Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link Up	)	WC Docket No. 03-109
Universal Service Contribution Methodology	)	WC Docket No. 06-122
Numbering Resource Optimization	)	CC Docket No. 99-200
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF METROPCS COMMUNICATIONS, INC.

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Summary

MetroPCS agrees that the time has come for the Commission to adopt comprehensive intercarrier compensation and universal service reform that implements a unified regime and reflects marketplace realities. Reform is long overdue, and MetroPCS applauds the Commission's efforts in this regard. This proceeding, which has been underway for over seven years, provides a unique opportunity for the Commission to resolve long-pending issues related to intercarrier compensation, to eliminate arbitrage, and to reform the universal service program. MetroPCS strongly urges the Commission to adopt a truly unified intercarrier compensation regime and universal service reforms at its upcoming open meeting, scheduled for December 18, 2008.

MetroPCS generally supports the proposed intercarrier compensation reforms, as specified in Appendix C of the *FNPRM*. In particular, MetroPCS strongly agrees that the Commission should adopt rules that ultimately treat all traffic – local, intrastate, or interstate; wireline and wireless; access and reciprocal compensation – the same, and create a definite path toward unifying all intercarrier rates and lowering them to $0.0007 per minute-of-use ("MOU") or less, which more accurately reflects the costs of terminating traffic.

In keeping with the Commission's objectives, MetroPCS proposes some clarifications of and additions to the comprehensive regime to close certain loopholes that otherwise would result in unintended consequences by allowing some carriers to exploit arbitrage opportunities under the new regime. First, the Commission must ensure that the rules during the initial transition period apply equally to both access traffic and reciprocal compensation traffic. Second, the Commission must clarify that carriers who now are exchanging traffic on a *de facto* bill-and-keep basis pursuant to indirect interconnection arrangements are subject to the ban on rate increases. Third, the Commission should include rules governing originating access traffic,

transit traffic, wireless access charges, and IP/PSTN traffic in its proposed reforms, in order to make certain that its regime for intercarrier compensation reform truly is unified. Fourth, in order to level the playing field between wireless and wireline services, the Commission should shorten its proposed ten year transition period to five years, in order to provide carriers with timely relief from the arbitrage and market distortions that exist in the current intercarrier compensation regime. Fifth, the Commission should take additional steps to assure that the glide path toward lower rates is better defined. By adopting the MetroPCS proposals, the Commission can ensure that it does not adopt rules that have unintended consequences, or that promote arbitrage and rate increases.

Lastly, MetroPCS also supports the Commission's overhaul of the universal service contribution mechanism. The universal service contribution mechanism has long been inefficient and unfair, and MetroPCS welcomes a change that would allow wireless carriers to have certainty about universal service charges. However, in order to improve the compensation mechanism and eliminate ambiguity, MetroPCS offers a suggestion to clarify the definition of "accessible number" in order to make sure that carriers only are making contributions for revenue generating phone numbers.

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments in response to the *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking,* FCC 08-262, released November 5, 2008 (the "*FNPRM*")[2] in

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*; *Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122, Order on Remand and

(continued...)

the above-captioned proceedings. MetroPCS applauds the Commission for proposing a unified intercarrier compensation regime and universal service reform that will bring intercarrier compensation into the 21st century and urges the Commission to proceed. In support, the following is respectfully shown:

I. METROPCS APPLAUDS AND SUPPORTS THE COMMISSION'S EFFORT TO UNDERTAKE UNIFIED INTERCARRIER COMPENSATION REFORM

MetroPCS agrees that the time has come for the Commission to adopt lasting intercarrier compensation and universal service reform that reflects marketplace realities. Reform is long overdue. This proceeding, which has been underway for over seven years, provides the Commission a unique opportunity to resolve long-pending issues related to intercarrier compensation and to reform the universal service program. MetroPCS strongly urges the Commission to adopt a truly unified intercarrier compensation regime and universal service reforms at its upcoming open meeting, scheduled for December 18, 2008.

The current intercarrier compensation regime and universal service program were adopted over twelve years ago under market conditions vastly different from those that exist today. Convergence, consolidation and new technologies have transformed the communications landscape and rendered obsolete many of the jurisdictional and technological compensation distinctions that drove the current regime. A lot has changed since 1996. For example:

- In 1996, there were seven Regional Bell Operating Companies operating under the Modified Final Judgment (MFJ) offering local telecommunications services; now there are just three and they offer a dizzying array of services, including voice, long-distance, television and broadband services;
- In 1996, there were three distinct categories of service – local, toll and long distance; now these lines have blurred with ever increasing amounts of traffic being offered in flat rate plans;

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Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008), 73 Fed. Reg. 66,821 (Nov. 12, 2008).

- In 1996, there were multiple national stand-alone interexchange companies, including AT&T, MCI, and Worldcom – now these companies, or the remnants of them, have been absorbed into telecommunications conglomerates;
- In 1996, there was no truly nationwide wireless carrier – now there are four national wireless carriers with a combined market share in excess of 90%;
- In 1996, there were a few local access providers, such as MFS, and no competitive local exchange carriers ("CLECs"); now there are numerous CLECs and cable providers providing local service;
- In 1996, cable provided only one service – cable television; now a substantial and increasing amount of the United States population receives broadband Internet and voice telecommunications from cable providers; and
- In 1996, the RBOCS had over 90% market share; now the remaining RBOCs have a diminishing share of the total telecommunications traffic pie.

Further, subscribers continue moving from legacy wireline networks to new wireless and IP services in ever increasing numbers. The wireless industry has become a major competitive force in terms of wireline substitution, a situation which did not exist when the current compensation system took shape, and wireless carriers need to be placed on an equal competitive footing with their wireline competitors. In addition, VoIP – which was largely a laboratory experiment when the compensation regime last underwent a major reform – is now a major platform for providing, and a competitive force in, voice communications.

Now is the time for the Commission to reflect these marketplace realities in a truly unified intercarrier compensation regime which does not differentiate between substitutable traffic. In doing so, the Commission must ensure that all carriers – incumbent local exchange carriers ("ILECs"), CLECs, and wireless carriers – are included, and are playing by fair rules for both intrastate and interstate services. Enlightened reform also will serve to reduce the number of recurring disputes, complaints, and other problems related to intercarrier compensation.

