocal compensation or access revenues[4] could force CLECs like TDS MetroCom to face the dilemma of either raising prices (thereby decreasing competitiveness); reducing or eliminating future facilities investment; or leaving the business entirely, any of which would move the market in the opposite direction of

[4] Access charges and reciprocal compensation account for approximately 24% of TDS MetroCom's annual CLEC revenue. TDS MetroCom has not sought designation as an eligible telecommunications carrier (ETC) and does not receive universal service support in the markets it serves.

Congress's and the Commission's stated goals in the 1996 Telecommunications Act and the *Local Competition* proceedings.[5]

It is from the perspective of TDS's combined ILEC and CLEC business lines, both of which are working to advance stated national policy goals under challenging circumstances, that TDS offers these comments. TDS urges the Commission to adopt intercarrier compensation reforms that ensure that both rural ILECs *and* facilities-based CLECs serving small and medium-sized markets have opportunities to transition smoothly to any new intercarrier compensation regime and to continue to recover the costs of building and maintaining the networks that offer critical services to local communities.

II. INTERCARRIER COMPENSATION REFORMS SHOULD PROMOTE CONTINUED, SUSTAINABLE INFRASTRUCTURE INVESTMENT IN ALL TELECOMMUNICATIONS MARKETS

The Commission recognized in the *FNPRM* that recent changes in the telecommunications marketplace are altering the relationship between carriers that exchange telecommunications traffic.[6] New service providers, including cable, wireless and VoIP providers,[7] currently are exchanging traffic, and technological innovation and market forces are

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[5] *See, e.g.*, 47 U.S.C. § 251; First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, 11 FCC Rcd 15,499 (1996) (*Local Competition First Report and Order*).

[6] *FNPRM* ¶¶ 18-20.

[7] The Commission is currently considering the appropriate regulatory framework for VoIP services. *See* Notice of Proposed Rulemaking, *IP-Enabled Services*, WC Docket No. 04-26, 19 FCC Rcd 4863 (2004) (*IP NPRM*). *See also, e.g.*, Memorandum Opinion and Order, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, 19 FCC Rcd 22,404, ¶ 14 (2004). With respect to phone-to-phone telephone calls that travel in part over IP networks, the Commission has determined that "[t]he protocol processing that takes place incident to phone-to-phone IP telephony does not affect the service's classification, under the Commission's current approach, because it results in no net protocol conversion to the net user." *See IP NPRM* ¶ 30 (citing Report to Congress, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, 13 FCC Rcd 11501, ¶ 52 (1998)); Order, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, 19 FCC Rcd

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altering the underlying makeup of the traffic.[8] These changes are affecting the market now, and industry participants are responding and preparing for a telecommunications future that will look substantially different from what we know today. The challenge for the Commission is to maintain policies that allow the market to evolve in a measured way while ensuring that networks remain robust and that all consumers can realize the benefits created by new opportunities.

In the *FNPRM* the Commission recognized that "any new approach [to intercarrier compensation] should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition."[9] This goal is particularly important in rural and smaller markets, where the development of a robust telecommunications network offering advanced services, including widespread broadband capabilities, is critical to the economic growth and development of local communities. Leaders at all levels of national, state and local governments have acknowledged the key role of broadband deployment in bringing new economic opportunities to businesses and residents.[10]

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7457, ¶ 24 (2004) (holding that a call originating from a touch-tone telephone that travels via IP transport over AT&T's Internet backbone and is converted back from IP format before terminating to a LEC switch is a telecommunications service subject to access charges).. TDS shares the view that any voice telephone call traveling over some portion of the public switched telephone network is still a voice telephone call constituting "telecommunications," regardless of whether it is transmitted in an analog, digital or IP format.

[8] *FNPRM* ¶¶ 18-20.

[9] *Id*. ¶ 31.

[10] *See, e.g.*, "On the Path to Making the Broadband Vision a National Reality," Remarks by Assistant Secretary Nancy J. Victory, U.S. Department of Commerce, at the NARUC National Summit on Broadband Deployment II, at 1 (Apr. 29. 2003) ("President Bush has 'seized the day' by calling for the removal of barriers to broadband deployment at all levels of government and by emphasizing that, '[i]n order to make sure the economy grows, we must bring the promise of broadband technology to millions of Americans.'") (available at http://www.ntia.doc.gov/ntiahome/speeches/2003/ naruc_04292003.htm); Remarks of Michael Powell, Chairman, FCC, at the National Summit on Broadband Deployment, at 1 (Oct. 25, 2001) ("Broadband is on the tip of everyone's tongue. It has certainly become the central
(continued…)

Telecommunications is the lifeblood of today's economy, in rural and urban areas alike. High-quality voice and data communications services can sustain local communities by connecting businesses small and large to customers and suppliers, connecting employees to distant workplaces, connecting students to educators and institutions, and connecting consumers to products and services. As commercial and social transactions continue rapidly to migrate to the Internet, ensuring the connectivity of all parts of the nation to a robust communications infrastructure will become an increasingly central element of national and local policies to promote economic growth and development.

In rural markets, this connectivity typically is provided by rural incumbent carriers with a long history of meeting the communications needs of their local communities, often in physically and economically challenging circumstances. Increasingly, the communications needs of larger neighboring communities are being met by competitive carriers affiliated with rural ILECs. These CLECs share the RLECs' commitment to serving smaller markets and are building on that experience to drive competition and service improvements and advancements in markets that otherwise would have been a lower priority for larger carriers.

