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

	)	
In the Matter of	)	
	)	
Petition of AT&T Inc. For Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption"	)	WC Docket No. 08-152
	)	
Letters from Robert W. Quinn, Jr., AT&T to Chairman Martin, FCC (Jul. 17, 2008)	)	

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), on behalf of its incumbent local exchange carrier ("ILEC") subsidiaries, hereby files comments in response to the Federal Communications Commission's ("Commission's" or "FCC's") Public Notice in the above-captioned proceeding.[1] CenturyTel is an integrated communications carrier providing voice, broadband data, and video services in 25 states to rural and small urban markets. CenturyTel is the ILEC in 72 study areas with approximately 2.1 million access lines and also provides competitive LEC services in a number of markets. Both AT&T's[2] and Embarq's[3] access unification proposals are to be

[1] Petition of AT&T For Interim Declaratory Ruling and Limited Waivers; Pleading Cycle Established, WC Docket No. 08-152, DA No. 08-1725 (rel. Jul. 24, 2008).

[2] Petition of AT&T For Interim Declaratory Ruling and Limited Waivers and the "ESP Exemption", WC Docket No. 08-152 (filed Jul. 17, 2008)("AT&T Petition")

commended as positive methods of advancing debate on intercarrier compensation. And there is a dire need to clearly declare that IP-based traffic should be assessed intrastate and interstate access charges. In scrutinizing these two proposals, however, the FCC must take care to address consumer needs that services remain affordable and broadband is available even in rural areas of the country. If these issues are addressed, the unification proposals can lay a good foundation for addressing more fundamental intercarrier compensation reform.

AT&T's Petition seeks two interrelated but independent rulings. First, AT&T requests the FCC to declare that IP-enabled traffic which utilizes the public switched telephone network ("PSTN") pay access charges. AT&T goes on to ask that the FCC declare that such compensation is only acceptable if the termination charge is no greater than the level of the interstate access charge. This request appears to be applicable to all traffic no matter what carrier handles the traffic. Second, AT&T requests that it be permitted to equalize intrastate access and interstate termination access rates, while making up any lost revenues by making adjustments to its subscriber line charges and its originating interstate access rates (subject to a cap of $0.0095).[4]

I. INTERCARRIER COMPENSATION MUST BE REFORMED.

Intercarrier compensation is in great need of reform. Such reform, however, must be made keeping three public interest goals in mind. First, consumers needs should be addressed. Consumers are no longer focused on the need for decreased long distance rates. Rather, they

---

[3] Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, WC Docket No. 08-160 (filed Aug. 1, 2008)("Embarq Petition").

[4] AT&T in a separate letter also asks the FCC to declare that fixed IP-enabled traffic be declared an exclusively interstate service similar to the FCC's ruling with respect to nomadic IP-enabled traffic. Letter from Robert W. Quinn, Jr., AT&T, to Chairman Kevin Martin, FCC, WC Docket Nos. 04-36, 06-122, 96-45 (filed Jul. 17, 2008)("Quinn Letter").

want access to reliable, affordable broadband services at speeds that can handle modern Internet applications. Second, access revenues must be preserved at reasonable levels so that the network needed to provide such broadband services can be maintained and expanded, particularly in rural areas. Third, a unified access rate would go far to reduce arbitrage, and thereby preserve access revenues. However, the level of the unified rate needs to be set correctly for rural carriers, establishing a sufficiently long transition to allow carriers to manage revenues and expenses and to ensure that consumer rates are affordable. Taking access rates to zero or near-zero levels may help various carriers, but ultimately, only at the expense of most end users. Section 254's affordability and comparability requirements must be preserved as intercarrier compensation is reformed.[5]

AT&T and Embarq are to be commended for accurately and effectively describing the present intercarrier compensation environment and making the case for much-needed reform. CenturyTel supports such reform efforts and agrees with AT&T's Petition insofar as it asks the Commission for a declaration that IP-enabled traffic should be assessed access charges and that the FCC adopt permanent intercarrier compensation reform.[6] Although CenturyTel has raised substantial concerns regarding the consumer impacts and arbitrarily low access rates in many of the global reform proposals that have been made in the FCC's *Intercarrier Compensation Proceeding*, such as the Missoula Plan, CenturyTel does believe that a reasonable comprehensive plan would be a better method of reform than using piecemeal approaches.