MetroPCS generally supports the Commission's proposed intercarrier compensation reform proposals, as specified in Appendix C of the *FNPRM*. In particular, MetroPCS strongly agrees that the Commission should adopt rules that treat all traffic, be it local, intrastate, toll, or interstate access, the same, and create a definite path toward unifying all intercarrier rates and lowering them to $0.0007 per minute-of-use ("MOU") or lower, which more accurately reflects the costs of terminating traffic. Thus, MetroPCS supports the Commission's proposed final unified rate based on an "additional costs" standard, and the Commission's expectation that, by using it, state commissions ultimately "will set final reciprocal compensation rates at or below $.0007 per minute-of-use."[3]

However, in adopting unified intercarrier compensation reform, the Commission must be vigilant to avoid ambiguities that will foster arbitrage, and avoid creating new opportunities for arbitrage during the transition. Reducing arbitrage is one of the goals of enacting comprehensive reform. The Commission correctly observes that it "has seen numerous examples of regulatory arbitrage in the marketplace both because of the different rates for similar functions under different intercarrier compensation regimes and because none of these regimes currently set rate levels in an economically efficient manner."[4] The Commission notes further that "[e]vidence of increasing regulatory arbitrage" has led it to consider comprehensive intercarrier compensation reform.[5] The Commission draws upon this experience to reach the well documented conclusion that "setting a single uniform rate for all incumbent LECs and interconnecting carriers in a state simplifies the regulatory process, minimizes arbitrage that could arise, and reduces the likelihood that unidentifiable traffic would remain a problem."[6]

In keeping with the Commission's objectives, MetroPCS proposes some clarifications of and additions to the comprehensive regime to close certain loopholes that otherwise would result in unintended consequences by allowing some carriers to exploit arbitrage opportunities under

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[3] *FNPRM* at Appendix C, para. 202; *FNPRM* at para. 41.

[4] *Id.* at Appendix C, para. 173.

[5] *Id.* at Appendix C, para. 181.

[6] *Id.* at Appendix C, para. 269.

the new regime. For instance, the *FNPRM* repeatedly indicates that the proposed rules are intended to foster lower rates for all carriers and all types of traffic over time, with an immediate prohibition on rate increases. In order to achieve this stated goal, the Commission must ensure that the rules during the initial transition period apply equally to both access traffic and reciprocal compensation traffic. Moreover, the Commission must clarify that carriers which now are exchanging traffic on a *de facto* bill-and-keep basis pursuant to indirect interconnection arrangements are subject to the ban on rate increases. Otherwise, the new rules could result in a significant disruption to existing arrangements. This disruption could lead to protracted litigation and increased intercarrier costs – a result opposite to what the new rules are intended to achieve. The Commission also should include rules governing originating access traffic, transit traffic, wireless access charges, and IP/PSTN traffic in its proposed reforms, in order to make certain that its regime for intercarrier compensation reform truly is unified. If the Commission leaves important aspects of the intercarrier compensation regime unresolved, carriers who may see their existing revenues diminish will be incented to pursue new business models designed to take advantage of arbitrage opportunities that remain as a result of these existing rules.[7] By adopting the MetroPCS proposals, the Commission can ensure that it does not adopt rules that have unintended consequences, or that promote arbitrage and rate increases. In addition, in order to level the playing field between wireless and wireline services, the Commission should shorten its proposed ten year transition period to five years, in order to provide carriers with timely relief from the arbitrage and market distortions that exist in the current intercarrier compensation regime.

[7] These would include the carriers which are currently engaged in traffic pumping schemes being examined in WT Docket No. 07-135.

Lastly, MetroPCS also supports the Commission's overhaul of the universal service contribution mechanism. The universal service contribution mechanism has long been inefficient and unfair, and MetroPCS welcomes a change that would allow wireless carriers to have certainty about universal service charges. This is particularly important for customers of MetroPCS who have flat rate plans. However, in order to improve the compensation mechanism and eliminate ambiguity, MetroPCS offers a suggestion to clarify the definition of "accessible number" in order to make sure that carriers only are making contributions for revenue generating phone numbers.

II. THE COMMISSION SHOULD INCLUDE RECIPROCAL COMPENSATION RATE REFORM IN ITS INITIAL FOUR YEAR TRANSITION PLAN

The Commission's transition plan for the initial four years of the new regime, under both the Chairman's initial draft (Appendix A) and the alternate draft (Appendix C), requires all LECs to reduce their terminating intrastate switched access rates by 50 percent of the difference between the current rate and their interstate switched access rate by the end of year one, and to reduce their rates by the remaining 50 percent of the difference by the end of year two so that the rate is no higher than their interstate access rate.[8] Then,

> [w]ithin two years from the effective date of this order, states must adopt a state-wide interim, uniform reciprocal compensation rate applicable to all carriers (except carriers whose rates are below the interim, uniform rate, in which case, those carriers' rates shall be capped at those lower, existing rates)[9] . . . three years from the effective date of this order, we require that all LECs reduce their terminating rates by 50 percent of the difference between their current terminating rate and the interim, uniform reciprocal compensation rate establish by the state. Four years from the effective date of this order we require that all LECs reduced their terminating rates by the remaining 50 percent of the difference between their current terminating rate and the interim, uniform reciprocal rate established by

[8] *FNPRM* at Appendix C, para. 188

[9] *Id.* at Appendix C, para. 189

> the state so that their terminating rates equal the state-set interim, uniform reciprocal compensation rate.[10]

MetroPCS applauds the Commission for proposing a regime that will lower intrastate access charge rates to interstate access rates in the first two years of the new regime. The Commission should make clear, however, that this transition plan also applies to any reciprocal compensation rates that exceed the interstate access rate. Otherwise, the Commission will be ignoring a substantial problem which exists in the reciprocal compensation market. Some rural carriers and CLECs are charging local terminating compensation rates to wireless carriers and others that approach the intrastate access rate.[11] Thus, the Commission must assure that its proposed rules treat high reciprocal compensation rates in the same manner that the Commission treats intrastate access rates - a decrease in reciprocal compensation rates to 50 percent of the difference between the reciprocal compensation rate and the interstate access rate by the end of year one and to at least the interstate access rate level by the end of two years after the effective date of the order. And, the Commission also must reiterate that reciprocal compensation rates are included in the Commission's proposed rate reductions in years three and four of the initial four-year transition plan. Specifically, the Commission should make clear that reciprocal compensation rates in year three of its proposed transition period are to be lowered by 50 percent of the difference between the then current terminating reciprocal compensation rate and the interim, uniform reciprocal compensation rate that is to be set by the states.[12] The Commission also must make clear that the reciprocal compensation rate would under no circumstances be higher than the state-established interim rate in year four of the Commission's proposed rules.

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[10] *Id.* at Appendix C, para. 190.

[11] Rural carriers and CLECs have taken the position that since their intrastate access rates are approved by a state commission that such rates are appropriate for reciprocal compensation.

[12] If the Commission adopts the proposal to eliminate the interim rate and go straight to the final unified rate, then the reduction should be to the final unified intercarrier rate.

