

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

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

COMMENTS OF T-MOBILE USA, INC.

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Date: May 23, 2005

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SUMMARY

Today's intercarrier compensation and universal service regimes are broken, harm consumers and need immediate fundamental repair. As an independent, rapidly growing wireless carrier that pays hundreds of millions of dollars a year for intercarrier compensation and universal service contributions, T-Mobile USA, Inc. ("T-Mobile") offers a unique perspective in the debate over Commission reform of these regimes.

As switched access line growth continues to decline at a rate of about five percent a year, the wireless industry continues to grow at more than ten percent a year.¹ In fact, the approximately 182 million wireless customers in the United States now substantially outnumber the 173 million (or fewer) switched access lines. As this radical transformation of the telecommunications landscape accelerates, the core regulatory programs that determine how carriers pay for access to other carriers' networks and fund universal service have become increasingly discriminatory, anticompetitive and inefficient.

Today's intercarrier compensation and universal service programs favor legacy wireline interests and are based upon distinctions (e.g., wireline vs. wireless; interstate vs. intrastate; rural vs. non-rural) that are becoming increasingly irrelevant in today's telecommunications market. Consequently, the overwhelming majority of benefits and cash flows from the regimes support local exchange carriers ("LECs") and ignore the public interest benefits and efficiencies presented by other types of technologies and services, including wireless. Consumers ultimately

¹ CSFB US Equity Research, *Key Telecom Trends: Wireless Subs the Positive Surprise* (Apr. 29, 2005) ("CSFB Trends Report") (RBOCs reported a 4.7 percent year-over-year decline in their wireline retail subscribers, due to pressure from wireless and VoIP services, while national wireless operators reported a 12 percent year-over-year increase in subscribers).

bear the cost of supporting the outmoded intercarrier compensation and universal service regimes and are denied the benefits of a fully competitive marketplace.

In order for customers to reap the benefits of emerging intermodal competition, the Commission must act quickly to reform the existing intercarrier compensation and universal service regimes. A number of proposals have been submitted to the Commission, but the vast majority of them continue to reflect the wireline-centric aspects of the current regime. The Commission must ensure that any intercarrier compensation reform focuses on benefits to *consumers*, rather than particular carriers or classes of carriers, by adopting a progressive, technologically and competitively neutral regime that generates incentives for *all* carriers to become more efficient, cost effective and competitive.

The Commission can accomplish longstanding reform by adopting a single, integrated compensation scheme along the lines proposed by CTIA – The Wireless Association™ (“CTIA”) and supported by T-Mobile and others in the wireless industry as a default mechanism for all interconnection arrangements not otherwise covered by a negotiated or arbitrated agreement, along with technologically and competitively neutral default interconnection rules. This approach applies equally to all types of traffic and carriers and is indifferent to artificial and outmoded regulatory distinctions. This approach is pro-consumer, nondiscriminatory, rewards innovation and price leadership, eliminates arbitrage opportunities and is administratively simple.

An important part of the intercarrier compensation reform effort is reform of the universal service system. Most other reform proposals advanced thus far, however, fail to provide incentives to stabilize or ultimately reduce the level of universal service support, or to ensure that universal service support is explicit and targeted in a manner that benefits only

consumers in high-cost areas. Consistent with the goals articulated in Section 254 of the Communications Act, the Commission should adopt a forward-looking, least-cost support mechanism that ensures that supported services are available to consumers in high-cost areas at rates that are comparable to (and not lower than) those available to consumers in urban areas. This system would base the distribution of high-cost funds on the most efficient technology available in a given area. Because the existing embedded cost mechanism rewards inefficient wireline operations and increases the burden on the already encumbered universal service fund, it should be replaced.

Finally, the Commission should grant Sprint's routing and rating petition by reaffirming that wireless carriers can serve telephone numbers with different routing and rating points and requiring incumbent LECs to route calls to them. Otherwise, wireless carriers will be forced either to replicate the LECs' legacy networks at enormous expense in order to interconnect directly with LECs throughout the wireless carrier's service area or to treat local calls as toll calls and pay access charges. Such a result would be grossly inefficient, anti-consumer and anticompetitive and thus directly contrary to the goals of both the Congress in the Communications Act and the Commission in this proceeding.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) submits its initial comments in response to the Further Notice of Proposed Rulemaking in the above-captioned proceeding (“FNPRM”).² T-Mobile supports the Commission’s goals for intercarrier compensation and universal service reform. In order to bring about effective, far-reaching reforms that advance consumers’ interests, however, the Commission must abandon the outmoded wireline local exchange carrier (“LEC”) network assumptions that guided intercarrier compensation, interconnection and universal service policies in the past. Rather, today’s marketplace demands adoption of progressive rules more suited to the variety of technologies and services that consumers now rely on for their communications needs.

I. INTRODUCTION AND SUMMARY

T-Mobile is an independent commercial mobile radio service (“CMRS”) carrier and one of five nationwide wireless carriers. Through its subsidiaries and affiliates, T-Mobile constructs and operates broadband PCS systems throughout the United States. As an independent wireless carrier, T-Mobile also offers a unique perspective. Not only does T-Mobile increasingly

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

compete with incumbent LECs (“ILECs”) for customers, but it also depends upon the ILECs to interconnect its network and pays the ILECs hundreds of millions of dollars annually for facilities and services to terminate its traffic. Unlike most wireless carriers, T-Mobile has not yet sought designation as an eligible telecommunications carrier (“ETC”) in any area and thus currently receives no high-cost universal service support. It is, however, an increasingly significant contributor to the universal service program, which provides ever greater subsidies to the ILECs with which T-Mobile increasingly competes.

The overwhelming majority of benefits and cash flows arising from today’s intercarrier compensation and universal service regimes accrue to incumbent networks, making the existing framework increasingly discriminatory, inequitable, anticompetitive and inefficient. LECs charge interconnecting carriers vastly different rates for technically identical services, based on factors unrelated to the costs of providing the services (such as the end points of a call and the identity of the carrier paying the charge). Similarly, universal service programs provide varying measures of support to different categories of carriers unrelated to the actual forward-looking cost of providing affordable service in high-cost areas. As a result, consumers ultimately bear the costs of hidden subsidies and inflated universal service support imposed by this outmoded system and are denied the benefits of fully competitive markets.

Rapidly changing consumer demands for new and innovative communications services only heighten the urgency for reform. There are now more wireless phones in the United States than wireline access lines,³ and traffic on wireless networks is increasing exponentially.⁴ In

³ According to data gathered by CTIA – The Wireless Association™, the current number of wireless handsets in the United States exceeds 182 million. *See* CTIA – The Wireless Association™ Semi-Annual Wireless Industry Survey (2005), www.ctia.org/content/index.cfm/AID/10047 (“CTIA Industry Survey”). Based upon data obtained from the Universal Service Administrative Company, the current number of incumbent LEC working loops is approximately 173 million. *See* Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter of 2005*, App. HC05 (May 2, 2005) available at <http://www.universalservice.org/overview/filings/> (“USAC Third Quarter Report”). However, the number of wireline phone lines also has been estimated to be as low as 132 million. *See*

(Footnote continues on next page.)

addition, Voice-over-Internet Protocol (“VoIP”) service is emerging as a competitor to both wireline and wireless telecommunications services. Meanwhile, technological innovation is leading to greater convergence of all communications services, including voice, data, video and broadband.

A number of intercarrier compensation reform proposals have been submitted to the Commission over the last few years. Almost without exception, however, the proposals reflect a world when services over legacy wireline networks were the dominant, indeed, almost the only, forms of telecommunications, and there was little, if any, effective competition from wireless and VoIP services – a world that no longer exists. For consumers to reap the benefits of emerging intermodal competition, independent carriers such as T-Mobile must operate in a transparent, nondiscriminatory marketplace that rewards innovation and price leadership. To achieve this objective, the Commission must adopt reforms that, among other things, eliminate obsolete regulatory distinctions that underlie the existing intercarrier compensation regime and rid the universal service program of costly inefficiencies. Consumers stand to benefit the most from pro-competitive, pro-efficiency intercarrier compensation and universal service reform.

Pro-consumer goals can best be realized by adhering to the following reform principles submitted to the Commission by T-Mobile and two other independent wireless carriers,⁵ and

(Footnote continued from previous page.)

Dennis Cauchon, *City, State, Cell Phone Taxes On The Rise*, USA Today, May 9, 2005, available at www.usatoday.com/money/perfi/taxes/2005-05-08-cellphone-taxes_x.htm.

⁴ See CTIA Industry Survey (reporting increases in wireless traffic of approximately 32.7 percent annually, and that wireless minutes of use exceeded one trillion minutes in 2004); see also CSFB US Equity Research, *Key Telecom Trends: Wireless Subs the Positive Surprise* (Apr. 29, 2005) (“CSFB Trends Report”) (noting that the wireless market was expanding and rate of wireless data penetration growing faster than previously estimated).

⁵ See Letter from Thomas J. Sugrue, T-Mobile USA, Inc., Gene A. DeJordy, Western Wireless Corp., and David M. Wilson, Counsel to Dobson Cellular Systems, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 17, 2004).

subsequently endorsed by at least one other carrier,⁶ and which parallel the reform principles submitted by CTIA – The Wireless Association™ (“CTIA Principles”):⁷

(1) In order to advance the goals of efficiency, equity and competition, intercarrier compensation reform should focus on benefits to consumers, not carriers. T-Mobile’s technologically and competitively neutral reform proposal promotes the development of a convergent telecommunications marketplace, rather than shoring up a legacy marketplace that is immune from competition.

