

SUMMARY

The many comments filed in this proceeding underscore that intercarrier compensation reform is necessary to address the inequities of the current system. While commenters differ on the specifics of reform, there are areas of general agreement that could yield an opportunity for the Commission to promote voluntary bill and keep arrangements as the Commission addresses long term intercarrier compensation reform. Nextel continues to support bill-and-keep as the ultimate form of intercarrier compensation.

Similar to Nextel, many commenters agree on the critical need for regulatory oversight of transit services to ensure its availability and the reasonableness of the rates, terms and conditions under which it is offered. This will provide for efficient networking, enhanced opportunities for intermodal competition, and lower prices to consumers. Most commenters acknowledge the Commission's legal authority over transit services and support some form of Commission regulatory oversight. The experience of Nextel and other carriers demonstrates that rates and terms for Regional Bell Operating Company ("RBOC") transit are not always reasonable and that there are no practical alternatives to the purchase of RBOC transit services, except in isolated cases.

Nextel also finds support among commenters that revenue guarantees are not in the public interest. Further, no commenter made a justifiable case under law or policy for guaranteeing the full recovery of revenues lost from intercarrier compensation reform. The Commission can meet its statutory responsibilities by allowing carriers to increase their end user charges corresponding to any decreases in their intercarrier compensation revenues. In addition, Nextel opposes the creation of new federal support mechanisms that would be recovered as part of the universal service fund. Record analysis does not provide the full picture of proposed new

support mechanisms or the overall size of the federal USF in future years. Nextel supports Commission reform of universal service, but does not believe that increasing the number of funds or enlarging the size of the fund is a solution that will promote the public interest objective to bring the benefits of technology and competition to the consumer.

Like Nextel, many commenters caution against changes in network interconnection that require carriers to engage in expensive network reconfiguration. Nextel supports Commission adoption of a single point of interconnection per LATA rule, while at the same time supporting the continuation of treatment of intraMTA traffic as “local” under interconnection rules. Nextel also supports prompt grant of the Sprint petition for declaratory ruling on telephone number routing and rating. Finally, RBOC special access rates are excluded from the reform plans. Considering the importance of special access as intercarrier compensation reform is implemented, Nextel proposes that the Commission expressly prohibit any further price increases to already unreasonably high rates.

Table of Contents

SUMMARY i

I. INTRODUCTION 1

II. THE COMMISSION CAN MAKE IMPORTANT PROGRESS TOWARD A UNIFIED REGIME BY DECIDING THRESHOLD LEGAL AND POLICY ISSUES AND MANDATING SOME CHANGES IN THE NEAR TERM..... 2

III. THE COMMENTS STRONGLY AFFIRM THE NEED FOR REGULATION OF TRANSIT SERVICES AND THE COMMISSION’S LEGAL AUTHORITY OVER RBOC TRANSIT SERVICES..... 6

 A. The Public Interest Requires Regulation of RBOC Transit Services. 6

 B. The Commission Has Legal Authority to Regulate RBOC Transit Service. 12

 C. Ensuring Just and Reasonable Rates, Terms and Conditions for RBOC Transit Services. 14

IV. REVENUE GUARANTEES ARE NOT IN THE PUBLIC INTEREST 17

V. THE COMMENTS JUSTIFIABLY EXPRESS CONCERN OVER PROPOSALS TO CREATE NEW SUPPORT MECHANISMS. 19

VI. THE COMMISSION MUST TAKE GREAT CARE IN MAKING ANY CHANGES TO EXISTING INTERCONNECTION ARRANGEMENTS. 25

 A. Other Aspects of Network Interconnection Require Commission Oversight. 26

 B. Special Access Reform is Related to Intercarrier Compensation Reform. 31

VII. CONCLUSION 32

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

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

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”) hereby files reply comments in the Federal Communications Commission (“Commission” or “FCC”) proceeding examining a range of proposed reforms to existing intercarrier compensation mechanisms.¹ Nextel continues to believe that it is best for the Commission to replace the current intercarrier system with a bill-and-keep intercarrier plan that preserves transit arrangements and avoids guaranteed recovery of revenue losses resulting from intercarrier compensation reform. In addition, Nextel offers recommendations for actions the Commission could take in the near term to move towards a pro-competitive, bill-and-keep compensation regime.

I. INTRODUCTION

The comments reflect a variety of positions and recommendations on the best means of reforming the current disparate systems by which carriers compensate one another. Nextel continues to believe that the current system of intercarrier compensation will evolve into bill-and-keep relationships among carriers, and that the Commission can promote this change through the prudent application of regulatory incentives and requirements. Virtually all of the more than one hundred parties filing comments agree that fundamental intercarrier compensation

¹ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (“*Further Notice*”).

reform is needed to address the controversies and inequities plaguing the current system. The comments also affirm that the availability of Regional Bell Operating Company (“RBOC”) transit service at reasonable rates and terms is indispensable to efficient networking, competition, and lower prices to consumers. Most parties addressing this issue advocate Commission involvement in ensuring both continued availability of transit and reasonable rates and terms for transit services.

Additionally, there appears to be some common agreement on a number of key features of reform, which can form the basis for Commission action in the near term. One common theme is that the new rules ought to encourage voluntary agreements among carriers by creating proper incentives and equalizing bargaining power. Another is that the Commission needs to begin the process of unifying the various forms of intercarrier compensation across jurisdictions as soon as practicable. There is also strong consensus for initiating reductions to overall levels of intercarrier compensation soon, although parties differ on whether final intercarrier compensation reform should result in intercarrier charges being phased-out completely or continuing in some form under a unified regime.

II. THE COMMISSION CAN MAKE IMPORTANT PROGRESS TOWARD A UNIFIED REGIME BY DECIDING THRESHOLD LEGAL AND POLICY ISSUES AND MANDATING SOME CHANGES IN THE NEAR TERM.

The *Further Notice* sought comment on a number of key threshold issues relevant to the design of a unified intercarrier compensation regime. Resolving these threshold issues should help focus Commission consideration of a set of achievable options. Among them are: Do law, policy and market conditions support the regulation of transit services? What is the Commission’s responsibility to carriers to permit explicit recovery of revenues they may lose

under new intercarrier compensation rules? On which entities and on what basis will the Commission assess mandatory contributions to the federal Universal Service Fund (“USF”)? What is the Commission’s legal authority to unify the various forms of intercarrier compensation existing today? What will be the state role and will there be a need for the Commission to preempt state regulation to achieve intercarrier compensation reform? Resolving key threshold issues would enable the Commission to focus on near-term achievable results, while moving toward bill-and-keep intercarrier compensation reform.