Further, the Commission should make clear that nothing in the order allows a carrier to start charging intrastate or interstate access rates as their reciprocal compensation rates during the first four years of the regime. Adoption by the Commission of these clarifications will ensure that high reciprocal compensation rates will be included in the gradual decline during the transition to the interim, state-determined year four rate.

The Commission's current proposal, which appears to leave reciprocal compensation rates untouched during the initial two year period, overlooks the fact that reciprocal compensation rates in certain cases are higher than the interstate access rate and approach or exceed intrastate rates.[13] As is the case with intrastate access rates, certain current reciprocal compensation rates "impose significant inefficiencies on users and distort carriers' investment incentives, which can result in billions of dollars in consumers and producers surplus,"[14] which is exactly what the Commission has stated it is trying to avoid with its new regime. As noted in further detail below, in some instances CLECs and rural ILECs have been engaging in a form of arbitrage by setting their local terminating compensation rates at high levels.

Arbitrage and higher than market rates in the reciprocal termination context present the same regulatory concerns as in the access charge context: potential windfall profits by carriers with terminating monopolies that violate the core principles that intercarrier compensation charges be fair, reasonable and cost-based. Terminating carriers, who enjoy a terminating monopoly, often are able to set local terminating compensation charges at high MOU levels and have the incentive to extract exorbitant intercarrier compensation fees by taking deliberate steps

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[13] Since the "mirroring" rule that implements the $0.0007 rate is applicable to ILECs only, certain CLECs have taken the view that they can, and will charge reciprocal compensation rates that are far in excess of $0.0007/MOU if they do not have substantial ISP-bound traffic. The Commission's *FNPRM* may mistakenly assume that most traffic is exchanged at $0.0007/MOU, which is not the case.

[14] *FNPRM* at Appendix C, para. 184.

to inflate the traffic volume artificially and thereby generate excessive local terminating compensation payments.[15] The most common approach is to seek out customers with high volumes of incoming traffic that will generate large reciprocal compensation payments. These one-way traffic business models, which are reminiscent of the ISP-bound traffic models dealt with in the order portion of the *FNPRM*, are purposefully designed to generate inbound-only traffic from wireless carriers and other telecommunications carriers, and give the carrier every incentive to charge excessive terminating compensation fees. This is occurring in the reciprocal compensation marketplace today, with certain carriers commanding rates that are significantly higher than their costs.

These one-way business models include chat-line services, free conference calling services, audio dating services, and some calling card services, all of which can be configured in a way that generates largely unidirectional traffic from wireless and other carriers to LECs. When these schemes are coupled with high terminating compensation rates, the result is a disruptive form of regulatory arbitrage that distorts the reciprocal compensation market. If the Commission merely establishes a transition regime which only lowers intrastate access rates in the near term, the problem with high reciprocal compensation rates will remain and, indeed, could be exacerbated as carriers attempt to resurrect the payment stream through their higher terminating reciprocal compensation payments.[16]

To avoid this result, the Commission must clarify that reciprocal compensation rates also must be lowered in this initial transition period if they are higher than the transition rates. First,

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[15] In some cases, state commissions inadvertently support such actions by allowing CLECs to file reciprocal compensation tariffs which certain CLECs claim show that the state has blessed an unreasonably high reciprocal compensation rate.

[16] Further, unless the Commission is explicit that carriers cannot charge rates higher than the rates being received at the time of the *FNPRM*, the Commission can expect carriers to ramp up this activity.

the Commission should state that both switched intrastate access charge rates <u>and</u> reciprocal compensation rates should be no higher than the LEC interstate switched access rate by the end of year two (along with the 50 percent ratchet included for year one). In addition, the Commission should reiterate that reciprocal compensation rates are to be included in the Commission's rule that "all LECs reduce their terminating rates by 50 percent of the difference between their current terminating rate and the interim, uniform reciprocal compensation rate established by the state."[17] Finally, the Commission must make explicit that carriers who are not currently charging reciprocal compensation rates cannot adopt the intrastate or interstate access rates as their new rate during the initial four years of the regime. These steps would incorporate reciprocal compensation rates into the unified regime within the initial four year transition period, as well as help reduce excessive charges.

III. THE COMMISSION MUST CLARIFY ITS RULES IN ORDER TO ACHIEVE ITS GOAL THAT INTERCARRIER COMPENSATION RATES WILL DECREASE, NOT INCREASE

One consistent and important theme that permeates the *FNPRM* is that intercarrier compensation rates are expected to go down, not up. For example, the Commission states explicitly that "we do not permit a carrier to increase rates during the transition."[18] There are, however, certain clarifications that the Commission must make to achieve this worthy objective.

In order to ensure that its rules will not result in rate increases, the Commission must (1) establish that existing *de facto* bill-and-keep arrangements establish a current rate that cannot be increased during the transition to the final unified intercarrier rate; (2) establish rules to guard against unwarranted rate increases when existing arrangements, in evergreen status or otherwise,

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[17] *FNPRM* at Appendix C, para. 189.

[18] *Id.* at Appendix C, para. 192. *See also FNPRM* at Appendix C, para. 187 ("carriers whose current rates are below the interim uniform rate set by the state, however, may not increase their prior rates").

expire; (3) establish that the "current" rates to be used as a starting point under the order will be those that were in effect as of November 5, 2008, the date of release of the *FNPRM*, and not the effective date of any order in this proceeding in order to avoid gamesmanship while the proceeding is pending; (4) give further guidance to the states regarding the setting of the interim unified intercarrier compensation rate; and (5) make clear that the current Major Trading Area ("MTA") rule for wireless carriers shall remain in effect unless and until wireless carriers can collect access charges. The clarifications proposed below by MetroPCS will help ensure that the Commission's intent that rates will be trending downward, not upward.

A. *De Facto* Bill-and-Keep Agreements Must Be Subject to the Prohibition on Rate Increases

Under the Commission's transition proposal, "states must adopt a state-wide interim, uniform reciprocal compensation rate applicable to all carriers (except carriers whose rates are below the interim, uniform rate, in which case, those carriers' rates shall be capped at those lower, existing rates)."[19] The Commission goes on to provide that "carriers with lower termination rates may not raise them to the interim uniform rate" set by the states."[20] The Commission's explicit language makes clear that it does not intend any carrier to pay a higher rate post-order than it pays pre-order. However, the Commission does not expressly address certain scenarios pertaining to the indirect exchange of reciprocal compensation traffic. If the Commission does not fill in the blanks for traffic exchanged in this manner during the transition, it risks allowing certain carriers to take advantage of the situation, and to exploit loopholes that will allow them to game the system and defeat the Commission's purpose.

[19] *Id.* at Appendix C, para. 189.

[20] *Id.* at Appendix C, para. 190.