(2) Intercarrier compensation reform should generate incentives for all carriers to become more efficient, cost effective and competitive. The current regime encourages certain carriers to exploit their bottleneck positions and shift excessive costs to their rivals.

(3) A single, integrated intercarrier compensation scheme for all types of traffic and carriers, irrespective of technology, distance and jurisdictional category, should be implemented over a reasonable transition period. The current intercarrier compensation regime is made up of a patchwork of inconsistent and increasingly irrelevant distinctions between inter- and intrastate, local and interexchange, and wireline and wireless services that were adopted piecemeal over more than 20 years to address seemingly separate issues. The resulting rules, which impose widely disparate compensation obligations for virtually identical functions, are better suited to a pre-divestiture, pre-competitive telecommunications industry. These artificial distinctions also generate arbitrage by entities taking advantage of non-cost based rate differences, further burdening the intercarrier compensation and universal service systems and the consumers who must pay more for services and contribute to inflated universal service programs.

⁶ See U.S. Cellular White Paper, *Rural America is on the Go*, CC Docket No. 01-92, at 2 n.3, (Jan. 7, 2005).

⁷ See Letter from Steve Largent, President and Chief Executive Officer, CTIA-The Wireless Association™, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 29, 2004) (“CTIA Principles”).

(4) The intercarrier compensation system should be non-discriminatory, technology-neutral and administratively simple. All carriers should have equivalent obligations to transport traffic originated by their own customers to other interconnecting carriers. The vastly different intercarrier compensation mechanisms for different categories of traffic and carriers impose tremendous administrative and regulatory costs on the consumer, the industry, and regulators.

(5) The intercarrier compensation system should eliminate arbitrage opportunities. For example, the current system encourages LECs to route CMRS-bound calls originating within the same Major Trading Area (“MTA”) through interexchange carriers (“IXCs”) to avoid reciprocal compensation and to garner originating access revenue.

(6) Universal service reform should be based solely on universal service considerations. Achieving universal service goals requires careful definition of the services to be supported, their costs and the reasonable price level for those services. By and large, the other intercarrier compensation reform proposals before the Commission fail to provide incentives to stabilize or ultimately reduce the level of universal service support, or to ensure that the universal service support that is distributed works to benefit consumers, rather than service providers.

These principles are consistent with the Commission’s intercarrier compensation goals set out in paragraphs 30-36 of the FNPRM: (1) promotion of efficient competition and open market entry; (2) preservation of universal service; (3) competitive and technological neutrality; (4) the elimination of regulatory distinctions unrelated to costs; (5) minimal regulatory intervention; and (6) clear interconnection rules. The CTIA Principles, which were summarized in the FNPRM along with the other industry reform proposals, also emphasize competitive neutrality in intercarrier compensation, interconnection and universal service regimes and the need for incentives for greater efficiency, competition and innovation.⁸

⁸ FNPRM ¶ 59.

Intercarrier compensation reform can best achieve these principles and goals by adopting a unified bill-and-keep type of regime as a default mechanism for all interconnection arrangements not otherwise covered by a negotiated or arbitrated agreement. When carriers recover their internal network costs through nondiscriminatory end user charges from their own customers, they send the proper signals for consumption, investment and market entry, thereby facilitating the introduction of true intermodal competition that the Commission has long sought to encourage.⁹ Customers will be able to access and directly compare each carrier's costs, ultimately forcing carriers to squeeze excess costs out of their rates. A default bill-and-keep system also will eliminate opportunities for ILECs to shift their inefficient costs onto other carriers, including carriers that are increasingly competing with them, and will eliminate the arbitrage behavior generated by intercarrier compensation charges.

A new intercarrier compensation mechanism, however, cannot be implemented without technologically and competitively neutral default interconnection rules. Interconnection rules that impose greater costs or burdens on one category of carrier than another, *e.g.*, that treat wireless carriers less favorably than rural wireline carriers, will undermine any reform that the Commission undertakes in the scheme of intercarrier compensation charges. Accordingly, T-Mobile endorses the significant aspects of the interconnection rules that CTIA will be proposing in its comments in this proceeding.

Consistent with CTIA's approach, T-Mobile proposes that, in the absence of a negotiated or arbitrated intercarrier agreement filed with the relevant state commission, a carrier delivering a call to a terminating carrier could choose one of the terminating carrier's designated network

⁹ See, *e.g.*, *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, 17 FCC Rcd 14972, 14978-80 (2002) (refusing to forbear from applying local number portability requirements to wireless carriers because such portability is "intended to increase competition both within the CMRS marketplace and with wireline carriers, which in turn would provide incentives for all carriers to provide innovative service offerings, higher quality services, and lower prices"), *aff'd sub nom.*, *Cellular Telecommunications & Internet Association and Cellco Partnership, d/b/a Verizon Wireless v. FCC*, 330 F.3d 502, 513 (D.C. Cir. 2003).

“edges” in a given LATA to use for the delivery of traffic to that LATA, to be completed on a bill-and-keep basis. An edge is a facility designated for the receipt of traffic. The non-terminating carrier would be responsible for any transport services necessary to deliver traffic to the terminating carrier’s edge. In the case of indirectly interconnected carriers, the originating carrier could use any transit provider that can deliver traffic to the terminating carrier’s edge. Any carrier that provides transit services as of the effective date of the plan must be required to continue providing transit service and must offer such transit service (including any necessary transport) at total element long run incremental cost (“TELRIC”) rates.

The Commission’s intercarrier compensation goals also can be realized only in conjunction with a forward-looking, least-cost universal service support mechanism. Consistent with the goals articulated in Section 254 of the Act, the Commission must adopt measures to ensure that supported services are provided at reasonable rates in high-cost areas. Neither the Act nor sound competition policy endorses artificially low end user rates (*i.e.*, rates below the levels that generally prevail in urban areas), or ILEC revenue replacement guarantees.

Finally, the Commission should grant the Sprint routing and rating petition (“Sprint Petition”).¹⁰ The Commission should reaffirm its policy that allows wireless carriers to serve telephone numbers with different routing and rating points and should require ILECs to route calls to them. Otherwise, wireless carriers will be forced either to replicate the ILECs’ legacy networks at enormous expense in order to interconnect directly with ILECs throughout the wireless carrier’s service area or to treat local calls as toll calls and pay access charges.

¹⁰ Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, CC Docket No. 01-92 (May 9, 2002) (“Sprint Petition”).

II. LASTING INTERCARRIER COMPENSATION REFORM LEADS INEXORABLY TO A UNIFIED REGIME ELIMINATING INTERCARRIER CHARGES.

As the Commission evaluates the intercarrier compensation reform plans submitted into the record (including T-Mobile's proposal in this filing), it should be guided by the principles and goals discussed above.¹¹ Most of the proposals submitted to the Commission to date fail to

¹¹ The other proposals submitted in the record are: the Ex Parte Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan ("ICF Brief") and App. A, the Intercarrier Compensation and Universal Service Reform Plan ("ICF Plan"), attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Oct. 5, 2004); Comprehensive Plan for Intercarrier Compensation, attached to Letter from Glenn H. Brown, Facilitator of the Expanded Portland Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 2, 2004) ("EPG Plan"); The Intercarrier Compensation Reform Plan of the Alliance for Rational Intercarrier Compensation, attached to Letter from Ken Pfister, Counsel to the Alliance for Rational Intercarrier Compensation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 4, 2004) ("ARIC FACTS Solution"); Cost-Based Intercarrier Compensation Coalition Proposal, attached to Letter from Richard M. Rindler, Counsel to the Cost-Based Intercarrier Compensation Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Sept. 2, 2004) ("CBICC Proposal"); Updated Ex Parte of Home Telephone Company and PBT Telecom, CC Docket No. 01-92 (Nov. 2, 2004) ("Home/PBT Plan"); Outline of Western Wireless Intercarrier Compensation Plan, attached to Letter from David L. Sieradzki, Counsel to Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Nov. 18, 2004) ("Western Wireless Plan"); Western Wireless Intercarrier Compensation Reform Plan, attached to Letter from David L. Sieradzki, Counsel to Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Jan. 28, 2005) ("Western Wireless PowerPoint"); NASUCA Intercarrier Compensation Proposal, attached to Letter from Philip F. McClelland, Senior Assistant Consumer Advocate, Commonwealth of Pennsylvania, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Dec. 14, 2004) ("NASUCA Principles"); National Association of Regulatory Utility Commissioners Study Committee on Intercarrier Compensation Goals for a New Intercarrier Compensation System and Intercarrier Compensation Proposal, attached as Appendices B and C, respectively, to Letter from Robert B. Nelson, Elliott G. Smith, and Ray Baum, NARUC, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92 (May 18, 2005) ("NARUC Proposal"); and Frontier Universal Telecommunications Freedom Plan, attached to Letter from Alex J. Harris, Vice President – Regulatory, Frontier to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (May 10, 2005) ("Frontier UTF Plan").

meet those criteria because they do not eliminate intercarrier compensation charges. Now that the number of wireless phones has overtaken the number of wireline access lines in the United States, and VoIP is challenging both services, the current wireline-centric access charge regime, based on legacy network architectures, increasingly thwarts competition and masks the true costs of telecommunications services to consumers. Only a bill-and-keep like regime will facilitate intermodal competition and significantly reduce incentives to structure firms and service offerings based on regulatory arbitrage opportunities.