Developing a unified intercarrier compensation regime that is competitively and technologically neutral is an ambitious task that will take time and require continual refinement. The Commission can, nevertheless, take steps to create an environment where carriers have incentives to enter into bill-and-keep agreements. It could start by adoption of rules that encourage voluntary bill-and-keep compensation arrangements. Most commenters favoring bill-and-keep as the ultimate form of unified intercarrier compensation acknowledge the need for a transition period to move from the present system to bill-and-keep. The suggestions for a transition timetable generally range from three to seven years.² However, there are important steps that the Commission can take in the near term to lay the groundwork for broader long term reform. Potential steps could include:

² See, e.g., Comments of Cox Communications, Inc. (Cox) at ii; Comments of CTIA at 43-45; Comments of the Intercarrier Compensation Forum (ICF) at D-31; Comments of Rural Cellular Association at 3; Comments of Qwest Communications International at 7 (Qwest); Comments of Western Wireless Corporation and Suncom Wireless, Inc. (Western Wireless and Suncom) at 25.

- Assertion of jurisdiction over RBOC transit services and adoption of requirements that transit be offered at the lower of current rates, TELRIC rates prescribed by a state commission or at the RBOC's interstate rates for comparable tandem switched access service.
- Coordinating with state commissions to reduce intrastate access charges to interstate levels to eliminate arbitrage opportunities and foster a smooth transition to full bill-and-keep intercarrier compensation reform.
- Adoption of rules that encourage carriers to enter into voluntary bill-and-keep agreements. The Commission could, for example, adopt a bill-and-keep rule for CMRS-Incumbent Local Exchange Carrier ("ILEC") and ISP-ILEC traffic, at least in situations where traffic is reasonably balanced between the carriers.³
- Allowance of additional carrier cost recovery from end users, including from increased subscriber line charges ("SLCs") and corresponding reductions in intercarrier compensation.
- Adoption of new universal service rules that limit growth in existing programs, demand greater accountability from carriers receiving funds and expand the universe of entities required to contribute to the fund. This needs to be accomplished before any consideration can be given to creating new support mechanisms.

³ MetroPCS argues that the Commission seriously consider an immediate shift to bill-and-keep for CMRS-ILEC intercarrier compensation. Comments of Metro PCS Communications, Inc. (MetroPCS) at 18 ("[A]ny deleterious effects of immediate adoption of bill-and-keep for wireless-wireline interconnection will be outweighed by the procompetitive benefits of supporting convergence.")

- Implementing network interconnection rules, based on the “edge” concept, which encourage efficiency and are competitively neutral, fair, and equitable to all interconnecting carriers.

These near term incremental efforts and actions by the Commission will create incentives for carriers to negotiate interconnection agreements that come increasingly closer to voluntary bill-and-keep arrangements and, hence, final intercarrier compensation reform.

A number of parties discuss the role of “default rules” in promoting intercarrier compensation reform.⁴ While such rules can serve a useful purpose, Nextel recommends that the Commission avoid a pervasive set of default rules that inhibit voluntary agreements by leaving little room for interconnecting carriers to develop efficient operational and business relationships. Any default rules ought to be less comprehensive and restrictive when the parties are on a relatively equal footing, affording them greater flexibility to structure their arrangements. Additionally, in situations where one party has the ability to exercise market power, as with RBOC transit services, Nextel believes that Commission rules, default or otherwise, ought to be more specific and obligatory. An appropriate balance must be achieved to promote technological and service innovations, while guarding against unfair competition.

⁴ See, e.g., Comments of Cincinnati Bell, Inc. at 14; Comments of CTIA at 6; Comments of Frontier Communications at 15; Comments of the Office of Advocacy, U.S. Small Business Administration at 9-10; 12-13; Comments of Qwest at 9; Comments of SBC at 5-6; Comments of T-Mobile at 18; Comments of US Cellular at 15; Comments of Verizon Wireless at 12; Comments of Western Wireless and Suncom at 4; Comments of Verizon at 7.

III. THE COMMENTS STRONGLY AFFIRM THE NEED FOR REGULATION OF TRANSIT SERVICES AND THE COMMISSION'S LEGAL AUTHORITY OVER RBOC TRANSIT SERVICES.

A. The Public Interest Requires Regulation of RBOC Transit Services.

The comments make a compelling case for Commission regulation of both the broad availability of transit services and the rates and terms under which transit service is provided. As Nextel and other commenters demonstrated in initial comments, the Commission has legal authority over transit service, and the public interest requires the exercise of that authority to ensure that transit service is available to other carriers at rates, terms and conditions that are just, reasonable, and not unreasonably discriminatory.⁵ Many carriers who rely on transit service to exchange traffic substantiate that indirect interconnection is vital to efficient networking and promotes competition by reducing barriers to entry.⁶ Like Nextel, they perceive few if any alternatives to the RBOC as the provider of critical transit services. A number of parties representing rural interests assert that the RBOC tandem transit service is crucial for the communities they serve to obtain access to other telecommunications providers and services. These transit service customers, as do other commenters, view Commission regulation as a necessary check on RBOC market power for the foreseeable future.⁷

⁵ See Comments of Nextel at 4-18. See, also Comments of Cox at 14-22; Comments of Leap Wireless International, Inc. (Leap) at 11-13; Comments of MetroPCS (MetroPCS) at 22; Comments of Western Wireless and Suncom at 29.

⁶ See, e.g., Comments of NuVox, Inc. at 4-6; Comments of Western Wireless and Suncom at 29.

⁷ See, e.g., Comments of the Coalition for Capacity-Based Access Pricing at 28; Comments of the Rural Alliance at 119-125.

Furthermore, carriers using RBOC transit service are not satisfied with current transit arrangements and believe that there can be no improvements without Commission action. Nextel believes there are substantial and increasing disparities between the high rates it pays for RBOC transit service and the declining RBOC tariff rates for comparable tandem switched access service. Nextel's comments document huge transit rate differences from state to state within a single RBOC, showing a ten-fold reduction where a state commission reviewed and set the transit rate.⁸

Other carrier representatives share similar concerns about the relatively unchecked ability of RBOCs in setting the rates and terms under which they make transit available. The comments of John Staurulakis, Inc. bear this out. They state: "BellSouth has filed a transit traffic tariff throughout its nine-state region that reflects a per-minute transit traffic rate of \$0.003, which doubles to \$0.006 on January 1, 2006."⁹ This ability of RBOCs to extract "market-based" rates for transit is more characteristic of a monopoly service provider than of a carrier providing service in a competitive market environment. In the absence of federal transit obligations and pricing constraints, Sprint notes, multiple states have moved ahead to address the same issues of RBOC transit obligations and rates.¹⁰ Sprint urges the Commission to resolve these matters

⁸ Comments of Nextel at 9-11.