MetroPCS' primary concern pertains to what it calls "existing *de facto* bill-and-keep arrangements." By this, MetroPCS refers to an existing arrangement in which MetroPCS has been exchanging traffic with another carrier through an intervening transit carrier without a written agreement between the originating and terminating carrier. Under indirect intercarrier arrangements of this nature (which are widespread in the industry), no intercarrier compensation payments are made; hence this is a *de facto* bill-and-keep arrangement.

In keeping with its pledge that "under no circumstances shall a carrier be permitted to increase its current rates,"[21] the Commission must make it clear that existing *de facto* bill-and-keep arrangements establish a current rate of $0.00 per MOU that cannot increase. LECs should not be able to abandon these bill-and-keep arrangements during the transition period for the Commission's unified intercarrier compensation regime. Rather, the Commission should expressly indicate in its rules that where commercial mobile radio service ("CMRS") carriers are exchanging reciprocal compensation traffic with LECs pursuant to a *de facto* bill-and-keep arrangement, as of the date of the *FNPRM*,[22] such an arrangement will remain in place in the new regime without change.

This clarification also makes perfect sense. The purpose behind the unified intercarrier compensation regime is to *reduce* intercarrier compensation charges between carriers, not increase them. Any other result will clearly incent carriers to begin seeking intercarrier compensation for traffic, which prior to the release of the *FNPRM*, they did not deem significant enough to warrant negotiating a reciprocal compensation agreement, especially if such carriers are experiencing reduced revenues through reduced rates for access.

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[21] *Id.* at Appendix C, para. 192.

[22] *See infra* at 16-19.

The inclusion of *de facto* bill-and-keep arrangements within the prohibition on rate increases clearly is within the Commission's authority. Bill-and-keep arrangements are expressly preserved in the Communications Act. Section 252(d)(2)(B) specifically provides that the "additional costs" standard "shall not be construed (i) to preclude arrangements that afford the mutual recovery of costs through offsetting reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements)."[23] The Commission could not have intended to preclude such bill-and-keep arrangements via its revision of the "additional costs" standard; as such a reading would violate the plain meaning of the statute. Statutory language should, when possible, be read according to its "plain meaning."[24] Indeed, the Commission previously has noted that "[i]t is well established that statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of the language accurately expresses the legislative purpose."[25]

Adopting the clarification requested by MetroPCS is in the public interest, and consistent with the intent and policies underlying the unified intercarrier compensation regime that are intended to prevent arbitrage during the proposed transition period. Otherwise, carriers who are subject to a *de facto* bill-and-keep arrangement might try to move their rates up to the transition rate that applies throughout the ten year transition period. This would have the perverse effect of converting the transitional rates – that were intended to act as rate ceilings – into a rate floor.

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[23] 47 U.S.C. § 252(d)(2)(B).

[24] *Caminetti v United States*, 242 U.S. 470 (1917).

[25] *Implementation of Section 309(j) of the Communications Act - - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings; Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, 13 FCC Rcd 15920 (1998).

Moreover, treating a *de facto* bill-and-keep arrangement as an existing agreement where the current rate is $0.00 per MOU will remove the incentive for carriers to inflate rates and pump traffic as a form of regulatory arbitrage. This is important, particularly in the case of CLECs, where the rates imposed for local terminating compensation can be largely unregulated.[26] Further, since the Commission is not directly addressing traffic pumping, it can expect that absent some limitations, reciprocal compensation will become the next target of traffic pumpers. Maintaining status quo bill-and-keep arrangements will help deter unjustified rate increases. On the other hand, if the Commission does not clarify its proposed rules in this fashion, it risks allowing certain LECs to solicit above-market and above-cost rates in situations where bill-and-keep is the appropriate remedy.

B. The Commission Should Clarify the Effect of Intercarrier Compensation Reforms on Existing Agreements

Another potential loophole that the Commission should close relates to interconnection agreements that expire after the release of an order implementing unified, intercarrier compensation reform. The Commission in the *FNRPM* takes the position that "[g]iven the comprehensive reforms today are necessary to eliminate arbitrage and reduce disputes, we believe it is appropriate for carriers to take a 'fresh look' at their interconnection agreements in 'evergreen' status … and follow the section 252 process of negotiation and arbitration."[27] Although MetroPCS agrees that the intercarrier compensation regime will affect existing interconnection agreements and may warrant carriers looking to re-examine certain aspects of

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[26] Indeed, many CLECs continue to tariff these charges. Although under the Commission's T-Mobile decision CLECs cannot unilaterally assess terminating compensation charges to CMRS carriers, CLECs may charge ILECs and CLECs these tariffed charges. *See T-Mobile et al, Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd. 4855 (2005).

[27] *FNPRM*, Appendix C at para. 287.

them, especially pursuant to change in law provisions, MetroPCS is concerned that carriers may use the Commission's statement to retrade interconnection agreements, including the rate charged to carries for terminating traffic, to shift costs on to wireless carriers that have previously been borne by the other carrier or to make up for reduced revenues from access. Further, since a considerable number of interconnection agreements may be in evergreen status, this position may trigger a substantial amount of arbitrations and negotiations just at the same time the state commissions will need to be undertaking proceedings to implement the unified intercarrier compensation regime. In order to prevent carriers that may be in evergreen status, or have expiring agreements, from suffering rate shock, the Commission should ensure that traffic exchanged under existing reciprocal compensation agreements that expire, or enter evergreen status, after the new intercarrier compensation regime is in place, continue to be deemed effective at rates no higher than the lower of the negotiated rate in such agreements or the interim rate in place at the time. To do so, the Commission must clarify its proposed rules to ensure that when existing agreements expire, carriers are not able to use such expiration as a way to increase rates, absent a significant and material change in circumstances that renders the previously agreed upon rate unreasonable.

Furthermore, to prevent carriers from using this renegotiation process to opt-in to other intercarrier compensation agreements which have higher intercarrier compensation rates, carriers should not be allowed to opt-out of existing agreements in order to obtain a higher rate when a ratcheted down rate clearly is desired by the Commission. Thus, the Commission specifically should state that no carrier can charge another carrier with which it interconnects by agreement a rate higher than the lower of: (a) the rate specified in the parties' respective agreement that was in place as of November 5, 2008, the date of the *FNPRM*, or (b) the interim rate, absent compelling changes in circumstances. This would prevent carriers whose existing negotiated rate is lower than the state-determined interim rate, from terminating their contracts in an effort to obtain the higher rate. While carriers are able to implement lower rates pursuant to the Commission's new regime, all carriers should be prohibited from attempting to garner transitional rates that are higher than the rate specified in any existing agreement as of November 5, 2008. If such negotiated rates are lower than the state-determined interim rate, such rates shall remain in force until the state determines its final unified rate. This clarification will ensure that the Commission's intention to cap the rates currently being charged is implemented, regardless of when or why particular agreements expire.

