Before the
Federal Communications Commission
Washington, DC 20554

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

REPLY COMMENTS OF AT&T CORP.

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July 20, 2005

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AT&T Corp. ("AT&T") hereby submits these Reply Comments on the Commission's *Further Notice of Proposed Rulemaking ("Further NPRM")*[1] in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

As a member of the Intercarrier Compensation Forum ("the ICF"), AT&T fully supports and urges the Commission to adopt in its entirety the ICF Plan for network interconnection, intercarrier compensation, and universal service reform. Among all of the plans, proposals, and statements of principles that the Commission has received, the ICF Plan stands out as the only comprehensive proposal that reflects balanced input from, and has received the support of, a broad variety of providers and industry groups. The increasing support for the ICF Plan is attributable to the fact that it is the only plan that creates true uniformity (both among the intrastate and interstate systems, and between the packet-switched and circuit-switched worlds) and does so in a way that preserves universal service and maximizes consumer welfare.

[1] Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 20 FCC Rcd. 4685 (rel. March 3, 2005).

AT&T also fully endorses the reply comments that ICF is filing today. Those reply comments wholly rebut criticisms of the ICF Plan and demonstrate that the ICF Plan is superior to all of the other proffered proposals. AT&T is filing its own reply comments to address a handful of additional points:

First, there is no merit to the claims of some commenters that network costs must be recovered through traffic-sensitive intercarrier charges because substantial portions of those costs are traffic-sensitive. Regulators (including the Commission's Wireline Competition Bureau as well as a number of state commissions) have held in recent years that switching costs today are largely non-traffic-sensitive. Similarly, interoffice transport (and loop feeder) costs are also largely non-traffic-sensitive, because carriers can augment the capacity of those fiber-optic facilities today simply by modifying the electronics at either end. The costs of these facilities are so predominantly non-traffic-sensitive today that the Commission could reasonably conclude that carriers may recover such costs in the flat-rated, end-user subscriber line charge ("SLC") rather than through intercarrier charges – especially in view of the overall public interest benefits of the ICF Plan.

Second, the ICF Plan offers numerous important benefits to rural consumers because unlike other proposals, it provides interstate carriers with incentives to serve rural areas, and provides rural carriers with incentives to offer LATA-wide local calling, enter the long distance market and offer bundled packages of local and long distance services to their customers. Rural groups' objections to the ICF Plan, based on fears about shifting a major source of their cost recovery from intercarrier compensation charges to universal service support, are unfounded.

Moreover, the rural carriers' attempts to *extend* the legacy calling-party-network-pays ("CPNP") access charge regime would take intercarrier compensation in precisely the wrong direction.

Third, the Commission should reject the suggestion of the Ad Hoc Telecommunications Users Committee that if it adopts the ICF Plan, it should adopt a "fresh look" requirement to permit customers to terminate existing contracts. The Commission adopts such market-disrupting requirements only in very rare circumstances, which do not exist here.

Fourth, if the Commission adopts the ICF Plan, there is no need for the Commission to address in this proceeding whether it should forbear from enforcing the rate averaging and rate integration requirements of section 254(g), because the ICF Plan addresses the significant anticompetitive effects of the section 254(g) requirements in long distance markets under the current access charge regime by eliminating access charges. Alternatively, however, if the ICF Plan or a comparable plan is not adopted, the Commission should forbear from enforcing the requirements of section 254(g), because these requirements are undermining long-distance competition. Any forbearance from the requirements of section 254(g) should, however, only extend to the 48 states in the Continental United States, not Alaska and Hawaii.

ARGUMENT

I. THE COMMISSION SHOULD REJECT CLAIMS THAT LOOP, SWITCHING, AND TRANSPORT COSTS MUST, AS A MATTER OF COST-CAUSATION PRINCIPLES, BE RECOVERED THROUGH TRAFFIC-SENSITIVE CHARGES.

In an effort to save the CPNP system, a number of commenters argue that traffic-sensitive CPNP charges must be retained because switching and transport costs are traffic-sensitive. *See, e.g.*, Time Warner Telecom at 11-15; Rural Alliance at 50-56; BellSouth at 22-26. Indeed, Time Warner Telecom goes so far as to argue that *loop feeder* costs should be recovered on a usage-sensitive basis. Time Warner Telecom at 13-14. The Commission should reject these claims. While the Commission has always recognized that loop costs are non-traffic-sensitive and should ideally be recovered through end-user flat-rated charges, the ICF Plan's recovery of switching and transport costs through the SLC is equally appropriate.

Twenty years ago, when the access charge regime was created, local switches were either electromechanical or analog, and interoffice transport consisted mostly of limited-capacity copper circuits. At that time, it was argued that much of the costs of these switching and transport facilities were traffic-sensitive. In the intervening years, however, technology has changed dramatically, and as a consequence switching and transport costs are becoming increasingly and predominantly non-traffic-sensitive. *See also Further NPRM* ¶ 23 ("It appears, therefore, that most network costs, including switching costs, result from connections to the network rather than usage of the network itself").