A. Eliminating Intercarrier Charges Will Prevent Carriers From Imposing Inefficient Costs On Other Carriers.

The current intercarrier compensation regime allows ILECs to exploit their control over access to the disadvantage of carriers originating traffic to the ILECs and their end users. These carriers can price access and other intercarrier services above cost and thereby shift their network costs to other carriers. Cost shifting imposes the equivalent of a tax on other carriers; this abuse raises consumer costs and hobbles competition by enabling carriers to offload their costs onto their competitors. As long as carriers are permitted to impose costs on other carriers (and their customers) in the form of access charges and reciprocal compensation, they will have no incentive to operate efficiently to reduce those costs. Ultimately, these costs are passed on to consumers. With bill-and-keep, these costs are eliminated, leading to an improvement in consumer welfare and creating a regime that is competitively neutral.

A system that eliminates intercarrier charges for the exchange of all categories of traffic (intra-/interstate and local/long-distance) and carriers (rural and non-rural, price cap and rate-of-return, and wireline and wireless) eliminates opportunities for carriers to burden competition by imposing inefficient costs on competitors. This approach therefore maximizes carriers' incentives to reduce costs, rather than to exploit bottleneck power.¹² Greater efficiency, in turn,

¹² See Staff of the Wireline Competition Bureau, *A Bill-and-Keep Approach to Intercarrier Compensation Reform*, at 103-06 ("Staff Analysis") (App. C of FNPRM).

strengthens the viability of the universal service program by eliminating costs that otherwise would require additional universal service subsidies, which ultimately are paid for by consumers. A uniform intercarrier compensation rate of zero eliminates non-cost based differences in intercarrier compensation rates. As a result, carriers have a greatly diminished opportunity to engage in regulatory arbitrage.

B. Eliminating All Intercarrier Compensation Will Eliminate The Arbitrage Of Disparate, Non-Cost-Based Intercarrier Compensation Rates.

As the Commission has long recognized, the existence of arbitrage discloses an underlying flaw in existing pricing practices.¹³ As a result, the Commission's goal should be to design a system that eliminates arbitrage by rationalizing the underlying principles used to price the relevant services. Bill and keep will eliminate the inefficiencies exposed by the existence of intercarrier compensation arbitrage and is therefore more sustainable in the long run than the current system or one with modified intercarrier compensation rates. Disparate compensation obligations for technically indistinguishable services create strong incentives for carriers to route or mischaracterize traffic in order to reduce their intercarrier compensation costs. As a result, the organization of firms and service offerings is distorted to take advantage of lower priced services, rather than investing in the most technically efficient solution (*e.g.*, organizing as an Internet service provider ("ISP") in order to purchase local business lines instead of interstate access services).¹⁴

These distortions result in diminished intercarrier compensation and universal service revenues, as parties avoid intercarrier and universal service obligations, thus straining both systems. The continuation of intercarrier compensation charges, even at reduced rates, will

¹³ See, *e.g.*, *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, 83 F.C.C. 2d 167, 175-76 (1980) (Commission notes that "arbitrageurs ... capitalize upon attempts by the telephone company to charge different prices for the same product.").

¹⁴ Staff Analysis at 103-04.

perpetuate this economic distortion.¹⁵ In the end, an incremental approach to intercarrier compensation reform will require repeated Commission interventions to police intercarrier compensation obligations and adopt additional “reforms” in order to keep the inherently unstable system from collapsing altogether. On the other hand, if carriers are required to recover all of their internal network costs from end user customer revenues going forward, the Commission will eliminate an endless cycle of intercarrier compensation crisis and reform.

Because a bill-and-keep system would require carriers to recover their internal network costs only from their end users (except to the extent that universal service support is warranted), consumers would receive accurate pricing signals as to their communications choices, thereby fostering intermodal competition. When carrier costs are primarily recovered through nondiscriminatory end user rates (rather than being passed along to other carriers and ultimately borne by those carriers’ customers), consumers are empowered to choose the most economical means of meeting their communications needs.¹⁶ Further, carriers also receive accurate signals for competitive entry decisions. In short, direct recovery from a carrier’s own end users will result in a much more efficient market, thereby encouraging the development of competition, and, ultimately, lower costs for consumers.¹⁷

It should be noted that the elimination of intercarrier compensation charges does not mean that carriers must perform any and all services for other carriers at no cost. The rates that are subsumed under the heading of “intercarrier compensation” are access charges and reciprocal

¹⁵ *See, e.g.*, Frontier UTF Plan at 5 (proposing continued positive intercarrier compensation rates for use of port interfaces).

¹⁶ Carriers under a bill-and-keep system could still provide misleading pricing signals to end users as to the actual total costs of different services through price discrimination, but they would be subject to liability under Section 202(a) of the Act for such conduct. 47 U.S.C. § 202(a).

¹⁷ Staff Analysis at 105. *See also* Jay M. Atkinson and Christopher C. Barnekov, Federal Communications Commission OPP Working Paper 34, *A Competitively Neutral Approach to Network Interconnection*, ¶¶ 5-15, 74-90 (Dec. 2000) available at http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp34.pdf (“OPP 34”).

compensation,¹⁸ which essentially recover internal network costs incurred in carrying an interconnected call entirely within a service provider's network. Carriers will continue to recover for services provided between networks, including responsibility for any transport and transit services performed by carriers interconnected with the originating and terminating carriers on a given call. As discussed below, when a carrier uses portions of another carrier's network for the provision of internetwork transport services or transit services, this use should be reimbursed at TELRIC rates.

C. Eliminating Intercarrier Charges Will Reduce The Need For Regulatory Oversight.

A default unified bill-and-keep system will drastically reduce the need for regulatory oversight by eliminating the need for this Commission and the states to set interstate or intrastate access or reciprocal compensation rates.¹⁹ The complexities of cost allocation and jurisdictional separations, as well as the unique cost characteristics of each carrier, make it impossible to set intercarrier rates that are "cost-based" by any objective standard. Bill-and-keep also eliminates disputes over intercarrier compensation and would eliminate the significant administrative costs that carriers incur today in tracking, recording, billing and collecting intercarrier compensation. Finally, in order to maximize the efficiency benefits of bill-and-keep, intrastate access charges also should be subsumed within a default bill-and-keep regime. Variations among the states could exacerbate the discriminatory effects of continued intrastate access charges, and continuation of intrastate access charges will cause rural ILECs ("RLECs") to continue the improper rating of intra-MTA calls as toll calls for their own end user customers.

¹⁸ See FNPRM ¶¶ 5-14.

¹⁹ See, e.g., Frontier UTF Plan at 8-9 (proposing formula for default port interface rates using several proxy assumptions, and proposing that the Commission review and revise these rates every four years).

D. Intercarrier Compensation Reform Should Not Focus On ILEC Revenue Replacement Concerns.

The oppositions to bill-and-keep, primarily based on ILEC revenue replacement concerns, should be rejected.²⁰ The ARIC FACTS Solution, in particular, sets forth various arguments against bill-and-keep on policy and legal grounds.²¹ The purpose of intercarrier compensation is not to guarantee ILEC revenues or to preserve local rates at a particular level for any given industry segment. Plans that continue access and other intercarrier charges in order to maintain ILEC revenue streams retain the discriminatory, inequitable, anticompetitive and inefficient access charge system and the resulting harm to consumers and burdens on universal service support. Proposals such as the EPG Plan and the ARIC FACTS Solution continue to base intercarrier compensation charges upon embedded costs and are particularly regressive because they would maintain all of the implicit subsidies and inefficiencies of the current system.²² The “proper” level of carrier revenue will flow from maximizing consumer welfare through an efficient intercarrier compensation and interconnection regime, which can best be achieved by recovering internal network costs from end users.²³

²⁰ See NARUC Proposal, app. B at 6; NASUCA Principles at 1-2; EPG Plan at 11-14; CBICC Proposal at Tab A.

²¹ ARIC FACTS Solution at 14-22. The ARIC FACTS Solution also argues that the Commission does not have the jurisdictional authority to impose a bill-and-keep system because such a system would not provide for “mutual and reciprocal recovery” of costs as mandated by the Act and because such a system would eliminate the role of state commissions as set forth in the Act. *Id.* at 18-19. The memorandum describing the ICF Plan sets forth the Commission’s jurisdictional basis for requiring a bill-and-keep system. See ICF Brief at 38-42.

²² EPG Plan at 21 (proposing that unified intercarrier compensation rate be cost-based and established at the level of current interstate access charges using Part 69 cost methodology); ARIC FACTS Solution at 37-43 (rate-of-return carriers’ intercarrier compensation rate would be set on the basis of embedded costs, and price cap carriers’ intercarrier compensation rate would be set at the lower of current price cap or embedded cost rates).

²³ See OPP 34 ¶¶ 5-15, 74-90 (bill-and-keep enhances efficiency, which increases total output).

E. The Elimination Of Intercarrier Charges Will Benefit Consumers.

The Commission should not be deterred from imposing a bill-and-keep default system by concerns that rural carriers will “have to” raise end user rates to make up for the disappearance of access revenues. The increased competition and reduced entry barriers resulting from bill-and-keep and other elements of T-Mobile’s and similar proposals will keep reasonable rates available to end users, irrespective of individual carriers’ increased “revenue requirements” and end user rates. Rural carriers will not raise rates to unreasonable levels if competitive alternatives are available, and alternatives are increasingly available. By 2003, 97 percent of the total U.S. population lived in counties in which there was access to three or more different wireless carriers,²⁴ and approximately 62 percent of the total land area of the United States had access to three or more wireless carriers.²⁵ The five Economic Areas (“EAs”) in the United States with the lowest population had an average wireless penetration rate of 46.51 percent in 2003.²⁶

Universal service support should and will be available in truly high-cost areas where reasonably-priced alternatives (*i.e.*, services offered at rates that are comparable to those available to consumers in urban areas) are not offered. That is a separate issue, however, from the need for pro-competitive, pro-consumer intercarrier compensation reform. Consumers can be protected only through an efficient intercarrier compensation system and properly bounded universal service obligations. To the extent that universal service support is needed in a high-cost area to keep retail rates reasonable, it should be provided through part of an explicit universal service system, and not through intercarrier compensation.

²⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Conditions With Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd 20597, 20608-09, 20618 (2004) (“*CMRS Ninth Report*”).

²⁵ *CMRS Ninth Report* at 20618.

²⁶ *Id.* at 20696 (Table 3 comparing the wireless penetration rates of EAs 149, 126, 142, 112, and 145).

F. Eliminating Intercarrier Charges Is Consistent With Cost Causation Principles And Is Appropriate For All Carriers.

Bill-and-keep is based on the assumption that both parties to a call, not only the calling party, benefit from and thus “cause” the communication and that both parties’ networks therefore should share the costs of the call. Contrary to ARIC’s antiquated arguments, those cost causation assumptions are more realistic today than the historic assumption that the calling party primarily benefits. Although the caller decides to initiate the call, the called party can decide whether to receive it and how long to continue it. Today, with the prevalence of Caller ID and other forms of calling party identification, as well as the success of the Do Not Call list, the called party is now as much in control of the communication as the caller. Because the call recipient can control the receipt and continuation of the communication, the simplifying assumption that both parties benefit from the call is more accurate than the previous assumptions that only the caller benefits. Customers are increasingly connected through a number of devices and express a desire to be connected with others through these devices, such as in the case of cell phone users who make their numbers available to others. Thus, the mutual need or desire to exchange information, rather than the calling party alone, “causes” the communication.²⁷

Moreover, underlying all of the arguments against bill-and-keep is the assumption that network costs are incurred on a usage basis and that each call therefore imposes additional costs on recipients. As noted in the FNPRM, usage does not appear to be a significant determinant of costs, given current telecommunications technology.²⁸ The Commission long ago recognized that fact with regard to loop costs, which are a function of subscriber density and technology, and the same appears to be true with regard to switching costs.²⁹ Because a call does not impose

²⁷ Staff Analysis at 99-103.

²⁸ FNPRM ¶¶ 23, 67-68.

²⁹ *Id.* See also *Petition of WorldCom, 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 Expedited Arbitration*, 18 FCC Rcd 17722, 17903-10 (CCB 2003) (“*MCI Virginia Arbitration Order*”) (Footnote continues on next page.)

significant incremental costs on either the calling party's or called party's network, there is no justification for allowing the terminating network to impose any charge on the non-terminating network.

Furthermore, the non-traffic sensitive nature of network costs renders traffic flows or internetwork traffic balances irrelevant. Because callers do not impose significant costs on called parties' networks (or on called parties, given the prevalence of bundled, flat-rate offerings), a disproportionately inbound traffic flow does not disadvantage a carrier.³⁰ Bill-and-keep thus does not favor any type of carrier over another. Concerns about traffic flow also reflect an implicit assumption that the calling party's network should bear all of the costs of a call, which, as discussed above, is not consistent with cost causation principles.

Even assuming that call termination imposes some incremental cost on the terminating carrier, bill-and-keep would still be appropriate. Terminating carriers would not be prevented from recovering these costs; they would simply recover both originating and terminating costs from their own customers (instead of just the origination costs, as under the current system). A bill-and-keep system would provide that each carrier recover from its customers the costs associated with all traffic that those customers originate, as well as all traffic that terminates to them.

ARIC's arguments as to the inapplicability of bill-and-keep to interexchange calls and IXC ignores the dynamic nature of the telecommunications market. The industry would quickly accommodate to a default bill-and-keep system, thereby addressing the problems hypothesized by ARIC. Once carriers could no longer collect access charges, LECs would contract with IXCs in order to offer bundled local and long distance services, as many LECs and IXCs do now.

(Footnote continued from previous page.)

(establishing flat-rated switching charges based on a finding that most switching costs are not traffic-sensitive), *app. for review pending*.

³⁰ Usage does affect network costs indirectly, in that peak volume determines the sizing of facilities. There is only an insignificant incremental cost from any single given call, however.

Those service packages would be offered at lower rates than the combined rates of stand-alone local and long distance service offerings and would quickly displace the separate offerings. Independent IXCs marketing retail long distance services separately from LECs would ultimately disappear. Indeed, this process has already begun with the announced acquisitions of AT&T and MCI by SBC and Verizon, respectively.³¹

G. The Commission Should Order A Rapid Transition To A Reformed Intercarrier Compensation Mechanism.

The Commission should implement a fairly rapid transition to bill-and-keep. The seven-year ICF transition to bill-and-keep is too long given the lightening fast developments in communications services and technologies. For example, the number of wireless subscribers in the United States has skyrocketed from approximately 44 million 1996 to more than 109 million in 2000 and 182 million currently.³² The ICF Plan thus continues the anticompetitive subsidies and inefficiencies of the current system unnecessarily and permits RLECs to continue charging for terminating transport, even after the end of the transition, to “ensure[] that rural carriers have the option of maintaining a distinct revenue stream.”³³ That stated purpose epitomizes the regressive, anticompetitive legacy assumptions underlying the existing intercarrier compensation regime and demonstrates why that regime must be completely overhauled.

³¹ It is also difficult to imagine entities masquerading as carriers, as ARIC suggests, in order to avoid end user charges under a bill-and-keep system. One hurdle they would face is state certification requirements, as well as compliance with Title II of the Act.

³² Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, at 11-1 (May 2004) (“2004 Telephone Trends”); CTIA Industry Survey.

³³ ICF Brief at 6-7.

III. COMPETITIVELY AND TECHNOLOGICALLY NEUTRAL DEFAULT INTERCONNECTION RULES ARE A NECESSARY BACKSTOP FOR THE ELIMINATION OF INTERCARRIER CHARGES.

Without effective default interconnection rules as a backstop, carriers with greater bargaining leverage could impose their internal network costs on their competitors by requiring them to exchange traffic in a manner that exploited that leverage. Default interconnection rules should be structured to maximize carriers' incentives to negotiate mutually fair and nondiscriminatory technical and compensation arrangements for the use of transport facilities to interconnect networks. The following default rules would apply only in the absence of negotiated or arbitrated agreements filed with the appropriate state commissions.

A. T-Mobile Supports CTIA's Proposal To Allow Carriers To Deliver Traffic To Any Of A Terminating Carrier's Designated Edges In A LATA.

T-Mobile actively participated in the CTIA negotiations that led to consensus interconnection rules and supports the significant points in the interconnection rules announced by CTIA on May 18, 2005³⁴ and set forth in CTIA's comments filed in response to the FNPRM.³⁵ Consistent with CTIA's approach, carriers would exchange traffic on a bill-and-keep basis (once the transition is complete) at the carriers' default network "edges." The non-terminating carrier would be responsible for delivering an interconnected call, including the securing of any necessary transport services, to the terminating carrier's edge and could determine how to provision facilities to deliver traffic to the terminating carrier. If directly

³⁴ CTIA Press Release, *CTIA – The Wireless Association™ Announces Proposal to Bring the Intercarrier Compensation and Universal Service Systems Into the 21st Century* (May 18, 2005).

³⁵ T-Mobile's interconnection rules differ from CTIA's as to certain details. For example, while CTIA proposes that ILEC transport and transit rates be based on forward-looking costs, T-Mobile specifies that those rates should be based on a TELRIC methodology. T-Mobile also provides more elaboration on certain points, such as the transit traffic segregation provisions of its interconnection proposal.

interconnecting carriers agree to use interconnection facilities jointly for two-way traffic, they may negotiate the sharing of interconnection transport costs.

Under this approach, each carrier, including wireless providers, must designate at least one edge in every LATA it serves to receive traffic. Edges are facilities that can serve as points of interconnection for the receipt of traffic. For the most part, the technical criteria in the ICF Plan should be used for designating edges.³⁶ Consistent with those criteria, carriers may designate any number of edges in any LATA. A non-terminating carrier (*i.e.*, an originating or transiting carrier) may deliver traffic bound for a given carrier in a LATA to any edge in that LATA designated by the terminating carrier, and no carrier shall be required to deliver traffic to a terminating carrier at points other than the edge selected by the non-terminating or transiting carrier.

This is a significant difference from the ICF Plan, which contemplates the delivery of traffic to *each* edge designated by the terminating carrier serving the destination points of the traffic. By allowing the non-terminating carrier to choose which edge to use for the delivery of its traffic, carriers will be able to design their networks and transport obligations in the most efficient manner possible, and terminating ILECs will not be able to force other carriers to mirror the terminating ILECs' network architecture.

