Reasonable and Responsible ICC Reform

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Responsible Reform of ICC is Possible

- The FCC has an opportunity to take a step toward ICC reform while addressing the CORE remand responsibly
- Principles for responsible ICC reform:
  - Maintain integrity of communications law
  - Avoid unlawful rate regulation
  - Provide predictable and lawful regulation
- Proposals for a mandatory “$0.0007” regulated rate have none of these principles
- Proposals for a mandatory “$0.0007” regulated rate imperil rural telephone companies

Maintain the Integrity of Communications Law

- Communications law governs ICC; don't reinvent law
- Most states follow federal communications law
- Our companies and our state have done the right things:
  - State benchmark rates
  - Lowered intrastate access rates
  - Targets support to low density areas and only provides support if the company is not earning its authorized return
- Having taken all these steps, moving to a mandatory $.0007 rate would be expensive and risky

Avoid Unlawful Rate Regulation

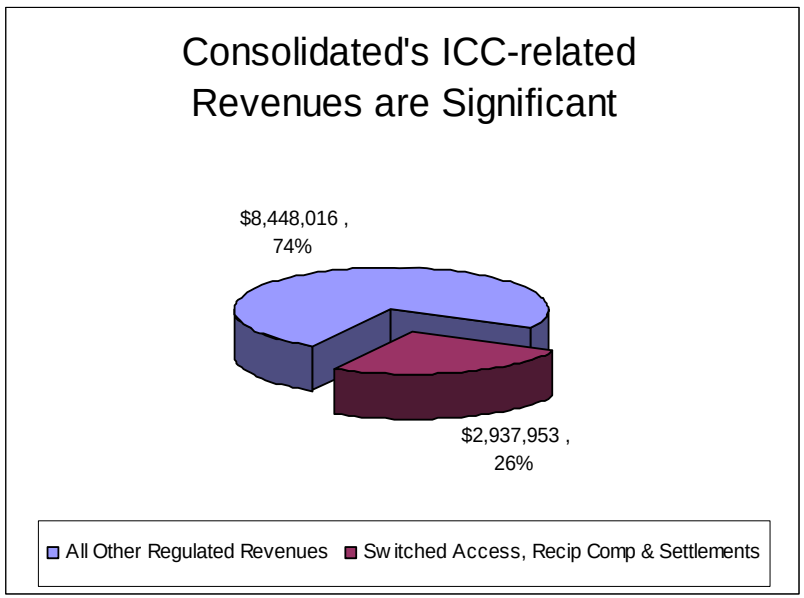
- As the Core Remand and AT&T v. IUB Supreme Court decision illustrate, the courts will not permit the FCC to exceed its rate regulatory authority. 525 U.S. 366 (1999)
- No legislation or case precedent provide the FCC with the legal basis to set intrastate rates at $0.0007
- One-size-fits-all federal rate regulation does not work
- States and companies will litigate, and the FCC will ultimately lose
- In the meantime, broadband investment will cease and consumers will suffer

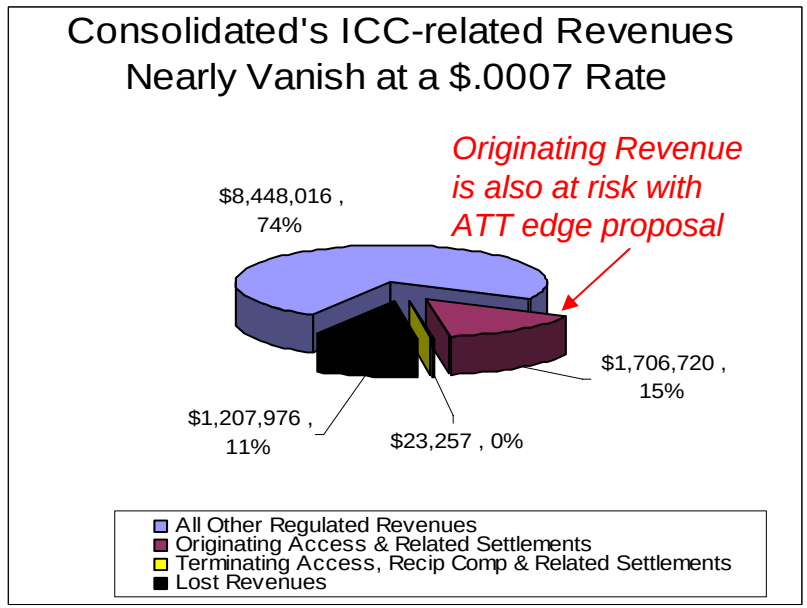
Provide Predictable and Lawful Regulation