⁹ Comments of John Staurulakis, Inc. at 18. Proceedings have been held in several states, including Florida and Tennessee on BellSouth transit tariff filings. *See, e.g.,* Docket No. 05-125-TP, *Petition and Complaint of AT&T Communication of the Southern States, LLC for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-282 filed by BellSouth Telecommunications, Inc.* (Fla. P.S.C.); Docket No. 04-00380, *BellSouth Tariff Filing to Introduce Transit Traffic Service, Tariff No. 04-01259* (Tenn. Regulatory Auth.); Docket No. 2005-63-C, *BellSouth Telecommunications, Inc. Transit Traffic Tariff No. 2005-50* (S.C. P.S.C.).

¹⁰ Comments of Sprint at 19-20.

comprehensively at the federal level to relieve parties of having to litigate similar issues in many different states.

Parties representing rural interests also recognize the need for federal rules that check the exercise of RBOC market power in the transit market. The Rural Alliance, for example, describes transit service as vital to the provision of telecommunications services in rural areas, and sees tandem providers “in position to control access to all other carriers subtending the tandem.”¹¹ The best way to avoid RBOC abuses of market power for these bottleneck services, NTCA observes, is for the Commission to require that they be offered under tariff at cost-based rates.¹² The comments of GVNW Consulting predict that as the telecommunications industry consolidation continues, regulation of transit service will become even more important.¹³

Several other commenters underscore an important point – a number of state commissions have reviewed transit service rates and determined that transit must be made available and rates regulated. According to PacWest and others, state commissions in Michigan, North Carolina, Massachusetts, California, and Indiana have required RBOCs to offer tandem

¹¹ Comments of the Rural Alliance at 121-123.

¹² Comments of the National Telecommunications Cooperative Association (NTCA) at 54-55.

¹³ Comments of GVNW Consulting, Inc. at 29.

services to other carriers.¹⁴ The Ohio PUC for years has recognized the obligation of RBOCs to provide transit services in return for reasonable compensation.¹⁵

The Texas PUC filed comments that focus in part on its experience in reviewing RBOC transit issues. After extensive hearings, the Texas PUC ordered SBC Texas to provide transit services upon request at TELRIC rates. The Texas PUC also adopted terms and conditions for SBC's handling of CMRS and other transit traffic.¹⁶ The PUC affirmed the transit obligation as necessary to efficient network interconnection, finding a lack of alternative transit providers within Texas. It also rejected SBC's proposal for private negotiations on the grounds that commercial negotiations could result in cost-prohibitive transit service rates.

A few commenters, however, while affirming the importance of transit service, mistakenly argue that there is no need for Commission rules addressing transit. They appear to believe either that there is emerging competition in the transit market that makes regulation of transit services unnecessary, or that the availability of RBOC transit on a voluntary basis negates any need for Commission oversight or regulation. BellSouth, for example, unjustifiably asserts that the existence of voluntary agreements for transit services demonstrates that the market is

¹⁴ Comments of PacWest Telcomm, Inc. *et al* at 22-23. *See also* Comments of CTIA at 26, n. 38 (reproducing North Carolina statement on transit) The comments also note that Illinois has a similar rule proposed, but not yet adopted. Further, a recent Missouri Public Service Commission ruling required SBC to offer transit service for reasonable compensation based on TELRIC pricing. *Southwestern Bell Telephone L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A")* at 42, Case No. TO-2005-0336, Arbitration Order, available at <http://www.psc.state.mo.us/orders.asp> (last visited on July 19, 2005).

¹⁵ Comments of the Public Utilities Commission of Ohio at 29.

¹⁶ Comments of the Public Utilities Commission of Texas at 13.

working.¹⁷ This is contrary to the majority of carriers that rely on transit service, as noted above. USTA states that its members willingly provide transit services via tariff and commercial arrangements around the country, but still acknowledges that regulation may be needed in transit markets that are not competitive.¹⁸ Qwest sees a niche market developing for competitive transit services, pointing to some limited activity by traffic aggregators and other carriers within its region.¹⁹ Qwest thus encourages the Commission to begin with a market-oriented approach to transit arrangements before employing a more detailed regulatory regime.²⁰

Carriers that depend on RBOC transit to interconnect with other carriers, however, find that current voluntary commercial agreements with RBOCs are inadequate to protect their legitimate interests and certainly are not an effective substitute for active Commission oversight of transit service. While RBOCs currently make transit arrangements available under most circumstances, the rates and terms under which they offer these vital services to other carriers are not always reasonable. Further, those carriers that must rely on transit to interconnect indirectly disagree that there are practical alternatives to purchasing RBOC transit services, except in isolated cases.²¹

The comments, therefore, fully support the Commission's conclusions in the *Further Notice* that "the availability of transit service is increasingly critical to establishing indirect

¹⁷ Comments of BellSouth Corporation at 38.

¹⁸ Comments of the United States Telecom Association (USTA) at 45-47.

¹⁹ Comments of Qwest at 43.

²⁰ *Id.* at 38, n. 88.

²¹ Nextel's experience bears this out. As Nextel explained in comments, it is aware of only one alternative tandem transit provider commencing operations in a limited number of geographic markets. Comments of Nextel at 9, n. 16.

interconnection” and that “indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic.”²² While it is true, as the Commission recognizes, that RBOCs voluntarily provide transit service pursuant to interconnection agreements, these agreements are the product of unequal bargaining power. Lacking competitive alternatives, wireless carriers like Nextel have no choice but to agree to transit prices that exceed TELRIC rates set by commissions and interstate rates for RBOC tandem switched access service – which from a functional perspective is the same service as transit.

The actions of the states that have reviewed RBOC transit rates and obligations have afforded some transit users limited relief from unreasonably high and discriminatory transit charges. It is nevertheless important, particularly in preparation for a bill-and-keep intercarrier compensation regime, for the Commission to assert its authority over the provision of RBOC transit services to ensure transit is provided at reasonable rates, and under reasonable terms and conditions.²³

²² *Further Notice* at ¶¶ 125-126.

²³ Qwest urges that any rules the Commission adopts cover both interstate and intrastate transit. Comments of Qwest at 43-44. However, it may not be necessary for the Commission to override the state regulation of transit services, at least in cases where state commissions have acted to set transit rates using a TELRIC methodology.

B. The Commission Has Legal Authority to Regulate RBOC Transit Service.

The comments of Nextel and a number of other parties confirm the Commission's legal power to regulate transit services.²⁴ Section 201 of the Act is an undeniable source of statutory authority. In fact, no commenter disputes the Commission's authority to regulate transit providers under Section 201(a), which empowers the Commission to establish physical connections, through routes and charges applicable thereto among common carriers, and under Section 201(b), which mandates just and reasonable rates and practices for common carrier services.²⁵

The RBOCs themselves acknowledge the Commission's legal authority under Section 201 of the Act. SBC, for example, recognizes this authority under Section 201 over transit providers, at least with respect to carriers that already provide transit services voluntarily.²⁶ Qwest's comments state that: "Transiting is an interconnection service subject to Sections 201 and 202 of the Act..." and that common carriers can be obligated to interconnect with other carriers after a hearing under Section 201(a).²⁷ Even BellSouth concedes that Section 201(a)

²⁴ See, e.g., Comments of Nextel at 12-18, Comments of CTIA at 24-27, Comments of Leap at 11-14, Comments of KMC Telecom, Inc. and Xpedius Communications, LLC at 56-59, Comments of the Rural Alliance at 119-125.