It is against this backdrop that the Commission is exploring potential reforms to intercarrier compensation mechanisms. Those reforms, while promoting efficiency and simplicity in intercarrier transactions, must preserve the ability of facilities-based carriers serving smaller and medium-sized markets to continue to provide high-quality basic telephone service and to invest in network improvements to deliver new technologies to consumers. This type of sustained capital investment in rural and suburban infrastructure is possible only with relatively

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communications policy objective in America.") (available at http://www.fcc.gov/Speeches/Powell/2001/spmkp110.pdf).

stable public policy and predictable revenue streams over the long run. Moreover, that revenue must come from all the entities and individuals that make use of and benefit from the network connectivity available in these smaller markets. Thus, intercarrier compensation policies and mechanisms adopted in this proceeding must (1) promote enforceability of existing and future intercarrier compensation obligations, (2) preserve fair and rational intercarrier compensation for all categories of traffic traversing local networks, (3) provide a glide path to transition carriers and consumers to new intercarrier compensation arrangements, and (4) where appropriate, provide long-term revenue replacement mechanisms, for incumbent and competitive providers, to ensure that local service rates remain reasonable, competitive, and reasonably comparable to urban rates.

III. INTERCARRIER COMPENSATION ENFORCEMENT AND UNIVERSAL SERVICE REFORM SHOULD PRECEDE REFORM OF INTERCARRIER COMPENSATION MECHANISMS

Many intercarrier compensation issues could be resolved, and the market could function more efficiently and effectively, by immediately improving traceability of intercarrier traffic and enforceability of intercarrier compensation obligations. Improving the identification and traceability of telecommunications traffic also will give the Commission a more accurate picture of the market as it considers intercarrier compensation reform. Accordingly, before the Commission undertakes any comprehensive reform of intercarrier compensation, it should first resolve existing "phantom traffic" issues.

In addition, the Commission should acknowledge that both intercarrier compensation and universal service support play a key role in funding the provision of telecommunications services, including access to Internet service, in rural communities. Before potentially disrupting the intercarrier compensation component of RLEC revenues, therefore, the

Commission should take steps to stabilize the USF as a source of ongoing support for service in rural areas and as a potential source of replacement funding for any lost intercarrier compensation revenues.

A. Eliminate Intercarrier "Phantom Traffic"

Perhaps the most significant immediate challenge facing the intercarrier compensation system is the growing prevalence of intercarrier traffic delivered with insufficient or inaccurate identifying information, resulting in the inability to bill and collect appropriate intercarrier compensation. Intercarrier traffic becomes unbillable or under-billed in several ways (some fraudulent, some inadvertent). For example, traffic may be incorrectly loaded on a trunk designed for lower-priced traffic (*e.g.*, wireless traffic on local exchange trunks, long distance traffic on wireless or local trunks); carrier identification codes (CICs) may be changed or zeroed; calling party numbers (CPNs) may be stripped or manipulated; and/or the jurisdictional information parameter (JIP) may be unpopulated. This "phantom traffic," which is discussed in detail in the Expanded Portland Group (EPG) proposal, has been estimated to constitute as much as twenty percent of the traffic transiting some RLEC networks over common trunk groups.[11] The growing problem of phantom traffic distorts the intercarrier compensation system by placing undue burdens and costs on other carriers and consumers (especially rural consumers); undermines the cost-causer principle at the heart of the current intercarrier compensation system; and contributes to regulatory arbitrage.

TDS acknowledges that incentives for altering or excluding call identifying information, and the impact of "phantom traffic" on carrier revenues, could be reduced if reforms

[11] *See* The Expanded Portland Group, *A Comprehensive Plan for Intercarrier Compensation Reform*, CC Docket No. 01-92, at 5 (Nov. 2, 2004) (*EPG Plan*).

undertaken in this proceeding simplify intercarrier compensation mechanisms and/or unify some categories of intercarrier traffic. However, most of the outstanding intercarrier compensation reform proposals would preserve at least some structural or categorical distinctions and some ongoing compensation obligations for the exchange of traffic.[12] Accordingly, it likely will remain important to be able to identify intercarrier traffic and its source. Moreover, the Commission's ability to understand current traffic flows and the costs and revenues associated with such traffic, and to assess the potential impact of changes to intercarrier compensation obligations, is significantly undermined in the absence of accurate information about all the traffic that traverses the network. Improving the accuracy of this information will help the Commission develop an intercarrier compensation system that more rationally and fairly allocates the costs of the national telecommunications infrastructure among its users.

Accordingly, TDS urges the Commission to preface any intercarrier compensation reform efforts with the adoption of measures to tighten and enforce carrier obligations to identify the source of traffic that is exchanged with other carriers. At a minimum, the Commission should (1) adopt "truth-in-billing" guidelines that make it explicitly unlawful to alter, exclude, or strip carrier and call identifying information; (2) implement processes for challenging suspect traffic and penalizing responsible carriers; (3) permit inaccurately labeled traffic to be billed at the highest applicable rate to the carrier delivering the traffic; and (4) authorize the blocking of

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[12] As discussed more fully herein, these distinctions and obligations should persist for good reason. Intercarrier compensation reforms that eliminate compensation necessary to the effective provisioning of telecommunications services to rural communities certainly should not be adopted solely for the purpose of avoiding the need to enforce intercarrier payment obligations. The Commission should not forsake its primary responsibility under the Communications Act – to promote the availability "to all the people of the United States . . . [of] a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges," 47 U.S.C. § 151 – for the sake of administrative simplicity alone.

inaccurately labeled traffic, subject to specific guidelines and timelines for notifying and warning consumers and investigating and resolving disputes.[13]

B. Reform the Universal Service Contribution Mechanism

Intercarrier compensation reform should also be preceded by Commission resolution of the open proceeding to reform the universal service contribution mechanism.[14] This step is important for two reasons.

First, as noted above, the provision of telecommunications services by rural ILECs is funded by revenues from intercarrier compensation and universal service support as well as from subscriber charges. Rural telephone service would be at significant risk if both of these revenue sources – both of which face new pressures and challenges – were destabilized at the same time. Therefore, before the Commission undertakes potentially disruptive intercarrier compensation reform, it should first ensure that universal service funding will remain stable during any period of transition to new intercarrier compensation mechanisms.

Second, intercarrier compensation reform may very well include some reliance on universal service support to replace lost intercarrier compensation revenues. In the past, the Commission has offset reductions in access charges with new universal support measures.[15] A

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[13] For a fuller discussion of these proposals, see *EPG Plan* at 16-17.

