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-	)	CC Docket No. 99-68
Bound Traffic	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF COMCAST CORPORATION

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

Comcast Corporation ("Comcast"), as the provider of voice service to over 6.1 million residential and business subscribers in 39 states, has a vital interest in intercarrier compensation and universal service policies. Comprehensive reform of these archaic systems is urgently needed, and Comcast commends the Commission for providing parties with an opportunity to comment on several reform proposals. Comcast conditionally supports the reform plan presented in Appendix C of the Further Notice of Proposed Rulemaking ("*Notice*"), with the pro-consumer, pro-competition revisions described below.

Intercarrier Compensation Reform

Single uniform statewide rate. Comcast strongly supports the Commission's primary goal of reducing the charges for transporting and terminating all switched traffic within a state to a uniform, economically efficient rate. There is no economic or technical justification for carriers to charge different rates for transporting and terminating a call. Factors such as the originating point of the call, the technology used, and the regulatory status of the carrier delivering the call simply have no relevance in the modern marketplace. A single statewide rate for all incumbent local exchange carriers ("ILECs") and interconnecting carriers would minimize the potential for regulatory arbitrage and create incentives for carriers to migrate to more efficient technologies, both of which are in the public interest. Comcast favors a bill-and-keep regime as the most efficient approach to intercarrier compensation.

New LRIC pricing methodology. Comcast supports the Commission's proposal to adopt a "long-run incremental cost" ("LRIC") methodology for setting transport and termination rates under section 251(b)(5) of the Communications Act of 1934, as amended. Until now, application of the Total Element Long Run Incremental Cost ("TELRIC") methodology has resulted in excessively high reciprocal compensation rates that are greater than permitted by section 252(d)(2). By excluding both fixed and certain common costs, and by focusing instead on traffic-sensitive switching and transport costs, LRIC will produce rates that more accurately reflect the "additional cost" of transporting and terminating traffic, consistent with the statutory standard.

Limits on "make whole" payments. The Commission should unequivocally establish that price cap incumbent LECs are not entitled to a "make-whole" dollar-for-dollar recovery of any revenues previously received from intercarrier compensation payments. The only basis on which these carriers can qualify for universal service support is a compelling demonstration in a public proceeding that they are unable to earn a normal profit, accounting for all of their costs and revenues from both regulated and non-regulated sources. The Commission's treatment of rate-of-return ILECs on this issue should be no different. Just like price cap ILECs, most rate-of-return ILECs now use their network plant to provide to rural customers numerous services that are not subject to price regulation, including long distance voice, broadband Internet access, and multichannel video service. The Commission should account for *all* of these revenues in making any determination of the need for replacement funding for rate-of-return ILECs.

Three year transition period and transition rates. Comcast urges the Commission to require the industry to complete the transition in three steps over three years, rather than prolong the harmful, anticompetitive and outdated intercarrier compensation system over a decade-long transition. The Commission should clarify that with respect to bill-and-keep arrangements, "evergreen" interconnection agreements, and instances in which providers are paying terminating access charges for traffic delivered to incumbent LECs, carriers may charge no more during the transition than the lower of their current rates or the applicable interim rates, regardless of any change-of-law provisions.

Affirmation of VoIP interconnection rights and regulatory treatment. The Commission should clarify that firms, affiliated or unaffiliated, furnishing wholesale telecommunications services to voice over Internet Protocol ("VoIP") service providers are "telecommunications carriers" under the Act and entitled to all of the rights, and subject to all of the responsibilities, conferred by, *inter alia,* sections 251 and 252 of the Act.

If the Commission were to address the regulatory classification of interconnected VoIP in this or any subsequent proceeding, it must at a minimum take the following steps to avoid disrupting the provision of interconnected VoIP service to millions of consumers. *First*, the Commission should conclude that interconnected VoIP is an "information service." *Second*, the Commission should clarify that existing compensation arrangements remain in effect and are subject to the reform plan, and that such traffic will not be subject to charges that exceed current levels. *Third*, the Commission should preempt state commissions from applying "traditional telephone company" or telecommunications regulations, or other rules or policies inconsistent with the FCC's policy of nonregulation of information services. It would be a serious mistake to decide the classification without considering all of the potential ramifications for consumers of such a decision. Thus, it is essential that the Commission be certain that it has adequate time to develop a comprehensive analysis of the classification issue and all of the related issues. If that cannot be accomplished, the prudent course would be to defer a decision until that comprehensive analysis can be completed.

