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

OPENING COMMENTS OF
THE WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION
AND
THE OREGON TELECOMMUNICATIONS ASSOCIATION

November 26, 2008

SUMMARY

The Washington Independent Telecommunications Association ("WITA") and the Oregon Telecommunications Association ("OTA") very much appreciate the opportunity to comment in response to the Further Notice of Proposed Rulemaking ("FNPRM")[1] issued November 5, 2008, under FCC 08-262.

In these Comments, WITA and OTA point out that the reforms that are set out on Plan A and Plan B not only will make access to capital for investment in rural infrastructure more difficult to come by, but threaten the very ability of rural telephone companies to survive. Without question, the proposals contained as a whole in Plans A and B should not be adopted.

WITA and OTA further comment that there are elements of the proposals set forth in Plan C that represent positive steps towards reform of universal service and addressing intercarrier compensation issues. Chief among these are: (1) inclusion of revenue recovery mechanisms; (2) elimination of the identical support rule; (3) creation of traffic record rules to address phantom traffic issues; (4) adoption of a rural transport rule; and (5) moving to a working number base for universal service contributions. In addition, the proposal to develop a pilot program for Lifeline/Link Up broadband is an innovative idea that should be adopted.

The Comments submitted by WITA and OTA also raise concerns about elements of the proposal set forth in Plan C that must be addressed before that plan can be adopted. Chief among these is the failure to adequately address the needs of rural price cap companies. Rural price cap companies are significant players in providing rural infrastructure. Rural price cap

[1] For purposes of these Comments, the proposal set out in Appendix A of the FNPRM, which is identified in the FNPRM as the Chairman's Draft Proposal circulated on October 15, 2008, will be referred to as Plan A. The proposal set out in Appendix B, which is identified as a Narrow Universal Service Reform Proposal circulated on October 31, 2008, will be identified as Plan B. The proposal set out in Appendix C to the FNPRM is identified as a draft Alternative Proposal circulated by the Chairman on November 5, 2008. That proposal will be referred to in these Comments as Plan C.

companies far more closely resemble rural rate of return companies than they do Regional Bell Operating Companies. That fact should be recognized in any intercarrier compensation reform that is adopted. For example, there needs to be revenue recovery mechanisms for rural price cap companies and the rural transport rule should apply to rural price cap companies.

A very dangerous aspect of the proposals in both Plan A and Plan C is the impermissible favoring of voice over Internet platform (VoIP) transmission technology. The proposal is to classify any traffic that originates on a VoIP platform as an "information service." That implies that the traffic is exempt from access charges and reciprocal compensation. That proposal is an absolutely inappropriate and unwarranted action by this Commission.

Seeking a unified intercarrier compensation rate is a good goal. However, seeking a rate below cost for rural companies such as that which is seemingly produced under the Commission's TELRIC analysis of $0.0007 per minute (or less under the Commission's Additional Costs methodology) is inappropriate. Instead, the appropriate step to take at this time is to move through a three year transition of both originating and terminating intrastate access rates to the corresponding interstate access rate, with appropriate revenue recovery mechanisms. Once that is done, a review can be undertaken as to whether further reductions are appropriate given the economic climate and the effect on rural infrastructure investment, including the advancement of broadband capabilities in rural America.

The advancement of broadband capabilities in rural America is an important objective. The Commission should give serious consideration to the creation of a Broadband Fund.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. REFORM EFFORTS MUST BE SURE TO ACCOMPLISH THE GOALS OF UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION 1

A. The Goals of Universal Service 1

B. The Goals of Intercarrier Compensation Reform 2

III. REFORM MUST REFLECT THE REALITIES OF THE ECONOMIC CRISIS FACING THE NATION 3

IV. NEITHER PLAN A NOR PLAN B SHOULD BE ADOPTED 4

V. PLAN C NEEDS MODIFICATION BEFORE IT CAN BE ADOPTED 6

1. The Positive 6

A. Inclusion of Revenue Recovery Mechanisms 6

B. Elimination of the Identical Support Rule 7

C. The Commission Correctly Moves Forward to Solve Problems Associated with "Phantom Traffic" 8

D. Adoption of the Rural Transport Rule is a Critical Element of Plan C 9

E. The Working Numbers Based Contributions Mechanism for USF is a Positive Step 10

F. The Lifeline/Link Up Broadband Pilot Program Represents an Innovative Step Forward 10

2. Needs Improvement 11

A. A Revenue Recovery Mechanism Must be Developed for Rural Price Cap Carriers 11

B. The Commission is Improperly Favoring VoIP Transmission Technology 11

C. Establishment of an Intercarrier Compensation Rate of $0.0007 or Less is Not Sustainable; Transition of Intrastate Rates to Interstate Rates is a Workable Proposition 13