[14] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001); Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 2752 (2002).

[15] In the *CALLS Order*, the Commission approved a reduction in price cap carriers' per-minute switched access charges but offset those reductions with a new universal service support mechanism. *See* Eleventh Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd

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number of proposals in this proceeding similarly contemplate replacing some lost intercarrier compensation revenues with new universal service support.[16] To the extent that the Commission decides to rely on universal service support to replace some portion of rural carriers' intercarrier compensation revenues lost as a result of intercarrier compensation reform, the Commission should ensure that the USF system can bear such additional obligations.[17]

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12,962 (2000) (*CALLS* Order). Similarly, the *MAG Order* created Interstate Common Line Support to allow rate-of-return carriers to recover any shortfall caused by changes in the interstate access rate structure. *See* Fifteenth Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 19613 (2001) (*MAG Order*).

[16] *See, e.g.*, Intercarrier Compensation Forum (ICF), *Intercarrier Compensation and Universal Service Reform Plan*, CC Docket No. 01-92, at 69-73 (Oct. 5, 2004) (*ICF Plan*) (proposing new universal service mechanisms, termed the Intercarrier Compensation Recovery Mechanism and the Transitional Network Recovery Mechanism, to provide support for amounts not recoverable under the *ICF Plan*); The Alliance for Rational Intercarrier Compensation (ARIC), *The Intercarrier Compensation Reform Plan of the Alliance for Rational Intercarrier Compensation*, CC Docket 01-92, at 73-80, 85 (Oct. 25, 2004, as corrected Nov. 4, 2004) (*ARIC Plan*) (proposing that costs not recovered through per-minute compensation, rebalanced local service rates, and subscriber line charges (SLCs) be recovered through a state equalization fund (SEF) including contributions from the federal USF and available only to ETCs); *Ex Parte* Letter from NARUC Task Force on Intercarrier Compensation to Chairman Kevin Martin, FCC, CC Docket No. 01-92 (May 18, 2005) (NARUC May 18 *Ex Parte*), Appendix C, *Intercarrier Compensation Proposal Version 7*, at 8-9 (dated May 17, 2005) (*NARUC Intercarrier Compensation Proposal Version 7*) (proposing creation of "Access Charge Transition Fund" within the USF).

We note that the NARUC proposal also suggests transitioning the high-cost and low income universal service support programs to a "State Allocation Mechanism" (SAM) under which each state would be allocated a block payment of USF funds and would distribute those funds among the state's ETCs as the state commission saw fit. *NARUC Intercarrier Compensation Proposal Version 7* at 11-13. TDS opposes NARUC's SAM proposal. The SAM proposal (1) would be inconsistent with the Communications Act (which assigns states responsibility for designating ETCs but requires the Commission, in consultation with the Federal-State Joint Board on Universal Service, to determine the type and amount of universal service support to be paid to ETCs to support the provision of interstate services); (2) would significantly increase the administrative burdens involved in obtaining universal service support (*e.g.*, carriers would need to petition state commissions in each state in which they operate for a determination of support amounts (with a right to petition the FCC for an alternative determination if the state allocation is inconsistent with section 254(b)(3) of the statute), and would then submit requests for payment of the state-determined amount to the federal Universal Service Administrative Company (USAC)); and (3) would undermine the statutory requirement that universal service support be "predictable" (in addition to specific and sufficient). *See* 47 U.S.C. § 254.

[17] Nevertheless, as NARUC recognizes, any intercarrier compensation plan should minimize the cost impact on universal support programs. NARUC May 18 *Ex Parte*, Appendix B, The National Association of Regulatory Utility Commissioners Study Committee on Intercarrier Compensation, "Goals for a New Intercarrier Compensation System," at VII.D (dated May 5, 2004) (*NARUC Intercarrier Compensation Reform Principles*).

In taking immediate steps to shore up the universal service system, the Commission should take into account the very market forces that have prompted this proceeding. Given emerging new technologies and new telecommunications traffic allocations shaping the instant debate, the time has come for the Commission to modify the universal service contribution requirements. Specifically, the Commission should adopt rules requiring all providers delivering voice communications between end users to contribute to the federal universal service fund that supports the existence of the ubiquitous network over which those communications are delivered. Ensuring an adequate universal service contribution base will help to stabilize the USF and guarantee that funding will be available, if necessary, to replace revenue lost as a result of the restructuring of intercarrier compensation revenues.

However, as discussed more fully below, TDS in fact supports replacement of lost intercarrier compensation revenues through mechanisms that do *not* transition access charges to new universal service support mechanisms. Eligible telecommunications carriers (ETCs) entitled to receive USF support are not the only carriers that will be affected by changes in intercarrier compensation. There is no reasonable policy rationale that justifies excluding non-ETC carriers, including CLECs serving non-rural markets, from revenue replacement mechanisms designed to restore revenue lost due to intercarrier compensation reform. Like ILECs, CLECs rely significantly on intercarrier compensation revenues to support the provision of service to their customers. These CLECs should not be placed at a competitive disadvantage to ILECs that are allowed to recover lost intercarrier compensation revenues from USF. Nor should CLEC customers face excessive rate increases because CLECs are forced to recover lost intercarrier compensation revenue solely from their subscribers while ILECs look to support from the USF. Therefore, TDS supports alternatives such as the EPG Plan's Access Restructure

Charge (ARC) and the PBT/Home Telephone Company's High Cost Connection Fund (HCCF), both of which would make replacement revenues available to all carriers that lost intercarrier compensation revenue as a result of intercarrier compensation reform.[18] Whatever revenue replacement mechanism the Commission adopts, however, a stable USF will facilitate a successful transition to a new intercarrier compensation system by ensuring stability with respect to another key source of RLEC revenue. Accordingly, reform of the USF contribution mechanism should precede structural intercarrier compensation reform.