²⁵ See, e.g., Comments of Nextel at 12-18; Comments of CTIA at 24-27; Comments of Leap at 11-14; Comments of KMC/Xpedius at 56-59; Comments of the Rural Alliance at 119-125.

²⁶ Comments of SBC Communications, Inc. at 4.

²⁷ Comments of Qwest at 36-37.

authorizes the Commission, upon making public interest findings, to require carriers to provide transit service on a common carrier basis.²⁸

Nextel and other commenting parties find an additional source of statutory authority to regulate transit service in the Section 251(a)(1) duty of all telecommunications carriers “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”²⁹ The BellSouth and Qwest comments disagree, arguing that the terms of Section 251(a)(1) do not apply to transit, and instead cover only physical interconnection and not transport and termination of traffic. According to this reasoning, Section 251(a) only requires an RBOC to interconnect its tandem switch with the facilities of other carriers, i.e., a physical linking; it does not obligate the RBOC actually to carry traffic among these indirectly interconnected carriers. The legal analysis contained in the ICF comments shows this argument to be without merit.³⁰ As the ICF comments explain, an interpretation that forecloses the Commission’s authority to regulate the essential middle link for indirect interconnection would “gut section 251(a)’s indirect interconnection provision of all meaning.”³¹

Nextel’s comments highlighted another statutory mandate to support Commission regulation of RBOC transit provided to CMRS providers. Sections 2(b) and 332 of the Act

²⁸ BellSouth maintains, nevertheless, that market conditions do not warrant assertion of this authority over transit services. Comments of BellSouth Corporation at 36-38. As described above in Section III.A, the comments document continuing market power and, hence, the need for regulation of transit services. BellSouth is thus essentially arguing for forbearance, for which it has not met the standard. *See* Section III.C, below.

²⁹ 47 U.S.C. § 251(a)(1).

³⁰ Comments of the ICF at A-22-A-25.

³¹ *Id.* at A-25.

confer on the Commission broad authority to regulate all aspects of CMRS-ILEC interconnection, including the provision of transit services.³² Both the Commission itself and the courts have confirmed the Commission's unique jurisdiction over CMRS under Sections 2(b) and 332, jurisdiction that extends to CMRS intercarrier interconnection matters.³³

C. Ensuring Just and Reasonable Rates, Terms and Conditions for RBOC Transit Services.

Nextel's practice is to seek voluntary negotiations for direct interconnection with other carriers if traffic levels justify the additional cost. Nextel also believes that a carrier's choice between direct or indirect interconnection is not limited under the Act. However, if a public interest need is demonstrated, Nextel would support the development of reasonable standards for interconnecting carriers to convert from indirect interconnection via transit arrangements to direct connection with other carriers. In the absence of reasonable standards, and in accordance with the Act, however, wireless carriers have the right to interconnect indirectly with local exchange carriers.

³² See 47 U.S.C. §§ 152(b), 332(c)(1)(B); Comments of Nextel at 17-18.

³³ See Comments of Nextel at 18, citing *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n. 21 (8th Cir. 1997), *rev'd on other grounds sub nom. AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("Because Congress expressly amended section 2(b) [and] 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to CMRS providers."); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 1025 (1996) ("should the Commission determine that the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory, the Commission may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates.")

T-Mobile and CTIA have proposed a 600,000 minutes per month threshold for converting indirect traffic exchange arrangements into direct interconnection arrangements.³⁴ Under these proposals, once usage exceeds this level, the originating carrier would have a reasonable amount of time during which to choose among several alternative arrangements: 1) direct connection with the terminating carrier; 2) segregation of traffic into additional trunk groups transiting the tandem; 3) the “meet me at the tandem” option by which the two carriers interconnect at the tandem via cross-connect services provided by the RBOC at reasonable rates, terms and conditions; or 4) use of multiple transit providers.³⁵

This 600,000 minutes per month threshold and the associated procedures recommended in these comments appear geared to ensure that carriers would neither lose the obvious network efficiencies of indirect interconnection prematurely nor incur the costs of direct interconnection unnecessarily. They also provide the RBOC with some reasonable level of control and planning predictability over the volume of traffic transiting its tandem and thus may likely merit further consideration.

As described above, numerous carriers that depend on RBOC transit services to route traffic efficiently have shown that the market for these services is not competitive. RBOCs have been able to exact high transit rates via one-sided interconnection agreements, except in cases where state commissions have intervened to establish rates. In view of the critical nature of this

³⁴ Comments of T-Mobile USA, Inc. (T-Mobile) at 22-23; Comments of CTIA at 24-25.

³⁵ Comments of T-Mobile at 22. The “meet me at the tandem” form of interconnection can be effective only if the Commission finds that RBOCs have market power in the provision of cross-connect services and regulates these like other transit services.

service today, Commission action is needed as part of any intercarrier compensation reform plan to ensure just, reasonable and not unreasonably discriminatory rates for transit pursuant to Sections 201 and 202. There are several ways the Commission can achieve this. It can require RBOCs to cost justify transit rates, using, for example, a TELRIC methodology. Alternatively, it can require that current transit rates be at no higher levels than rates for comparable tandem switched access service in RBOC interstate tariffs. Another alternative or default arrangement would be for the Commission to defer to the transit rates that a state commission has prescribed using a TELRIC methodology.³⁶ In the absence of state TELRIC rates the Commission could establish rate caps and/or default rates that are based on TELRIC. Any one of these approaches, perhaps in combination with others, could satisfy the need for rate regulation of RBOC bottleneck facilities.

Nextel is in favor of commercially negotiated agreements if the Commission sets ground rules preventing the exercise of market power in the provision of transit services and in other key areas. Any proposals, however, that would base future transit rates on the rates that transit users currently pay is unacceptable, since it would simply carry forward unreasonably high rates without any review or regulatory oversight.³⁷ For the reasons Nextel and other commenters have articulated, more engagement by the Commission is necessary to counteract the market failure that is evident in the transit service market.

³⁶ See *Diamond Int'l Corp. v. FCC*, 627 F.2d 489, 492-493 (D.C. Cir. 1980) (Commission can defer to state tariffing of particular services).

³⁷ See ICF Comments at D-25-D-31.