3. Broadband Initiative.....15

VI. CONCLUSION.....16

I. INTRODUCTION

The Washington Independent Telecommunications Association ("WITA") and the Oregon Telecommunications Association ("OTA") welcome the opportunity to submit comments on the Federal Communication Commission's ("Commission") momentous effort to reform universal service mechanisms and to reform of intercarrier compensation.[2] One of these tasks alone would be extremely difficult to accomplish. Undertaking to do both universal service reform and addressing intercarrier compensation simultaneously is an even more difficult task, but a necessary one. WITA and OTA congratulate the Commission on the efforts it has made to date. However, WITA and OTA caution that care must be taken to be sure that the reform efforts meet the goals of universal service and intercarrier compensation and establish a system that does not remove incentives or unduly constrict opportunity for investment in rural telecommunications infrastructure in the very precarious economic climate that faces the Nation today.

II. REFORM EFFORTS MUST BE SURE TO ACCOMPLISH THE GOALS OF UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION

In examining the proposals to reform universal service and intercarrier compensation, WITA and OTA believe that any action that is taken must meet the overriding goals of each of the programs involved.

A. The Goals of Universal Service.

In the area of universal service, Congress has provided a specific set of goals that need to be taken into account in evaluating the proposed reforms to the universal service system. In the context of the high-cost fund, those goals are set out in 47 U.S.C. § 254(b) as follows:

(1) Quality services should be available at just, reasonable, and affordable rates.

[2] The members of the two associations participating in these Comments are set forth in Attachment A.

(2) Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) All providers of telecommunications services should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service.

(5) There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

Thus, the end result of any effort to reform of universal service should be to provide a stable platform on which to accomplish the above goals.

Without a doubt, the current system needs some reforms. However, it should also be kept in mind that the current system has produced investments in rural infrastructure that have gone a long way towards meeting the above-stated goals set out by Congress. The goals stated above recognize the importance of advanced services (broadband) in rural America. Significant strides have been made under the current system to deploy broadband in rural areas. Rural customers today enjoy, for the most part, a high-quality telecommunications infrastructure that benefits rural economies and the economy of the Nation as a whole. Any reform of universal service should advance the gains that have already been made and must not place those gains in jeopardy.

B. The Goals of Intercarrier Compensation Reform.

Simply put, reforms in intercarrier compensation mechanisms should have the following goals in mind:

(1) To compensate each carrier fairly for the use of its network by other carriers.

(2) To minimize the opportunities for arbitrage.

(3) To be sure that all traffic is properly identified so that it is possible to accomplish goals (1) and (2) immediately preceding.

To accomplish these goals, intercarrier compensation reform cannot favor one transmission technology over another. Use of a particular transmission technology, such as Voice-over-Internet-Protocol ("VoIP"), cannot be advanced as the reason for giving one set of carriers a free ride in the use of other carriers' networks.

III. REFORM MUST REFLECT THE REALITIES OF THE ECONOMIC CRISIS FACING THE NATION

The Nation, indeed the world, is facing what can be optimistically described as very dangerous and uncertain economic times. These uncertain times will probably continue for the foreseeable future. Sources of investment in the current economic climate are difficult to find. The Commission's effort at universal service reform and intercarrier compensation reform should not make access to capital even more difficult than it is today. Put bluntly, the proposals advanced by the Commission for comment, as written, will undoubtedly make investment in rural infrastructure painfully difficult to accomplish. This is particularly true of the proposals set forth in Plan A and Plan B of the FNPRM.

