Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
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

REPLY COMMENTS OF GVNW CONSULTING, INC.

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Executive Summary

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It is not appropriate public policy to reduce large carrier rates without providing an alternative recovery for rate-of-return carriers that are not able to absorb the differential in a similar manner.

Several possible options for alternative recovery would be to add a subpart onto an existing support mechanism such as either the Interstate Common Line Support (ICLS) or the Local Switching Support (LSS) mechanisms, both which have historically provided some form of access replacement vehicle.

For the purpose of accelerating discussion on such an alternative, we have offered some draft rules language in Attachment A to this filing if the Commission were to choose the LSS route in this matter for rural carriers.

INTRODUCTION AND BACKGROUND

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America.

The purpose of these reply comments is to respond to the Public Notice concerning a request for input on the August 1, 2008 petition offered by Embarq. In this petition, Embarq seeks permission to unify its intrastate and interstate switched access charges on a study-area basis, pending comprehensive access and universal service reform.

GVNW joins other parties[1] in urging the Commission to approve the Missoula Plan. In the absence of that level of comprehensive reform, we join others in encouraging the Commission to address both phantom traffic and to develop a rational transition to a unified intercarrier compensation rate level that provides for universal service support for rural carriers for displaced intrastate access revenues.

We concur with NECA, et al in their ex parte letter[2] dated August 26, 2008: "Embarq's approach would not be workable for rate-of-return (ROR) carriers." We assert that many of the issues surrounding Embarq's petition are similar to the issues we raised in our comments on AT&T's recent petition in WC Docket No. 08-152, and we therefore reiterate several of our arguments in the following pages for this record.

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[1] See Western Telecommunications Alliance (WTA) ex parte dated August 14, 2008. WTA supported the basic approach and framework of the Missoula Plan, indicating that it is an equitable and effective compromise among a broad cross-section of service providers.

[2] Letter to Marlene H. Dortch, FCC Secretary, from NECA, OPASTCO and WTA dated August 26, 2008 in WC Docket No. 08-160, page 1.

A ONE SIZE FITS ALL APPROACH IS NOT AN APPROPRIATE PUBLIC POLICY SOLUTION FOR THIS ISSUE

The record is replete with evidence that rural is different. While the seminal work in this regard is found in the white papers of the Rural Task Force, data continues to be placed in the record in this regard. In an August 12, 2008 filing, the National Telecommunications Cooperative Association (NTCA) concisely captured the current rural challenges:

"With access revenues shrinking, uncertain universal service reform pending, middle-mile costs increasing, and broadband infrastructure costs[3] *soaring, rural service providers and rural consumers are entering a perfect storm. In order to avert this impending danger, the Commission must act quickly to stabilize*[4] *the federally regulated revenue streams that support rural [local exchange carrier] infrastructure currently used to deploy broadband, as well as provide voice service, to rural consumers."*

Similarly, OPASTCO, et al indicated in a very recent ex parte[5] that rural ILECs depend on high-cost universal service support and intercarrier compensation for a substantial portion of their cost recovery and that it is important that reform of those mechanisms consider the unique characteristics[6] of rural LECs and their service areas.

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[3] We add the following observation: Rural carriers stand ready to meet their portion of the broadband challenge. The question that this and future Commissions are faced with is a simple one: "How much of this broadband cost will be recovered from carrier rates and how much will be left to be recovered from support mechanisms?" We respectfully submit that the solution set may be a bit different in rural, high cost to serve areas with low density that it will be in the heavily populated areas served by AT&T and Verizon.

[4] NTCA has filed a plan with the Commission that is tailored to address the interstate Universal Service Fund and intercarrier compensation needs of rural consumers served by rural local exchange carriers. This proposal argues that as more traffic moves to voice-over-IP and other IP-based applications, more costs should be assigned to the interstate jurisdiction and recovered through the federal universal service mechanism, since rural carriers will not be able to recover the difference through a SLC increase as is the case for many price cap carriers.

[5] Ex parte filing of OPASTCO, Totah Communications, and Waitsfield and Champaign Valley Telecom in WC Docket Nos. 01-92, 96-45, 05-337, 06-122, and 04-36 dated August 26, 2008.

[6] OPASTCO et al further note at page 1 of their August 26 ex parte that "one size fits all" reform that fails to address the operating characteristics of rural ILECs will make it "increasingly difficult" for rural carries to provide affordable advanced services that are comparable to urban offerings.

ACCESS CHARGES ARE APPROPRIATE FOR COST RECOVERY FOR THE CARRIERS THAT ENABLE THE NETWORK TO FUNCTION

In its petition that is the subject of WC Docket No. 08-152, AT&T offers (page 28) as a foundational basis for assessing access charges the fact that one of the Commission's primary objectives with respect to access policy, in place now for nearly two decades, "*has been to assess access charges on all users of exchange access, irrespective of their designation…*"[7]

Access charges assist in paying for the infrastructure[8] that everyone[9] uses. The issue of carriers not paying for their usage of the public switched telephone network[10] will continue to pose thorny problems for providers and regulators alike, absent proactive Commission attention.