Backward-looking "default" interconnection and network edge rules. Comcast urges the Commission *not* to adopt the "default" interconnection and network edge rules proposed to become effective at the end of the transition. These proposals are based on an already outdated circuit-switched network hierarchy – a network architecture that is rapidly being supplanted by IP networks deployed by both incumbent and non-incumbent providers. Equally troubling, the proposals are insufficiently detailed and fail to address the complexities of interconnected networks that are the product of years of technological development, negotiations, arbitrations, and state commission and FCC orders. If adopted, this simplistic, backward-looking approach would likely have a significant negative effect on provider investment and deployment decisions – to the detriment of American consumers and providers alike.

Phantom traffic and treatment of originating carriers. The Commission should clarify that its new rules will not permit a terminating carrier to charge its highest terminating rate, or an intermediate carrier to pass on the higher terminating charge, if the originating carrier delivered the traffic to the intermediate carrier with the required call information intact. There may be a variety of technical reasons that preclude passage of the information, none of which is attributable to the originating carrier. In any case in which the problem is not the result of any action or inaction by the originating carrier, the terminating carrier should not be permitted to assess its highest terminating charges for such traffic.

Pro-competitive approach to transit service. "Transit service" arrangements are vital to the ability of Comcast and other competitive facilities-based providers to offer ubiquitous termination to their customers. Unfortunately, the remaining regional Bell operating companies ("RBOCs") are dominant in the provision of transit service, with the incentive and ability to raise prices unilaterally in order to disadvantage competitors. The most effective, pro-competitive action the Commission could take at this point would be to affirm unequivocally that transit arrangements are subject to the section 251/252 negotiation and arbitration process.

Universal Service Reform

Shift to numbers-based USF contributions. Comcast has consistently supported a numbers-based system for assessing contributions for residential customers to the universal service fund ("USF"), and it supports the Commission's current proposal to implement such a system. This change represents sound policy, given that (i) the total assessable revenue base is declining and (ii) interstate telecommunications revenues are becoming increasingly difficult to identify. Comcast supports the Commission's decision to request comment on whether business service providers should be required to contribute to the USF on a per-connection basis.

Conclusion

With the proposed pro-consumer, pro-competition revisions outlined in these comments, Comcast urges the Commission to adopt comprehensive reform of its intercarrier compensation and universal service systems.

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COMMENTS OF COMCAST CORPORATION

Comcast Corporation ("Comcast") and its affiliates hereby submit these comments in response to the Further Notice of Proposed Rulemaking ("*Notice*") released by the Federal Communications Commission in the above-captioned proceeding.[1]

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1 *High-Cost Universal Service Support*, WC Dockets No. 05-337 & CC Dockets No. 96-98, *et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (rel. Nov. 5, 2008) (FCC 08-262) ("*Notice*" or "*Order on Remand*").

I. Comcast Commends the Commission for Providing Parties with an Opportunity to Comment on the Different Intercarrier Compensation Reform Proposals

Comcast currently provides voice service to over 6.1 million residential and business subscribers in 39 states. As the largest competitive provider of voice residential services and the fourth largest provider overall of such services in the United States, Comcast has a vital interest in the intercarrier compensation issues raised by the *Notice*. Given the extraordinary complexity of these issues, Comcast commends the Commission's decision to provide interested parties with an opportunity to review and comment on the different reform proposals currently under consideration.

Comcast agrees fully with the industry consensus that comprehensive reform of the archaic system of intercarrier compensation is urgently needed. While much of the existing compensation regime originally was designed to function in a monopoly, circuit-switched environment, the Telecommunications Act of 1996 supplanted that paradigm with a pro-competitive model. Further, the growth of the communications industry today is driven by innovative Internet Protocol ("IP")-enabled technologies and services, including the retail voice over IP ("VoIP") service provided by Comcast and other competitors. These IP-enabled services offer consumers and businesses an ever-expanding array of features and functions through an ever-growing range of devices. Comprehensive reform of intercarrier compensation is essential to ensuring that these trends continue to propel the industry's expansion.

Any comprehensive plan for addressing intercarrier compensation will inevitably involve tradeoffs among industry segments. It is highly unlikely that an industry with such diverse technologies and business plans will arrive at a consensus plan that all participants regard as optimal. Recognizing this reality, Comcast generally supports the reform plan presented in Appendix C of the *Notice*, as discussed below. By moving to a single uniform reciprocal compensation rate, utilizing a new pricing methodology, and guiding state commission implementation of this new framework, the Commission will promote more efficient and effective competition, encourage expanded broadband deployment, and help bring the benefits of competition – innovation and better value – to consumers.

However, Comcast believes that the Commission should revise the Appendix C framework in a number of ways, described in greater detail below. As an initial matter, the Commission should reduce the transition period from ten years to three years. Some elements of the Commission's proposal, such as the proposed default interconnection rules, would likely have a disproportionately adverse impact on services, such as Comcast's Digital Voice service, that compete with incumbent LEC ("ILEC") voice services. Such adverse effects would disserve the interests of consumers, who benefit from a robustly competitive marketplace.