It is without question that a sound telecommunications infrastructure that can promote access to broadband is an essential component of a healthy U.S. economy. For the universal service program, it is interesting to note the scope of the issue that is before the Commission in comparison to current efforts to aid the economy as a whole. At Paragraph 33 of the FNPRM, the Commission points out that based on 2007 expenditures, the universal service

high cost program is a 4.3 billion dollar a year program. In isolation that appears to be a large program that should be carefully watched. And, it is today. There are excruciatingly detailed audits of the recipients of the high-cost funds being undertaken today. This audit program has not resulted in blaring headlines of malfeasance or blatant misuse of high-cost funds. The existing program has provided the basis for advancing broadband in rural areas. Many of WITA and OTA's members can offer all or nearly all of their customers access to broadband today. In this light, the high-cost fund universal service program, with all of its warts, is a substantial bargain.

IV. NEITHER PLAN A NOR PLAN B SHOULD BE ADOPTED

WITA and OTA firmly believe that if either Plan A or Plan B is adopted, investment in rural infrastructure will decline, rural customers will suffer and the goals of universal service and intercarrier compensation will not be met. Obviously, Plan B has the additional deficiency of not addressing intercarrier compensation reform. However, Plan A's solution for intercarrier compensation reform would not fairly compensate rural companies for the use of their networks. Plan A also appears to unfairly favor VoIP platforms by classifying them as information services and, apparently, exempting such traffic from intercarrier compensation obligations. That would be a disastrous result.

Two of the major sources of capital for investment in rural infrastructure are the Rural Telephone Finance Cooperative ("RTFC") and CoBank ACB ("CoBank"). In an ex parte letter from RTFC dated October 27, 2008, filed in response to the outline of Plan A in the trade media, which turned out to be a fairly accurate description of the contents of Plan A, RTFC noted that intercarrier compensation and universal service revenues have thus far enabled capital to flow to the rural telecom sector and for rural local exchange carriers (which RTFC dubs "RLECs") have

put in place the infrastructure necessary to provide the full range of modern telecommunications services to rural Americans. RTFC stated, however, that "Lenders won't lend and RLECs won't invest unless they have a reasonable assurance of being repaid and earning a reasonable return on invested capital." RTFC concluded that under the proposal that has become Plan A, if adopted, "investment in rural telecommunications will be severely curtailed."[3]

The reliance on reverse auctions, the predominant feature of Plan B, will also severely reduce the availability of capital for investment in rural infrastructure. For example, CoBank has identified that it has 3.4 billion dollars in loan commitments to over two hundred rural communication companies nationwide.[4] In prior comments, CoBank has pointed out that reverse auctions will have a negative effect on the cost of debt and availability of debt financing. CoBank described the problem as follows:

> CoBank cautions the FCC on the use of auctions to determine high-cost universal service support funding (USF) to eligible telecommunications companies (ETCs) pursuant to section 254 of the Communications Act of 1934. Reverse auctions do not provide clarity in regard to federal cost recovery mechanisms to empower the best providers of basic and advanced telecommunications services in rural areas. Reverse auctions present more uncertainty because they are a risky approach to high-cost support, which will cause the cost of debt to increase. (Emphasis added.)[5]

CoBank concluded its discussion of reverse auctions as follows:

> The result could be a failure for the rural ILEC to invest in advanced networks. Access to capital for these projects could disappear. This would threaten the 1996 Act's expanded definition of universal service if it removes the provider that is best positioned to develop these advanced services. This would be devastating for rural customers and businesses because their access to advanced information would be severely delayed if not impaired indefinitely. New FCC policies should spur the growth of broadband deployment, not inadvertently impede it.[6]

---

[3] Rural Telephone Finance Cooperative ex parte letter of October 27, 2008, to Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell in CC Docket No. 01-92 and CC Docket 96-45.
[4] CoBank ACB ex parte letter of April 28, 2008, to Ms. Dortch in CC Docket No. 01-92 and CC Docket No. 96-45.
[5] Comments of CoBank at p. 2, submitted October 10, 2006, in WC Docket No. 05-337.
[6] Comments of CoBank at p. 4.