C. The Commission Should Set "Current" Rates as of the Date of the Release of the *FNPRM* (November 5, 2008) in Order to Eliminate Game Playing, Brinksmanship, and Self-Help Remedies

As noted above, the Commission has made clear its intention that there should be no rate increases for traffic exchanged under the new regime. Indeed, the Commission states that "carriers are not permitted to increase any of their current rates, including their originating access rates" in this new regime.[28] In order to implement this policy, the Commission should specify that all traffic exchanged, including reciprocal compensation traffic exchanged under *de facto* bill-and-keep arrangements, will not experience rate increases from the date of the *FNPRM* under the new regime. This will ensure that carriers do not engage in game-playing or arbitrage between the date of the *FNPRM* and the effective date of the new regime by setting the "current" rates at the rates in effect as of the release of the *FNPRM*, rather than measuring such rates as of the date of the order's release or effective date.

[28] *Id.* at Appendix C, para. 224.

The *FNPRM*, and the stated intention of at least four Commissioners to have a vote on the proposed *FNPRM* rules on December 18, 2008,[29] put all carriers on notice that the Commission may adopt regulations that would cap intercarrier compensation rates. The Commission must be concerned that some carriers may seek to take advantage of this notice by increasing their rates under the wire – either by opting out of evergreen agreements prior to the release of the order, trying to assess charges unilaterally by sending invoices, or by filing revised tariffs prior to the release of the order.

In order to guard against such manipulation, the Commission should specify that current rates will be determined as of the date of the *FNPRM*, rather than the date of any final order. This would apply to tariffed rates, rates imposed by agreement, and to any other rates at which traffic is exchanged. Since intrastate tariffs may be changed in many instances merely by the carrier filing a tariff amendment, the Commission must instruct the states to not accept any intrastate tariff amendments which were filed after the date of the *FNPRM*. Further, since the interstate tariffs can also be changed relatively easily, the Commission should prohibit any carriers from changing their interstate tariffs. Since many smaller carriers opt-into the NECA interstate tariff, the Commission should also freeze NECA's tariff rates as well to the rate in place on the date of the *FNPRM*. This freeze would prevent carriers from gaming the system by attempting to cram down higher rates immediately before the unified intercarrier compensation regime takes effect.[30] Preventing this type of arbitrage or gamesmanship would clearly be in the

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[29] "Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell," News Release (rel. Nov. 3, 2008).

[30] The higher rates would have two pernicious effects. First, a carrier would immediately begin receiving the higher compensation. Second, the mid-point for a transition to lower rates would be higher because the starting rate would be higher.

public interest. In essence, the Commission would be establishing a rate freeze as of the date of the *FNPRM*.

The Commission previously has found it to be "well established that the Commission may initiate a freeze without prior notice and hearing"[31] when it serves the public interest. And, on occasion, the Commission has determined that a new rule should take effect as of the earlier date that an *NPRM* was issued rather than on the date that the new rule was adopted. For example, when the Commission revised Part 22 of its rules to allow non-wireline applicants to file for frequencies previously reserved for wirelines, it took care to have certain aspects of the new rule date back to the *NPRM* date so that applicants would not benefit from waiver applications they filed after the *NPRM* was issued in anticipation of a possible rule change.[32] Specifically, in that instance, although the *Report and Order* in the *Part 22 Rewrite* proceeding was released on December 19, 1983, the Commission made a policy decision that certain waiver procedures contained within that rule would be applied retroactively back to July 29, 1982, which was the day on which the *NPRM* in that proceeding was adopted.[33] The Commission justified its retroactive action on the need to safeguard the public interest by ensuring that all of the available wireline frequencies were not co-opted by non-wireline applicants who sought to take advantage of the lag time between the proposed rule change to take down the so-called "fence" separating wireline and non-wireline frequency allocations and the Commission's final

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[31] *In the Matter of Amendment of the Commission's Rules Regarding the 37.0 -38.6 GHz and 38.6 -40.0 GHz Bands*, Implementation of the Section 309(j) of the Communications Act – Competitive Bidding, 37.0 -38.6 GHz and 38.6 – 40.0 GHz Bands, *Memorandum Opinion and Order*, 12 FCC Rcd. 2910, 2915 (rel. January 17, 1996).

[32] *In the Matter of Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, 95 FCC 2d 769 (Rel. December 19, 1983).

[33] *Id* at para. 199.

action.[34] Here, the Commission would serve the public interest by requiring current rates to be measured as of November 5, 2008, which would effectively prevent carriers from engaging in regulatory arbitrage at the expense of higher rates to the public.

D. The Commission Should Give the States Further Guidance on Setting the Interim Intercarrier Compensation Rate

Under the *FNRPM*, each state regulatory commission is obligated to establish an interim unified intercarrier compensation rate to be used by all carriers in the state. The interim rate will serve as a rate cap that will go into effect four years after the effective date of the Order in this proceeding, and will serve as the benchmark for reductions in the interstate access rate in the third year after the effective date of the Order in this proceeding.[35] While the Commission did offer some guidance on the methodology that the states could use to set the interim unified intercarrier rate, it also indicated that the interim unified intercarrier compensation rate "may be higher at the beginning of the transition than some existing incumbent rate LEC rates today."[36] MetroPCS submits that it is a mistake for the Commission not to provide a cost methodology or stricter guidelines for the states to use in setting the interim unified rate. Otherwise, states could, and would, be encouraged by many carriers to set the interim rate very close to their current interstate access rate.

Allowing state commissions to set rates that are not tied to a costing methodology would not serve the public interest and may reflect a mistaken assumption that most traffic already is subject to existing written interconnection arrangements. The current system, where the Commission sets the costing methodology and the states apply it, has worked well to reduce the involvement of the Commission and has also allowed the states to take into account local

[34] *Id.* at para 200.

[35] *FNPRM* at Appendix C at para. 190.

[36] *Id*. at Appendix C at para. 190.

conditions. Allowing the states complete flexibility, however, swings the pendulum too far in favor of local conditions. The better approach would be the same approach used in the *First Report and Order*[37] (and used later to set the final unified rate), where the Commission set the basis costing methodology and let the state regulatory commission determine the rates based on such cost methodology.

MetroPCS believes that the most appropriate cost methodology for the interim rate, which will not result in higher intercarrier rates, is the current TELRIC methodology. Although the Commission convincingly argues that, at the end point, the costing methodology should be the revised "additional costs" methodology, using the familiar TELRIC methodology for the interim rate would avoid unwarranted rate increases and provide greater continuity between the existing intercarrier compensation regime and the new intercarrier compensation regime.