IV. STRUCTURAL INTERCARRIER COMPENSATION REFORM SHOULD REFLECT THE REALITIES OF NETWORK USAGE AND PROMOTE ECONOMIC EFFICIENCY

TDS supports the intercarrier compensation reform principles set forth in the comments of the Rural Alliance also filed in this proceeding today.[19] TDS offers these comments to highlight specific elements of intercarrier compensation reform that are of particular importance to both TDS Telecom and TDS MetroCom. Specifically, TDS urges the Commission to ensure that any intercarrier compensation reforms it adopts include the following elements: (1) all users of local telecommunications networks should contribute to the costs of constructing and maintaining those networks; (2) intercarrier compensation rates should be unified, but separate mechanisms should be maintained for recovering compensation for local

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[18] The *EPG Plan* proposes a new Access Restructure Charge (ARC) that would offset the revenue loss from the reduction of intrastate access for carriers. *See EPG Plan* at 7, 22-27. The ARC would be a capacity-based intercarrier compensation rate element that would be administered by the National Exchange Carrier Association (NECA) separately from the existing USF and would compensate qualifying NECA members for the usage of their local networks. Home Telephone Company has offered a similar compensation mechanism, called a High Cost Connection Fund (HCCF), that is a "direct assignment of cost, on a nationally averaged basis to all subscribers who connect to the public network." Updated *Ex Parte* of Home Telephone Company, Inc. and PBT Telecom, CC Docket No. 01-92, at 15-17, Appendix A (Nov. 2, 2004).

[19] TDS Telecom is a member of the Rural Alliance. TDS MetroCom is not a member of the Rural Alliance, but supports the Rural Alliance comments to the extent described herein.

and interexchange calls and local carriers should continue to be compensated for originating interexchange calls on behalf of other carriers; and (3) unified intercarrier compensation rates should be based on network operators' costs. These priorities are consistent with the Commission's goals in this proceeding and with the goals identified by the National Association of Regulatory Utility Commissioners (NARUC).[20]

A. The Costs of Local Telecommunications Networks Should be Recovered from All Users and Beneficiaries of Those Networks

The Commission has recognized that all telecommunications users nationwide benefit when carriers can use the networks of other carriers, including rural and competitive carriers, to originate and terminate telecommunications services.[21] It is fundamental to maintaining the robust, ubiquitous, nationwide telecommunications infrastructure for network operators to recover from other carriers charges that reflect a rational measure of the costs incurred when the network is used for calls initiated by the other carriers' customers. Indeed, economic efficiency, one of the primary goals of intercarrier compensation reform,[22] requires that intercarrier prices be set to reflect accurately the costs incurred by carriers in making their networks available to other carriers.[23] In short, all users of a network must pay for that use to

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[20] *FNPRM* ¶¶ 31-36; *NARUC Intercarrier Compensation Reform Principles*.

[21] *See, e.g.*, Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, 11 FCC Rcd 14,171, ¶¶ 6-13 (1996).

[22] In the *FNPRM* the Commission expressed agreement with commenters that "any new approach [to intercarrier compensation] should promote economic efficiency." *FNPRM* ¶ 31. Specifically, the Commission indicated that reform proposals should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition. *Id*. NARUC similarly supports "economically sound" intercarrier compensation mechanisms that recover an appropriate portion of network costs and are applied to all carriers that exchange traffic over the public switched telephone network. *NARUC Intercarrier Compensation Reform Principles* at II.B, III.

[23] The Commission has previously concluded that rural carriers should be able to establish rates for interstate access services that recover the costs of carrying interstate traffic on their networks. *See, e.g.*, *MAG Order* ¶¶ 17, 206. The National Association of Utility Consumer Advocates (NASUCA) has argued that "any plan for [intercarrier compensation] reform must recognize that a carrier that originates,

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ensure that all participants (both suppliers and consumers) in the market for network services are motivated by appropriate economic incentives.

Bill-and-keep proposals that would eliminate most intercarrier payments for the use of each others' networks simply do not offer a viable alternative for rural ILECs and suburban CLECs like TDS. The basic principle of bill-and-keep is that carriers can and will recover all of their network costs from their own end users. However, the relatively small number of end users served by rural ILECs and by CLEC entrants in smaller and medium-sized markets makes such end-user cost recovery impossible without raising subscriber rates above reasonable levels comparable with rates in more populous areas. Particularly in lower-income rural areas, attempting to increase subscriber line charges (SLCs) to replace lost access charges could result in rate shock and undesirable consumer effects. The FCC staff report on bill-and-keep appears to recognize this issue in principle, but seems to assume that it can be fully addressed through "additional commitments of universal service funds."[24] This response over-simplifies the issue by assuming that it exists only for rural ILECs (as opposed to all carriers with a relatively small customer base) and by assuming that the universal service program can bear the burden of replacing virtually all intercarrier compensation revenues.

The reality of the situation is that imposing a bill-and-keep regime on rural ILECs and suburban CLECs will significantly destabilize carrier revenues (at minimum imposing massive burdens on the USF), undermine the provision of quality telecommunications services in

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transits or terminates traffic on the network of another carrier imposes costs on that carrier. As a result, the cost of intercarrier compensation cannot be zero." NASUCA Intercarrier Compensation Proposal, CC Docket 01-92, at 1 (Dec. 14, 2004).

[24] *FNPRM*, Appendix C, "A Bill-and-Keep Approach to Intercarrier Compensation Reform: An Analysis of Pleadings in CC Docket No. 01-92 by the Staff of the Wireline Competition Bureau," at Part 5 (*WCB Staff Bill-and-Keep Analysis*).

rural and suburban markets, and virtually eliminate incentives (and resources) to invest in telecommunications infrastructure in these markets. Bill-and-keep proposals are also likely to create uneconomic incentives for other carriers to push traffic to local networks, which could place unanticipated, uncompensated burdens on local network facilities.[25]

B. Intercarrier Compensation Should Transition to Unified Rates while Preserving Structurally Separate Compensation Regimes for Local and Interexchange Traffic

TDS agrees with the Rural Alliance that intercarrier compensation mechanisms can be simplified, and most regulatory arbitrage problems eliminated, by unifying intercarrier compensation rates for interstate and intrastate calls. However, TDS also supports the Rural Alliance position that intercarrier compensation reforms should preserve fundamental structural differences in the treatment of access services and local exchange calls, including in particular the recovery of originating access charges for long distance traffic (where neither the originating nor the terminating local carrier has a retail relationship with the customer who pays for the call). These structural differences reflect real variations in the technical and economic circumstances surrounding local and interexchange calls, and preserving the differential treatment of these calls is consistent with the goals of intercarrier compensation reform.