The prior comments of the RTFC on reverse auctions are just as much to the point. RTFC pointed out that it has more than 2 billion dollars in outstanding loans to rural providers. RTFC then stated its position on reverse auctions:

> Reverse auctions (competitive bidding) to determine high-cost universal service funding for incumbent rural local exchange carriers (RLECs) will discourage investment in the rural telecommunications infrastructure and result in lesser quality service to rural Americans. Such a high-cost support regime will cause lenders to reconsider lending into the rural telecom space. (Emphasis added.)[7]

When two of the major finance institutions for rural infrastructure investment comment that reverse auctions will increase risk, increase the cost for rural infrastructure investment, and lessen the availability of funds to build rural infrastructure, those comments should be paid a great deal of attention. Without the substantial debt financing that CoBank and RTFC provide, rural infrastructure would not be nearly as robust as it is today. Bluntly, if Plan A or Plan B is adopted, rural companies would lose an ability to finance advancements in broadband availability. Thus, the very goal that the Commission seeks to accomplish would be lost. Without the advancement of broadband networks in rural America, VoIP services will not be available to rural America. The goal of comparable services at comparable prices would be lost.

V. PLAN C NEEDS MODIFICATION BEFORE IT CAN BE ADOPTED

Plan C represents a positive step forward. However, as proposed in the FNPRM, Plan C is not yet ready for adoption. While Plan C contains a number of positive components, there are additional modifications that need to be made.

1. The Positive.

A. Inclusion of Revenue Recovery Mechanisms. The inclusion of revenue recovery mechanisms in Plan C for rural rate of return carriers is a major improvement over Plan A. The

[7] Comments of Rural Telephone Finance Cooperative at p. 2 submitted October 10, 2006, in WC Docket No. 05-337.

types of revenue recovery mechanisms contained in Plan C are an essential element of any intercarrier compensation reform. Without these mechanisms, the ability to attract capital for continued investment in rural infrastructure will be extremely limited. More than this, without revenue recovery mechanisms, the freeze in USF support (which may not be warranted) and the significant reduction of intrastate access levels to the interstate level (which WITA and OTA recommend as the appropriate step at this time) threatens the ability of many rural carriers to just survive, let alone deploy further broadband capability.

Thus, inclusion of revenue recovery mechanisms is a good step forward. However, as will be discussed below, the concept of the revenue recovery mechanisms needs to be expanded to address rural price cap carriers in additional to rural rate of return carriers.

B. Elimination of the Identical Support Rule. Plan C would eliminate the identical support rule. WITA and OTA have long supported elimination of the identical support rule, and applaud the inclusion of this element in Plan C.[8]

The Commission correctly defines the issue in its finding that the recent growth in the size of the universal service fund is due in no small part to CETCs receiving support based on the "identical support" rule:

> In recent years, this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the incumbent LECs receive, rather than on the competitive ETCs' own costs. While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support, in the six years from 2001 to 2006, has grown from under 17 million to 980 million – an annual growth rate of over one hundred percent. (Footnotes omitted.)[9]

In FCC 08-4, the Commission also correctly noted that wireless carriers rather than

[8] See, e.g., Comments of the Rural Telecommunications Associations dated April 17, 2008, in WC Docket No. 05-337 and CC Docket No. 96-45.
[9] FCC 08-4 at ¶4.

wireline competitive LECs receive a majority of competitive ETC designations, serve a majority of competitive ETC lines and have received a majority of competitive ETC support. However, as the Commission notes, wireless competitive ETCs do not capture lines from the incumbent LEC to become a customer's sole service provider as a general rule.[10]

The Commission accurately identified the perverse incentives created by the identical support rule when the Commission stated:

> Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving access to telecommunications services in rural, insular and high-cost areas. Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks. (Footnote omitted.)[11]

For all of these reasons, WITA and OTA urge the Commission to move forward by eliminating the "identical support" rule.

C. <u>The Commission Correctly Moves Forward to Solve Problems Associated with "Phantom Traffic"</u>.

In Plan C, the Commission is proposing rules that would require carriers to correctly identify traffic. The proposed rules would allow the terminating carrier to bill the carrier delivering the traffic if the traffic is delivered without the correct identifying information. To the extent that the delivering carrier is a transiting carrier, the transiting carrier can, in turn, bill the originating carrier if the traffic is not identified properly. These are very positive steps forward.