An originating or transiting carrier must, however, segregate traffic delivered to the terminating carrier's edge into separate transport facilities based on the highest level of switching on the terminating carrier's network that directly serves the point of termination for that traffic. For example, if a terminating carrier has three tandem switches in a LATA, traffic destined to points served by each of those tandems must be delivered to the terminating carrier at one of the

³⁶ See ICF Plan at 4-9. Because of the configuration of wireless networks, however, T-Mobile opposes limiting the number of edges in a LATA to the total number of ILEC tandems and restricting a carrier to one edge at any given geographic location, as proposed by the ICF. *Id.* at 4. If a non-terminating carrier may choose any terminating carrier edge for the delivery of traffic for a given LATA, there is no need to limit the number or locations of edges, apart from technical criteria.

edges in that LATA in a separate trunk group from traffic destined to points served by the other tandems. Similarly, if a terminating wireless carrier has three mobile switching centers (“MSCs”) in a LATA, traffic destined to points served by each of those MSCs must be delivered to the wireless carrier at one of the edges in that LATA separately from traffic destined to points served by the other MSCs. In the event that none of the designated edges in a LATA happens to be a switch, however, the non-terminating carrier must segregate traffic to that LATA based on whichever designated edge serves the point of termination for each call.

When a carrier chooses to interconnect directly with another carrier for the termination of traffic, the method of interconnection should be mutually agreed. Under T-Mobile’s approach, if the parties cannot agree, the terminating carrier will provide the non-terminating carrier with a connecting facility assignment (“CFA”). The CFA may be, but is not required to be, at the terminating carrier’s edge. If it is not, the terminating carrier may not require the non-terminating carrier to incur a higher cost than if the CFA were located at an edge, and the terminating carrier is responsible for transport costs from the CFA to its edge. The non-terminating carrier will determine how it wants to provision facilities to the CFA. Collocation and/or self-provisioning should never be a requirement for interconnection.

Once traffic is delivered to the terminating carrier’s edge, the terminating carrier would be responsible for assuming all of the costs of delivering the traffic from the receiving edge to its end user customer. The terminating carrier’s responsibility to deliver traffic extends to all categories of calls: intrastate and interstate; local and long distance; and wireless and wireline. Imposing strict responsibility for delivery of all calls on the terminating carrier ensures that the bill-and-keep regime cannot be evaded by offloading termination responsibility onto other carriers.

B. An Originating Carrier May Use Transit Service To Deliver Traffic To An Indirectly Interconnected Terminating Carrier.

No carrier may refuse or block traffic from another that has established direct or indirect interconnection under these default rules.³⁷ In the case of indirectly interconnected originating and terminating carriers, the originating carrier may use transit service offered by any third party that is able to deliver traffic to the terminating carrier's edge and would be responsible for assuming the costs of such transit service and establishing connectivity to the transit provider's edge or mutually agreed POI.

Under T-Mobile's approach, any ILEC providing transit services as of the effective date of these rules shall be required to continue providing such services at TELRIC rates subject to the requirements of Section 214 of the Act. Section 251(a) of the Act requires *all* telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...."³⁸ By expressly permitting indirect interconnection – *i.e.*, transiting arrangements – this statutory provision authorizes the Commission to regulate all transit traffic, whether interstate or intrastate, in order to implement this requirement. Regulation of the physical interconnection between two networks necessarily encompasses the connecting or "transiting" pipe that may be the means of such interconnection when it occurs indirectly. Accordingly, the Commission has authority to require ILECs to provide transit services and may set transit rates to ensure that transit providers do not undermine

³⁷ See 47 U.S.C. § 251(a)(1). Unfortunately, some ILECs today are successful in blocking CMRS-originated traffic even while dispute resolution and/or negotiations over interconnection arrangements are underway. For example, several Missouri RLECs recently requested Southwestern Bell Telephone Company and Sprint Missouri to block all indirectly interconnected calls from T-Mobile customers to the RLECs' subscribers until T-Mobile paid disputed RLEC termination charges. See letter from W. R. England III, Counsel to Cass County Telephone Co., *et al.*, to VoiceStream/T-Mobile USA (Nov. 5, 2004).

³⁸ 47 U.S.C. § 251(a)(1).

the benefits of intercarrier compensation reform.³⁹ Moreover, a transit provider may not refuse traffic from a carrier using its services if that carrier is making a good faith effort to meet all interconnection rules. If ILEC interconnection transport service is required to effectuate direct or indirect interconnection, transport also should be provided at TELRIC rates.⁴⁰

T-Mobile's transit traffic segregation rules are somewhat different from CTIA's approach. In any case where an originating carrier indirectly interconnected with a terminating carrier sends 600,000 or more minutes of use ("MOU") per month of one-way traffic to the lowest level of switching on the terminating carrier's network that directly serves the point of termination for that traffic via a third party's transit service for three consecutive months, such traffic would be subject to segregation requirements in order to allow the most efficient use of transit facilities. Following an additional grace period of three months to enable the originating carrier to determine and implement the most efficient traffic segregation solution, the originating carrier would have a choice of: (1) using direct connections to the appropriate terminating carrier's edge or mutually agreed-upon POI; (2) segregating traffic into a separate trunk group on transit facilities already in place to the transit provider's transit tandem location; (3) agreeing to meet the terminating carrier at the transit carrier's tandem location and having the transit provider connect both originating and terminating carriers' transport facilities via a cross connection (often called "Meet Me at the Tandem"); or (4) using multiple transit providers.

Under the Meet Me at the Tandem option, each carrier will provide transport facilities from its network to the transit tandem office of the transit service provider. Each far end carrier will be wholly responsible for all transport costs between its network and the tandem office of the transit service provider. The transit service provider will supply a third-party cross connection on a cost-based, nondiscriminatory basis, creating an end-to-end transport connection

³⁹ Compare Frontier UTF Plan at 6-7, 10-11 (proposing that transport and most transit be completely deregulated and subject only to market forces).

⁴⁰ *Id.*

between the two far end carriers. The far end carriers' transmission links will be connected via cable, multiplexer, Digital Access Cross Connection System, or other appropriate combination of equipment and facilities. Meet Me at the Tandem is an efficient and economic way for carriers to satisfy their statutory interconnection obligations because they do not have to invest large sums of money to expand or install new circuit-switched tandems even in the event of potential congestion or exhaust issues.

The blatantly discriminatory and monopoly-reinforcing interconnection rules in the ICF Plan unnecessarily add costs by forcing carriers with more efficient technologies to replicate the ILECs' legacy networks. The ICF also grants RLECs an exclusive right to impose a terminating transport charge on non-RLECs. By contrast, T-Mobile's proposed rules do not differ based on type of carrier or traffic. Carriers' responsibilities are the same whether they are RLECs, ILECs, CLECs or CMRS carriers. These interconnection rules thus facilitate intermodal competition and encourage all carriers to become more efficient, rather than creating a favored class of carrier insulated from the rigors of competition.

C. T-Mobile Also Supports CTIA's Proposed Signaling System 7 Interconnection Rules.

If two service providers choose to employ Signaling System 7 ("SS7") to exchange call signaling information, they should be able to do so by either direct or indirect interconnection of their SS7 networks. No service provider may require direct SS7 interconnection from another provider. Two service providers that are directly interconnected to exchange traffic do not necessarily have to directly interconnect their SS7 networks to do so. Indirect interconnection may be accomplished by using the services of an SS7 Hub Provider, analogous to a carrier using a transit provider to indirectly interconnect with another carrier.

Permitting indirect interconnection of SS7 networks enables service providers to avoid unnecessary transport and Signaling Transfer Point ("STP") port charges. Otherwise, service providers with greater market power could impose onerous direct SS7 interconnection

requirements on competitors. Permitting indirect SS7 interconnection therefore is a necessary element of competitively neutral default interconnection rules.

When two service providers agree to directly interconnect SS7 networks, each carrier should designate the STP pair(s) and locations of associated Signaling Points of Interconnection (“SPOIs”) that will be used for SS7 interconnection. Furthermore, each carrier will assume responsibility for the provisioning and costs of two of the four D-links in a quad set required to provide connectivity between the STP pairs designated by each carrier. Consistent with the bill-and-keep compensation mechanism applied to other intercarrier charges, neither carrier may bill the other for SS7 transport, STP ports or messages between signaling points. These internal network costs also should be recovered from each carrier’s end user customers.

IV. THE CONSUMER AND COMPETITIVE GOALS OF UNIVERSAL SERVICE REQUIRE THAT THE EXISTING RURAL EMBEDDED COST UNIVERSAL SERVICE REGIME BE REPLACED BY A FORWARD-LOOKING, LEAST-COST SUPPORT MECHANISM.

Intercarrier compensation reform and universal service reform should proceed on parallel but independent tracks in order to avoid distorting universal service reform with carrier revenue neutrality concerns. ILEC revenue neutrality should never be considered a legitimate basis upon which to base universal service. Various intercarrier compensation proposals in this proceeding – such as the ICF Plan, the NARUC Proposal, the NASUCA Principles, the EPG Plan, the ARIC FACTS Solution, the CBICC Proposal, the Home/PBT Plan and the Frontier UTF Plan – rely on additional universal service support or a comparable funding mechanism to replace lost intercarrier compensation, ignoring the gathering threat to the viability of the universal service program caused by carriers’ increasingly voracious appetite for universal service support.⁴¹

⁴¹ See, e.g., ICF Plan at 69-75 (establishing in the universal service program the Intercarrier Compensation Recovery Mechanism and the Transitional Network Recovery Mechanism); NARUC Proposal, app. C at 8-10 (creating a new Access Charge Transition Fund within the universal service program to offset reductions in tariffed access charges experienced by rural ETCs); NASUCA Principles at 1 (acknowledging that additional intercarrier compensation may be recovered by rural carriers through increased high-cost funding); EPG Plan at 22 (establishing a federal Access Restructure Charge that would be billed to all carriers
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Adopting additional universal service support or similar mechanisms to replace lost intercarrier compensation revenue simply increases an already overburdened support regime and does nothing to promote operational efficiencies.