Further, in order to reduce the burden on the state commissions and to eliminate the possibility of rate shock, the Commission should require that state commissions set the interim unified rate at a level no higher than the current or latest TELRIC rate of the dominant ILEC in the state.[38] This has a number of public interest benefits. First, in most cases the ILEC TELRIC rates have already been established so states could, if they wanted, minimize their burden by simply adopting the TELRIC rate as the interim rate. Second, since the TELRIC rates were set prior to the release of the *FNPRM*, there is no likelihood that the rates would be influenced by carriers seeking to recoup revenue lost as a result of the unified intercarrier compensation regime. Third, the rates would in most cases not result in rate shock to originating carriers since

[37] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15499 (1996) ("*First Report and Order*").

[38] To the extent that there is more than one dominant ILEC in the state, the TELRIC rate of the largest ILEC in the state as measured by 2007 access lines should be used.

smaller carriers' reciprocal compensation rates would be higher than the dominant ILEC rate. Finally, since the dominant ILEC TELRIC reciprocal compensation rates would be lower than the interstate access rates (but higher than $0.0007), the proposal would result in continued reduction in intercarrier compensation rates, rather than a situation which could occur under the existing proposal where intercarrier rates could rise to the interstate access rate and not be reduced in the third and fourth years.

E. The Commission Should Clarify that the MTA Rule Embodied in Section 51.701(b)(2) Remains in Place Until Wireless Carriers Receive Terminating Access

In the *First Report and Order*, the Commission established a rule that any traffic exchanged between a wireless carrier and a wireline carrier would be subject to reciprocal compensation and not access charges so long as at the beginning of the call, the called and calling party are located in the same MTA.[39] This rule, known as the MTA Rule, has served the industry well, and should remain in place at least until wireless carriers are permitted to receive access payments. Under the *FNPRM*, there is no discussion of the MTA rule so presumably it would remain in place during the period of time prior to the date that all traffic is handled the same and wireless carriers are permitted to receive access. This is extremely important because the MTA Rule has incented wireless carriers to develop systems without regard to LATA boundaries, which has fostered wide-area service to customers and has allowed wireless to become the significant competitor to wireline that it is today.

Wireless carriers, particularly those who act as a significant landline displacement, are disadvantaged by not receiving access revenue. However, the MTA Rule at least has allowed the industry to be relieved of paying access charges for intra-MTA calls and to collect reciprocal compensation for such calls. Without the MTA Rule, wireless carriers would be at a much more

[39] *See First Report and Order* at para. 1036; 47 C.F.R. § 51.701(b)(2).

severe disadvantage to their wireline competitors because they would not be able to receive access and might not be eligible to receive reciprocal compensation for traffic that today would be compensable. Given that the Commission has proposed that wireless carriers not receive access payments until the end of the transition to the final intercarrier compensation rate, the Commission must ensure that the MTA Rule remains in place. Further, since some rural carriers and CLECs continue to argue that, if MTA traffic is handed off to an interexchange carrier, no reciprocal compensation is owed, the Commission should reiterate that MTA traffic regardless of whether handed off directly or indirectly is subject to the MTA Rule and reciprocal compensation is due to the wireless carrier.[40]

IV. THE COMMISSION SHOULD SHORTEN THE TRANSITION PERIOD FOR ITS UNIFIED INTERCARRIER COMPENSATION REGIME FROM 10 YEARS TO 5 YEARS

While a transition period is necessary and appropriate to implement a new, final unified intercarrier compensation rate, MetroPCS is concerned that ten years is too long, and proposes that the transition period be shortened to five years.[41] Since the only constant in telecommunications is change, the proposed ten year transition period does not take into account changes that inevitably will occur seven or eight years from now.[42] Moreover, a transition period of ten years significantly diminishes the effectiveness of the Commission's unified plan,

[40] At least two federal courts of appeal have found that intra-MTA traffic is considered to be subject to reciprocal compensation rather than access traffic even if it is handed off to an intervening interexchange carrier. *See Alma Communications Company dba Alma Telephone Company, et. al. v. Missouri Public Service Commission, et. al.*, 490 F. 3d 619 (8th Cir. 2007); *see also Atlas Telephone Co. v. Oklahoma Corp. Commission*, 400 F.3d 1256 (10th Cir. 2005). It is important for the rest of the state commissions to understand that this is the Commission's view as well.

[41] If the Commission adopts this shortened transition period, it should adopt the proposals noted above in accordance with this revised time frame.

[42] For example, the docket in this proceeding has been on-going for seven years, a period in which substantial change has occurred. The Commission must proceed more quickly here since such changes are continuing and are accelerating.

and allows potential arbitrage opportunities to continue for an extended period of time. Shortening the transition period will provide timely relief from the myriad of current market distortions and arbitrage situations that pervade the intercarrier compensation market at this point, and will serve the public interest.

MetroPCS thus supports the transition proposal submitted by Verizon on October 28, 2008.[43] Verizon proposes that "[o]ne way to structure the transition would be to cap intrastate terminating access rates at interstate levels by the end of the first year; to cap terminating rates at a rate no higher than the state's average reciprocal compensation rate by the end of the third year; and to unify all terminating rates at the final terminating rate by the end of the fifth year."[44] Alternatively, the Commission could implement the current proposal for the first two years and have the state commissions set the final unified intercarrier compensation rate using the "additional costs" methodology in year two with the access rate reducing to the final rate in three equal steps over three years. The important point is that the final rate be achieved within five years instead of ten years. Either transition plan would accomplish all of the Commission's goals while still allowing enough time for carriers to adjust to the revised market conditions.

Moreover, either proposed transition plan would shorten the period of time in which arbitrage could occur and minimize the period in which the playing field between wireless and wireline is not level. Currently, wireline carriers are allowed to recover access charges for interstate and intrastate access, including calls that are inter-MTA. However, wireless carriers are not allowed to recover either interstate or intrastate access, except pursuant to voluntarily

[43] *See Ex Parte* of Verizon, filed in CC Docket Nos. 01-92, 96-45 and WC Docket Nos. 04-36, 95-337, 06-122 (filed Oct. 28, 2008).

[44] *Id.* at 5.

negotiated agreements.[45] Since a growing percentage of wireline usage is migrating to wireless services, this disparity over time will continue to impede the ability of wireless providers to act as a competitive choice to wireline services. Further, the proposed shorten transition plans will reduce the work necessary by the Commission and the state regulatory commissions by eliminating a whole series of interim unified intercarrier compensation rates, in favor of the final unified rate and a simple three step transition plan. Given the scarce state commission resources, this simplification would be in the public interest. This approach also gives the Commission needed input into the downward glide path toward the final rate. Also, eliminating the multi-step interim rate process will free up scarce Commission resources as well which also serves the public interest.