It appears that the proposed traffic rules in Plan C are closely aligned with the NECA Petition for Interim Order, CC Docket No. 01-92 (January 22, 2008) and NECA's letter from Joe

[10] FCC 08-4 at ¶9.
[11] FCC 08-4 at ¶10.

A. Douglas, NECA, to Marlene H. Dortch, FCC, in CC Docket No. 01-92 dated January 15, 2008. The significant improvement proposed by the Commission in Plan C is the ability to bill the carrier delivering the message that lacks adequate call detail information. With this improvement, WITA and OTA support adoption of the NECA proposal; particularly on the application of those rules to all interconnected voice service providers regardless of the technology used.

D. Adoption of the Rural Transport Rule is a Critical Element of Plan C.

Under Plan C, a rural transport rule is proposed to be adopted for rural rate of return carriers. The rural transport rule is a very important step in recognizing the costs that other carriers attempt to impose on small, rural carriers. It is not clear from the FNPRM, however, if the rural transport rule contemplated by Plan C deviates from the rural transport rule as proposed in the Missoula Plan. It should not. WITA and OTA advocate adoption of the rural transport rule as set out in the Missoula Plan. It is essential that the rural transport rule of the Missoula Plan be enacted. Otherwise, larger carriers can impose significant costs on rural carriers by locating their points of presence at locations chosen solely for the larger carriers' convenience. Allowing larger carriers to impose extensive transport burdens on rural carriers simply to accommodate the larger carriers' convenience would result in significant economic harm to small rural local exchange carriers and the customers they serve.

In addition, WITA and OTA also believe that the rural transport rule as set out in Plan C needs to be applied to rural price cap carriers as well. Those carriers often have highly disaggregated service areas. For example, a price cap rural carrier may have two exchanges isolated in the northeast part of a state and several exchanges located hundreds of miles away in the western part of the same state. Those far flung exchanges are not connected by an ubiquitous

network for that rural price cap carrier. The rural transport rule is just as critical for those rural price cap carriers as it is for the rural rate of return carriers. Otherwise, the cost to the rural price cap carriers of serving their customers can be greatly increased by transport costs which are imposed simply because competitive local exchange carriers and other carriers locate their points of presence at distant locations from the rural price cap carriers' exchanges solely for the convenience of the competitive local exchange carrier. That is not an appropriate outcome.

E. The Working Numbers Based Contributions Mechanism for USF is a Positive Step.

The FNPRM, in both Plans A and C, propose moving to a working number methodology for the contribution base for the universal service program. WITA and OTA have supported this move in prior comments. This is a positive step forward in reforming universal service.

The FNPRM provides only limited exceptions to the working number contribution base for residential customers.[12] Specifically, the FNPRM rejects the concept that a wireless family plan should only be counted as one working number. This limitation on the number of exemptions is the correct outcome in order to develop a broad based contribution mechanism.

F. The Lifeline/Link Up Broadband Pilot Program Represents An Innovative Step Forward.

WITA and OTA support the Lifeline/Link Up Broadband Pilot Program as described in Plan C as a pilot program. It is an interesting concept and one that deserves to move forward as a pilot program. After the end of the term of the pilot program, the costs and benefits can be analyzed to determine if a next step should be taken.

[12] The FNPRM calls for further comment on the appropriate contribution methodology for business customers. Further thought should be given to non-number based users of the public switched telecommunications network ("PSTN") as well.

2. Needs Improvement.

While there are good things about Plan C, there are also things that need improvement. This section will identify those items that must be changed before Plan C is adopted.

A. A Revenue Recovery Mechanism Must be Developed for Rural Price Cap Carriers.

Under all of the proposals set forth by the Commission, including Plan C, rural price cap carriers are literally left swinging in the wind. The rural price cap carriers have been major players in developing a modern telecommunications infrastructure in rural America. They should not be penalized for those efforts. WITA and OTA strongly believe that a revenue recovery mechanism must be developed for rural price cap carriers that reflect their situation. The one-time offer to convert back to a rate of return carrier contained in the FNPRM is an insufficient solution.[13]

B. The Commission is Improperly Favoring VoIP Transmission Technology.

The Commission is proposing that traffic that originates on a VoIP platform or terminates to a VoIP platform be considered information service.[14] Although the Commission is silent on the point of access charges, the classification as an information service appears to mean that such traffic may not be subject to access charges. If that is the Commission's intent, that would be an exception that would swallow the rule of intercarrier compensation.