More importantly, revenue neutrality actually freezes current operational inefficiencies in perpetuity. Universal service support should be no higher than is necessary to allow properly defined supported services to be provided at reasonable rates in high-cost areas. To simply replace one revenue stream (from intercarrier compensation) with another revenue stream (from universal service), with no basis in the actual cost of serving customers in a given service area, stymies competition and encourages the continuing use of inefficient legacy networks in order to receive inflated, guaranteed universal service subsidies.⁴²

Some proposals also recommend that support be limited to wireline carriers, raising concerns regarding the competitive and technological neutrality of universal service support. The Commission should not place new demands on the universal service program as part of an intercarrier compensation plan without considering the overall consequences to the fund. Piecemeal modification of the universal service program will have a long term and detrimental impact on consumers and the program and would defeat any attempt to reform the universal service system by continuing to burden consumers with paying for legacy inefficiencies.

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based upon telephone numbers); ARIC FACTS Plan at 72-88 (lifting the cap on high-cost universal service loop support and using a State Equalization Fund to recover intercarrier compensation revenue shortfalls); CBICC Proposal at 2 (proposing that lost intercarrier compensation revenue be offset by a capped increase in an end user charge and universal service support); Home/PBT Plan at 15-17 (proposing a high-cost connection fund to recover lost intercarrier compensation revenue); Frontier UTF Plan at 13, 16-17 (proposed that lost intercarrier compensation be replaced with the non-rural Intercarrier Compensation Transitional Replacement mechanism and the rural Carrier of Last Resort Network Support fund).

⁴² For example, the ICF Plan proposes to add \$2.669 billion to the high-cost universal service program. Letter from Richard R. Cameron, Counsel to the ICF, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (Dec. 14, 2004). *See also* Frontier UTF Plan at 15 (acknowledging that the “total initial USF and intercarrier replacement funding could be expected to rise from the current \$3.5B to a best case of \$5B and a worst case of \$7B”).

A. The Commission Should Not Allow The High-Cost Fund To Be Further Burdened By Demands To Replace Access And Other Intercarrier Compensation Revenue.

Section 254(b) of the Act sets forth certain principles upon which the universal service program must be based, including the availability of quality services at just, reasonable and affordable rates to all Americans under a specific, predictable and sufficient support mechanism.⁴³ Consistent with this mandate, any universal service reform must ensure that all consumers, regardless of location, will have access to high-quality services at affordable rates, but should not at the same time thwart competition by providing preferential treatment to ILECs.

These goals are not being met under the existing universal service mechanism. High-cost universal service support has more than tripled since 1996, jumping from \$1.2 billion in 1996 to over \$3.8 billion in 2005.⁴⁴ Although the increase in high-cost support is in part attributable to the addition of new high-cost mechanisms – *e.g.*, interstate access support (“IAS”) under the CALLS Plan in 2000⁴⁵ and interstate common line support (“ICLS”) under the “MAG Plan” in 2002⁴⁶ – each new fund grew steadily after its first full year.⁴⁷ Each year since 1996, the high-

⁴³ 47 U.S.C. § 254(b).

⁴⁴ See Federal-State Joint Board on Universal Service, *2004 Universal Service Monitoring Report*, at Table 3.1, CC Docket No. 98-202, available at www.fcc.gov/wcb/iatd/monitor.html (“2004 USF Monitoring Report”); USAC Third Quarter Report at 7-10.

⁴⁵ *Access Charge Reform*, 15 FCC Rcd 12962 (2000) (“CALLS Order”), *rev’d and remanded*, *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *Access Charge Reform*, Order on Remand, 18 FCC Rcd 14976 (2003).

⁴⁶ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613 (2001) (“MAG Order”).

⁴⁷ The only exception is the IAS fund established under the CALLS Plan, which was capped at \$650 million.

cost support funds have steadily and substantially risen, not just in the years when new funds were established.⁴⁸

The Commission intended in the rural high-cost support mechanism to provide incentives to implement innovative technologies and operate more efficiently.⁴⁹ With more innovative and efficient operations, carriers' costs and their resulting draw on the universal service program should decline. That has not happened, however. Because rural LECs are guaranteed high-cost support and an 11.25 percent rate of return based upon their embedded costs, there is no incentive to operate efficiently by taking advantage of technological advances or utilizing economies of scale.⁵⁰ RLECs, which serve only 12 percent of the nation's wireline access lines, received more than three-quarters of the total high-cost universal service support in 2003.⁵¹ In 2004, all LECs received approximately 90 percent of all high-cost support, in contrast to wireless carriers, which received less than ten percent.⁵² The national average loop cost for RLECs grew

⁴⁸ For example, the high-cost loop support increased by 23 percent between 1996 and 2004; high-cost model support increased 17 percent between 2000 when it was implemented and 2004; long term support ("LTS") and ICLS (these are combined because recovery under LTS is being phased out and incorporated into ICLS) increased 32 percent between 2002 and 2004; IAS increased 55 percent between 2000 and 2004; and local switching support increased 11 percent between 1998 and 2004. *See* 2004 USF Monitoring Report at Table 3.1.

⁴⁹ *See, e.g., MAG Order*, 16 FCC Rcd at 19617, 19619.

⁵⁰ *See, e.g., Price Cap Performance Review for Local Exchange Carriers*, 10 FCC Rcd 8961, 8973 (1995) ("Traditional rate-of-return regulation provides few incentives for carriers to become more innovative and efficient, and encourages cost-shifting by carriers that participate in both competitive and noncompetitive markets."); *see also* Economics and Technology, Inc., *Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs*, at 10 (Feb. 2004), attached as Exh. A to Western Wireless Comments, CC Docket No. 96-45 (Feb. 13, 2004) ("*Lost in Translation*") (estimating that the high-cost fund would be approximately \$1 billion less if rural LECs had proper incentives to operate efficiently).

⁵¹ Comments of CTIA – The Wireless Association™ at 4, CC Docket No. 96-45 (Oct. 15, 2004) ("CTIA USF Reform Comments").

⁵² Universal Service Administrative Company, 2004 Annual Report, at 27 ("USAC 2004 Annual Report"), available at www.universalservice.org/download/pdf/2004AnnualReport.pdf.
(Footnote continues on next page.)

from approximately \$337 per month in 2000 to approximately \$378 per month in 2003.⁵³ There is no reasonable justification for RLECs' costs to keep rising, when non-rural carriers' costs continue to decline because of operational efficiencies and new technologies.⁵⁴

RLECs' dependence on universal service is dramatically illustrated in a study submitted in the *Universal Service* docket. The combined federal and state universal service support of ten Texas RLECs ranged from 38.3 to a whopping 76.2 percent of the total revenue of particular RLECs.⁵⁵ Similarly, in 2003, a group of Kansas RLECs stated that they collectively derived only 17 percent of all revenue from subscribers, and derived their remaining revenue from access charges (49 percent) and universal service support (34 percent).⁵⁶ Other economic evidence demonstrates that RLECs are overcompensated by universal service support. Publicly traded RLEC stocks generate returns, measured by market-to-book ratios, far in excess of, and exhibit significantly lower risk premiums than, the supposedly more secure RBOCs.⁵⁷ Rural high-cost

(Footnote continued from previous page.)

ILECs also were responsible for 87 percent of the growth in the high-cost funds between 2000 and 2003. *See id.*; CTIA USF Reform Comments at 3-4.

⁵³ CTIA USF Reform Comments at 7.

⁵⁴ *See, e.g.*, 2004 Telephone Trends, at Tables 12.3 and 13.4 (May 2004) (showing declines in price indices and revenue per minute for toll services during the 2000-2003 period); *see also Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8933 (1997) (subsequent history omitted) (noting that where a competitor can serve a customer at a much lower cost, the incumbent carrier may be inefficient) (“*USF Order*”).

⁵⁵ *Lost in Translation* at 7, Table 1.1.

⁵⁶ Ex parte letter from Tom Karalis, Fred Williamson & Associates, Inc. to Marlene Dortch, Secretary, FCC, Tab 2, p.2, Fig. 2 (Aug. 25, 2003).

⁵⁷ Economics and Technology, Inc., *Reforming Universal Service Funding for Rural ILECs: An Idea Whose Time Has Come*, at 2-5 (Dec. 2004), attached to Western Wireless Reply Comments on Reform of the Rural High-Cost Support System, CC Docket No. 96-45 (Dec. 14, 2004) (“*USF RLEC Reform*”).

support thus is generating excessive returns for shareholders, rather than affordable services in rural areas.⁵⁸

An example of this problem is XIT Rural Telephone Company, which paid a dividend to its 1,500 subscribers in 2003 averaging substantially higher than the average annual local service charge paid by each subscriber. XIT collected \$2.6 million in federal universal service support and another \$650,000 in state support in 2003, dwarfing the \$309,000 in local service revenue paid by its customers. XIT is one of at least four Texas telephone cooperatives since 1999 that has paid its customers dividends that equaled or exceeded their local service charges. Another Texas RLEC, Big Bend Telephone, received \$9.6 million in federal universal service funds and \$3.3 million in state support in 2003, while it paid a \$3 million dividend to its shareholders.⁵⁹ Firms receiving such massive support, apparently unrelated to actual costs, will never have any incentive to become more efficient and thereby lose their lush universal service support.