Under the current access call framework, the interexchange carrier (IXC) sets the retail terms of service, provides service to the end user, and arranges for billing and collection. When the IXC is a different carrier than the LEC,[26] the IXC provides long distance service by

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[25] *See FNPRM* ¶¶ 3, 15, 33, 147. NARUC has recognized that uncompensated call origination for other carriers could promote "gaming" by creating "opportunities for IXCs to export current costs to their customers' LECs" and could lead to the elimination of special access circuits and use of the switched network inconsistent with its engineering design. *NARUC Intercarrier Compensation Proposal Version 7* at 3-4.

[26] Although BOC long distance entry and pending mergers between BOCs and IXCs are changing this dynamic in some areas, customers in many rural markets continue to obtain local exchange and

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obtaining both originating and terminating access services from one or more LECs. The end user pays the IXC, and the IXC pays the LECs that provide network connectivity and functionality essential to the completion of the call. By contrast, local calls do not typically involve a third party retail arrangement. The LEC itself is the retail provider to the originating end user and decides under what conditions it will offer and provide the service. Thus, no intercarrier compensation is payable for the origination of local calls because the originating LEC recovers the costs of call origination directly from the originating caller.

The different intercarrier compensation regimes for local and interexchange calls are justified by the different retail and end-user relationships involved in call origination in the two cases. The Communications Act recognizes the differences between these calls and treats them separately under section 251(g) (interexchange access calls) and section 251(b)(5) (local calls subject to reciprocal compensation).[27] The *FNPRM* acknowledges the distinction, noting that in section 251(g), "Congress 'carved out' access traffic from the scope of section 251(b)(5)."[28]

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interexchange service from different carriers. Where an interexchange call is handled by separate LECs and IXC, traffic is handled by multiple carriers and networks, and the exchange of compensation remains appropriate.

[27] In distinguishing between the two types of traffic, Congress contemplated bill-and-keep as a permissible, *voluntary* intercarrier compensation option only in the context of local exchange traffic subject to reciprocal compensation. Thus, section 252(d)(2) provides "for the *mutual and reciprocal recovery* by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that *originate on the network facilities of the other carrier*." 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added). Traffic delivered for termination by an IXC does not "originate on the network facilities of the [IXC]," and thus does not fall within this provision. Even for local traffic, section 252(d)(2)(B) contemplates only that carriers might voluntarily enter into "arrangements that *waive mutual recovery* (such as bill-and-keep arrangements)." 47 U.S.C. § 252(d)(2)(B) (emphasis added). Mandatory bill-and-keep for all intercarrier exchanges is clearly not what Congress intended with this provision, contrary to the assertions of the ICF. *Compare ICF Plan* at 25 *with ARIC Plan* at 18-19 (arguing that mandatory bill-and-keep is not permitted under the Act).

[28] *FNPRM* ¶ 79 (citing *Local Competition First Report and Order* ¶ 732).

Bill-and-keep proposals in this proceeding generally call for "unifying" the treatment of interexchange and local calls and eliminating any compensation for originating interexchange calls. Under these proposals, LECs would be responsible for the switching and transport of retail interexchange calls to the relevant IXC's point of presence in the LATA. The IXC would receive payment from the customer for the call, but would not compensate the LEC for originating and transporting the call from the originating caller to the IXC's network. The conflation of access and reciprocal compensation regimes called for in these proposals would significantly destabilize the revenue streams of rural and suburban ILECs and CLECs and create uneconomic bypass opportunities. As noted above, these LECs cannot recover the revenue represented by lost originating access charges solely from their end users while continuing to maintain reasonable rates or, in the case of CLECs, continuing to remain competitive with the local ILEC. Moreover, RLECs and their customers would likely suffer greater harm than other LECs if responsibility for originating IXC calls were shifted to LECs because rural consumers tend to make more interexchange calls than urban consumers.[29]

By allowing IXCs to obtain free usage of local networks while LECs receive no reimbursement for other parties' usage of the network, the ICF Plan proposal would contribute to the type of regulatory arbitrage that the Commission has sought to avoid in considering

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[29] *FNPRM* ¶ 111 (citing National Telecommunications Cooperative Association (NTCA), Intercarrier Compensation Work Group, *Bill and Keep: Is it Right for Rural America?*, at 16-21 (March 2004), attached to *Ex Parte* Letter from Scott Reiter, Senior Telecommunications Specialist, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Mar. 10, 2004). The reason for the discrepancy is that there are fewer customers in RLEC local calling areas. The Commission notes the benefits to rural consumers of lower IXC rates caused by decreasing access charges. *Id*. While this may be true, rural consumers would on balance be harmed by higher subscriber line charges and declining local exchange investment in existing and new telecommunications services that would result from the loss of access revenue.

intercarrier compensation reform.[30] Bill-and-keep would give IXCs (both those existing today and new IXC entrants that might suddenly find the market financially advantageous) an unfair windfall because the IXCs would realize the benefits and profits of originating their customers' interexchange calls while bearing none of the costs.[31] Accordingly, the Commission should maintain originating access as a separate intercarrier compensation obligation even if it unifies the charges for originating and terminating access and terminating local traffic.[32]

If the Commission were to take the radical step of destabilizing carrier revenue streams by adopting a predominantly bill-and-keep regime, the Commission should at a minimum (1) preserve compensation for the origination of 8XX-number, toll-free calls, and (2) eliminate the requirement for incumbent local exchange carriers to provide equal access to long distance carriers.