[7] 6 FCC Rcd 4524, paragraph 54.

[8] One of the reasons that universal service is working today is that virtually all customers are accounted for within some eligible carrier's service territory. These "carriers of last resort" (COLR) stand ready to serve even the most remote and isolated customers. But, this universally available service comes with a cost. Specifically for rural carriers, in a rate-of-return regulatory environment, the overarching principle that the Commission should adhere to is that rate-of-return carriers are entitled, as a matter of law, to a full recovery of their costs in providing interstate (access) services.

[9] The mobility provider depends on the wireline provider in its call completion architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006. This paper states in part: *Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain underserved . . .Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.*

[10] There are various estimates that activities such as peer-to-peer networking involves 10-15% of customers that are utilizing as much as 85% of available bandwidth. Providing capacity requires capital investment on the part of carriers. The Commission will, in our opinion, be required to find a balance in order to mitigate network management issues.

REDUCING INTRASTATE RATES TO INTERSTATE LEVELS MUST BE DONE WITH EXTREME CARE

Both Embarq and AT&T offer proposals[11] in order to better position each entity in today's increasingly competitive environment. We respectfully submit that it is not appropriate public policy to modify price cap carrier rates and attempt to apply such an approach globally, without providing an alternative recovery[12] for rate-of-return carriers that are not able to absorb the differential in the same manner.

Several possible options for alternative recovery for rate-of-return carriers would be to add a subpart onto an existing support mechanism such as either the Interstate Common Line Support (ICLS) or the Local Switching Support (LSS) mechanisms, both which have historically provided some form of access replacement vehicle. ICLS was initiated to replace revenues displaced when this Commission phased out per-minute carrier common line charges, and the LSS permits certain carriers to assign a portion of their traffic sensitive local switching costs to a support mechanism in lieu of access charge recovery.

We note with interest the comments of NECA, OPASTCO and WTA in WC Docket No. 08-152, that were attached to a letter in this WC Docket No. 08-160, that recommend the implementation of an LSS2 component for revenue recovery for small

[11] We are concerned that future advocacy by AT&T could appear to seek to significantly reduce or eliminate access if an explanation of its proposal is summarized as being geared to "establish uniform compensation rules applicable to all traffic exchanged with or on the public switched telephone network." We do not believe that it is appropriate policy to use this debate as a scenario to combine access and non-access traffic into a single category.

[12] Any amounts shifted to universal service support for rural carriers should not then be subject to a reverse auction scenario.

carriers. For the purpose of accelerating[13] discussion on such an alternative, we have offered some draft rules language in Attachment A to this filing if the Commission were to choose the LSS route in this matter.

Respectfully submitted

Via ECFS on 9/4/08

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[13] Although we note that the August 26, 2008 ex parte filed by NARUC in WC Docket No. 08-152 and CC Docket No. 01-92 (NARUC noted 08-152 as CC instead of WC), challenging the Commission's jurisdictional authority, will tend to slow down the debate process, especially in the event of the formulation of a Joint Board deliberative process.

Attachment A

Draft Rules Language for Interstate Support Mechanism Treatment of intrastate revenue requirement reduction

The following language could be added as 54.301(g) if the Commission were to decide to provide for an interstate support mechanism for rural carriers to replace foregone intrastate access revenues if interstate and intrastate access rates were to be equalized. [The proposed rule language is geared to provide the same filing deadlines as existing provisions of 54.301. Obviously, it will not be possible for a final Order to be rendered and data submitted by October 1 of this year, which could require a waiver for initial implementation or a different timing target.]

(g) *Calculation of revenue requirement component for displaced intrastate access revenues*

(1) Beginning January 1, 2009, each carrier eligible for support under this subpart shall, for each study area, provide the Administrator with the projected intrastate access minutes for the calendar year following each filing. This information must be provided to the Administrator no later than October 1 of each year. The Administrator shall use this information to calculate support applicable to this subpart as follows: The difference between the applicable interstate and intrastate switched access rates will be multiplied by projected intrastate access minutes for the calendar period, with the resulting product equaling the amount of support to be paid under this subpart. If the intrastate switched access rate is at a level below the interstate switched access rate, then no support mechanism is applied.

(2) The Administrator shall develop true-up mechanisms similar to those that currently exist under 54.301(e) so that carriers are provided net support (estimate revised by true-up) for only actual intrastate access minutes for each applicable period that subpart 54.301(g) (1) is in effect.