Before the
Federal Communications Commission
Washington, D.C. 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 GVNW CONSULTING, INC.

GVNW Consulting, Inc.
Jeffry H. Smith
VP, Western Region Division Manager
Chairman of the Board
P.O. Box 2330
Tualatin, OR 97062

Kenneth T. Burchett
Vice-President – Western Region

Robert C. Schoonmaker
President/CEO
P.O. Box 25969
Colorado Springs, CO 80936

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Executive Summary

We do not believe that the additional cost standard, as proposed, represents a prudent step in telecommunications public policy. The Commission's proposals relative to the "additional cost" standard do not create an environment that is conducive to cost recovery for rate-of-return incumbent LECs. In simplest terms, the proposed incremental costing standard posited by the Commission assumes that the cost is to be recovered from the first unit of usage. This results in the lack of any meaningful cost recovery except from end user customers. In the absence of sufficient supplemental funding, such an approach is problematic at best.

We believe that a unified rate structure that produces rates that are the same for all traffic but may in fact differ among operating companies based on individual company cost characteristics creates a better public policy foundation for access charge reform. Such an approach should be tried initially to ascertain whether such a step is sufficient to address existing arbitrage challenges.

The proposal offered in this round of the debate presents an excellent starting point to address phantom traffic issues. By allowing terminating service providers that receive traffic that does not include all the necessary call identifying information to assess their highest terminating rate to the service provider that is delivering such traffic, an incentive is provided to mitigate the growing phantom traffic dilemma.

While capital expenditures start the broadband deployment process, the job is not complete at that point. For rate-of-return incumbent LECs, support of the operations and maintenance costs through universal service mechanisms is vital in order for the subscriber to continue to receive service.

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 comments is to respond to the expedited request for comments and replies issueed by the Commission on November 5, 2008 in the above-captioned dockets.

We note that Chairman Martin has indicated publicly that the reply comment due date does not permit a three week cycle for circulation of a draft order to vote on at the December 18 scheduled Commission public meeting, indicating that yet another year may well pass without any significant progress on issues such as phantom traffic.

However, we also note with interest that in the Joint Statement of Commissioners Copps, Adelstein, Tate and McDowell that those four regulators believe "that there is a tentative but growing measure of consensus on a number of issues…"

We believe a record is present to achieve at least the beginning of a transition for intrastate access rates to align with interstate access charge rates and the implementation of at least a partial fix for the long-standing phantom traffic problem. Our comments that follow are focused to these and related issues.

We respectfully request that as the Commission considers the proposed enhancements to intercarrier compensation and universal service programs, that the interests of customers and the carriers serving them in the high cost to serve areas of our country are fully considered in any rule changes that will be promulgated.

COST STANDARDS SHOULD BE BASED ON A SINGLE RATE PER OPERATING COMPANY

For a period of years, there have been efforts to drastically reduce the level of access charges assessed by local exchange carriers. The most recent Commission attempt to move to either bill and keep or de facto bill and keep is embodied in the additional cost standard proposal detailed in Appendix C starting at paragraph 231. While an argument may be offered that for large carriers the proposed SLC increases will offset the revenue reduction, this is certainly not the case for rural carriers. As Chairman Martin has indicated, intercarrier compensation and universal service reform are intertwined. Accordingly, it is important to evaluate any intercarrier compensation proposal in the context of its impact on universal service in rural areas.

Proposals such as the additional cost incremental approach found in the Appendices sorely miss the mark[1] for rural carriers. If such an approach were to be adopted for rural carriers, we assert that a taking claim will be valid, as a primary consideration for such a takings claim is whether the rates ultimately adopted will produce a reasonable return sufficient to enable a company to maintain[2] its financial integrity. The Commission's proposed additional cost standard would not enable rate-of-

[1] It is impossible to implement a policy that is defective at the basic conceptual level. In a text on bureaucratic policy implementation, Bardach offers a hypothetical example: "If Congress were to establish an agency charged with squaring the circle with compass and straight edge – a task mathematicians have long ago shown is impossible – we could envision an agency coming into being, hiring a vast number of consultants, commissioning studies, reporting that progress was being made, while at the same time urging in their appropriations request for the coming year that the Congress augment the agency's budget." Eugene Bardach, *The Implementation Game*, pages 250-251. [Editors note: The circle is still round at the end of the day.]
[2] *FPC v. Hope Natural Gas Co.*, 320 U.S. at 605.

return incumbent LECs to maintain their financial integrity or deploy[3] adequate infrastructure.

We do not believe that the additional cost standard, as proposed, represents a prudent step in telecommunications public policy. The Commission's proposals relative to the "additional cost" standard do not create an environment that is conducive to cost recovery for rate-of-return incumbent LECs. In simplest terms, the proposed incremental costing standard posited by the Commission assumes that the cost is to be recovered from the first unit of usage. This results in the lack of any meaningful cost recovery except from end user customers. In the absence of sufficient supplemental funding, such an approach is problematic at best.

