

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)	CC Docket No. 96-98
Provisions in the Telecommunications Act of)	
1996)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	
)	
Intercarrier Compensation for ISP-Bound)	CC Docket No. 99-68
Traffic)	
)	
IP-Enabled Services)	WC Docket No. 04-36

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Global Crossing North America, Inc. (“Global Crossing”) hereby submits its comments on the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceedings¹ (the “Further Notice”).

I. INTRODUCTION

Global Crossing commends the Commission for the intensity of its recent focus on intercarrier compensation and universal service issues. As has been well-established in the

¹ *High Cost Universal Service Support*, WC Docket No. 05-337, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008).

record of these proceedings, Commission action to unify and lower intercarrier compensation rates, rationalize the collection and distribution of universal service support funding, and create efficient default rules for network interconnection is long overdue. Global Crossing has been a tireless contributor for many years to industry efforts to develop consensus reform proposals, and was a signatory both to the Missoula Plan and its predecessor developed by the Intercarrier Compensation Forum.² Today's trying economic conditions have made immediate action in this area critical. With economic conditions worsening, carrier billing disputes are growing ever more bitter and intense. Similarly, carriers are getting bolder in their attempts to game the system in an effort to collect more revenue. Further, the Commission has a number of petitions pending seeking forbearance on issues relating to the access charge exemption applicable to enhanced service providers ("ESPs"), including Internet and information service providers. With deadlines for action on these petitions as soon as January,³ the Commission should pursue comprehensive reform immediately, rather than tackling these issues piecemeal in response to forbearance deadlines.

II. SUMMARY

Global Crossing remains a staunch proponent of decisive Commission action to unify and lower terminating intercarrier compensation rates across all traffic types. The Commission has taken an important first step in reaffirming its intercarrier compensation rules

² *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Ex Parte* Letter of the NARUC Task Force on Intercarrier Compensation (filed July 24, 2006) (transmitting the Missoula Plan); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Intercarrier Compensation and Universal Service Reform Plan of the Intercarrier Compensation Forum (filed Oct. 5, 2004).

³ *See, e.g., Petition of Feature Group IP for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(a)(1) and Rule 69.5(b)*, WC Docket No. 07-256, Public Notice, Da 07-5029 (Dec. 18, 2007) (seeking comment on forbearance petition filed Oct. 23, 2007).

applicable to ISP-bound traffic, and should continue along the path outlined in the proposals attached to the Further Notice. Specifically, the Commission should:

- Adopt the new “additional cost” standard proposed in the Appendices to the Further Notice, and require state public utility commissions to select one rate to apply to terminating carriers statewide;
- Classify interconnected VOIP traffic as an interstate information service, reaffirm the interconnection arrangements under Section 251 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 251, on which such providers rely, and cap the rate for terminating such traffic at \$0.0007, as was adopted in the ISP remand, pending the completion of proceedings under the new additional cost standard described in the Further Notice Appendices A and C;
- Adopt its proposed four year transition to TELRIC-based reciprocal compensation rates, and mandate a further transition to the incremental “additional cost” standard, as described over a brief period of one or two additional years; and
- Reform the universal service contribution methodology applicable to business services to replace the current revenue-based system with one based solely on a flat-rated, per-number charge or, if this is not possible, one based on a combination of flat-rated per-number charges for residential services and tiered, capacity-based charges for business services, such as proposed in Appendix B to the Further Notice.

The Commission should also establish a working group comprised of industry experts to provide a forum for discussing and, to the extent possible, resolving implementation issues that arise in connection with the Commission’s sweeping reforms. Comprehensive reform, while it would undoubtedly advance many laudable goals, would also raise implementation issues that even extremely detailed Commission rules would be unlikely to address fully. The creation of such a working group could minimize the time and resources necessary to resolve these issues.

III. DISCUSSION

Global Crossing enthusiastically supports many aspects of the proposals offered by the Commission in the Appendices to the Further Notice. Global Crossing also has been a

longstanding proponent of lower, more uniform intercarrier compensation levels, and supports an eventual transition to bill and keep principles. While the proposed four year transition to uniform TELRIC-based reciprocal compensation rates is longer than necessary, Global Crossing believes that it provides a reasonable path to this result. Similarly, action to reign in unchecked growth of high cost universal service funding is critically needed to ensure that funding is sufficient but not excessive under the statute.⁴

Nevertheless, the Commission should make certain adjustments to the proposals, as detailed below.