Overall, the comments document continuing RBOC market power in the provision of transit services that is not fully addressed by the availability of commercial interconnection negotiations. This situation justifies Commission assertion of Sections 201 and 202 authority over RBOC transit providers. Commission regulation of transit at this time does not mean that RBOC transit would need to be regulated indefinitely. If at some point in the future other transit providers enter the market and competitively provided services become more available, RBOCs can seek relaxation or Commission forbearance from regulation under Section 10 of the Act.

IV. REVENUE GUARANTEES ARE NOT IN THE PUBLIC INTEREST

Any guarantee of full recovery of revenues lost from intercarrier compensation reform is unjustified from either a legal and policy standpoint, as many of the comments reflect. Revenue neutrality, moreover, is not an appropriate policy objective because it is likely to impede technological change and competition. The Ohio PUC opposes using existing or new federal support mechanisms to keep rate-of-return carriers whole as a result of access restructuring in this proceeding.³⁸ Qwest, like Nextel, finds that any legal responsibility on the part of the regulator would be fully satisfied by affording carriers a “reasonable opportunity” to recover their revenue requirements.³⁹ In the context of new rules limiting intercarrier compensation, the Commission can meet its responsibility by allowing ILECs to increase their end user charges corresponding to any decreases in intercarrier compensation revenues.

³⁸ Comments of Ohio PUC at 22-23.

³⁹ Comments of Qwest at 25-8. *See also id.* at 26 (“If competitive inroads into access lines reduce the revenue available from subscriber line charges in the future, or if carriers seek to prevent access line loss by charging less than the maximum authorized SLC increase, the FCC’s duty has been fulfilled.”); Comments of Verizon at 4-5.

NASUCA in its comments concurs that revenue replacement is not an automatic entitlement for any carrier. It points out that courts have recognized the regulator's broad latitude in determining "just and reasonable" rates.⁴⁰ Ad Hoc similarly finds no evidence to justify any rule maintaining revenue neutrality under the standards of Sections 201 or 254.⁴¹ In fact, the commenters supporting revenue neutrality provide little policy rationale for such an approach. Fundamentally, any use of new support mechanisms to replace lost intercarrier revenues would require detailed findings that such measures are necessary to carry out the purposes of Section 254.

The legal arguments in favor of revenue neutrality fare no better than the policy arguments. No commenter explained how the loss of access revenues by ILECs would result in a valid regulatory "taking" or "confiscation" claim. The threshold requirement for finding regulatory confiscation is that an agency's rate prescription threatens an incumbent's financial integrity.⁴² Commission elimination of access revenues, coupled with an opportunity for carriers to recover their costs through other avenues such as end user charges, would not constitute a regulatory taking. Furthermore, as Nextel demonstrated in its initial comments, a long line of Supreme Court cases confirms that regulatory agencies may supersede previous forms of rate-making with new forms that do not guarantee the recovery of carrier costs.⁴³ A unified intercarrier compensation regime satisfies this standard.

⁴⁰ Comments of National Association of State Utility Consumer Advocates (NASUCA) at 29.

⁴¹ Comments of the Ad Hoc Telecommunications Users Committee (Ad Hoc) at 14.

⁴² *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

⁴³ Comments of Nextel at 21-23, citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944), *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 528 (2002).

V. THE COMMENTS JUSTIFIABLY EXPRESS CONCERN OVER PROPOSALS TO CREATE NEW SUPPORT MECHANISMS.

Many commenters representing diverse interests warn against creating new federal support mechanisms to replace lost intercarrier compensation, as several of the plans propose. Carriers that are primarily contributors to the federal universal service programs oppose augmenting the burgeoning support programs already in existence. Some observe that the Commission's USF reform initiatives need to show more progress before saddling contributors with new funding requirements.⁴⁴ Carriers who receive universal service funds generally are wary of eliminating intercarrier compensation because in part they fear the USF may be overloaded to the breaking point and their individual funding might be jeopardized.⁴⁵ Other commenters, such as the Ohio PUC, stress the importance of reforming USF at the same time as the Commission acts on intercarrier compensation.⁴⁶ Many commenters call upon the Commission to expand the contribution base to include other entities, many of which are using the public switched network and are not paying a fair share of the support obligation.⁴⁷ Nextel reiterates that the Commission does not have unlimited discretion to create new USF programs – universal service support must fit within the framework of Section 254(b) of the Act as

⁴⁴ See, e.g., Comments of Ad Hoc at 16-17; Comments of Pac-West at 49-50; Comments of XO Communications at 16-20.

⁴⁵ See, e.g., Comments of Colorado Telecommunications Association, Oregon Telecommunications Association and Washington Independent Telephone Association at 34-35; Comments of NTCA at 17-18; Comments of the National Exchange Carrier Association, Inc. (NECA) at 3-12.

⁴⁶ Comments of the Public Utilities Commission of Ohio at 23.

⁴⁷ See, e.g., *id.* at 25; Comments of CTIA at 40-42; Comments of T-Mobile at 35-36; Comments of Dobson Cellular at 9; Comments of Leap at 15; Comments of Surewest Communications at 27.

interpreted by the Commission and the courts. Section 254 specifies that universal service support mechanisms may be used only to promote the universal service goals of the Act. The Commission is not free to stray from the core Section 254(b) USF principles in designing a USF program.⁴⁸

One notable feature of this controversy has been the lack of data quantifying new proposed support requirements under the various plans that have been filed. NECA's comments provide a partial impact analysis of several of the plans, focusing on the telephone companies that participate in its pools. NECA takes a snapshot view in time using sample data and assumptions from 2002 and 2003. NECA projects that to maintain revenue neutrality federal support requirements for its pool participants would increase by \$1.7 billion under the NARUC Intercarrier Compensation Task Force Proposal (version 5) and by \$1.5 billion under the ICF plan.⁴⁹ This NECA analysis does not take into account support payments to Eligible Telecommunications Carriers ("ETCs") other than NECA pool participants. Nor does it take into account increases in federal and state support funding over time for reasons not directly related to adoption of a plan.

The ICF developed a model that projects the effects of implementing the ICF plan over five steps. The model estimates the decrease in ILEC revenue (step-by-step) attributable to reductions in intercarrier compensation. In addition, it projects increases in subscriber line

⁴⁸ See *Qwest v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001); *Qwest v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

⁴⁹ Comments of NECA at 5.

charges (“SLCs”) and the size of the two new support mechanisms the ICF proposes in order to achieve revenue neutrality. These new support mechanisms and other ICF plan changes to existing USF programs would combine to increase the size of the existing federal USF by \$2.900 billion in Step 3 of the plan, \$3.038 billion in Step 4 and \$2.744 billion in Step 5.⁵⁰ The purpose of the ICF model is to determine the added support requirements related to its plan. The model thus projects only changes in fund sizes that are related to adoption of the ICF plan. In fact, the ICF contribution analysis uses a constant baseline USF amount of \$6.885 billion in each step of the plan.⁵¹

⁵⁰ Comments of the ICF at B-12-B-14. At each step the ICF includes a constant amount of \$300 million for “Increase in High Cost Fund from Changes in Existing High Cost Mechanisms.” The ICF comments do not reveal how this amount was derived or explain why it does not change from step to step. The \$300 million per year increase apparently is the product of changes to current high cost fund rules contained in a section of the ICF plan entitled “Other USF Issues.” *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, ICF Inter-carrier Compensation and Universal Service Reform Plan at 79-81 (Oct. 5, 2004) (ICF Plan). Among these changes, proposed without explanation or justification, are removal of the cap on High Cost Loop Support and unfreezing the national average cost per loop. The ICF Plan also would lower the high cost support eligibility criterion for large study areas to that of small study areas. *Id.* at 79.