Both the Wireline Competition Bureau and an increasing number of state commissions have ruled that switching costs are now almost entirely insensitive to incremental per-minute demand.[2] As the Commission's Wireline Competition Bureau concluded in the *Virginia*

[2] *See Petition of WorldCom, Inc. and AT&T Communications of Virginia, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, 18 FCC Rcd. 17722, ¶¶ 458-83 (2003) ("*Virginia Arbitration Order*"); *In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection Service, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes*, Opinion, Cause No. 40611-S1 Phase I, at 42 (Indiana Utility Regulatory Commission, March 28, 2002); *In the Matter of the Commission Review and Investigation of Qwest's Unbundled Network Element Prices; Commission's Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Order Setting Prices and Establishing Procedural Schedule, Docket No. P-421/CI-01-1375 (Minnesota Public Utilities Commission, October 2, 2002); *In the Matter of the Determination of the Cost of the Unbundled Loop of Qwest Corporation*, Report and Order, Docket No. 01-049-85 (Utah Public Service

Arbitration Order, "switch manufacturers today design switches that are limited only in the number of lines that they can serve." *Virginia Arbitration Order* ¶ 391. Because "modern switches typically have large amounts of excess central processor and memory capacity, the usage by any one subscriber or group of subscribers is not expected to press so hard on processor or memory capacity at any one time as to cause call blockage, or a need for additional capacity to avoid such blockage." *Id.* ¶ 463. Accordingly, because "no one subscriber or group of subscribers is any more or any less causally responsible for the processor or memory capacity costs," "[p]rinciples of cost causation . . . support a per line port cost recovery approach because, more than any other approach, it spreads getting started costs to carriers in a manner that treats equally all subscribers served by a switch." *Id.* The same principles supporting per line port charges apply to other non-peak-period switching costs.

A small portion of total switching costs are related to "peak-period usage" and may be usage-sensitive.[3] It has long been recognized, however, that attempting to recover such a small percentage of switching costs in a usage-sensitive peak-period charge would be extremely impractical to implement, and no one suggests such a rate structure here. *Virginia Arbitration Order* ¶ 474 ("Although the parties all agree that peak-period pricing is correct in principle, no party proposes a peak-period rate structure because such an approach is extremely difficult to implement in practice"). Accordingly, the Commission could reasonably conclude, as the Wireline Competition Bureau already has, that such costs are properly included with other switching costs in a flat-rated charge as a next-best alternative. Marketplace evidence confirms

Corporation, May 5, 2003); Richard N. Clarke (AT&T), Thomas J. Makarewicz (SBC), and Brian K. Staihr (Sprint), "Economic Benefits from Reform of Intercarrier Compensation," July 20, 2005 ("ICF Economist Study") at 20-21, attached to ICF Reply; Frontier at 7-8.

[3] *See also, e.g., Virginia Arbitration Order* ¶ 473 (summarizing the peak-period cost elements).

that flat-rated charges, which could theoretically lead to some overuse of the network during peak periods, have not in fact resulted in significant call blocking or a concomitant need to augment switch capacity.[4]

With regard to interoffice transport costs, LECs have generally replaced copper interoffice transport facilities with fiber optic facilities that have a potential capacity far beyond any reasonably anticipated demand.[5] As the Commission has repeatedly acknowledged, the vast majority of transport costs are the costs of original deployment – the trenching, the laying of the fiber, obtaining the rights-of-way, and so forth. Once the initial sunk cost of installing the fiber facilities has been incurred on a route, the capacity of the fiber can be increased to accommodate virtually any amount of potential demand by changing the electronics at either end of the fiber route at a relatively modest cost. The incremental cost of additional demand is thus very small.[6]

These changes have had profound consequences for the industry, but the Commission's regulations do not yet reflect these realities. The persistence of usage-sensitive carrier rates to recover costs that are properly borne by the end-user in flat-rated charges is inefficient and leads to substantial distortions in the marketplace. Indeed, the Commission has historically recognized

[4] *See generally* Joint Declaration of Terry L. Murray and Catherine E. Pitts on behalf of AT&T (December 16, 2003), submitted in *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173. To be sure, it would also be possible to recover these peak-period costs in a usage-sensitive fee that applied across-the-board to all traffic (peak and non-peak). That would be much more inefficient than a flat-rated charge, however, because a per-minute rate for all calls would signal to ratepayers that they should make fewer or shorter calls throughout the day, including during non-peak periods – a cost that would greatly outweigh the potential inefficiencies of a flat-rated charge. *Virginia Arbitration Order* ¶ 475 ("A per MOU rate therefore could result in under-utilization of Verizon's switches during non-peak periods and over-utilization during peak periods").

[5] *Further NPRM* ¶ 23.