A. The Commission Should Adopt the Proposed “Additional Cost” Pricing Methodology, and Mandate that the State Public Utility Commissions Select One Rate to Apply Throughout the State

The Further Notice seeks comment on two specific questions, namely, whether the Commission should mandate that state public utility commissions use the incremental cost standard described in the Further Notice Appendices when setting reciprocal compensation rates under Section 251(b)(5) of the Act, 47 U.S.C. § 251(b)(5), and whether the Commission should require such rate to be set as a single statewide rate applicable to all carriers within the state.⁵

The Commission should answer both questions in the affirmative.

The statutory text is clear that a state public utility commission may consider only the “additional cost of terminating [calls that originate on the network of the other carrier]” in setting reciprocal compensation rates for Section 251(b)(5) traffic.⁶ Global Crossing supports the Commission’s proposal to direct the state public utility commissions, when computing such “additional cost” of termination, to use forward looking, “least cost, most efficient network

⁴ *Alenco Communications v. F.C.C.*, 201 F.3d 608, 620 (5th Cir. 2000).

⁵ Further Notice at ¶ 41.

⁶ 47 U.S.C. § 252(d)(2)(A)(ii).

technology,” specifically including soft switches and fiber optic cable (deployed in capacity significantly in excess of current needs),”⁷ and, using such network architecture, to compare the costs of a standalone network that performs all of the functions of a modern telecommunications network, including transport and termination of other carriers’ traffic, with the costs of such a network that performed all such functions except such transport and termination of other carriers’ traffic, excluding all common costs and overhead costs.⁸ This standard is most consistent with the language of the statute, and would facilitate carriers’ transition to more modern IP network architecture that will benefit consumers by providing greater communications capabilities at lower cost. Further, the low intercarrier compensation rates this methodology would produce would encourage carriers to negotiate bill-and-keep arrangements, resulting in economic efficiencies and other public interest benefits.

To minimize the gaming opportunities inherent in any system where intercarrier compensation rates differ based on the classification of traffic or the identity of the terminating carrier, the Commission should require state public utility commissions to select one terminating reciprocal compensation rate to apply to all carriers statewide. First, such a result will best advance the Commission’s goal to achieve low rates under the incremental cost standard articulated in the draft proposals. If the rate the state public utility commission selects applies to all carriers, large and small, within its borders, that rule will create the maximum incentive to select a low, economically efficient rate that will advance the public interest benefits of the cost methodology discussed above. Second, a low, uniform rate will encourage the deployment of lower cost IP network equipment with greater capabilities, including broadband, as carriers seek

⁷ Further Notice Appendix A at ¶ 272; Appendix C at ¶ 267.

⁸ Further Notice Appendix A at ¶ 273; Appendix C at ¶ 268. The difference in cost would be the “additional cost” rate to be charged under Section 251(b)(5). Further Notice Appendix A at ¶ 271; Appendix C at ¶ 266.

alternative revenue opportunities they can generate from introducing new and additional services. If the state public utility commission has the opportunity to select a significantly higher rate for certain LECs, then such a choice could retard the transition to modern network architecture, lower economic efficiency, and encourage continued exploitation of arbitrage opportunities such as free conference calling or other gamesmanship associated with the routing of calls through carriers with high termination rates.⁹

B. The Commission Should Clarify Interconnection Issues Surrounding Interconnected VOIP Traffic

Global Crossing generally supports the proposal contained in the Further Notice Appendices to classify services that originate on IP networks and terminate on circuit-switched networks, or *vice versa* (“IP-PSTN traffic”) as interstate information services.¹⁰ Indeed, with respect to interconnected VOIP services, Global Crossing has been a steady proponent of such a finding.¹¹ As the Appendices to the Further Notice correctly observe, because these services involve a net protocol conversion between IP and TDM, they fall squarely within the Commission’s definition of enhanced services and the Act’s definition of information services.¹² As the Commission observes in the Further Notice Appendices, these services are “entirely new services with characteristics in many ways different from pre-existing telephone services.”¹³ As such, the interstate information services classification is essential to the Commission’s

⁹ See, e.g., *See Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989 (2007).

¹⁰ Further Notice, Appendix A at ¶ 209; Appendix C at ¶ 204.