⁵¹ Comments of the ICF at B-16. The ICF plan also creates a new universal service contribution methodology based on “units” applied to telephone numbers and network connections that do not have telephone numbers. The ICF methodology differs significantly from the numbers-based plan proposed by the FCC. The ICF contribution methodology assesses DSL, cable-modem and other high-speed residential connections one unit and for business special access and private line connections, establishes a four-tiered system of capacity multipliers ranging from one to 100 units. The ICF capacity tiers are less than that proposed by the FCC, which range from one to 336 units. See *Federal State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 81 (2002). The result is that business connections under the ICF plan would contribute much less to USF than under the FCC proposal, thus shifting more of the burden to residential and wireless users. Taking into account the additional support requirements, the ICF estimates that the per-unit universal service assessment with this proposed methodology would start at \$1.00, increase to \$1.17 at Step 1, \$1.25 at Step 2, up to \$1.31 at Step 5. It is important to point out that the ICF derived these

In deciding what additional load the USF can bear, it is important for the Commission to take a broad view of future funding requirements. The ICF analysis is merely a partial picture, also a snapshot in time, isolating the effects only of the ICF plan. It does not project or display the total support requirements in each year for all USF programs based on current trends, nor does it account for future growth in all support mechanisms.

The latest projections by USAC of USF funding needs for the first three quarters of 2005 already exceed \$5.5 billion. Its 2005 projection of High Cost Fund size exceeds \$4 billion. When USAC's 2005 projection of almost \$800 million for Low Income Support programs is counted, it appears that the 2005 funding requirement federal USF programs exceeds \$7 billion.⁵² If the ICF model were to factor in growth for every USF program due to the ICF plan and other causes as well, the overall year-by-year projected increase in fund size would likely be far greater than implied by the ICF plan analysis.⁵³ Even accepting the limited purpose of the model, the accuracy of its projections is uncertain. Changes in model inputs that might be

projections using a constant baseline USF size of \$6.885 billion (an approximation of the 2005 USF level) for each step. Also, the total number of "units" was held constant at each step – with only the phase in of additional numbers for CMRS carriers, CRTC's and CRTC competitors at each step. The ICF analysis shows that the contribution factor would increase about 31% over five steps. This static analysis, however, is of limited use -- the USF has been steadily increasing year-to-year and the number of telephone numbers and connections is similarly expected to increase. A comprehensive analysis of any proposed contribution methodology must take into account growth of the support mechanisms, growth in USF programs and growth in the revenues, numbers and connections, as the case may be.

⁵² USAC, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter*, available at <http://www.universalservice.org/overview/filings/default.asp> (May 2, 2005).

⁵³ Experience suggests that the \$6.885 billion base used by the ICF, even if it were accurate today, would grow substantially each year. Combining this growth with the new ICF support

required by any modification of the ICF plan could influence the results significantly. Transit service revenue is an example of one of the inputs that could change and affect the model's projections, if the Commission were to modify the transit rate proposal set forth in the ICF plan, as many comments advocate.⁵⁴

There are additional reasons why caution is warranted. When the Commission shifted revenue requirements from access charges to universal service support programs in the past, the result has been substantial increases in funding requirements. For example, the Commission introduced Interstate Common Line Support in 2002 as a means of replacing rate-of-return ILEC revenues lost as a result of rule changes phasing out Carrier Common Line access charges.⁵⁵ This new support mechanism, which the Commission specifically decided to leave uncapped in the MAG Order, has grown from \$400 million in 2003 to \$1.2 billion in 2005.⁵⁶

The inescapable conclusion is that mandatory contributors to USF face continually escalating funding obligations unless the Commission introduces meaningful USF reform. The

mechanisms and the other changes to current USF programs it proposes would produce a total federal USF well in excess of \$10 billion and growing.

⁵⁴ There are many other unknowns that could increase USF funding requirements well above what this model predicts. An interesting, if not major, item is the so-called "Adjustment for Impact on Special Access Revenues," by which rate-of-return ILECs would be able to recover special access revenues lost after the ICF plan takes effect. ICF Plan at 59-60.

⁵⁵ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001).

⁵⁶ USAC, *Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2003*, available <http://www.universalservice.org/overview/filings/default.asp> (August 1, 2003); USAC, *Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2005*, available at <http://www.universalservice.org/overview/filings/default.asp> (May 2, 2005).

establishment of new support mechanisms would only exacerbate an already chronic situation that has been in search of a remedy for years.

The proposed new support mechanisms – although claimed by their proponents to be different from other universal service programs – share many common features. Each of these new programs would be funded by the same contributions using the same criteria as for other programs that make up the federal Universal Service Fund, assuming, of course, that a showing could be made that these programs fall within “universal service” parameters.⁵⁷ These new support mechanisms simply would add to the already overwhelming federal USF price tag without any showing: (1) that local exchange carrier recipients under current programs are utilizing this funding for universal service purposes, or (2) that LECs would be forced to raise local service rates above affordability benchmarks absent the new support revenue. Such an analysis would necessarily take into account other sources of revenue, including SLC increases and supplemental support from existing federal and state universal service programs, as well as carrier savings realized from a unified regime.

It would not be prudent for the Commission even to consider establishing new support mechanisms without rationalizing the current universal service rules, resizing existing programs and controlling overall fund growth. The Federal-State Joint Board on Universal Service and the Commission to date have shown little progress in their efforts to reform the funds distribution and contribution aspects of the federal USF. These understandably are extraordinarily difficult

⁵⁷ See Comments of USTA at 38-41; submission of the Alliance for Rational Intercarrier Compensation’s Fair Affordable Comprehensive Telecom Solution at 71-72 (Nov. 4, 2004); ICF Plan at 69-75.

tasks. Thus, it is uncertain how, when, and by what means they can be accomplished.⁵⁸ The result is that there is no relief in sight from growing funding requirements and ever higher contribution factors.⁵⁹ Creating new support mechanisms in the midst of this crisis would only compound the problem and make the solution more elusive.