[6] ICF Economist Study at 20-21.

that, but for the desire to create implicit cross-subsidies, non-traffic-sensitive local network costs should usually be borne by the end-user, rather than by other carriers.[7] While per-minute intercarrier charges may have been defensible in previous decades, the retention of such intercarrier charges in today's world is creating severe distortions in demand, efficiency, and investment that are hindering the development of advanced services and intermodal competition. The harms from retaining these intercarrier charges are exacerbated by the fact that many intercarrier rates are high, and those rates vary widely according to the type of traffic or carrier involved.[8] Rates that exceed economic cost suppress demand, and the widely varying rate levels for what are essentially identical uses of the network send grossly distorted investment signals to the market. The ICF Plan is the only plan that eliminates these inefficiencies by phasing out most intercarrier payment obligations and replacing them with flat-rated end-user rates and USF funding. As the ICF Economist Study shows, the ICF Plan's elimination of artificial suppression of demand (along with increased efficiency from USF reform) should result in over $44 billion

[7] *See, e.g., MTS and WATS Market Structure*, Third Report and Order, CC Docket No. 78-72, Phase I, 93 F.C.C.2d 241, ¶¶ 72, 121, 124 (1983) ("*MTS and WATS Market Structure Order*"); *Access Charge Reform, et al.*, Sixth Report and Order, *et al.*, 15 FCC Rcd. 12962, ¶¶ 18, 65 (2000) ("*CALLS Order*"). The D.C. Circuit has even reversed the Commission in instances in which it has declined to make long overdue changes in rate structures necessary to makes rates consistent with cost-causation principles. *See Comptel* v. *FCC*, 87 F.3d 522, 529-32 (D.C. Cir. 1996).

[8] As the ICF Economist Study explains (at 5-6, emphasis in original), "economics teaches that [intercarrier compensation] charges should reflect the *incremental* costs of transporting and terminating a call." Thus, "while it is true that a carrier's total network costs can vary widely depending on the character of its service area (*e.g.*, dense, sparse, mountainous, *etc.*), most of these cost differences are irrelevant for determining the appropriate level of compensation charges" because most of those costs do not increase with additional calls. *Id.* at 5; *see also id.* at 6 ("[b]ecause the lion's share of the costs that differ across carriers are non-incremental costs associated with customer loops or port investment on end office switches, differences in pertinent incremental costs across carriers tend to be rather modest").

in consumer welfare gains over the life of the plan – with a multiplier effect on the entire economy of approximately $105 billion.[9]

Time Warner Telecom takes a slightly different tack: it argues that "the use of a network component causes a carrier to incur usage-sensitive costs if . . . the component of the network is shared" (*i.e.*, shared with other carriers). Time Warner Telecom at 11. Time Warner Telecom contends that not only switches but also fiber loop feeder plant are "shared" components of the network and, therefore, that these "shared" switching and loop costs should be recovered through usage-sensitive carrier charges. *Id.* at 11-14; *see also* Rural Alliance at 50. The contention is doubly wrong. First, and most fundamentally, Time Warner Telecom's concept of the recovery of "shared" costs necessarily assumes the continued existence of the CPNP system of intercarrier compensation and the legacy distinction between local and toll calling, because only in that system can one carrier be viewed as the "cost causer" for uses of another carrier's network (and thus a "user" or "sharer" of that network). As ICF has explained in more detail in its Reply, each carrier should look to its own end-users for the recovery of all of its costs, and carriers should no longer be thought of as "using" or "sharing" the facilities of other carriers when collaborating to complete a call.

Second, even if that were not the case, Time Warner Telecom does not explain why the apportionment of even "shared" costs should be on a traffic-sensitive basis when the underlying costs of the facility increase only on a per-line basis. *See, e.g., Access Charge Reform*, First Report and Order, 12 FCC Rcd. 15982, ¶ 24 (1997) ("*Access Reform Order*") (cited by Time

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[9] *See also* Mercatus Center at George Mason University at 10-11 ("Long-distance access charges harm consumers by taxing a price-sensitive service in order to subsidize a service whose use is not very sensitive to price," and elimination of such cross-subsidies would result in $2.5 billion

Warner Telecom at 12 n.9). In that regard, the basic indefensibility of Time Warner Telecom's "sharing" argument is illustrated by the fact that it embraces even the *reductio ad absurdum* of its position – *i.e.*, that even loop feeder costs should be recovered from other carriers on a usage-sensitive basis. The Commission has always acknowledged that loop costs are non-traffic-sensitive.[10] In a CPNP world that preserves the local/toll distinction, virtually all interexchange carrier ("IXC") "uses" of the local network would be "shared" in the sense that Time Warner Telecom is using the term. IXCs and LECs "share" the use of copper DS0 loops, but the Commission has determined that it is not economically efficient for LECs to recover copper loop costs from IXCs in usage-sensitive charges and has eliminated such charges. In fact, contrary to Time Warner Telecom's suggestion, the Commission's longstanding policy is the opposite: it has always held that non-traffic-sensitive local network costs should ordinarily be recovered from the end-user in flat-rated charges, except where the Commission has decided to deviate from that default assumption to promote other policies such as universal service.[11]

Nor would attempting to recover non-traffic-sensitive charges from other carriers in *non-traffic-sensitive* charges solve the problem.[12] Indeed, the Commission's previous experiment with foisting non-traffic-sensitive network costs on other carriers in flat-rated charges – the

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to $7 billion annually in consumer welfare gains).