In contrast, the actions of one rural Alaskan carrier, Yukon Telephone Company (“Yukon”), demonstrate the level of savings that can be achieved by taking advantage of new technologies and creating more efficient operations. Yukon recently announced that it replaced its antiquated Class 5 switches with “soft switches” that cost one-fifth of the price of the legacy equipment.⁶⁰ According to one article, “the uncertainty of federal funding for rural telcos” forced Yukon’s general manager “to look at rationalizing Yukon’s operation with next-generation equipment that he hoped would enable the company to remain cost effective, deliver new services, and expand its coverage area.”⁶¹ After an easy two-week installation period,

⁵⁸ *Id.* at 1.

⁵⁹ Paul Davidson, *Fees Paid by All Phone Customers Help Rural Phone Firms Prosper*, USA Today, Nov. 15, 2004.

⁶⁰ See Herman Mehling, *Yukon Telephone Blazes VoIP Trail*, Apr. 1, 2005, available at www.americasnetwork.com/americasnetwork/article/articleDetail.jsp?id=152896.

⁶¹ *Id.*

Yukon and its customers were able to realize these benefits quickly in the form of new and affordable services over a larger service area.⁶²

Universal service support was designed to benefit *consumers*, not the carriers that happen to be serving them. It is the consumers, however, that are being harmed by the ever increasing universal service support levels.⁶³ As the universal service fund contribution rate increases (now at an unsustainable 11.1 percent for the second quarter of 2005), so do consumers' telephone bills. The contribution level itself is becoming an obstacle to affordable rates for *all* end users. When telephone bills increase, consumers tend to curb their calling practices, which conflicts with Congress' objective in mandating the universal service program.⁶⁴

B. A Single, Unified Forward-Looking Least-Cost Universal Service Support Mechanism Ensures Competition And Consumer Benefits.

To ensure the viability of the universal service program and maintain the pro-competitive and pro-consumer objectives of the universal service program, universal service reform must be undertaken in a comprehensive manner. First, the services supported by the universal service program must be carefully defined in a technologically neutral manner. Universal service support must remain fully portable and available to all carriers, irrespective of technology, that are committed to providing supported services throughout their designated service areas.⁶⁵ In

⁶² Yukon's monthly charges are \$50 for broadband, \$35 for cable, and \$40 for flat-rate local and long distance domestic telephone service. Yukon also significantly lowered its transport costs by using packet-based switches. *Id.*

⁶³ *See Alenco v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) ("*Alenco*") (universal service programs are intended "to benefit the *customer*, not the *carrier*") (emphasis added); *see also* 47 U.S.C. § 254.

⁶⁴ *USF Order*, 12 FCC Rcd at 8900 (Excess contributions, "by increasing the burden on all contributors to the support mechanisms, would also unnecessarily reduce the demand for other telecommunications services.").

⁶⁵ *See Alenco*, 201 F.3d at 616 (The universal service program "must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.").

2004, wireless service providers paid almost 27 percent of all universal service contributions, but received only seven percent of all universal service support.⁶⁶ In contrast, LECs paid around 24 percent of universal service contributions and received 81 percent of all universal service support.⁶⁷ Similarly, LECs received approximately 90 percent of all high-cost support while wireless carriers received less than ten percent, even though the number of wireless handsets has overtaken the number of ILEC access lines.⁶⁸ Discriminating against a particular type of technology or service provider simply to maintain legacy, inefficient networks denies consumers the benefits of more innovative networks and affordable services.

In order to maximize efficiencies and stabilize the level of universal service support, all high-cost universal service programs should be combined into a single fund that eliminates artificial distinctions between rural and non-rural carriers, rate-of-return and price cap ILECs, and intrastate and interstate costs. High-cost support under the universal service program should be no higher than is necessary to ensure reasonable rates and provide incentives for carriers to operate efficiently, which will facilitate competition and, in turn, ultimately reduce carriers' costs and their reliance on the universal service program. This could be accomplished through a single, unified high-cost support mechanism based upon the forward-looking economic costs of

⁶⁶ See Industry Analysis and Technology Division, Wireline Competition Bureau, "Trends in Telephone Service," at Table 19.15 (May 2004) ("2004 Telephone Trends Report"); Universal Service Administrative Company, Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Second Quarter 2005, at 4 (March 2, 2005) ("USAC 2Q Contribution Report"), available at www.universalservice.org/overview/filings/2005/Q2/2Q2005%20Contribution%20Base%20FC%20Filing.pdf; USAC 2004 Annual Report at 27.

⁶⁷ See 2004 Telephone Trends Report at Table 19.15; USAC 2Q Contribution Report at 4; USAC 2004 Annual Report at 27.

⁶⁸ USAC 2004 Annual Report at 27; CTIA USF Reform Comments at 4; Comments of Western Wireless Corp., CC Docket No. 96-45, at 7 (Oct. 15, 2004). The Bureau of Labor Statistics also found that 50.5 percent of rural households have wireless services, in contrast to 53.5 percent of urban households. CTIA USF Reform Comments at 21.

the most efficient technology for a particular geographic area.⁶⁹ The universal service program will be sustainable only if high-cost support is based upon forward-looking efficient costs and targeted solely at high-cost customers.⁷⁰

In one respect, however, support for high-cost areas should be more widely available for all carriers than it is under the non-rural forward-looking model used today. Rather than making funding available only where the statewide average forward-looking cost of non-rural service is above a nationwide cost benchmark – effectively limiting non-rural high-cost support to ten states – support should be provided for particular geographic areas (*e.g.*, counties) with average costs above a certain nationwide benchmark, irrespective of the statewide average.⁷¹ The Federal-State Joint Board on Universal Service and the Commission also should consider other possible market-based reform mechanisms, such as providing universal service support through end users, rather than directly to carriers.⁷² In that way, the Commission could be assured that the universal service program meets the statutory goal of providing “sufficient funding of customers, not providers.”⁷³

Competitive eligible telecommunications carriers (“CETCs”), primarily wireless carriers, received only ten percent of all high-cost funding in 2004 and do not appear to be significantly

⁶⁹ The amount of support that would be available under this method should not vary by carrier because all carriers would have the same long-run costs of the most efficient available technology in a given area, whether or not they chose to deploy it.

⁷⁰ T-Mobile’s Reply Comments in the Federal-State Joint Board proceeding regarding high-cost universal service support explains why a single, unified forward-looking high-cost support mechanism is feasible and appropriate and sets forth in more detail an interim and long-run proposal to reform the universal service program. *See* Reply Comments of T-Mobile, CC Docket No. 96-45 (filed Dec. 14, 2004).

⁷¹ *See id.* at 8-9, 11.

⁷² *See id.* at 14.

⁷³ *Alenco*, 201 F.3d at 620.

affecting the high-cost funds.⁷⁴ Regardless, limiting high-cost support to forward-looking costs will ameliorate concerns regarding CETCs drawing universal service support in high-cost areas. All carriers serving a given high-cost area – whether wireless or wireline – would receive universal service support based upon the most efficient method of providing service to that area. Moreover, the current rural high-cost mechanism should be changed so that when an RLEC loses a customer to a CETC, the RLEC’s high-cost support is reduced by the amount of funding received by the CETC, rather than remaining the same, as occurs today.⁷⁵ Reducing ILEC support when the ILEC loses a customer to a CETC is one way to force competitive efficiencies on incumbent networks and eliminate duplicative funding.

C. High-Cost Universal Service Support Should Not Be Extended To Cover Broadband Service, Nor Should It Subsidize Lower Than Affordable Local Rates.

High-cost universal service support should not be expanded to include broadband services at this time. The precarious position of the universal service program cannot support the provision of new, high-end competitive services when it cannot effectively support basic services. As the Joint Board previously found, broadband services are not “essential” for consumers and would be too burdensome to deploy as a supported service. Moreover, inclusion of broadband as a supported service would violate competitive neutrality because many

⁷⁴ As noted above, LECs receive about 90 percent of all high-cost support, while wireless carriers receive less than ten percent, according to USAC’s 2004 Annual Report at 27. Because wireless carriers account for over 94 percent of the high-cost funds received by all CETCs (*see* Universal Service Administrative Company, *Distribution of HC Support Between Wireline & Wireless Carriers*, available at www.universalservice.org/hc/download/pdf/graphs/Wireless-Wireline%20CETC.pdf), the incumbent ETC/CETC ratio is roughly similar to the LEC/wireless breakdown.

⁷⁵ *See Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, 11294-98 (2001) (declining to freeze high-cost loop support upon competitive entry in rural carrier study areas).

broadband providers would not be eligible for universal service support.⁷⁶ Furthermore, subsidies for broadband services already exist through the Rural Utilities Service broadband grant and loan programs.⁷⁷

The high-cost universal service program also should not subsidize artificially low end user rates for telecommunications services provided in high-cost areas. Section 254(b)(3) of the Act provides that consumers in rural and high-cost areas should receive access to services at rates that are reasonably comparable to rates charged for similar services in urban areas.⁷⁸ Conversely, carriers and consumers in urban areas should not be required to pay more for services so that consumers in rural areas can receive similar services for less than “affordable” urban rates. Sprint recently presented data showing basic residential rates charged by ten Ohio RLECs ranging from \$4.05 to \$12.35 per month, compared to a nationwide average monthly urban residential rate of \$14.57.⁷⁹

Consumers in urban areas that contribute to the universal service program are effectively subsidizing rural consumers' purchase of below-market services, which is contrary to the policy underlying Section 254(b)(3) of the Act that consumers in rural and high-cost areas have access to services at rates comparable to those in urban areas. There is no statutory or policy justification for requiring urban customers (many of whom are low income) to support lower rural rates. To the extent that rural or high-cost areas may include low-income consumers, other

⁷⁶ *Federal-State Joint Board on Universal Service*, Recommended Decision, 18 FCC Rcd 2943, 2947-50 (Jt. Bd. 2002), *aff'd*, Order, 18 FCC Rcd 15090, 15093 (Jt. Bd. 2003).