¹¹ *Petition of Feature Group IP for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(a)(1) and Rule 69.5(b)*, WC Docket No. 07-256, Comments of Global Crossing North America, Inc. (filed Feb. 19, 2008).

¹² See 47 U.S.C. § 153(20) (definition of “Information Service”); 47 C.F.R. § 64.702(a) (definition of “Enhanced Service”).

¹³ Further Notice, Appendix A at ¶ 210; Appendix C at ¶ 205.

deregulatory approach to such services, and is necessary to preempt inconsistent state regulation of such services.

To find otherwise would undermine the benefits of the Commission's deregulatory rules and policies, such as those applicable to entry regulation and tariffing. As the Commission found when deciding to preempt state public utility commission regulation of Vonage's Digital Voice product, heavy-handed rate and entry regulation could stifle introduction of new and innovative services, and hamper market competition:

State entry and certification requirements . . . require the filing of an application which must contain detailed information regarding all aspects of the qualifications of the would-be service provider, including public disclosure of detailed financial information, operational and business plans, and proposed service offerings. The application process can take months and result in denial of a certificate, thus preventing entry altogether. Similarly, when the Commission ordered the mandatory detariffing of most interstate, domestic, interexchange services (including services like DigitalVoice), the Commission found that prohibiting such tariffs would promote competition and the public interest, and that tariffs for these services may actually harm consumers by impeding the development of vigorous competition The administrative process involved in entry certification and tariff filing requirements, alone, introduces substantial delay in time-to-market and ability to respond to changing consumer demands, not to mention the impact these processes have on how an entity subject to such requirements provides its service.¹⁴

These considerations apply with no less force today.

Moreover, the Commission need not apply the "interstate information service" label beyond "interconnected VOIP services,"¹⁵ as the proposals in the Further Notice

¹⁴ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, 19 FCC Rcd 22404 (2004).

¹⁵ *See, e.g., Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, at ¶ 15 (rel. June 27, 2006) ("*VoIP USF Order*") (defining "interconnected VoIP service" as any service that: (1) enables "real-time, two-way voice communications," (2) requires "a broadband connection from the user's location," (3) requires "IP-compatible customer premises equipment," and (4) permits users

Appendices A and C propose. As the Commission has observed in applying local number portability, universal service contribution, and E-911 obligations on providers of interconnected VOIP services, these services compete with traditional local exchange telephony and are viewed by consumers as a substitute therefor.¹⁶ The same cannot be said for so-called “one-way VOIP” services, which typically allow a customer to make outgoing calls, but do not provide the ability to receive calls. Today, consumers do not tend to view these niche products as a substitute for two-way local exchange and interexchange telephony and, as a result, the Commission has not subjected them to the regulatory requirements generally applicable to telecommunications carriers and interconnected VOIP providers identified above.

Regardless of whether the Commission decides to proceed with its proposal to classify interconnected VOIP services as interstate information services, it should clarify that wholesale carriers on which providers of these services rely remain entitled to interconnect and exchange traffic with local exchange carriers under Section 251 of the Act, and the intercarrier compensation rates applicable to such traffic. While the Wireline Competition Bureau has held that the Act and the Commission’s rules entitle providers of interconnected

to “receive calls from and terminate calls to the PSTN”); *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 at ¶ 24 (2005) (“*E911 Order*”), *aff’d sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

¹⁶ *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, FCC 07-188, at ¶ 18 (“[W]e limit our decision to interconnected VoIP providers, in part because, unlike certain other IP-enabled services, we continue to believe that interconnected VoIP service ‘is increasingly used to replace analog voice service,’ including, in some cases, local exchange service”) (quoting *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 15009-10, ¶ 42 (2005), *aff’d sub nom. American Council on Education v. FCC*, 451 F.3d 226 (D.C. Cir. 2006)); *see also Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-94, 21 FCC Rcd 7518, ¶ 34 (2006).

VOIP services to interconnect with traditional LECs indirectly through wholesale telecommunications carriers,¹⁷ many state public utility commissions nevertheless have required interconnected VOIP service providers to obtain state certificates of public convenience and necessity or to comply with other burdensome state regulations. As such, it is critically important that the Commission preempt inconsistent state regulations that would require interconnected VOIP providers to comply with burdensome regulations otherwise applicable to telecommunications carriers providing intrastate legacy telecommunications services. Were the Commission to find that interconnected VOIP services fall within the Act's definition of telecommunications services, 47 U.S.C. § 153(46), the Commission's necessary preemption of state public utility regulations would be significantly more difficult.