Notwithstanding, AT&T's request to limit the compensation for IP-enabled traffic to arbitrarily low levels produces unreasonably low compensation for rural carriers such as

---

[5] 47 U.S.C. § 254.

[6] *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005)("*Intercarrier Compensation FNPRM*").

CenturyTel and effectively negates the switched access regime. Rural carriers did not invent the access charge mechanism. Rather, the FCC established the access charge plan, primarily focused on the largest carriers at divestiture, but applied it to all ILECs as a way of producing reasonable compensation for the costs for originating and terminating interstate traffic using local networks. Despite the issues brought about by changes in technology, new competitors, and a mixture of different types of traffic, access charges continue to form a vital part of the funds necessary to maintain and build the network, and to keep user rates at affordable levels. For a variety of reasons related to low density, high-cost markets, rural carriers must have the ability to collect interstate or intrastate access charges, depending on which is jurisdictionally applicable to the traffic in question. Embarq's proposal meets the financial and network construction needs of mid-sized carriers such as CenturyTel far better than would the AT&T proposal. Regardless of whatever changes have taken place within the industry, the nature and cost structure of providing rural service has not changed. It is also clear that formal phantom traffic rules will be required in order to insure proper compensation for the use of rural networks will be rendered even in a unified access charge regime.

Beyond this interim unification proposal, AT&T also urges that the FCC adopt AT&T's own plan for comprehensive reform of universal service, which includes raising consumer rates through local rate rebalancing to a national benchmark and, if necessary, increasing subscriber line charges and/or universal service funding.[7] CenturyTel has submitted its own plan for comprehensive reform, including the urgent need to reform the universal service compensation mechanism to stabilize receipts.[8] Although CenturyTel does not oppose a reasonable

---

[7] Letter from Henry Hultquist, AT&T to Chairman Kevin Martin, FCC, CC Docket No. 01-92; WC Docket No. 05-0337; CC Docket No. 96-45; WC Docket No. 99-68; WC Docket No. 07-135, at 4-6 (Jul. 17, 2008).

[8] Comments of CenturyTel, WC Docket No. 05-337 (Apr. 17, 2008).

benchmarking proposal, with attendant rate rebalancing of local and other rates, such a benchmark would have to be reasonable to ensure that CenturyTel's rural customers, especially those with already-high local rates with small local calling area scopes, can afford it and are not otherwise harmed. CenturyTel is also mindful that customers write one check for their telephone bills. Additions to rates, such as new or increased subscriber line charges, are not nebulous separate charges for a customer, but are indeed part of an overall monthly rate increase consumers must absorb in their household budgets. Achieving unified compensation rates is also acceptable, as long as the rate is compensatory for rural carriers and any transition is sufficiently long to address consumer affordability issues. At the same time, the FCC needs to ensure that whatever it does in this area continues to help support rural networks used to provide voice and broadband services. CenturyTel urges the FCC to take action to reform intercarrier compensation in a reasonable manner in light of these competing interests.

II. AT&T'S IP-ENABLED RULING.

CenturyTel wholeheartedly endorses the request that non-local IP-enabled traffic which is delivered to the PSTN should be assessed access charges.[9] Intrastate non-local calls should be assessed intrastate access charges, and interstate non-local calls should be assessed interstate access charges. CenturyTel has fully explained this position in comments it filed in other dockets before the FCC and will not repeat those more detailed arguments here.[10] The bottom line is that

---

[9] CenturyTel believes that the FCC's rules are clear that IP-enabled traffic, absent a showing that it is an information service, is a telecommunications service. The FCC should expeditiously resolve that issue in the appropriate ongoing rulemaking proceedings by finding that IP-enabled traffic is "telecommunications traffic" subject to intercarrier compensation under the existing access charge or reciprocal compensation rules according to the jurisdiction of the traffic. *See, e.g., IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (2004) ("*IP-Enabled Services NPRM*").