⁷⁷ *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19102 (2004) (describing the Rural Utilities Service loan and grant programs); *see also* USDA, Telecommunications Program at www.usda.gov/rus/telecom/index.htm.

⁷⁸ 47 U.S.C. § 254(b)(3).

⁷⁹ Reply Comments of Sprint, at 7, CC Docket No. 96-45 (Dec. 14, 2004).

universal service programs such as Lifeline and Link-Up are available to lower the cost of services for those customers.⁸⁰

D. The Universal Service Contribution Base Should Be Broadened.

To effectively and efficiently sustain the universal service program funding, the Commission should ensure that the program costs are spread over the widest possible base of contributors. As noted above, the contribution factor for the second quarter of 2005 is 11.1 percent and, without reform, the factor is widely expected to continue to rise, attributable in part to a shrinking interstate and international revenue base that itself is driven in part by the proliferation of wireless and other new service offerings. If the universal service program is to continue in any meaningful way without harming competition and consumers, all providers of interstate telecommunications should contribute to the universal service program on an equitable and non-discriminatory basis. This includes cable modem, DSL and other broadband providers; IP-enabled services provided by telecommunications carriers; prepaid calling card providers; and non-carriers selling excess capacity on their networks for telecommunications services.

The current interstate revenue-based universal service contribution methodology has been endorsed by the courts and should continue to provide a stable, reliable source of support if contributions are assessed from as wide a base as possible.⁸¹ If the Commission ultimately determines, however, that a number or connections-based contribution system is preferable, it should do so in a manner that ensures that all providers of interstate telecommunications services pay their fair share into the universal service fund, minimizes administrative complexity and opportunities for gaming and meets the other goals stated above. All of the points set forth above concerning the need for as wide a contributor base as possible apply equally to a number or connection-based methodology.

⁸⁰ 47 C.F.R. §§ 54.400 *et seq.*

⁸¹ *See, e.g., Texas Office of Public Utilities Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (Sections 2(b) and 254(d) of the Act prohibit use of a universal service contribution method based partly on intrastate revenues).

Moreover, the Commission should take care to avoid the pitfalls associated with number-based contribution methods. Per-number or per-connection contribution assessments should not create discrimination based on capacity. The use of capacity tiers and multipliers to set different levels of contribution thresholds must not provide advantages or arbitrage opportunities to users of higher-capacity connections, and contribution assessments on residential, single-line business and mobile wireless connections should not be based on capacity. Similarly, multi-line business Centrex connections should not be provided special discounts.

V. SPRINT’S ROUTING AND RATING PETITION SHOULD BE GRANTED.

In response to various petitions seeking declaratory rulings and/or clarifications of a LEC’s current obligations regarding the rating and routing of calls to wireless numbers, the FNPRM seeks comment on whether the Commission should modify “the existing rating obligations of carriers.”⁸² T-Mobile strongly urges the Commission to grant the Sprint Petition requesting that the Commission confirm that an ILEC is obligated to load wireless carrier numbers with different routing and rating points into its switches and route calls to those numbers accordingly. ILECs today are refusing to route calls originating on other carriers’ networks to numbers served by wireless carriers with different routing and rating points and where the rating point for the number is associated with another LEC’s rate center. This situation can arise when a wireless carrier has customers throughout a large area served by its MSC that have wireless telephone numbers with NXX codes rated in different rate centers throughout the service area. If calls to those numbers are routed through a single ILEC tandem, the routing point (the tandem) typically will be different from the rating point for the called party’s number. ILECs are insisting that the wireless carrier in this situation interconnect directly with the ILEC serving each rate center associated with the NXX codes for the numbers served by the wireless carrier, so that each of the wireless customer numbers has a rating point that matches its routing point.

⁸² FNPRM ¶¶ 141-43.

Under the Commission’s numbering rules, however, wireless carriers may obtain numbers and assign them to any LEC rate center where they provide service,⁸³ and it is well recognized that having telephone numbers with separate routing and rating points often is the most efficient alternative for carriers. Industry guidelines also recognize that the rating and routing points for a number may be different.⁸⁴ Specifically, wireless carriers require numbering resources in ILEC rate centers in order to provide a local calling area that is commensurate with landline numbers. Otherwise, intra-MTA calls to a wireless carrier’s numbers would have to be dialed as if they were toll calls unless the wireless carrier were directly interconnected with each LEC originating local calls to the wireless numbers.

The issue raised by the Sprint Petition should not be confused with the “Virtual NXX,” or “VNXX,” issue that has also been raised in this docket.⁸⁵ ILECs and CLECs are disputing the appropriate intercarrier compensation treatment of a call from an ILEC subscriber to a CLEC subscriber in another exchange with a telephone number that “looks” local to the ILEC subscriber. ILECs argue that, based on the physical location of the parties, such calls are interexchange calls subject to access charges, while the CLECs argue that, if both telephone numbers are assigned to the same local calling area, the calls are interconnected local calls subject to reciprocal compensation.⁸⁶ The Sprint Petition addresses an entirely different situation, in which wireless carriers request telephone numbers for their customers with NXX codes corresponding to the local rate centers where the wireless carrier has facilities and provides service to those customers. There is nothing “virtual” about these wireless numbers.

⁸³ 47 C.F.R. § 52.15(g).

⁸⁴ *See, e.g.*, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.2.2 (Feb. 4, 2005) (“Each switching center, each rate center and each POI may have unique V&H coordinates.”).

⁸⁵ *See, e.g.*, Ex parte letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68, 01-92 (Jan. 7, 2005).

⁸⁶ *Id.*

Under Section 251(a)(1) of the Act, direct interconnection is not required.⁸⁷ The Commission has long recognized that wireless carriers cannot be required to interconnect directly with another carrier and that the choice whether to interconnect directly or indirectly belongs to the competitive carrier based upon technical efficiencies and costs.⁸⁸ Further, the Commission's rules specifically mandate that a LEC must provide the type of interconnection reasonably requested by a wireless carrier.⁸⁹

Pursuant to these rules, traffic originating on an ILEC's network and terminating on a wireless network is often transited through the tandem of a Regional Bell Operating Company ("RBOC"), creating an indirect interconnection between the networks of the originating ILEC and the wireless carrier.⁹⁰ Furthermore, the Commission's rules specifically provide that intra-MTA calls are subject to reciprocal compensation, not access charges.⁹¹ The U.S. Court of Appeals for the 10th Circuit recently confirmed that a wireless carrier may charge reciprocal compensation to an RLEC originating an intra-MTA call routed through another carrier to the wireless carrier for termination.⁹²

Accordingly, the Commission should retain its current routing and rating rules and clarify that LECs are required to load wireless numbers with different routing and rating points into their switches and route calls to those numbers accordingly. Intra-MTA calls to such numbers

⁸⁷ 47 U.S.C. § 251(a)(1).

⁸⁸ *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 15991 (1996) ("*LEC/CMRS Interconnection Order*").

⁸⁹ 47 C.F.R. § 20.11(a).

⁹⁰ *See MCI Virginia Arbitration Order*, 17 FCC Rcd at 27101-02 (noting that transit is vital to the "ability to interconnect indirectly with other carriers").

⁹¹ *See* 47 C.F.R. §§ 51.701(b)(2), 51.703. *See also LEC/CMRS Interconnection Order*, 11 FCC Rcd at 16014 (stating that intraMTA traffic originating or terminating on a wireless network is subject to transport and termination charges rather than access charges); *Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9173 (2001) (same).

⁹² *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1264 (10th Cir. 2005).

must be treated as local calls by the originating LEC and by an ILEC receiving such calls from an originating LEC for transit to the terminating wireless carrier. Otherwise, T-Mobile and other wireless carriers will be forced to either replicate the ILEC legacy network in order to interconnect directly everywhere or treat local calls as toll calls and pay access charges.

It is imperative that the Commission act quickly to grant Sprint's petition. Now that ILECs may request wireless carriers to enter into negotiations and/or arbitration regarding reciprocal compensation arrangements,⁹³ ILECs might use such requests as an opportunity to insist that a wireless carrier interconnect directly with ILECs in every rate center where the wireless carrier provides service. The Sprint Petition issues thus may be raised in multiple arbitrations in multiple state commissions while the Commission considers the reform proposals submitted in this docket. The issues raised by the Sprint Petition therefore cannot wait for completion of the policy rulemaking process, but should be decided immediately to ensure that the prospective relief granted by the *Wireless Termination Tariff Order* is not sabotaged.

VI. CONCLUSION

In order to bring about pro-competitive, pro-consumer intercarrier compensation and universal service reform, the Commission should replace the current discriminatory intercarrier compensation system with a default unified bill-and-keep system, implemented by neutral default interconnection rules, and combine today's inconsistent, disparate universal service programs into a single, unified high-cost fund based on the forward-looking costs of the most efficient technology available in each high-cost area. Any modification short of those steps will waste this unique opportunity to repair the dysfunctional intercarrier compensation and universal

⁹³ *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, CC Docket No. 01-92, FCC 05-42, ¶ 16 (Feb. 24, 2005).

service systems now in place, dooming consumers to ever higher service costs and universal service fees and restricted choices.

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Date: May 23, 2005

dc-416011