[10] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, ¶ 1057 (1996) ("*Local Competition Order*") ("The costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities"); *Access Reform Order* ¶ 54 ("Because the cost of using the incumbent LEC's common line does not increase with usage, the costs should be recovered through flat non-traffic-sensitive fees"); *CALLS Order* ¶ 18 ("costs that [do] not vary with usage" include "the local loop"); *id.* ¶ 65 ("[B]ecause the costs of using the price cap LEC's common line (or 'local loop') do not increase with usage, the Commission decided that these costs should be recoverable entirely through flat, non-traffic sensitive fees").

[11] *See, e.g., MTS and WATS Market Structure Order* ¶¶ 72, 121, 124.

presubscribed interexchange carrier charge ("PICC") in the late 1990's – was a complete failure. When it moved to eliminate the PICC in 2000, the Commission conceded that recovering these non-traffic-sensitive costs from carriers instead of end-users effectively insulated those costs from competition.[13] The Commission correctly concluded that recovery in end-user charges "establishes a straightforward, economically rational pricing structure which enables consumers to make a choice among competing providers through head-to-head comparisons and better promotes competition by sending potential entrants economically correct entry incentives" (*CALLS Order* ¶ 78) – and it should so conclude again here.

II. THE ICF PLAN MAKES RURAL CUSTOMERS BETTER OFF AND RURAL CARRIERS' CONCERNS ABOUT THE ICF PLAN ARE NOT JUSTIFIED.

The ICF Plan will bring substantial benefits to consumers in rural areas. Not only will the Plan bring the same benefits that it will bring to all consumers – gains in consumer welfare, more rational pricing that will spur competition, increased carrier incentives to invest and develop new technologies, and reduced carrier administrative costs – but the ICF Plan also advances geographic rate averaging objectives by eliminating intercarrier charges and replacing them with a predictable and sustainable source of universal service funding. Although rural carriers do not dispute ICF's calculations concerning support flows under the ICF Plan or ICF's

[12] *See, e.g.,* Frontier at 7-9.

[13] *CALLS Order* ¶ 89 ("[b]ecause PICCs are an external cost to the IXCs that they cannot reduce by managing it better or being more efficient, PICCs are unlikely to be competed away. Indeed, we are now into the third year of its introduction, and there is no sign that the PICC is being competed away. . . . If common line costs are recovered in the SLC, a LEC can reduce its costs through efficiency gains and will have the incentive to avoid costs and reduce prices as it faces increased competition from competing local exchange carriers. Further, we find that the proposed cost recovery structure will be more apparent to the end user, whereas PICCs currently are at least partially buffered against direct comparison because of the manner in which they are processed from the LEC through the IXC to the end user. Proceeding in this manner will provide greater economic incentives to stimulate the alternative sources for the loop through facilities-

showing that its Plan fully preserves rural carriers' opportunity to recover their costs, some rural carriers have nonetheless expressed reservations about relying on increased universal service fund ("USF") funding. These carriers prefer to cling to the traditional access charge regime – and even *extend* that regime for the first time to Internet-related services. These concerns are not well founded.

First, it should be underscored that the ICF Plan provides critically important benefits for rural consumers. For example, the ICF Plan provides interstate carriers, such as IXCs, with much-needed incentives to serve rural areas, which will give rural customers greater choice of providers. Under the current system, with its grossly disparate access rates, the rate averaging requirements of section 254(g) discourage carriers from serving rural areas. Specifically, many different kinds of interstate carriers are not required to offer service in rural areas, nor are they required to offer service in every state. As a result, such carriers are increasingly limiting their entry to low-cost states or to lower-cost urban areas, which allows them to offer lower retail rates than carriers that serve both high-cost and low-cost markets. As a consequence, more and more interstate carriers can be expected to abandon rural areas. By phasing out most intercarrier payments, the ICF Plan thus allows the rate averaging requirements to achieve their intended purpose without driving carriers out of rural markets. Thus, the ICF Plan will benefit rural customers through increased consumer choice.

The ICF Plan also provides rural providers with an incentive to offer LATA-wide local calling to their customers, which would give rural customers greater value by allowing them to make more calls as local calls and pay toll rates on a smaller percentage of their calls. The

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based competition, and thus subject loop prices to competitive pressure").

existing access charge regime, with its local/toll distinction, has provided rural providers with an incentive to design smaller local calling areas so that they can collect more access charges. As a result, rural customers currently make a high percentage of toll calls. *See* Rural Iowa Independent Telephone Association at 5 ("[C]ustomers in rural exchanges have substantially fewer other customers to reach for unlimited local calling and as a result make a far greater percentage of interexchange calls"). The ICF Plan, however, eliminates access charges, and thus the local/toll distinction in intercarrier compensation that has provided rural providers with an incentive to shrink local calling areas. In addition, under the ICF Plan, rural providers do not pay transit costs beyond their exchange boundary so long as the call is terminated by a non-CRTC provider within the LATA. Thus, the ICF Plan will remove the obstacles that have caused rural providers to design smaller local calling areas. *See* Sprint at 12 ("[W]ith the ICF Plan, rural LECs could readily offer their customers a LATA-wide local service, because their cost to provide LATA-wide local service would be no more than the cost for their current small local calling areas.")