Major carriers such as Verizon and AT&T are rapidly deploying VoIP platforms. Other major carriers, such as the cable companies, are doing so.[15] The Commission must make it clear that VoIP platform traffic is subject to access charges. Otherwise, intercarrier

[13] Appendix C to FNPRM at ¶318.
[14] Appendix C to FNPRM at ¶204.
[15] To some extent, the cable companies try to characterize themselves as not being telecommunications carriers in their retail VoIP offerings. That is an issue that is not resolved under any of the proposals.

compensation is meaningless.

The National Telecommunications Cooperative Association (NTCA) highlights this point in its recent ex parte.[16] NTCA argues in part as follows:

> After reviewing the previously undisclosed Comprehensive IC and USF orders contained in the FNPRM, it is perfectly clear that the Chairman's proposals are unbelievably generous to AT&T, Verizon and Qwest, and truly devastating to small rate-of-return rural ILECs serving consumers in high-cost rural communities throughout America. The draft orders wrongly classify interconnected voice over Internet protocol (VoIP) service as an "information service," exempt interconnected VoIP service from paying access charges in rules buried in footnotes 564 and 555 in Appendices A and C in the FNPRM, respectively, and provide AT&T, Verizon and Qwest and other IXCs and wireless carriers with a resulting annual multi-billion dollar access savings windfall with no strings attached.
>
> * * * *
>
> In the IP-Enabled services NPRM, the Commission stated that, as a policy matter, the FCC believes that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network." The Commission further maintained "that the cost of the PSTN should be borne equitably among those that use it in similar ways." If interconnected VoIP providers were allowed a free ride from paying access charges, the Commission would be handing VoIP providers an unfair advantage in the highly competitive voice communications market in direct conflict with its own principle of competitive neutrality.
>
> * * * *
>
> The Commission should classify interconnected VoIP service as a "telecommunications service" subject to access charges. The Act defines "telecommunications services" as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of facilities used. Customers of Interconnected VoIP service pay a fee for sending and receiving voice telephone calls. Interconnected VoIP service uses North American Numbering Plan (NANP) telephone numbers to facilitate voice calls throughout the PSTN. Interconnected VoIP uses the PSTN in the same way as other carriers who pay access and contribute to universal service in recognition of the fact that their use imposes costs on the underlying ILEC network. From the customer's perspective, interconnected VoIP service is identical to traditional telephone voice service. The fact that interconnected VoIP uses the PSTN, NANP telephone numbers, and charges customers for its voice service, clearly demonstrates that interconnected VoIP is voice service, should be classified as a

[16] Ex parte Notice of National Telecommunications Cooperative Association, letter to Marlene H. Dortch dated November 18, 2008.

"telecommunications service" and should be required to pay access charges.[17] (Footnotes omitted.)

There is nothing in the record in this proceeding, massive though it is, that would support the Commission classifying VoIP transmission technology as a nascent technology. It is a fully developed technology in wide deployment. The major carriers in the Nation are deploying the technology. There is no need to protect this technology in any sense.

VoIP technology is simply a means of delivering voice traffic from one caller to another. VoIP traffic must often rely upon the PSTN for the delivery of calls and must rely on the PSTN to receive calls where the carrier involved on the other end of the call does not happen to use a VoIP platform. VoIP is now a common element of telecommunications service and must pay its fair share for the use of the PSTN.

C. Establishment of an Intercarrier Compensation Rate of $0.0007 or Less is Not Sustainable; Transition of Intrastate Rates to Interstate Rates is a Workable Proposition.

In the FNPRM, the Commission asks for comment on whether a unified rate at the individual company level or a unified rate of one rate applying to all companies in a state is appropriate for intercarrier compensation.[18] The Commission also calls for comment on whether TELRIC or its "Advanced Costs" standard is appropriate.[19] It is WITA and OTA's firm position that any intercarrier compensation rate at $0.0007 or less is not sustainable.