Moreover, the Commission should cap the intercarrier compensation rate levels that apply to interconnected VOIP services at \$0.0007 per minute during the initial four year transition. Global Crossing applauds the Commission's proposal in the Further Notice Appendices to move all intercarrier compensation rates, including for IP-PSTN traffic, initially to TELRIC-based reciprocal compensation rates and subsequently to reciprocal compensation rates based on the new "additional cost" standard rates. Nevertheless, the proposal to "maintain the status quo for [IP-PSTN] traffic during the transition" will prolong today's existing disputes over the level of compensation applicable to such traffic for a considerable period.¹⁸ Indeed, the only prevailing "status quo" applicable to IP-PSTN traffic today is one of ongoing disputes and litigation. Even if it proceeds with its proposal to permit state public utility commissions to set

¹⁷ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, DA 07-709, 22 FCC Rcd 3513, ¶ 8 (Wir. Comp. Bur. 2007).

¹⁸ Further Notice, Appendix A at ¶ 218 n. 564; Appendix C at ¶ 213 n. 555.

the reciprocal compensation rates applicable to such traffic,¹⁹ the Commission should cap the intercarrier compensation rate applicable to IP-PSTN traffic at \$0.0007 per minute during this transition, consistent with the rate applicable to ISP-bound dial-up traffic.

C. The Commission Should Shorten the Intercarrier Compensation Transition Period

While Global Crossing supports the Commission's proposal to achieve lower, more uniform intercarrier compensation rates, the contemplated ten year transition period is longer than necessary. Several industry proposals have recommended a shorter transition, given the exigent need for reform. For instance, the Intercarrier Compensation Forum plan, which Global Crossing supported, proposed a four year transition to a uniform \$0.000175 per minute rate, with a further three year transition to bill and keep.²⁰ More recently, Global Crossing has supported Verizon's proposal to unify all intercarrier compensation rates at current reciprocal compensation levels over three years.²¹ Considering the well-documented need for intercarrier compensation relief, and the rapid pace at which industry dynamics change, a ten year transition is simply too long.

Given the need for state public utility commissions to conduct new cost proceedings under the newly articulated additional cost standard based on incremental cost principles that the Commission's proposals would establish, a reasonable transition period to TELRIC-based reciprocal compensation rates could be necessary while the new rates are set. In

¹⁹ Further Notice, Appendix A at ¶211; Appendix C at ¶ 206.

²⁰ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Letter from Gary M. Epstein and Richard R. Cameron to Marlene H. Dortch, Appendix B at 5-6 (filed Oct. 5, 2004).

²¹ *Petition of AT&T for Interim Declaratory Ruling and Limited Waivers*, WC Docket No. 08-152, Letter from Teresa D. Baer and Richard R. Cameron to Marlene H. Dortch, at 1 (filed Sept. 18, 2008).

the wake of the Telecommunications Act of 1996, however, state public utility commissions largely completed TELRIC-based rate proceedings in fewer than four years, and there is no reason to expect that proceedings under the new additional cost standard would take longer. Similarly, once these rates are set, the further transition to the new reciprocal compensation rate levels should take fewer than an additional six years. With the difference in the rates likely measured in hundredths of a cent, the change from TELRIC-based reciprocal compensation rates to those based on the new cost standard is likely to be the smallest in absolute terms of the entire transition. As such, there is no need for it to consume six full years. Rather, the second portion of the transition should take no more than one or two additional years, for a total transition period of five or six years.

The Commission should also commit to expeditious action on originating access rates. Global Crossing wholeheartedly supports the Commission's proposed finding in the Further Notice Appendices that "retention of originating access charges would be inconsistent with [the] statutory scheme and our new regulatory approach."²² While the Appendices to the Further Notice would launch an additional proceeding to seek comment on how to implement this finding,²³ such originating access charge reform should be completed contemporaneously with terminating access charge reform. Even if the Commission creates lower and more uniform termination rates, access customers will see only limited benefits of those reforms if the Commission retains the existing outdated and artificial classifications of originating traffic. As a result, the Commission should complete action on originating access rates in time for its findings to be implemented during the initial transition to uniform TELRIC-based reciprocal compensation rates for termination. Otherwise, by preserving existing origination rules, in

²² Further Notice, Appendix A at ¶ 229; Appendix C at ¶ 224.