[10] *See, e.g.*, Comments of CenturyTel, Inc., WC Docket Nos. 07-256, 08-08 (filed Feb. 19, 2008).

IP-enabled traffic is delivered to the PSTN by telecommunications carriers, and hence utilizes the services provided by ILECs. The ESP exemption has never been applied to telecommunications carrier traffic, whether it is IP-enabled or not.[11] It is essential that the FCC issue this declaration because widespread self-help in the industry has been increasingly eroding ILEC access charge revenue through uneconomic arbitrage and otherwise. Access charges continue to be a vital source of revenue which is used to support the maintenance and investment in the public network to provide both voice and broadband services as well as reliable access for other carriers. This declaratory ruling is relatively straightforward, and can be accomplished in the context of existing law and rules.

III. AT&T'S ACCESS UNIFICATION PROPOSAL.

We further note that AT&T's request to unify its own terminating access rates may be rational for AT&T. CenturyTel is very sympathetic to AT&T's plight in preventing uneconomic arbitrage of its services. CenturyTel too is suffering mightily through the self-help measures taken by several parties in the industry to avoid paying access charges by masking or rerouting traffic in order to hide the true jurisdictional nature of the traffic. CenturyTel would suggest that arbitrage, and not IP traffic, is the fastest growing "business" our industry faces, and it hits rural carriers particularly hard, hence the need for formal phantom traffic rules. Therefore, CenturyTel does not oppose AT&T's proposal as long as any waiver would be limited to AT&T. Such a solution, however, would be wholly unworkable for a rural carrier which has a different level of access charges at both the state and interstate levels, and thus could not meet the

[11] The enhanced services exemption prohibited ILECs from imposing traffic-sensitive switched access charges on enhanced service providers, now termed information service providers. *See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2631, ¶ 2 (1988)("*ESP Exemption Order*").

parameters specified by AT&T without serious disruptions to investments and service provided in rural service areas. Therefore, CenturyTel urges that any access charge unification waiver granted should be limited to AT&T, or carriers which choose to elect such a waiver, subject to any final determination in the intercarrier compensation proceeding.

The FCC, however, should not limit compensation for IP-enabled traffic to a maximum rate equaling the interstate terminating access rate in accordance with the AT&T proposal. A declaratory ruling is not a legal method to limit the amount of compensation applicable to access traffic. Intrastate access charges are set in accordance with state tariffs. Therefore, a declaratory ruling petition is simply not a viable way to obtain a ruling on rate levels. Limiting the amount of charges for intrastate and interstate access, absent comprehensive intercarrier compensation reform, would be detrimental to rural telephone companies and the customers who rely on rural networks for voice, broadband, and video. Under the Constitution, the FCC cannot arbitrarily limit current charges without providing some other mechanism, and a reasonably long transition period, to recover the lost revenues that are currently recovering legitimate costs. Therefore, the FCC should not adopt this part of the AT&T proposal.[12]

IV. EMBARQ'S ACCESS UNIFICATION PROPOSAL.

Embarq has filed its own petition for waiver seeking to unify its intrastate and interstate originating and terminating access rates by study area.[13] As a rural price cap carrier, it seeks to unify access rates to reduce arbitrage, without unduly burdening consumers with increases to subscriber line charges or universal service funding. Such a plan is designed to preserve the

---

[12] Because of its abrupt and noncompensatory change to access rates, the proposal set forth by one segment of the communications industry to establish $ 0.0007 as the rate for all carrier terminating intercarrier compensation rates is likewise not workable for CenturyTel. *See* Letter from AT&T, et. al. to Chairman Martin and FCC Commissioners, WC Docket No. 04-36, CC Docket No. 01-92 (Aug. 6, 2008).

[13] Embarq Petition, *supra* note 3.

vitality of its existing intrastate access revenues. Such a result is essential to a rural company's ability to maintain and develop its network infrastructure, which is used to provide quality voice and advanced communications. Embarq's petition holds great promise for rural mid-sized carriers, such as CenturyTel, although CenturyTel has not yet completed the process of evaluating the economic effects of such a plan on its own access revenues.