As recently stated by NECA:

> Prescription of a nationwide uniform default rate of $0.0007 is unnecessary to solve the rate arbitrage problems identified by Verizon. It would also represent bad policy. Such below-cost rates would likely encourage new forms of uneconomic arbitrage, as well as abuse of the network. Moreover, transferring a disproportionate share of network costs caused by interconnecting carriers to alternative recovery mechanisms runs the risk of unduly burdening the universal service fund.

---

[17] Ibid. at p. 5-6.
[18] FNPRM at ¶41.
[19] Ibid.

> A more reasonable approach would be to permit, not require, carriers to set unified originating and terminating access rates. Such rates must (a) recognize differences in costs and operational circumstances among carriers or groups of carriers and (b) maintain a reasonable balance of network cost recovery among intercarrier compensation charges, end user rates and universal service funding.[20] (Footnotes omitted.)

NECA points out that the abuse to the network would be caused by prompting large end users to seek carrier status to take advantage of below-cost interconnection pricing. This is an obvious result of the Commission's $0.0007 per minute proposal.

Just as it is not appropriate as pointed out by NECA to establish a uniform rate for all carriers, it is also not appropriate to engage in the type of cost methodology as proposed under the Faulhaber incremental cost standard, which the Commission labels Additional Cost. That methodology ignores the existence of the network and the investment required to produce that network. As pointed out by RTFC, use of a methodology to reduce access charges to unacceptably low levels would undoubtedly result in credit becoming much more difficult to obtain for investment in rural infrastructure.[21]

Given the uncertain economic climate that the Nation now faces, a more reasonable approach is to transition intrastate originating and terminating access rates to the corresponding interstate level. This transition should occur over three years. At the end of the three year transition, a review can be undertaken to determine what the effect of the transition has been and whether any further adjustment for intercarrier compensation rates is required. This transition to interstate access rates, coupled with a clear statement that interconnected VoIP traffic is subject to access charges will bring stability and organization to the marketplace.

---

[20] NECA letter of October 6, 2008, to Marlene H. Dortch filed in CC Docket No. 01-92.
[21] See, discussion at pp. 4-5, above.

The transition of intrastate access rates to the interstate level should be accompanied by a clear statement that this is not an invitation for rate cases, either initially or on a year-by-year basis for the transition. Rate cases impose too great a transactional cost and the Commission should be clear that rate case processes are not part of the transition. The transition should also be supported by the revenue recapture mechanisms as contained in Plan C, with an appropriate adjustment to accommodate the required needs of rural price cap carriers.

3. Broadband Initiative.

The advancement of the availability of broadband capability in rural America is a key objective of any telecommunications reform proposal. WITA and OTA request that the Commission think long and hard about whether the proposals advanced for reform will in fact create an environment for the deployment of broadband capability in rural America. There is already an existing economic climate that does not favor the availability of capital. Reduction of intrastate access rates to interstate access rate levels will put additional strain on the capability of rural companies to continue to invest in infrastructure, even with revenue recovery mechanisms being made available. In this context, WITA and OTA ask that the Commission carefully analyze the effect that freezing USF support, in conjunction with the compelled commitment to deploy broadband or lose USF support in a reverse auction,[22] without the availability of additional support for that broadband requirement may have on the availability of broadband in rural America.

Part of this equation is the fact that investment in telecommunications infrastructure is capital-intensive. Telecommunications investment is also cyclical in nature for smaller, rural carriers. Just the existence of the Commission's proposals has already had an effect on the

[22] WITA and OTA have consistently cautioned the Commission that the use of reverse auctions in the context of rural wireline carrier universal service programs is a very dangerous concept.

availability of capital for infrastructure investment. As an example, one rural telecommunications carrier in Oregon sought a twelve million dollar loan from a major financier of rural telecommunications infrastructure. That major investment project would provide significant broadband capability. The rural telecommunications carrier is not a major drawer of universal service support today. However, it was expected that its draw from the universal service fund would increase on a significant basis as the investment is made to deploy advanced infrastructure to provide advanced services for these rural customers. The lender has placed the loan process on hold because with the very thought of a universal service support freeze, the lender does not believe the carrier will have the capability of repaying the loan as proposed. Is this the result the Commission seeks? The answer should be "no."