Rural carriers generally do not dispute that the ICF Plan, by eliminating intercarrier charges and establishing its "edge" and transiting rules, would provide these benefits. Moreover, under the ICF Plan, the rate-of-return cost recovery rules will continue to apply to rural carriers. Yet a number of rural carriers continue to advocate the retention of traditional intercarrier access charges, seemingly out of an unstated reluctance to tamper with something that has "worked" and a fear that increased reliance on universal service funding would pose new risks for rural carriers. But the ICF Plan, like the Commission in the *Further NPRM*, recognizes that changing markets and technology mean that reliance on access charges has become an *inherently unsustainable* source of cost recovery for the rural incumbent local exchange carriers ("ILECs").

Indeed, the retention of access charges and the extension of that regime into the Internet world would do a great disservice to rural consumers. In addition, concerns about increased USF funding are simply unfounded.

The Rural Alliance, for example, notes that the ICF Plan "requires more USF than other plans . . . because more revenue is being displaced by the reduction of intercarrier compensation rates to zero," and contends that bill-and-keep proposals such as the ICF Plan "inevitably subject the universal service fund to unwarranted pressure." Rural Alliance at 18, 88. The reality, of course, is that change is inevitable because the current regulatory regime based on intercarrier compensation charges is "increasingly unworkable" and "cannot be sustained" in light of market and technological developments. *Further NPRM* ¶ 3. In particular, because technological developments such as wireless services and voice-over-Internet protocol ("VoIP") technology "mak[e] it increasingly difficult to enforce the existing compensation regimes," *id.* at ¶ 21, intercarrier compensation charges cannot be viewed as a sustainable means of cost recovery for any provider on a going-forward basis. Accordingly, some rural providers are clinging to a doomed system that cannot provide sustainable cost recovery in the years ahead. In contrast, the universal service support proposal in the ICF Plan will provide rural carriers with a stable and reliable means of cost recovery as next-generation technologies are implemented.

Some rural carriers seem concerned that, at some point, universal service support under the ICF Plan to rural carriers may be reduced or eliminated. *See, e.g.*, Rural Alliance at 88 ("The enormous burden that the ICF's bill-and-keep regime would place on the high-cost [universal service support] program would risk growing the fund to potentially unsustainable levels"). This fear is unfounded. In truth, it is extremely unlikely that the Commission would adopt reforms to universal service support mechanisms in the future that would fail to protect rural providers, because the central purpose of the universal service system is to support providers who serve high-cost areas. To the contrary, ensuring affordable access to the telecommunications network for all citizens has long been – and will remain – a significant and widely supported national public policy objective, and the rural carriers present no basis to believe that will change.

Some rural providers also may fear that they will be subjected to broader or more frequent audits of their revenue streams under proposals such as the ICF Plan that envision more money going into universal service support mechanisms. With or without adoption of the ICF Plan, however, more frequent audits are inevitable. The Universal Service Administrative Company ("USAC"), for example, recently announced that it has received funding to conduct additional audits. 2004 Annual Report, Universal Service Administrative Company, at 8 ("In 2005, USAC, in conjunction with the FCC, will retain an outside audit firm to substantially increase audits of beneficiaries in all support mechanisms"). It is true that adoption of the ICF Plan, in which substantial support will be shifted from access charges to universal service funding, may result in more funds being subject to USF audits. This is only appropriate, however, because audits are an important and essential means of detecting and deterring waste, fraud and abuse. The overall result will be greater accountability in the system, and regulators and carriers alike will have much greater assurance that support flows are both secure and adequate.

Some rural carriers are so reluctant to embrace bill and keep principles that they not only advocate clinging to unsustainable CPNP principles in the circuit-switched world, but also propose extending these principles into the packet-switched world. Their proposals are thus an ill-advised attempt to drive the flawed legacy access model into the Internet space. The Commission should reject these proposals.

The Rural Alliance urges the Commission to address in this proceeding interconnection and compensation issues in the Internet Protocol ("IP") context based on its view that "solutions to circuit-based intercarrier compensation issues will not be beneficial if not accompanied by *comparable solutions*" in the IP environment. Rural Alliance at 161 (emphasis added). As an example of such a "comparable solution," the Rural Alliance proposes that all "Retail Service Providers" be required to provide "appropriate compensation" when they use another carrier's network facilities to provide service to their customers, "regardless of the technology or protocol used." *Id.* at 13. This "appropriate compensation" would include "[o]riginating and terminating exchange access." *Id.* The term "Retail Service Providers" appears to encompass not only traditional telecommunications providers, but also Internet-based applications providers, such as VoIP providers, information service providers ("ISPs"), content providers, and video services, all of which use other carriers' broadband facilities to provide service to their customers. Thus, the Rural Alliance apparently proposes that applications providers who use the Internet would pay some form of per-minute or per-packet originating and terminating access charges for use of their broadband access networks – a significant departure from the *status quo*.