We do not believe that there is a record in place that justifies requiring rate-of-return incumbent LECs to replace their existing interstate and intrastate access charges with below-cost reciprocal compensation rate structures. We submit that the logical first step is the unification of interstate and intrastate access charge rate levels over an appropriate transition period, coupled with an appropriate transition mechanism. We also submit that the Commission's proposed additional cost concept raises a number of concerns that merit careful scrutiny. Rates for accessing the vital communications infrastructure that are set at near-zero levels do not reflect rural cost structures. Introducing an entirely new cost standard and providing a very limited analysis cycle appears to be an attempt to reach a conclusion that could have catastrophic consequences in the many rural service territories across our nation.

[3] Fiber deployment costs for transport facilities in rural areas can be as much as $10,000 per mile, with fiber-to the home costs ranging from $2,500 for in-town and $7,500 for out-of-town areas.

MOVING ACCESS RATES TOWARD A UNIFIED RATE OVER A REASONABLE TIMEFRAME IS A LAUDABLE GOAL

A transition of intrastate access rate levels to interstate access rate levels is certainly an item that has nearly unanimous consensus. Industry debate on this has occurred since the late 1980's. The time has come to take this foundational step towards access reform. Concomitant with such a step is the need to create a transition mechanism or utilize a vehicle such as the supplemental ICLS approach as proposed by OPASTCO and WTA[4] for rate-of-return incumbent LECs since these carriers will receive very little revenue[5] from increased subscriber line charges.

As noted earlier, we believe cost standards should be based on a single rate per operating company. We respectfully suggest that any resultant new rate mechanisms should be geared to unification rather than uniformity. We believe that a unified rate structure that produces rates that are the same for all traffic but may in fact differ among operating companies based on individual company cost characteristics creates a better public policy foundation for access charge reform. Such an approach should be tried initially to ascertain whether such a step is sufficient to address existing arbitrage challenges, while comporting with existing legal precedent found in cases such as Bluefield Water Works, Hope Natural Gas, and Duquesne Light Co[6].

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[4] Letter from John N. Rose, President, OPASTCO, and Kelly Worthington, Executive Vice President, WTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, 01-92, WC Docket No. 05-337, Attachment (filed Oct. 29, 2008)(Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter).

[5] Based on the observation offered by the Joint Board – that rate-of-return carrier USF mechanisms have been flat or declining over the last five years – we are somewhat surprised that the Commission recommended freezing rural carrier support at 2010 levels when the desire is to increase broadband penetration.

[6] As the Commission is aware, the Duquesne case (1989) made it clear that "the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."

AN ALTERNATIVE COST RECOVERY MECHANISM IS APPROPRIATE FOR RURAL CARRIERS

Rural carriers exhibit different cost characteristics than large national carriers that concentrate their service in densely populated urban centers. There is an overwhelming preponderance of evidence in this regard, including the seminal work performed by the Rural Task Force.

In the current proposals being debated, carriers that operate under the auspices of rate-of-return regulation for interstate operations may qualify for supplemental interstate common line support (ICLS) to "*replace revenues lost as a result of mandated reductions in intercarrier charges that are not otherwise recoverable through increases in SLCs*."

Due to the low level of revenue generated for small carriers from SLC increases, this supplemental funding would be a crucial revenue stream. Rate-of-return carriers have historically depended on both access charge revenue and USF support, as revenues from affordably priced local service rates provide only a small portion of the revenues that are needed in order to maintain and upgrade a high-quality ubiquitous network. These revenues have been a vital component in the mission of maintaining and upgrading the network. In order to accomplish this mission, it has been necessary to obtain and repay loans for these capital expenditures that are required in order to maintain a reliable carrier of last resort network and provide to rural customers an affordable telecommunications service as is promulgated in Section 254(b)(3) of the Telecommunications Act of 1996.

CUSTOMER RATE CHANGES MUST PASS A REASONABILITY TEST

Congress has recognized that there are different challenges facing carriers serving customers in rural and high cost to serve territory through specific provisions that were included in the Telecommunications Act of 1996. Specifically, the principles espoused in Section 254(b)(3) that "*consumers in rural, insular, and high cost areas should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas*."

While SLC changes may provide large carriers adequate cost recovery, this is not the case for rate-of-return incumbent local exchange carriers. To this end, we have addressed the need for additional recovery mechanisms in the prior section of these comments.

With respect to the proposals that seek to increase the subscriber line charge (SLC) cap for residential and single-line business lines from $6.50 to $8.00 per month, and the multi-line business line SLC cap from a current level of $9.20 per month to a new capped level of $11.50, we believe this to be a reasonable proposal in the context of the other objectives. Despite the objection of parties such as NASUCA, we contend that such modest increases to the SLC cap level are properly targeted to allow carriers to recover a portion of the revenues lost from mandated access charge reductions.