VI. THE COMMISSION MUST TAKE GREAT CARE IN MAKING ANY CHANGES TO EXISTING INTERCONNECTION ARRANGEMENTS.

A number of the proposals included in the *Further Notice* or described in comments would modify existing interconnection arrangements in some respects. Nextel and others have cautioned that any such changes as the Commission may adopt be fair and equitable to all interconnecting carriers and not require extensive network reconfiguration or impose significant costs. CMRS uses different technology and architecture than landline service, has different service requirements and features and operates according to a business model that has evolved over its relatively short lifespan. The success of wireless service and the emerging promise of intermodal competition are in large part due to the relative freedom from traditional regulation

⁵⁸ The Joint Board proposal to limit high cost support to primary lines is a case in point. Numerous comments argued that this approach would hurt universal service policy and would be administratively unworkable. Congress ultimately blocked its adoption.

⁵⁹ Broadening the base of USF contributors to include facilities-based ISPs, cable modem companies and providers of IP telephony would lessen the burden on current contributors and promote a more level playing field for competitors. Nextel supports this approach. Although the Commission years ago found that Section 254(d) empowered it to require these entities to contribute to the fund, it has not yet exercised this authority. *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, ¶ 65-78 (2002), citing *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998). The effect, if any, of the Supreme Court's *Brand X* decision on legal and policy implications of expanding the contributor base is unclear, and doubtless will take time to sort out.

that Congress has mandated for CMRS and the Commission's enlightened approach to the development of the wireless industry.

A. Other Aspects of Network Interconnection Require Commission Oversight.

In addition to the critical issues associated with the availability and cost of transit service, comments raise a range of other issues related to how carriers compensate and interconnect with one another in the absence of specific Commission rules or guidelines. These issues include unresolved disputes about transit traffic payment responsibilities, the workability of a single point of interconnection ("POI") per LATA regime, the routing and rating treatment of certain wireless traffic, and the refusal of certain ILECs to honor the intraMTA wireless local calling area, at least for land-to-mobile traffic.

The comments differ on how to apportion the costs of third-party transit services among indirectly interconnected carriers.⁶⁰ Nextel believes that an even-handed approach to cost responsibility for traffic interchange would hold the originating carrier responsible for the transport and transit services needed to bring traffic to the terminating carrier. A number of other commenters agree.⁶¹ This approach is consistent with the "calling party's network pays" payment methodology that underlies most assumptions regarding the mutual benefit to the exchange of traffic between carriers. Requiring only one of two interconnecting carriers – i.e. the CMRS provider – to compensate the third-party transit provider both for calls that are

⁶⁰ See, e.g., Comments of Nextel Partners at 18-22; Comments of T-Mobile at 21-22; Comments of the Rural Alliance at 100-103; Comments of John Staurulakis, Inc. at 16-18.

⁶¹ See, e.g., *id.* at 7; Comments of CTIA at 24; Comments of Qwest at 10.

originated as well as terminated – and where both indirectly interconnected carriers benefit from using the indirect interconnection made available through transit – would be inequitable and not competitively neutral.⁶²

Several rural interests claim in their comments that carriers may not send traffic to a rural ILEC via an RBOC tandem unless the rural ILEC first has agreed to the method and point of interconnection; that rural ILECs are not required to transport traffic to other carriers outside of their individual service territories; and that the carrier interconnecting with the rural ILEC must pay transport costs to points outside of the rural ILEC local-calling area.⁶³ These claims amount to demands for unwarranted special treatment under a unified intercarrier compensation regime.

Nextel typically negotiates interconnection agreements with rural ILECs when traffic levels are sufficient to justify a business relationship. Even prior to the Commission’s *Wireless Termination Tariff Order*, Nextel did not refuse to negotiate interconnection arrangements with a rural ILEC when the rural ILEC requested negotiations.⁶⁴ Further, where Nextel seeks locally-

⁶² See *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256, 1264 (10th Cir. 2005) (rural ILECs have mandatory duty to establish reciprocal compensation agreements with CMRS providers for calls originating and terminating within the same MTA regardless of whether any portion of the intraMTA traffic exchanged is transported on an IXC network).

⁶³ See, e.g., Comments of the Coalition for Capacity-Based Access Pricing at 27-28; Comments of Colorado Telecommunications Association, Oregon Telecommunications Association and Washington Independent Telephone Association at 38-39; Comments of Interstate Telecom Consulting at 22-23; Comments of John Staurulakis, Inc. at 16-17; Comments of Minnesota Independent Coalition at 36; Comments of Montana Independent Telecommunications Systems at 9-10; Comments of NTCA at 44-54; Comments of the Rural Alliance at 93-103.

⁶⁴ *Developing a Unified Intercarrier Compensation Regime*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶ 16 (2005) (“*Wireless Termination Tariff Order*”) review pending sub nom. *Ronan Telephone Co. v. FCC*, Case No. 05-71995 (9th Cir. filed April 8, 2005). See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Written Ex Parte Presentation of Nextel Communications, Inc. at 4, n. 5 (Dec. 10, 2003).

rated NXX codes, Nextel agrees to establish a local POI and to negotiate interconnection agreements with the rural ILEC.⁶⁵ Nextel accedes to the rural ILEC's insistence on a local POI because this is the path of least resistance, but it is not without cost and loss of efficiencies to Nextel and the public. For example, some rural ILECs typically insist that Nextel agree to the rural ILEC rating land-to-mobile traffic using landline local traffic definitions, in direct violation of the intraMTA rule.

By refusing to honor the intraMTA rule for land-to-mobile traffic, these rural ILECs have, up to this time, defeated an important aspect of wireless carrier interconnection rights – the treatment of all intraMTA traffic as local.⁶⁶ The rural ILEC position that interconnecting carriers should be required to cover transit and transport costs for all traffic beyond the local-calling area or the rural ILEC service area boundary imposes disproportionately high costs on the interconnecting carriers, and negates much of the efficiency of indirect interconnection through the RBOC tandem.

Assertions by rural ILECs that the intraMTA rule will become obsolete under a unified intercarrier compensation regime are premature, and, in any case, are no reason to change the rule now. The rule importantly recognizes the fundamentally different characteristics of wireless

⁶⁵ Allegations by the Rural Alliance that interconnecting carriers somehow are misusing the Local Exchange Routing Guide (“LERG”) are misplaced. Comments of the Rural Alliance at 133. Because NANPA's current procedures require an executed interconnection agreement with a LEC prior to assigning a wireless carrier an NXX code in an ILEC service area, it is highly unlikely that carriers can routinely abuse the LERG process.