This proposal is misguided. The Internet achieves efficient outcomes because ISPs recover their costs of originating and terminating traffic from their end-user customers, not from intermediate carriers. Accordingly, incorporating CPNP cost recovery principles into the IP world would turn the existing, efficient system inside out, and thereby undermine the Commission's goal of promoting widespread use of IP-based technologies. In short, given that

CPNP cost recovery principles have become unworkable in the circuit-switched world due to evolution in markets and technology, attempting to import these outdated principles into the packet-switched world would be taking the intercarrier compensation regime in precisely the wrong direction.[14]

Moreover, rural carriers could only benefit from the scheme that some propose if the applications providers average their rates across all applications users that they serve. Thus, rural carriers must be assuming that the Commission will require geographic rate averaging for information services. Such a federal requirement, however, would be squarely contrary to the Commission's long-standing policy of not imposing undue regulation on the Internet. *See* Rural Alliance at 174 n.359 (acknowledging that, pursuant to 47 U.S.C. § 230(a)(2), it is "the United States' policy 'to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation'").

Finally, with regard to broadband deployment and next-generation technologies, the ICF Plan will bring far greater benefits to rural consumers than proposals based on the outdated legacy access model. By eliminating inefficient intercarrier compensation mechanisms and ensuring a stable universal service support system, the ICF Plan will provide rural carriers with significant incentives to invest in broadband and advanced technologies.

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[14] *See, e.g.*, ICF Economist Study at 24 n.43 ("At best it would result in either ISPs and websites declining to serve customers whose DSL provider opted to charge them such a session fee, or, if feasible, these ISPs and websites passing these LEC-imposed usage fees directly back to the LEC's DSL customer. At worst this session fee proposal would generally stunt the use of innovative information technology applications in the U.S. and lead to a decline of U.S. competitiveness in the global economy").

III. THE COMMISSION SHOULD REJECT AD HOC'S SUGGESTION THAT IF IT ADOPTS THE ICF PLAN, IT SHOULD ADOPT A "FRESH LOOK" REQUIREMENT TO PERMIT CUSTOMERS TO TERMINATE EXISTING CONTRACTS.

The Ad Hoc Telecommunications Users Committee ("Ad Hoc") suggests that, if the ICF Plan is adopted, the Commission should "afford[] customers a one hundred and eighty (180) day 'fresh look' window of opportunity within which they may terminate existing contracts." Ad Hoc at 23. Ad Hoc contends that a "fresh look" requirement is warranted in order to "give long distance customers under multi-year term contracts an opportunity to realize a market-based flow through of the access cost savings that the long distance carriers will enjoy." *Id.; see also id.* at 24 ("the Commission should use a 'fresh look' opportunity to give customers a chance to avoid, or partially offset, higher communications costs when their carriers' cost[s] drop – all because of Commission action"). The Commission should reject this suggestion out of hand.

The Commission has made clear that the grant of "fresh look" relief is a "very rare" occurrence because a Commission order overriding existing contractual arrangements is a "market-disrupting remedy" that should be disfavored. *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, ¶¶ 694, 698 (2003) ("*Triennial Review Order*"); *see also id.* ¶ 694 (declining to adopt "fresh look" policy for conversions from special access to EELs because "restructuring these contracts may be unfair to both incumbent LECs and other competitors, disruptive to the marketplace, and ultimately inconsistent with the public interest").

Ad Hoc's proffered justification – the desire to obtain better prices – is not a valid basis for a "fresh look" requirement, much less a compelling justification that can satisfy the

Commission's very high standard. The Commission has only adopted such requirements based on specific findings that continued enforcement of existing contract terms would be "unjust" or "unreasonable." *See, e.g., Competition in the Interstate Interexchange Marketplace*, Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd. 2677, ¶ 25 (1992) ("Implicit in our decision to adopt 'fresh look' [with respect to contracts for 800 number services] is a *finding* that AT&T's termination liability clauses will be *unreasonable* in light of the risk of leveraging in 800 services") (emphasis added); *Expanded Interconnection With Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 7341, ¶ 16 (1993) ("*Special Access Order on Recon.*") (adopting "fresh look" policy with respect to long-term special access arrangements with termination liability provisions based on a "*find[ing]* that the continuation of such termination provisions without the modifications specified in this Order would be *unjust and unreasonable* in violation of the Communications Act") (emphasis added). *See also Triennial Review Order* ¶ 698 (declining to adopt "fresh look" requirement because there was not "sufficient evidence, in this record, of abuse of market power . . . or some other wrong that must be retroactively addressed"). Ad Hoc's sole contention – that customers should be given an "opportunity" to realize a flow through of supposed cost savings – falls far short of establishing that enforcement of existing contract terms would be unreasonable or unjust within any provision of the Communications Act.