A key argument cited by bill-and-keep proponents to justify recovering origination and termination costs from end-users is that both the calling *and* called party benefit from the exchange of calls and should jointly bear their costs.[33] Toll-free calling, however, is

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[30] *See FNPRM* ¶¶ 3, 15, 33, 147.

[31] *Cf. FNPRM* ¶ 23 n.67 (expressing concern about the "reciprocal compensation asymmetry" that gives a windfall to CLECs serving customers (like ISPs) who primarily receive traffic); Order on Remand and Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98; CC Docket No. 99-68, 16 FCC Rcd 9151, ¶ 70 (2001). TDS MetroCom, a full-service facilities-based CLEC, does not have such an imbalance in traffic.

[32] NARUC has recognized explicitly that several of its principles support a nonzero origination charge. These include (1) creating economic incentives for carriers to interconnect, (2) minimizing arbitrage opportunities, (3) ensuring LEC recovery of an appropriate portion of network costs, (4) ensuring competitive and technological neutrality, (5) minimizing the cost impact on universal service support programs, and (6) reducing the incentive to use the public switched telephone network for "spam." *NARUC Intercarrier Compensation Proposal Version 7* at 3-4.

[33] *See, e.g.*, *WCB Staff Bill-and-Keep Analysis* at Part 1 ("We are not persuaded that principles of cost causation require retention of a [calling party's network pays] regime. The purpose of a telephone call is to facilitate communications between two or more parties. These communications enable the exchange of information between the parties, not just the relaying of information to a recipient. Although the calling

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intended to offer benefits to the calling party *on a cost-free basis*. Accordingly, the costs of originating toll-free calls should not be recovered from originating end-users, but from the recipients of toll-free calls (through the carrier that has a retail relationship with the toll-free number operator).

In addition, ILEC equal access obligations should be eliminated if ILECs are denied compensation for originating access. If the Commission were to adopt a bill-and-keep regime in an attempt to "move[] the intercarrier compensation system away from traditional regulatory and jurisdictional classifications" and to force carriers to succeed or fail in the marketplace based on "[the] carrier's ability to serve customers efficiently, rather than its ability to extract payments from other carriers,"[34] then ILECs should be permitted to compete in that market without the inefficient regulatory obligation to deliver intercarrier calls to any IXC the customer chooses. In a bill-and-keep environment, ILECs should be permitted to limit the delivery of interexchange traffic to IXCs with which they have interconnection arrangements that facilitate the efficient provision of service to the ILEC's customers.

C. Unified Intercarrier Compensation Rates Should Be Cost-Based

Rural and suburban ILECs and CLECs have invested significantly in the networks serving their local markets. To promote continued investment and reasonable subscriber rates, the Commission should ensure that network operators can recover the costs of these networks in

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party decides to place the call, the called party must decide to answer and continue the communication. the communication therefore is a two-way joint interaction between the calling party and called party.") (citations omitted).

[34] *Id.* Part 2.

a cost-causative manner while maintaining balance among revenue sources.[35] Forcing all carriers to use default rates that may not adequately recover network costs could substantially undermine the goal of a robust, nationwide communications network available to all consumers at reasonable rates.

Thus, intercarrier compensation rates, although unified for each carrier, should be sufficiently flexible to reflect carrier-specific costs. Although it may be useful for the Commission to establish default rates for intercarrier compensation, carriers (*including CLECs*) should also be entitled to demonstrate through cost studies (as appropriate depending on the carrier's business) that a different rate is needed to adequately recover the portion of their costs appropriately attributable to intercarrier traffic. Under this proposal, rates for originating and terminating interexchange and local traffic would be unified for each carrier, but they could vary from carrier to carrier based on carrier-specific costs supported by cost studies approved by the state regulator.

For ILECs, TDS supports the Rural Alliance's endorsement of the use of embedded costs, plus an allocation of joint and common costs, to determine ILEC unified rates for origination, transport, and termination of intercarrier traffic. Embedded costs are those historically incurred by an ILEC that are recorded in the company's accounting records (consistent with the Part 36 and Part 69 accounting standards), as adjusted for depreciation. This pricing system provides maximum economic efficiency for ILEC access charges, because it reflects quantifiable costs of established networks and sends the appropriate economic signals to users regarding the actual costs of originating and terminating local telecommunications traffic.

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[35] The Commission has long supported carrier recovery of costs based on the manner in which the costs were caused. *See, e.g.*, *MAG Order* ¶ 17.

It also provides economic incentives for investment because it signals the ILEC and its investors concerning how their investments will be recovered.

As discussed more fully in the Rural Alliance comments, reliance on forward-looking methodologies to develop ILEC intercarrier compensation rates likely would not produce rates sufficient to recover appropriate network costs. Existing forward-looking cost allocation mechanisms pose enormous difficulties for ILECs attempting to estimate long-run costs. Forward-looking proxy models generally have proven particularly unreliable for estimating costs for RLECs.[36] Moreover, attempting to identify data and techniques for estimating forward-looking costs would impose considerably greater administrative burdens on RLECs than determining embedded costs based on existing, readily-available accounting records.[37] Embedded costs thus provide the most appropriate basis for developing intercarrier compensation rates for ILECs.

For CLECs, it typically will be more appropriate to base intercarrier compensation rates on forward-looking costs. First, CLECs have not been subject to the Part 36 and Part 69 accounting requirements and generally have negotiated intercarrier compensation rates, *e.g.*, for reciprocal compensation, based on forward-looking costs. Second, most CLECs are currently in the process of deploying new networks, and are making decisions about investment and deployment based on anticipated, forward-looking costs. Under these

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[36] *See, e.g.*, *Rural Task Force White Paper #3: Alternative Mechanisms for Sizing a Universal Service Fund for Rural Telephone Companies* 22-23 (Aug. 2000) (available at http://www.wutc.wa.gov/rtf, last visited May 23, 2005).