⁶⁶ As noted below, the solution to this challenge is not to eliminate the intraMTA rule as “confusing” or a nuisance to rural ILECs. Rather, it is for the Commission to give plain guidance and allow industry forums and groups to identify ways to make whatever modifications

networks and service. It would be a major step backward for the Commission to impose the historical boundaries of traditional landline telephone companies upon the wireless industry. Even though in many cases local exchange carriers are not complying with the intraMTA rule with respect to land-to-mobile traffic, and wireless carriers have been tolerating this non-compliance in order to serve their customers, the rule establishes a standard useful for negotiating interconnection agreements. Only when bill-and-keep universally replaces intercarrier compensation can it be assumed that the rule may have outlived its effectiveness and can be eliminated.

Like many other wireless carriers, Nextel currently has at least one POI in each LATA. Nextel agrees that this standard can be embodied in the Commission's network interconnection rules, although CMRS carriers should always have the flexibility to have additional POIs. The "edge" concept put forth in the ICF plan as modified by T-Mobile and CTIA generally appears workable and technically sound.⁶⁷ The CTIA and T-Mobile changes to the ICF plan's edge proposal represent competitively neutral improvements that will promote network efficiency and fair and equitable treatment of interconnecting carriers. Removing potentially arbitrary restrictions on the number of edges a carrier can establish within a LATA and providing some

are necessary in the way carriers operate today, so that compliance with the Commission's rules is achieved.

⁶⁷ A number of commenters build their own proposals around this concept but with some modification to the numerous and specific rules proposed by the ICF. Qwest's plan is founded on this approach insofar as carriers would have a "financial edge," to which interconnecting carriers would have to deliver traffic. Originating carriers would have the responsibility to bring traffic to the terminating carrier edge, whether by direct or indirect connection pursuant to arrangements with a transit service provider. Comments of Qwest at 33-36. Qwest believes that

choice to each carrier as to which edge it chooses to deliver traffic to the terminating carrier are key to an effective network interconnection policy. These edge arrangements would accommodate bill-and-keep as well as any transitional approach the Commission may select.

The Commission should grant the Sprint routing and rating petition expeditiously to affirm the right of carriers to use local telephone numbers while interconnecting indirectly with a local exchange carrier.⁶⁸ Restrictions placed on the availability and use of local numbers are contrary to the public interest, impose additional charges on consumers unnecessarily and cause much inconvenience and confusion. These restrictions unfairly impede intermodal competition and contravene other policies of the Commission. Dialing parity, for example, requires that local numbers be available to CMRS customers; there simply is no basis for denying CMRS customers dialing parity because the CMRS provider chooses to utilize an efficient, indirect interconnection arrangement.⁶⁹

Nextel concurs with T-Mobile's observation that "Virtual NXX" traffic is not an issue raised by the Sprint Petition.⁷⁰ In contrast to the situation where a CLEC assigns a number that "looks" local to the ILEC subscriber although the CLEC customer is in another landline

under this framework, carriers would have an incentive to cooperate with one another and seek joint agreements with transit carriers.

⁶⁸ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Sprint Petition for Declaratory Ruling (filed May 9, 2002).

⁶⁹ See Comments of Dobson Cellular Systems, Inc. and American Cellular Corporation at 6; Comments of Western Wireless and Suncom at 31. As discussed above, Nextel typically agrees to establish a local POI and negotiate interconnection agreements with the rural ILEC in rural ILEC service areas where Nextel seeks to serve using locally-rated NXX codes. Nevertheless, Nextel should have the flexibility to choose the most efficient form of interconnection.

⁷⁰ Comments of T-Mobile at 37.

exchange, wireless carriers have facilities and provide service in the local rate centers corresponding with the NXX codes the wireless carriers are requesting. As T-Mobile aptly observes, “[t]here is nothing ‘virtual’ about these wireless numbers.”⁷¹

B. Special Access Reform is Related to Intercarrier Compensation Reform.

Special access services generally are not addressed in any of the intercarrier compensation reform plans. Yet these services are essential to interconnection for CMRS and other carriers. If RBOCs are permitted to continue to charge unreasonably high rates for special access services, the Commission’s goals in this proceeding may well be frustrated. While the Commission is addressing this problem in the *Special Access NPRM*,⁷² it needs to act quickly and decisively to rectify persistent RBOC market power in the provision of special access services.

There is an additional reason for concern over special access rate levels. As the Commission unifies and eliminates other forms of intercarrier compensation, special access will remain a major revenue source for RBOCs. Since special access services are excluded from most intercarrier compensation reform plans, as reform takes place, Nextel sees a substantial risk that RBOCs could raise special access rates above current unreasonable levels. Ad Hoc shares this concern, emphasizing in its comments that special access must not be the vehicle for recovering lost switched access revenues.⁷³ Therefore, as part of intercarrier compensation

⁷¹ *Id.*

⁷² See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (“*Special Access NPRM*”).

⁷³ Comments of Ad Hoc at 17-18.

reform in this proceeding and pending the conclusion of the *Special Access NPRM*, Nextel proposes that the Commission expressly prohibit any additional carrier-initiated price increases to the special access services upon which RBOC intermodal competitors rely.

VII. CONCLUSION

Nextel continues to support bill-and-keep as the ultimate form of intercarrier compensation reform. Nextel believes the Commission can initially act to promote carrier initiated voluntary bill-and-keep agreements. Nextel and many parties support regulatory oversight of RBOC transit services to ensure its availability at rates, terms and conditions that are just, reasonable, and not unreasonably discriminatory. Transit services remain essential to interconnection arrangements that provide for efficient networking, enhanced opportunities for intermodal competition, and lower prices to consumers.

Nextel also finds support among commenting parties that revenue neutrality guarantees under intercarrier compensation reform are not in the public interest, in particular, where potential revenue loss is driven by technological change and competition. The Commission can meet its statutory responsibilities by allowing carriers to increase their end user charges corresponding to any decreases in their intercarrier compensation revenues. Although Nextel supports reform of the current federal USF, Nextel opposes and finds inadequate justification for the creation of new federal support mechanisms that could overburden and jeopardize the current federal USF.

Nextel, along with other parties, cautions against reform that would result in expensive network reconfiguration. Nextel is willing to support adoption of a single point of interconnection per LATA rule, but also supports maintaining the intraMTA rule. Only when

bill-and-keep universally replaces intercarrier compensation can it be assumed that the rule may have outlived its effectiveness and can be eliminated. Finally, considering the increasing competitive importance of RBOC special access to intermodal competitors for purposes of network interconnection and pending the conclusion of the *Special Access NPRM*, Nextel proposes that the Commission expressly prohibit any further carrier-initiated price increases to already unreasonably high RBOC special access rates as it implements intercarrier compensation reform.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



Laura H. Phillips
Patrick R. McFadden
DRINKER BIDDLE & REATH LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005-1209
(202) 842-8800

Kent Nakamura, Vice President and Deputy General
Counsel – Regulatory
Anthony M. Alessi, Senior Counsel – Regulatory
Christopher R. Day, Counsel – Government Affairs
NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, VA 20191

Its Attorneys

July 20, 2005