- Implementing a mandatory $.0007 terminating rate for all carriers and all services:
  - Would harm rural customers and their carriers, absent replacement revenue
  - Would subsidize carriers that use rural networks, but do not invest in rural infrastructure
  - Would halt further broadband investment in rural areas
  - Would be an exaggerated remedy for problems associated with arbitrage

The Real Impact of $.0007

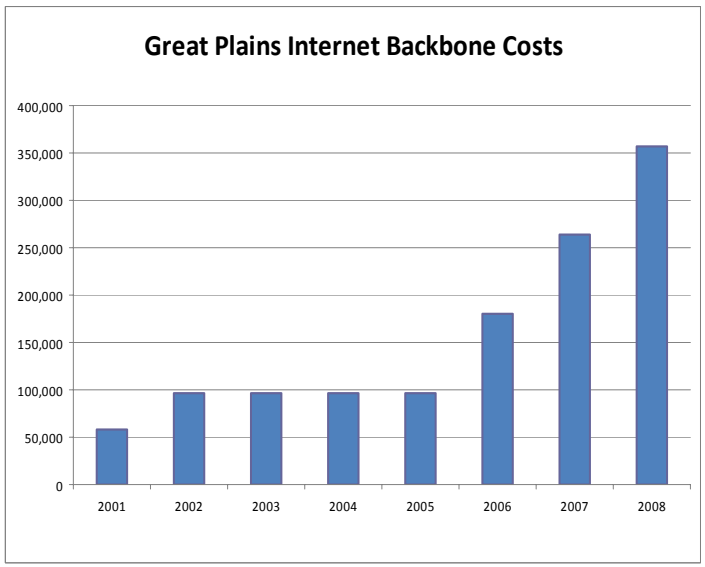
- For rural carriers, the terminating revenue received is less than the billing cost
- Great Plains' TELRIC rate is nearly 30 times higher than $.0007
- Revenue replacement is $4.3 billion per AT&T
- Without revenue replacement, carriers will stop investing in broadband infrastructure

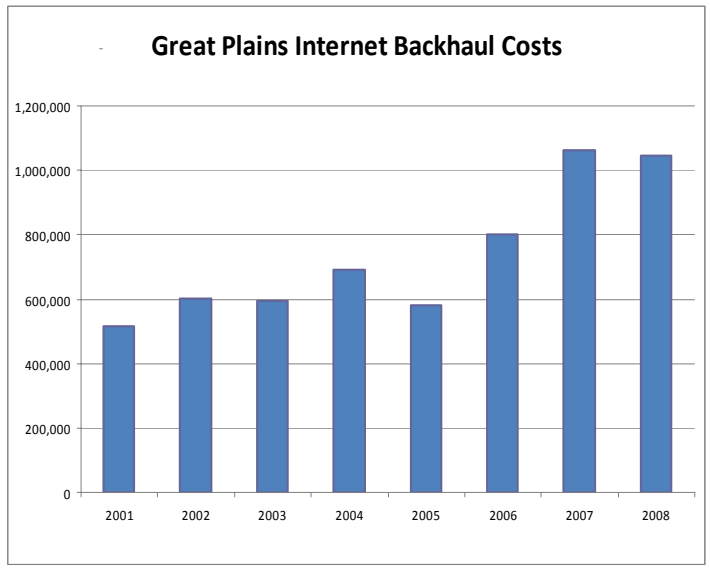




The Real Impact of $.0007

- The proposal is putting traditional revenue streams at risk while unregulated middle mile and backbone costs are increasing dramatically
- Broadband deployment will halt





Dealing Responsibly with the CORE Remand

- The FCC should deal directly and narrowly with the court remand
  - The FCC should reconsider its position and conclude that the Interim ISP-bound Rules are not sustainable because
    - ISP-bound traffic is subject to 251(b)(5), and;
    - the FCC's authority is limited to establishing pricing methodologies and does not allow for rate setting according to IUB v. FCC, 219 F.3d 744 (8th Cir. 2000)
  - The U.S. Supreme Court has determined that the FCC does not have jurisdiction to set or telegraph prices for reciprocal compensation. AT&T Corp., et al. v. IUB, et al., 525 U.S. 366 (1999)

Reforming ICC Responsibly

- As an interim step, *cap interstate ROR access rates* and recover the residual in ICLS
  - Stops the problem from getting worse, while the larger reform issues can be resolved
  - The price tag is much smaller --$300 million vs. $4.3 billion
- Open a docket to address separations reform
  - Recognize the changing nature of communications and the expiration of the separations freeze, these changes are timely
  - Legally unify access rates on a carrier-by-carrier basis after reallocating costs to the interstate jurisdiction

Recommendations

- Don’t blindly embrace one-size-fits-all federal rate regulation
- Read such proposals carefully
- Adopt only clearly legal ICC reform
- Consider effects on rural consumers and the carriers that serve them
- Consider responsible rural ICC proposal