If the Commission nevertheless maintains a ten year transition period, it should implement specific steps to ensure that states are adhering to a meaningful downward glide path during the six years of the last transition period to the final reciprocal compensation rates. The Commission notes that "states may determine the glide path for moving from the interim, uniform reciprocal compensation rate to the final, uniform reciprocal compensation rate."[46] However, the Commission should not allow states complete flexibility to wait until year nine or ten to implement most of the rate reductions. By indicating "states will have discretion to determine the glide path," with the only guidance being that the FCC expects a "gradual downward transition,"[47] a state could interpret this to allow the bulk of the rate decreases to

[45] MetroPCS is not aware of any voluntary access agreements with wireless carriers since interexchange carriers have no incentive to enter into them.

[46] *FNPRM* at Appendix C, para. 190.

[47] *Id.* at Appendix C, para. 189.

come late in the 10-year transition phase.[48] Rather, the Commission should adopt specific, mandatory time lines for states to follow to implement the unified regime. The Commission should mandate the state commissions to adopt a glide path with a straight percentage decrease, on an annual basis, from the interim rate in year four to the final, uniform reciprocal compensation rate in year ten. Otherwise, states would have the flexibility to determine on their own the "glide path" to take, which could postpone the determination of a final rate far into the future. Such a "glide path" would not implement the Commission's intention, and would allow arbitrage to continue in particular states for an extended period of time.

V. THE COMMISSION SHOULD ADDRESS ORIGINATING ACCESS CHARGES, TRANSIT SERVICES, WIRELESS ACCESS CHARGES, AND IP/PSTN TRAFFIC AS PART OF ITS UNIFIED INTERCARRIER COMPENSATION REFORM

The Commission, in order to adopt truly unified intercarrier compensation reform, should resolve issues related to a number of items that it either leaves open or gives short shrift to in its *FNPRM*. These issues relate to transit traffic, originating access, wireless access, and the potential rates for IP/PSTN traffic. By leaving these issues to another day, the Commission is failing to implement a unified comprehensive reform, and leaving unresolved potentially divisive issues that could compromise the reform by generating continued controversy and litigation, as well as provide fertile ground for arbitrage. MetroPCS encourages the Commission to include the following items when it considers an order on unified intercarrier compensation reform.[49]

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[48] Under the Commission's proposed rules, a state could take no percentage or a very small percentage of the reduction in the first several years of the transition and backload all reductions into years nine and ten. This would not serve the public interest or the stated goals for the intercarrier compensation scheme because it would allow unreasonably high rates to remain in place for a substantial period of time. Just as the Commission has decided that the reduction from intrastate rates to interstate rates should occur in a very fixed manner, the same should apply in the last stage of the transition as well.

[49] MetroPCS also agrees with the Commission's proposal to immediately issue an order adopting a unified intercarrier compensation regime, followed by a comprehensive review of its rules in

(continued...)

A. The Order Should Not Provide Incentives for Carriers to Alter Their Provisioning of Transit Services in a Post-Order Regime

Transit services are a critical part of the overall traffic exchanged between carriers, and as the Commission notes, "carriers have various agreements governing the provision of transit traffic."[50] In order to address this critical component, MetroPCS agrees with the approach taken to transit services in the Missoula intercarrier compensation reform plan – which proposed that transit services be included within the overall unified intercarrier compensation reform.[51] Consequently, the Commission should include in its unified intercarrier compensation order default rules regarding the exchange of transit traffic and set standards governing the rates for such service.[52] Specifically, MetroPCS proposes that the Commission adopt a rate for such traffic that is no greater than the actual incremental cost for the provision of such traffic. This cost should be similar to the TELRIC cost charged for similar functionality for the provisioning of the various unbundled network elements ("UNEs") that comprise such service. MetroPCS submits that these UNE elements are tandem switching and shared transport from the tandem switch to the point of interconnection with the terminating carrier. Currently, ILECs are trying

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Parts 51, 54, 61, and 69 regarding interconnection and reciprocal compensation to implement the new regime. *See FNPRM* at Appendix C, para. 346. When taking further comment, the Commission should make clear that, to the extent the order conflicts with existing rules, the order overrides such rules. Since the initial actions are relatively straight forward (*e.g.*, reduce intrastate of interstate in the first year), the unification of the rules can be done after the release of the order. However, MetroPCS suggests that the rules be placed on public notice prior to their adoption to ensure that they are vetted to make sure that they reflect the Commission's order and do not introduce ambiguity or conflict with the order.

[50] *FNPRM* at Appendix C, para. 344, ft. nt. 883.

[51] Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commission and Vice-Chair, NARUC Task Force, CC Docket No. 01-92 (filed Jul. 24, 2006) (attaching the Missoula Plan, at 49-54).

[52] This issue has been pending for seven years, and without Commission guidance, MetroPCS has started to try and charge supra-competitive market rates.

to charge significantly higher than "market" rates for transit services. Since one of the goals of the unified intercarrier compensation regime is to conform prices for elements that provide the same services, transit charges should be at the same rate as the underlying network functionality provided on a UNE basis. Such cost should be applied immediately and should be ratcheted downward by year five (or year ten if the transition period is not shortened) to the "additional costs" final, unified rate to be determined by the state commissions. Whether the Commission adopts the Missoula plan or this alternative, either proposal would allow the Commission to unify transit services in accordance with its overall unified intercarrier compensation plan.

B. The Commission Should Immediately Implement the Lowering of Originating Access Charges in its Overall Intercarrier Compensation Regime

MetroPCS agrees with the Commission that "retention of originating access charges would be inconsistent with [its] new regulatory approach to intercarrier compensation" and that "originating charges . . . must be eliminated by the conclusion of the transition to the new regime."[53] However, MetroPCS believes that there is no reason to wait, and that the Commission should not deal with originating access charges using a plan that is substantively or procedurally different than the plan used to lower terminating access charges. Originating access presents the same arbitrage opportunities as terminating access, and creates an unlevel playing field between wireless and wireline carriers. Moreover, to the extent that intrastate originating access charges are higher than interstate rates, there is no logical reason to exclude them from the transition down to a lower unified rate. Indeed, by not including originating access, the Commission can expect to see carriers who are losing terminating access revenue pursue business models designed to capture a larger share of originating access. For example, traffic

[53] *FNPRM* at Appendix C, para. 343.

pumping carriers could abandon their terminating business models for ones that seek to capture originating traffic, such as call centers and IP traffic.

Thus, the Commission should include originating access rates in its unified intercarrier compensation regime. Such rates can easily be incorporated into the Commission's existing proposal, with such rates being subject to the same transition period as terminating access rates, as well as to the same framework of rate lowering, as terminating access rates. The transition would conclude with an elimination of such origination charges by the end of year five (or year ten if the transition period is not shortened). There is no reason for the Commission to avoid dealing with this issue at this time.