²³ Further Notice, Appendix A at ¶ 346; Appendix C at ¶ 343.

which not only the amount but also the direction of compensation depends on the regulatory classification of the call in question, the Commission could force access customers to maintain dual originating and terminating access networks and continue segregating originating traffic for routing and billing purposes, and will engender continued disputes over traffic classification and compensation.

Finally, the Commission should make its proposed network architecture rules effective coincident with the initial four year transition to uniform TELRIC-based reciprocal compensation rates, rather than at the end of the transition to reciprocal compensation rates based on the new additional cost standard.²⁴ As termination rates become uniform, carriers will be able to begin eliminating redundant trunk groups and achieving other network efficiencies that rate uniformity will bring. As such, there is no need for the Commission to defer implementation of its network architecture rules to the end of the full transition to the new cost standard.

D. The Commission Should Adopt Universal Service Contribution Reform for Business Services

Global Crossing supports a universal service contribution methodology based on a flat-rated, per number assessment for both business and residential services alike. A numbers-based contribution mechanism, with only the minimum number of narrowly tailored exceptions necessary, will be more predictable and easier to administer than the current system based on interstate, end user, telecommunications revenue, and will distribute the universal service burden more broadly and equitably across the contributor base. Further, it has become increasingly difficult to distinguish residential and business services, particularly in the small office and home office market segments. Thus, contribution reform that requires a contributor to distinguish

²⁴ Further Notice, Appendix A at ¶ 275; Appendix C at ¶ 270.

between residential and business customers is likely to perpetuate significant uncertainty as to a contributor's obligations.

If the Commission believes that it cannot, consistent with Section 254 of the Act, 47 U.S.C. § 254, mandate contributions based solely on telephone numbers, then Global Crossing urges the Commission nevertheless to end today's revenue-based contribution methodology. In today's world of bundled services, IP networks, and global communications, it has become impossible for an integrated service provider to determine with any degree of confidence what portion of its revenue is assessable as interstate, end user, telecommunications revenue, despite the risk stiff penalties for even minor errors. The Commission therefore should adopt a connections-based system such as proposed in the Further Notice, Appendix B.²⁵

E. The Commission Should Establish a Working Group to Implement the Commission's Reform Order

The Commission's resolution of the issues in this proceeding is bound to raise a host of implementation issues that neither the Commission nor industry participants can hope to anticipate today. To minimize disputes and facilitate quick resolution of these issues, the Commission should establish a Working Group to provide a forum for discussing and, hopefully, resolving these questions. The Working Group should be composed of subject matter experts from a broad cross section of industry participants and should be charged with recommending answers to technical implementation questions that arise as carriers work to implement the new regulatory regime. Industry fora of this sort are commonplace, for example, within the Alliance for Telecommunications Industry Solutions ("ATIS")²⁶ and could in fact operate in the same fashion here.

²⁵ Further Notice, Appendix B at ¶ 82.

²⁶ See www.atis.org.

For instance, Global Crossing has concerns with aspects of the proposal contained in Appendices A and C to the Further Order as they relate to phantom traffic. One of the larger problem areas Global Crossing has encountered is the use of non-geographic numbers (or toll-free numbers) in the calling party or charged number fields which, while permitted by Commission rules,²⁷ cannot be used to determine the jurisdictional category of the call and, therefore, the rate to be charged. Carriers should not be penalized for this type of traffic because of the non-geographic nature of the originating number. In such a case, payment obligations placed on the “n-1” carrier should be imposed based on the percentage interstate usage (“PIU”) factors of the carrier’s remaining traffic, not imposed at the highest access rate. While this and a myriad of similar details need to be addressed, they are likely beyond the level of detail that can be addressed in a Commission order of the proposed breadth, but they would be ideal for an industry working group to develop recommended solutions.

²⁷ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, FCC 03-153, 18 FCC Rcd 14014, ¶ 180 (2003)

IV. CONCLUSION

Global Crossing strongly supports the need for intercarrier compensation reform, and applauds the Commission for its renewed and intense focus on these issues. While Global Crossing broadly supports the reform proposals contained in the Appendices to the Further Notice, it recommends some additional actions and revisions to the proposals, as detailed herein. Global Crossing looks forward to working with the Commission in these proceedings to achieve long overdue intercarrier compensation reform to the benefit of consumers and the industry alike.

Respectfully submitted,



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