V. INTERIM INTERCARRIER COMPENSATION REFORM.

If the FCC is not able to achieve fundamental intercarrier compensation reform in the near term, the FCC should address the urgent policy issues associated with such traffic, in addition to the IP-enabled ruling identified above. First, phantom traffic continues to be a problem and is growing. The FCC must adopt the industry solution for phantom traffic to accurately identify traffic and eliminate carrier gamesmanship which masks the true jurisdictional nature of such traffic.[14] Second, the FCC needs to respond to the Court's remand in the ISP compensation proceeding. Given that dial up Internet traffic continues to be significant in rural areas, and is growing in some areas, the FCC should move to bill-and-keep for ISP-bound traffic, which it originally planned as the permanent compensation mechanism for such traffic.[15]

---

[14] Letter from Glenn Reynolds, US Telecom to Marlene Dortch, FCC, CC Docket No. 01-92 (Feb. 12, 2008).

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Remand and Report & Order, 16 FCC Rcd 9151 (2001), *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002), *mandamus issued, In re: Core Communications, Inc.* No. 07-1446, 2008 WL 2649636 (D.C. Cir. Jul. 8, 2008). Third, there is no further reason to address "traffic pumping" by ILECs other than targeted, and limited rule changes identified in CenturyTel's comments in the traffic pumping proceeding. *See* Comments of CenturyTel, WC Docket No. 07-135 (Dec. 17, 2007); Comments of Independent Telephone & Telecommunications Alliance, WC Docket No. 07-135 (Dec. 17, 2007).

VI. AT&T'S PROPOSAL FOR PREEMPTION OF STATE REGULATION.

CenturyTel has legitimate concerns about AT&T's proposal that the FCC declare all fixed IP-enabled traffic to be interstate. At the present time, CenturyTel has a significant amount of jurisdictionally intrastate telecommunications traffic that originates from customers using fixed IP-enabled services and terminates to CenturyTel customers. Declaring all IP-enabled traffic inherently interstate could well motivate network users to suddenly declare all traffic "IP based" and not subject to intrastate access rates. State commissions and carriers would find themselves in the unwelcome position of having to sort out a litany of disputes that would preoccupy the industry for years to come. Only if the FCC can offset these lost intrastate access revenues through some other source, such as with sufficient universal service funding, could such a proposal be workable, if such a result were the correct policy choice. In so doing, however, the FCC should take care not to raise end user rates so high as to render them unaffordable, in violation of Section 254 of the Communications Act. AT&T's state preemption request undermines the current access regime and fails to address the needs of rural consumers as outlined above. Therefore, the FCC should not adopt this proposal at this time.

VII. CONCLUSION.

For the foregoing reasons, CenturyTel urges the Commission to declare that IP-enabled traffic is telecommunications traffic subject to existing intercarrier compensation rates. CenturyTel supports AT&T's access unification proposal, but only insofar as it applies to AT&T. Embarq's access unification proposal holds greater promise to rural carriers, and offers a

solution that is fair to carriers and avoids un-warranted pressure on universal service funding and end-user rates.

Respectfully submitted,

By: /s/ *Gregory J. Vogt*

Gregory J. Vogt
Law Offices of Gregory J. Vogt, PLLC
2121 Eisenhower Ave.
Suite 200
Alexandria, VA 22314
(703) 838-0115

Counsel for CenturyTel, Inc.

John F. Jones
Jeffrey S. Glover
CenturyTel, Inc.
100 CenturyTel Park Drive
Monroe, LA 71203
(318) 388-9000

Of Counsel

August 21, 2008

Certificate of Service

I, Gregory J. Vogt, do hereby certify that I have on this 21st day of August 2008 caused a copy of the foregoing "Comments of CenturyTel, Inc." to be served by electronic mail upon the following:

Victoria Goldberg
Federal Communications Commission
Wireline Competition Bureau
Pricing Policy Division
445 12th Street
SW, Room 5-A266,
Washington, DC 20554
Victoria.goldberg@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 S.W. Twelfth St.
Washington, D.C. 20554
fcc@bcpiweb.com

/s/ Gregory J. Vogt
Gregory J. Vogt