[37] *Id*. at 23.

circumstances, forward-looking costs offer the most appropriate basis for developing intercarrier compensation rates for CLECs.[38]

V. INTERCARRIER COMPENSATION REFORM SHOULD BE IMPLEMENTED OVER A TRANSITION PERIOD AND SHOULD INCLUDE MECHANISMS TO PROVIDE REVENUE STABILITY AND PROMOTE SUSTAINED INFRASTRUCTURE INVESTMENT IN SMALLER MARKETS

The public interest would not be served by an immediate and dramatic disruption of revenues upon which carriers have long relied to support the deployment of network infrastructure. Dramatically and suddenly reducing intercarrier revenues likely would result in "rate shock" for consumers facing significantly increased rates or in an immediate drop-off in investment and service quality. Therefore, reductions in intercarrier compensation rates should take effect gradually over a carefully structured transition period to allow carriers and consumers to adjust to revenue and rate changes.

In addition, reductions in intercarrier compensation revenues must also be accompanied by revenue replacement mechanisms for all carriers, including CLECs. The establishment of mechanisms to replace revenues lost as a result of intercarrier compensation reform is essential to ensure that subscriber rates remain reasonable and reasonably comparable to those in urban areas and that carrier revenues remain sufficient to enable ongoing investment in network infrastructure in all parts of the country.

The Commission recognized in the *FNPRM* the importance of maintaining stable revenue streams for carriers affected by intercarrier compensation reform. Because "many rural LECs collect a significant percentage of their revenue from interstate and intrastate access

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[38] The Commission should, however, allow sufficient flexibility to permit a CLEC to demonstrate to the applicable state regulator(s) that, for legitimate reasons based on the CLEC's business, the CLEC's intercarrier compensation rates should be based on embedded costs.

charges" and "[b]ecause of the high costs associated with serving rural areas, we must be certain that any reform of compensation mechanisms does not jeopardize the ability of rural consumers to receive service at reasonable rates."[39] Thus, the Commission noted, and sought comment on, "the need to maintain reasonable and affordable end-user rates and the avoidance of rate shock."[40]

Rural carriers and CLECs alike receive a significant portion of their revenues from intercarrier charges. For example, NTCA reports that rural LECs receive on average 10 percent of their revenue from interstate access charges and 16 percent from intrastate access charges.[41] But the percentages are significantly higher for many carriers, up to two-thirds of all revenues.[42] For TDS, approximately 29% of ILEC revenues are derived from intercarrier compensation (including interstate and intrastate switched access, special access, and reciprocal compensation) and 24% of CLEC revenues come from intercarrier compensation. Thus, any proposal that eliminated or substantially reduced access charges and other intercarrier compensation mechanisms would have a huge impact on the revenue levels of many rural and suburban carriers, both incumbents and CLECs. These kinds of revenue losses simply cannot be transferred to subscribers while maintaining reasonable and competitive rates. Therefore, if carriers are going to sustain meaningful infrastructure investment in the wake of significant

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[39] *FNPRM* ¶ 32.

[40] *Id*.

[41] *Ex Parte* Letter from Scott Reiter, Senior Telecommunications Specialist, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attachment, at 7 (slide 14) (Jan. 7, 2004) (cited in *FNPRM* ¶ 107 n.321).

[42] For example, RLECs in Oklahoma receive 28 percent of their revenue from interstate access charges and 42 percent from intrastate access charges, while RLECs in Kansas receive 37% of their revenues from interstate access charges and 12% from intrastate access charges. *See Ex Parte* Letter from Tom Karalis, Fred Williamson & Associates, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 02-361, at Tab 2 (Jan. 7, 2004) (cited in *FNPRM* ¶ 107 n.321).

reductions in intercarrier compensation revenues, the Commission must adopt concrete revenue replacement mechanisms to preserve both incumbent and competitive provider revenues at sufficient levels and with sufficient certainty to permit ongoing investment.

It is critical that revenue replacement mechanisms be structured to extend to competitive as well as incumbent carriers, regardless of whether the CLEC has been designated an ETC entitled to USF support. Competitive neutrality, one of the Commission's stated goals in this proceeding,[43] requires that revenue replacement mechanisms apply to all carriers who lose tariffed access revenues as a result of intercarrier compensation changes. Indeed, competitors would be placed at a significant (in many cases insurmountable) disadvantage in the market if incumbent carriers were allowed to recover lost revenues from an outside source (such as a new category of universal service support) while competitors were forced to raise retail rates (potentially to noncompetitive levels) as the only means available for revenue recovery or to cut network maintenance and investment (with resulting declines in service quality and competitiveness).

Based on these principles, TDS encourages the Commission to adopt a revenue replacement mechanism similar to the EPG's ARC mechanism. The ARC would replace lost access charge revenues with a bulk-billed access charge assessed against all carriers based on number usage and payable to carriers that lose access revenues, to the extent that the carrier's local service rates plus SLCs are at or above a nationwide benchmark rate. Because the ARC would be administered by NECA rather than by USAC as part of the USF, it could be utilized by all carriers experiencing losses in revenues as a result of the restructuring of intercarrier

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[43] *FNPRM* ¶ 33.

compensation. In addition, because contributions to the ARC would be based on numbers in service the ARC would also appropriately be supported by the users that benefit from the ubiquitous connectivity currently supported in large part by access charges. Finally, the application of the nationwide benchmark rate would ensure that the ARC does not fund unreasonably low rates in any market.

VI. NETWORK INTERCONNECTION REQUIREMENTS SHOULD SUPPORT A FAIR ALLOCATION OF NETWORK AND TRANSPORT COSTS AMONG INTERCONNECTING CARRIERS

With respect to the obligations that should be applied to rural LECs concerning network interconnection obligations and requirements, TDS supports the Rural Alliance proposal to permit RLECs to continue to recover compensation based on interconnection at a negotiated meet point on the RLEC's network for each contiguous group of RLEC local exchanges within a LATA. This approach is appropriate for RLECs, who typically interconnect with *neighboring* networks that should reasonably be expected to share a fair portion of the costs of reaching a mutually agreeable interconnection point.