WITA and OTA question the wisdom of tying USF support to a compelled deployment of broadband. This portion of Plan C should be reviewed in detail. Certainly, a ninety-eight percent standard appears to be too onerous. A more realistic standard would be at the ninety percent level, although still difficult for some companies to obtain.

In addition, the Commission should consider creating a "carrot" to go along with the "stick." That carrot would be the creation of a Broadband Fund. This is a concept that has appeared in previous comments. It is a concept that deserves careful consideration.

VI. CONCLUSION

Chairman Martin has long made it clear that he favors moving to a working numbers contribution base for universal service. Chairman Martin has long sought a unified intercarrier compensation rate. The recommendations that WITA and OTA make in these Comments are consistent with those objectives, with the caveat that the appropriate step at this time is to move intrastate access rates to the interstate access level.

In a Joint Statement issued by Commissioners Copps, Adelstein, Tate and McDowell released with the FNPRM, the Commissioners identified five supportable objectives. These include: (1) moving intrastate access rates to interstate levels over a reasonable period of time; (2) avoiding unduly burdening customers with rate increases; (3) establishing alternative cost recovery mechanisms to offset lost access revenues which result from intercarrier compensation reform; (4) eliminating the identical support rule; and (5) emphasizing the importance of broadband to the future of universal service. Again, the recommendations from WITA and OTA are consistent with these five objectives. In particular, the need to recognize the applicability of revenue recovery mechanisms and the rural transport rule to price cap rural carriers is an important aspect.

As cautioned above, however, careful consideration must be given to whether the proposals that are being advanced will meet the objective of advancing broadband availability. Very careful consideration must be given to the aspects of the proposal that are related to broadband deployment to be sure they actually do not hinder, rather than advance, investment in infrastructure that allows broadband deployment.

Thank you for the opportunity to comment.

Respectfully submitted this 26th day of November, 2008.

By: _____

Richard A. Finnigan
Attorney for the Washington Independent Telecommunications Association and the Oregon Telecommunications Association

ATTACHMENT A

Washington Independent Telecommunications Association

Asotin Telephone Company d/b/a TDS Telecom
CenturyTel of Cowiche, Inc.
CenturyTel of Inter-Island, Inc.
CenturyTel of Washington, Inc.
Ellensburg Telephone Company d/b/a FairPoint Communications
Embarq
Hat Island Telephone Company
Hood Canal Telephone Co., Inc. d/b/a Hood Canal Communications
Inland Telephone Company
Kalama Telephone Company
Lewis River Telephone Company, Inc. d/b/a TDS Telecom
Mashell Telecom, Inc. d/b/a Rainier Connect
McDaniel Telephone Co. d/b/a TDS Telecom
Pend Oreille Telephone Company
Pioneer Telephone Company
St. John Co-operative Telephone and Telegraph Company
Tenino Telephone Company
The Toledo Telephone Co., Inc.
Western Wahkiakum County Telephone Company d/b/a Wahkiakum West
Whidbey Telephone Company
YCOM Networks, Inc. d/b/a FairPoint Communications

Oregon Telecommunications Association

Asotin Telephone Company d/b/a TDS Telecom
Beaver Creek Cooperative Telephone Company
Canby Telephone Association d/b/a Canby Telecom
Cascade Utilities, Inc. d/b/a Reliance Connects
CenturyTel of Oregon, Inc.
CenturyTel of Eastern Oregon, Inc.
Clear Creek Mutual Telephone Company
Colton Telephone Company d/b/a Coltontel
Eagle Telephone System, Inc.
Embarq
Gervais Telephone Company
Helix Telephone Company
Home Telephone Company d/b/a TDS Telecom
Midvale Telephone Exchange
Molalla Communications Company
Monitor Cooperative Telephone Company
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Co.
Oregon-Idaho Utilities, Inc.
Oregon Telephone Corporation
People's Telephone Co.
Pine Telephone System, Inc.
Pioneer Telephone Cooperative
Roome Telecommunications Inc.
St. Paul Cooperative Telephone Association
Scio Mutual Telephone Association
Stayton Cooperative Telephone Company
Trans-Cascades Telephone Company