C. The Commission Should Allow for CMRS Terminating Access Charges

The Commission notes that "because CMRS providers may not tariff terminating access today, and we do not permit a carrier to increase rates during the transition, CMRS providers therefore will not be permitted to charge for terminating access until the end of the transition period."[54] However, this proposal has the practical effect of treating CMRS carriers differently than all other carriers. The Commission previously has recognized that CMRS carriers are competing with wireline providers, and that wireless-wireline substitution is increasing.[55] To the extent that the Commission leaves in place originating access, does not continue the MTA Rule, or does not shorten the transition period to five years, the playing field under the new intercarrier compensation regime will not be level. Indeed, MetroPCS would prefer that the Commission reduce originating access, continue the MTA Rule and shorten the transition period instead of allowing wireless access. However, if the Commission does not adopt these proposals, the

[54] *Id.* at Appendix C, para. 192.

[55] *Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 07-71, FCC 08-28, Twelfth Report at paras. 246-249 (rel. Feb. 4, 2008).

Commission should not leave in place this inequity. With the ever increasing amount of wireline traffic that is migrating to wireless services, this disparity will continue to grow over time – and may completely displace wireline services in ten years.

Since the unified intercarrier compensation regime is designed to eliminate unnecessary or arbitrary distinctions in the handling of traffic, there is no reason not to allow wireless carriers to collect the same access as other carriers with which they compete. That being the case, the Commission should allow CMRS carriers to compete with wireline carriers on a level playing field during the transition period. By allowing wireline carriers to continue charging for the termination of access traffic while prohibiting CMRS carriers from doing so, the Commission continues to give wireline carriers a significant competitive advantage over CMRS carriers.

If the Commission does not otherwise level the playing field, CMRS carriers should be accorded the same rights as wireline carriers. Since the Commission is allowing carriers to transition first to the interstate rate, then to the interim (or final) unified carrier rate, it should allow CMRS carriers to collect terminating access charges at the interstate rate immediately – to level the competitive playing field before the disparity creates substantial arbitrage opportunities under the new regime. Adopting the above proposal would place all carriers on an equal footing.

D. The Commission Should Include IP/PSTN Traffic in its Proposed Unified Intercarrier Compensation Proposal

The Commission should clarify that traffic exchanged between "services that originate calls on IP networks and terminate them on circuit-switched networks, or conversely that originate calls on circuit-switched networks and terminate them on IP networks" will be included within the Commission's unified intercarrier compensation regime by all states. The Commission appears to have come to the conclusion that IP/PSTN traffic should be included in its overall unified intercarrier compensation reform, as it notes that "we allow states to establish reciprocal compensation rates, pursuant to our methodology, including for IP/PSTN traffic."[56] However, it is not enough for the Commission to merely allow the states to include such traffic in their overall rate. If that were to be the case, it is possible that some states would include such traffic, while others would ignore it. All traffic that travels across the PSTN should be treated the same. Any other regime would create a patchwork of rates, which would not satisfy the Commission's goal of a unified regime.

Rather, the Commission should definitively specify that the state-determination of rates should include all traffic that travels across the PSTN, including IP/PSTN traffic. This would ensure that carriers are not forced to include certain traffic in rate determinations in some states, and other traffic in rate determinations in other states. A truly unified intercarrier compensation regime should account for all traffic exchanged over the PSTN – and thus the Commission should mandate that the states include IP/PSTN traffic in their determination of unified rates.

VI. THE COMMISSION SHOULD CLARIFY ITS DEFINITION FOR "ACCESSIBLE NUMBERS" FOR THE UNIVERSAL SERVICE CONTRIBUTION CALCULATION

MetroPCS supports the Commission's proposal to "adopt a system of contributions that will assess a $1.00 contribution per residential telephone number per month . . ."[57] However, MetroPCS requests that the Commission clarify its definition of an "accessible number," which determines the amount of actual contributions for carriers. The Commission should clarify that numbers which do not provide revenue to carriers will not be subject to the universal service contribution mechanism.

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[56] *FNPRM* at Appendix C, para. 206.

[57] *Id.* at Appendix C, para. 93.

While the Commission provides a number of examples to "represent the numbers being assessed for universal service contribution purposes,"[58] it leaves ambiguous whether numbers which may be assigned but not able to receive service and do not have revenue allocated are to be included for contribution purposes. It does not address, for instance, if a subscriber is on a pre-paid plan and no longer has service, even though the number is not immediately released, whether that number should be considered as an accessible number. If the subscriber does not re-up their account, their service is cut off, and the telephone number is not used. In these situations, MetroPCS submits that the number at issue should not be considered an "accessible number" for that month because the carrier is not receiving any revenue from that subscriber, and the phone number is not in use.

Indeed, the Commission states that it is adopting the new term "accessable numbers" in order to focus "on those numbers that are actually in use by end users for services that traverse a pubic interstate network."[59] Such numbers once not paid for in advance are no longer, at that moment, "in use by a residential end user."[60] Once a subscriber does not pay their forward-looking bill for services, the number is no longer in use for them. This is different from a number used for an intermittent or cyclical purpose (which the Commission is including as accessible numbers), as once the grace period expires for the subscriber in question, they are no longer able to retain that number.[61]

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[58] *Id.* at Appendix C, para. 112.

[59] *Id.*

[60] *Id.*

[61] *Id.* at Appendix C, para. 114.

Rather, this situation is closer in kind to the Commission's exclusion from assessable numbers for numbers for which are not working but have a customer service order pending.[62] The Commission notes that such numbers should be excluded because "[p]roviders generally do not bill for services that have yet to be provisioned and therefore are not compensated for services during the pendency of the service order."[63] Since the Commission proposed that "providers would not contribute for services they are about to provide (but have not yet provided) under a pending service order,"[64] the Commission should broaden this exception to clarify that a provider will not contribute for services they may provide in the future, and thus do not receive revenue for. Thus, for the avoidance of doubt, and in order to clarify the contribution system for the scenario described above, the Commission should specifically specify that a number will not be considered an "accessible number" if a carrier is not receiving revenue for the use of such number in a particular month.[65]

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[62] *Id.* at Appendix C, para. 115.

[63] *Id.*

[64] *Id.*

[65] The Commission also should include this exception in other contexts, including its calculation of accessible numbers for the assessment of regulatory fees. *See* Docket No. 08-65. Since wireless carriers pay regulatory fees based on units in service, the definition of "Assessable Number" established in this proceeding could serve a dual purpose by becoming the basis for allocating wireless regulatory fees.

VII. CONCLUSION

For the foregoing reasons, the Commission should implement the proposals described above by MetroPCS in its upcoming Order implementing a unified intercarrier compensation regime.

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