For all other carriers, such as CLECs, that interconnect their own networks with the *overlapping* networks of BOCs and other non-rural ILECs, the default network interconnection arrangement should be a single point of interconnection on an ILEC's network within each LATA. This approach is consistent with long-standing principles adopted by the Commission in BOC Section 271 proceedings and in the order arbitrating Verizon interconnection agreements in Virginia.[44] This "single POI" methodology requires carriers to

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[44] *See, e.g.*, Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, 15 FCC Rcd 18,354, ¶ 78 (2000) ("Section 251, and

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interconnect at a single point on the relevant ILEC's network and assigns responsibility to each carrier for providing the facilities, whether owned or leased, on its own side of the single POI. The single POI method is intended for default purposes only and can be replaced by a different network arrangement upon mutual agreement of the interconnecting parties.[45]

The complicated facilities compensation mechanism set forth in the ICF Plan proposes to establish multiple POIs within each LATA, called "Edges," for interconnecting carriers to receive each other's traffic.[46] The number of Edges would be capped at the number of cumulative BOC tandems in the relevant LATA.[47] This leads to the likelihood of numerous inefficient facilities routes being required of any originating carrier to reach the declared multiple Edge points of each and every terminating carrier. With BOC tandems ranging from as few as two to as many as a dozen within certain LATAs, intercarrier networks could well be

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our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.") (citations omitted); Memorandum Opinion and Order, *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc., and AT&T Telecommunications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Arbitration*, CC Docket Nos. 00-218, 00-249, 00-251, 17 FCC Rcd 27,039, ¶ 52 (Wireline Competition Bureau 2002) ("Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA."); *id.* ¶ 53 (prohibiting Verizon from designating an additional financial demarcation point beyond which the CLEC would bear financial responsibility for delivering Verizon's traffic to the CLEC's physical point of interconnection).

[45] It is probably unnecessary for the Commission to dictate default requirements for interconnection between two CLECs, which typically have relatively equal bargaining power. Where two competitive carriers interconnect, the parties should be able to negotiate between themselves to agree on a common meet point for a single POI or to identify separate directional POIs and agree that each carrier will be responsible for originating transport costs to the terminating carrier's POI.

[46] The "Edge" point, as termed by the ICF, is the designated point of interconnection where an originating carrier drops off a call with a terminating carrier. *See ICF Plan* at 4-6.

[47] *See id.*

apportioned into hundreds of inefficient routes, thereby increasing network costs and, ultimately, end user rates.

At first blush, the ICF Plan suggests a certain symmetry because it requires each interconnecting carrier to establish Edges and obligates all other carriers to deliver traffic to each carrier's self-designated Edges. Upon further inspection, however, the ICF Plan interconnection proposal clearly discriminates against RLECs and CLECs in favor of the BOCs. The ICF Plan requires any RLEC that obtains "equal access functionality," a term the ICF Plan does not define, from an Access Tandem to declare that Access Tandem to be its Edge and to assume financial responsibility for all transport costs, in both directions, on its side of that Access Tandem Edge. Because Access Tandems are typically operated by BOCs and located in BOC service areas, this provision could saddle RLECs with both originating and terminating transport facility costs beyond the RLEC's network boundaries in many cases, depending on how the term "equal access functionality" is interpreted. There is no valid reason to shift transport obligations to RLECs in this manner.[48]

With respect to CLECs, the ICF Plan is again patently discriminatory because of its distinction between "hierarchical" and "non-hierarchical" carriers. The ICF Plan classifies carriers as either hierarchical (with a network structure of tandems subtended by end offices, like traditional BOCs) or non-hierarchical (with a flat network structure connecting all end users to a single hub switch, like many CLECs). Under the ICF Plan, carriers with the same network structure are financially responsible for transport costs only for their originating traffic and are responsible for delivering their originating traffic to the other carrier's Edge. When carriers

[48] This approach, by eliminating originating and terminating access charges but preserving charges for transport over other networks, essentially eliminates the payment of intercarrier compensation to all carriers except the BOCs.

employing different network structures interconnect (*e.g.*, when a BOC and CLEC interconnect), the ICF Plan assigns responsibility to the non-hierarchical carrier for all transport costs, both originating and terminating, to and from the ILEC's Edge. In other words, when two BOCs interconnect, they share transport costs for exchanging traffic between themselves, but when a CLEC interconnects with a BOC, the CLEC is responsible for all interconnection transport costs. The ICF Plan provides no valid justification for this anti-competitive proposal.

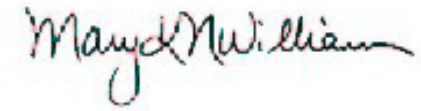
CONCLUSION

For the reasons set forth above, TDS urges the Commission (1) to promote enforceability of existing and future intercarrier compensation obligations and eliminate unbillable "phantom traffic"; (2) to reject bill-and-keep proposals and instead adopt structural intercarrier compensation reforms that preserve compensation for local and interexchange traffic, including originating access; (3) to adopt unified intercarrier compensation rates that allow carriers to recover a reasonable portion of network costs from other carriers using the local network; (4) to implement transition and revenue replacement mechanisms to ensure that consumers are protected from rate shock and that rural and suburban carriers, both ILECs and CLECs, retain the ability to invest in their networks and to provide evolving services to consumers at rates that remain reasonable and reasonably comparable to urban rates; and (5) to preserve existing interconnection rules for RLECs and CLECs, including rules permitting CLECs to interconnect with non-rural incumbent carriers at a single point of interconnection on the ILEC's network within each LATA.

These recommendations are designed to ensure that consumers in all markets throughout the country continue to receive the benefits of high quality telecommunications services at reasonable rates. This goal is particularly important in rural areas where reasonably-

priced, advanced telecommunications services play a critical role in economic growth and development.

Respectfully submitted,



Gerard J. Waldron
Mary Newcomer Williams
Darrin Hurwitz
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Tel.: (202) 662-6000
Fax: (202) 662-6291

Kathleen Wallman
KATHLEEN WALLMAN, PLLC
9332 Ramey Lane
Great Falls, VA 22066

Counsel to TDS Telecommunications Corp.

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