PHANTOM TRAFFIC SOLUTIONS ARE AVAILABLE

The problems surrounding the phantom traffic issue affect carriers of all sizes. As the Commission states in paragraph 323 of Appendix C: "*Problems related to traffic arriving for termination with insufficient identification information arise from the technical systems and processes used to create, transfer, and gather intercarrier compensation billing information*." Unfortunately, the record includes ample evidence that some of these problems were intentionally created, and not just a random or infrequent occurrence. While certain solution sets that may be deemed as draconian[7] have been tried, the Commission has consistently indicated certain restrictions will be in place despite the fact that entities that remove call identifying information are engaging in deception and fraud.

The proposal offered in this round of the debate presents an excellent starting point to address phantom traffic issues. By allowing terminating service providers that receive traffic that does not include all the necessary call identifying information to assess their highest terminating rate to the service provider that is delivering such traffic, an incentive is provided to mitigate the growing phantom traffic dilemma. As stated in paragraph 322 of Appendix C: "*This will ensure that providers are paid for terminating traffic in those instances, and gives financial incentives for upstream providers in the call path to ensure that the traffic includes proper information in the first instance*."

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[7] Carriers that have blocked certain phantom traffic have been fined by the Commission. Such an approach could have provided an effective solution to a majority of phantom traffic issues and eliminated the theft of access by such carriers that remove the required calling identifying information. The Commission's desire to promote competition in this case has, in the opinion of some, contributed to this nagging problem.

A SOLUTION EXISTS IN THE RECORD FOR ELIMINATING THE IDENTICAL SUPPORT RULE AND MOVING OVER TIME TOWARDS SUPPORT BASED ON A COMPANY'S OWN COSTS

The record established in several dockets includes an auditable and implementable solution for wireless CETCs to calculate universal service support based on their own costs.

The WiPan proposal jointly filed by GVNW Consulting and Panhandle on August 8, 2008 provides an algorithm that bases support on a comparison to a benchmark cost per minute. The WiCAC/Panhandle (WiPan) proposal is a synthesis of the WiCAC II and Panhandle proposals that is intended to provide an auditable and administratively workable solution, while also recognizing the problems facing the smaller rural wireless providers. The WiPan proposal is geared to meet the Commission's comprehensive reform goals for federal USF, by using the WiCAC II costing module, with minutes as a denominator for the loop equivalent portion, and incorporating the Panhandle roaming rate concept.

The WiPan proposal contains all three of the WiCAC II modules that added two more potential universal service support mechanisms for wireless CETCs serving less than 50,000 lines, resulting in smaller wireless CETCs having potential access to three wireless cost-based mechanisms as follows:

Identical Basis for HCL - Equivalent High Cost Loop Support (EHCLS)[2007 WiCAC I]
Identical Basis for Switching – Equivalent Switching Support (ESS)
Identical Basis for Scope and Scale issues – Equivalent Scope and Scale Support (ESSS)

If the Commission desires a per line basis as the metric or benchmark, the earlier GVNW proposal of WiCAC would offer that avenue. In simplest terms, this first WiCAC proposal replicates the current wireline HCF algorithm in a manner that recognizes the differences between wireline and wireless architecture. For example, the proposed 23 accounts in a new 32.8000 are based on the investments a wireless carrier must make (e.g., towers, spectrum acquisition). Several modifications are proposed to Part 54 to enable cost-based wireless carrier support. Based on the results of the WiCAC[8] algorithm, wireless CETCs could then be compared against the current National Average Cost per Loop (NACPL) to determine support eligibility, or used in a separate mobility funding mechanism.

The ex partes filed earlier by parties such as AT&T that WiCAC costing is unduly burdensome and cumbersome is effectively refuted by the recent WiPan cost study filing on October 24, 2008 of Westlink, a wireless CETC in Kansas, a mere eleven weeks after the filing of the WiPan proposal. If WiPan was unduly burdensome, this small rural wireless carrier would have required much longer than eleven weeks completing its filing.

[8] WiCAC/WiPan is currently the only proposal for a cost-based alternative to the identical support paradigm that is replicable and auditable and includes a set of proposed Commission rules for review.

BROADBAND INFRASTRUCTURE MUST BE MAINTAINED OVER THE LIFE OF THE PLANT

There is a consensus that broadband investment should be encouraged. There is not a consensus as to how to best accomplish this, with the Joint Board proposing an approach not adopted by the full Commission and the Commission in Appendix C proposing[9] that carriers have a mandatory build-out requirement.

While capital expenditures and infrastructure deployment begin the process, the job is not complete at that point. For rate-of-return incumbent LECs, support of the operations and maintenance costs through universal service mechanisms is vital in order for the subscriber to continue to receive service. If U.S. policymakers are concerned about the national ranking of broadband deployment as compared to other countries, it will be necessary to be concerned about the operation and maintenance of the network in order to retain any gains made relative to broadband deployment.

Respectfully submitted

Via ECFS on 11/26/08

GVNW Consulting, Inc.

Jeffry H. Smith
VP, Western Region Division Manager
Chairman of the Board
P.O. Box 2330
Tualatin, OR 97062
email: jsmith@gvnw.com

[9] The Commission's requirement for carriers to provide broadband internet access raises some interesting questions with regards to the provision of an information service by the ILEC itself, given current Commission cost allocation rules.