In addition, the substance of the ICF Plan does not fall within the narrow range of regulatory reforms that have satisfied the Commission's high standard for adoption of a "fresh look" requirement. The Commission has adopted "fresh look" requirements only in the rare situations where its order resulted in new competitive alternatives, and the Commission concluded that relief from existing contracts was necessary to allow customers to obtain the benefits of this new competition. In the *Expanded Interconnection Orders*, for example, the Commission exercised its discretion to grant "fresh look" relief based on its conclusion that this relief was necessary to enable customers to avail themselves of new competitive local access alternatives. *Expanded Interconnection With Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, ¶ 201 (1992) ("*Special Access Order*") (because certain long-term access arrangements "tend to 'lock up' the access market . . . we conclude that certain LEC customers with long-term access arrangements should be permitted to take a 'fresh look' to determine if they wish to avail themselves of a competitive alternative"); *Special Access Order on Recon.* ¶ 12 ("We find that there is a need for a limited fresh look opportunity to allow eligible customers to assess the new alternatives available in a more competitive market"). Here, the ICF Plan does not affect customers' range of provider choices or create new competitive alternatives; rather, like many Commission orders, it only has a potential effect on the prices that customers pay. Accordingly, a "fresh look" requirement cannot be justified under this limited exception.[15]

Even if the reforms in the ICF Plan could provide a valid basis for a "fresh look" requirement, such a requirement is not warranted because the ICF Plan imposes a gradual transition. The ICF Plan does not propose a "flash cut" to new intercarrier compensation rules. Instead, it proposes a gradual, predictable transition that allows carriers and customers to adjust

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[15] Ad Hoc cites the *1997 Universal Service Reform Order* as an instance in which the Commission permitted carriers to alter pre-existing contracts to pass higher universal service costs on to their customers. Ad Hoc at 22-24 (citing *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776 (1997) ("*1997 Universal Service Reform Order*"). As the language cited by Ad Hoc makes clear, however, the Commission did not adopt a mandatory "fresh look" requirement in that order; rather, it merely suggested that carriers could attempt to negotiate new contracts.

their business plans, expectations, and contractual arrangements over several years. Indeed, a "fresh look" requirement makes little sense in the context of a phased transition.

Finally, Ad Hoc's claim that long distance customers should be allowed to abrogate negotiated contracts is particularly weak because "carriers have been on notice for almost four years that the Commission was considering significant reform of intercarrier compensation regimes." *Further NPRM*, Appendix C, at 108. At the very least, customers could have negotiated to include "change of law" provisions in their long-distance contracts. *See Triennial Review Order* ¶ 696 ("[T]o the extent that [carrier] seeks protection from regulatory and judicial uncertainty, it was free to negotiate to include a change of law provision that would have protected it").

IV. RETENTION OF INTERCARRIER CHARGES WOULD LEAVE THE PROBLEMS RAISED BY THE RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS OF SECTION 254(g) UNADDRESSED.

The many opposing plans that retain significant intercarrier charges would not alleviate the strains on the system that are being caused by section 254(g)'s rate averaging and rate integration requirements. Indeed, some parties, such as Qwest (at 30-33), affirmatively argue that the Commission should forbear from the rate averaging and rate integration requirements now as part of intercarrier compensation reform. *See also Further NPRM* ¶ 86. If the Commission adopts the ICF Plan, however, the Commission need not address the issue of forbearance in this proceeding.

The Commission is certainly right to be concerned about the increasingly anticompetitive effects of the rate averaging and rate integration requirements. As the Commission recognizes, these requirements have a "disparate impact" on "nationwide IXCs" such as AT&T, which offer long-distance services in both urban and rural areas, and "may place IXCs that serve rural areas at a competitive disadvantage to those that focus on serving urban areas" because the requirements preclude IXCs from passing through to end-users the high access charges imposed by many rural LECs. *Id.* As a result, the Commission properly notes that "[a]bsent some further reform of the access charge regime . . . the rate averaging and rate integration requirements eventually will have the effect of discouraging IXCs from serving rural areas." *Id.*

If the Commission adopts the ICF Plan, however, it need not face the issue of forbearance in this rulemaking proceeding. The ICF Plan is consistent with section 254(g), and it will go a long way toward alleviating the significant anticompetitive effects of the section 254(g) requirements in long distance markets, particularly rural long distance markets, by eliminating the intercarrier access charges that create the competitive disparities. *See* ICF Comments at 29. By obligating LECs to recover their origination and termination costs from their own end-users, the ICF Plan "align[s] cost recovery with the party who has the ability to choose the provider," and, therefore, "allows market forces to efficiently govern rates and drive them toward efficient levels." *Id.* Therefore, if the Commission adopts the ICF Plan, there is no need for the Commission to reach the issue of whether it should forbear from enforcing the long-standing requirements of section 254(g).

Alternatively, however, if the ICF Plan (or a substantively similar plan that requires carriers to recover their origination and termination costs from end-users) is not adopted, the Commission will have no choice but to revisit the requirements under section 254(g), because these requirements are undermining long-distance competition. If the ICF Plan or a comparable plan is not adopted, the Commission should forbear from enforcing the rate averaging and rate integration requirements of section 254(g). Absent such forbearance, nationwide IXCs that serve rural markets will continue to be placed at a competitive disadvantage and will continue to have a significant disincentive to serve these markets.

Pursuant to section 10(a),[16] the Commission can exercise its authority to forbear from enforcing a statutory requirement when it finds that: (1) enforcement of the requirement is not necessary to ensure that rates for the telecommunications service are "just and reasonable and not unjustly or unreasonably discriminatory"; (2) enforcement of the requirement is "not necessary for the protection of consumers"; and (3) forbearance is "consistent with the public interest." All of these criteria are easily satisfied with respect to the requirements of section 254(g) in the absence of a plan like the ICF Plan. If the requirements continue to be enforced, carriers will have no choice but to stop serving rural markets. This would leave rural customers without an adequate choice of providers and force them to pay higher rates – a result which would be contrary to the Commission's long-standing public policy of ensuring service availability and reasonable rates for rural customers.

Any forbearance from the requirements of section 254(g) should, however, only extend to the 48 states in the Continental United States. AT&T acknowledges that the section 254(g) requirements serve an important role in Alaska and Hawaii because of the unusually high costs of serving rural and remote locations in these states. *Cf.* State of Alaska at 3-5 (opposing forbearance from the section 254(g) requirements); Regulatory Commission of Alaska at 4-7 (same); State of Hawaii at 2-5 (same). Accordingly, if the Commission does not adopt the ICF

[16] 47 U.S.C. § 160(a).

Plan or a comparable plan, it should forbear from enforcing the rate averaging and rate integration requirements of section 254(g) with respect to all states except Alaska and Hawaii.

In this regard, AT&T also agrees with the recommendation of the Regulatory Commission of Alaska ("RCA") that explicit support should be provided to IXCs serving as carriers of last resort in rural and remote locations with unusually high transport costs, such as AT&T Alascom. In its Comments, RCA demonstrates the unique circumstances of providing interexchange switching and transport in Alaska. Specifically, "[i]n Alaska, interexchange switching and transport is provided primarily by interexchange carriers (IXCs), not incumbent local exchange carriers (ILECs)." RCA at 2. RCA explains that Alaska's public switched and broadband networks have become dependent on expensive satellite communications, such that "the unit cost of providing long distance and broadband service to and from rural areas of the state is much higher than in other states." *Id.* at 3. Indeed, in opposing forbearance from the requirements of 254(g) with respect to Alaska, RCA points out that if toll rate averaging were to be eliminated with respect to Alaska, IXCs serving the hundreds of remote villages that can only be served by expensive satellite technology would have higher than average transport costs and a strong incentive to raise their rates to these customers. *Id.* at 7. Accordingly, RCA recommends that explicit support be provided to IXCs serving as carriers of last resort in rural and remote locations with unusually high transport costs.

AT&T agrees with RCA's recommendation. AT&T's subsidiary in Alaska, AT&T Alascom, is the interexchange carrier of last resort in that state, and, indeed, provides switched services to rural and remote locations in Alaska via expensive satellite technology. Unlike local exchange carriers who may be carriers of last resort for local exchange services, AT&T Alascom is the only stand-alone IXC carrier of last resort in Alaska. Thus, it cannot avail itself of the subsidies inherent within access revenues since it has none. And, moreover, even if it did have access revenues, as shown above, access charges are not a sustainable support mechanism. Nor can it obtain support from the current explicit USF programs, as it does not provide the supported service for these programs, which is a local service offering.

While the rate averaging requirements under 254(g) require AT&T to average out these extraordinary costs in its interstate toll rates, there is nothing comparable within the state of Alaska that prevents Alaska's intrastate toll rates from being among the highest in the nation. Nor are these higher toll rates limited to wireline services. Even wireless operators that rely on these satellite facilities to serve these rural communities must pass on these higher costs. Thus, their bulk calling plans are either more expensive in Alaska or offer fewer minutes relative to those plans offered in the lower 48 states. For example, Cell-One's "National 1250" plan, which provides 1250 minutes-of-use per month of anytime/anywhere calling, costs $80 in the lower 48 states but $100 in Alaska due to higher operating costs in that state.

Thus, RCA's suggestion of explicit support to IXCs that are carriers of last resort is a good one. Such support should be *separate* from the existing programs, and targeted only to those carriers of last resort, such as AT&T Alascom, that use satellite facilities to serve remote locations. This program should be independent of any other programs, such as the ICRM and the TRNM proposed by ICF, that are created in this proceeding under an access reform umbrella.

The Commission has ample authority to adopt such a program. Pursuant to section 254(c) of the Communications Act,[17] the Commission has authority to establish the definition of

[17] 47 U.S.C. § 254(c).

the services that are supported by Federal universal service support mechanisms. The Commission could amend the existing definition to include interstate and intrastate long distance services provided by IXCs serving as carriers of last resort in rural and remote locations.

CONCLUSION

For the foregoing reasons, the Commission should adopt the ICF Plan for network interconnection, intercarrier compensation, and universal service reform without modification and without delay.

Respectfully submitted,

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July 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2005, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served by mailing, postage prepaid on the parties listed on the attached service list.

Dated: July 20, 2005
Washington, D.C.

/s/ Peter M. Andros
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* Filed electronically via ECFS and electronic mail