Additional aspects of the Commission's Appendix C proposal, including the impact on existing interconnection agreements, require clarification to prevent undesirable and unintended consequences. For example, the Commission should reaffirm that wholesale providers of telecommunications services are telecommunications carriers under the Act. In a related vein, the Commission should not decide the interconnected VoIP classification issue in isolation, without regard to the numerous other significant competitive issues, such as interconnection rights, that are implicated by such a decision. If the Commission concludes that it has adequate time to adopt a comprehensive decision on the interconnected VoIP issue, that decision, at a minimum, should make clear that interconnected VoIP is an information service and that interconnected VoIP traffic is governed by the Commission's general rule that no traffic during the transition should be subject to higher charges than currently apply. The Commission should also preempt state commissions from applying "traditional telephone company" or telecommunications regulations, or other rules or policies inconsistent with the FCC's policy of nonregulation of information services.

Other parts of the Commission's plan, such as the "make whole" proposal for rate-of-return ILECs, appear to be inconsistent with the overarching, pro-competitive, forward-looking goals of the reform effort. Comcast urges the Commission to address all of these intercarrier compensation issues now. Moreover, instead of initiating another proceeding to consider the adoption of rules to govern the provision of transit service, the Commission should simply confirm that section 251 imposes an obligation on ILECs to offer transit at just and reasonable rates and that requesting carriers have the right to negotiate and arbitrate an interconnection agreement that includes an ILEC's provision of transit, pursuant to section 252.

A. Comcast Supports Most of the Commission's Plan for Reforming Intercarrier Compensation

1. *Transition to single uniform statewide rate*

Under the existing intercarrier compensation regime, carriers charge different rates for transporting and terminating a call, depending on the originating point of the call, the technology used, and the regulatory status of the carrier delivering the call. Because the functions performed by the terminating carrier in every case are essentially the same, there is no economic or technical basis for these price disparities. As long as the intercarrier compensation framework relies on obsolete regulatory distinctions in setting prices, disputes over the proper regulatory treatment of different types of traffic will continue to hamper unnecessarily the industry's robust growth. With the issuance of the *Notice*, the Commission appears prepared to undertake much-needed, fundamental reform of the current intercarrier compensation system. Comcast applauds the Commission for taking this critical action.

Comcast strongly supports the Commission's primary goal of reducing the charges for transporting and terminating all switched traffic within a state to a uniform, economically efficient rate. Although Comcast continues to favor a bill-and-keep regime as the most efficient approach, the Commission's proposal, as presented in Appendix C of the *Notice*, represents a substantial, positive step toward reform of the current system.

Under the Commission's proposal, state commissions would reduce existing access and reciprocal compensation rates to a single uniform rate through a series of steps.[2] Specifically, each state commission would first reduce intrastate access rates to interstate levels, and then would reduce all termination charges to a state-established uniform, interim reciprocal compensation rate. Finally, each state would establish a "glide path" for lowering the interim rate to a final reciprocal compensation rate. During this transition period, carriers with existing transport and termination rates below the interim levels would not be permitted to increase their charges. Originating intrastate and interstate access charges would also be capped at current levels.

As discussed below, Comcast favors a much more rapid transition than the lengthy period proposed by the Commission, and believes that it can be achieved consistent with the public interest. Nonetheless, the overall proposal for replacing the existing compensation patchwork with statewide, uniform rates would generate substantial benefits for the industry as well as consumers. As the Commission has observed, a single statewide rate for all ILECs and interconnecting carriers would simplify the regulatory process, minimize the potential for regulatory arbitrage, and create incentives for carriers with less efficient networks to migrate

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2 *Notice* at Appendix C, ¶ 187.

more quickly to more efficient technologies.[3] Further, the Commission's proposal to eliminate the possibility of asymmetrical termination rates would ensure that these benefits are extended to all consumers.[4]

2. *Adopt new pricing methodology*

Comcast also supports the Commission's proposal to adopt a "long-run incremental cost" ("LRIC") methodology for setting transport and termination rates under section 251(b).[5] Comcast agrees with the Commission that application of the Total Element Long Run Incremental Cost ("TELRIC") methodology has resulted in "excessively high reciprocal compensation rates" that do not accurately reflect the "additional costs" that carriers incur transporting and terminating traffic and, consequently, exceed the levels permitted by section 252(d)(2).[6] Specifically, the TELRIC methodology uses the forward-looking costs of an entire network element, including any fixed costs, in setting the price, rather than the incremental cost of an additional service or additional usage provided over the network. Moreover, the

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3 *Id.* ¶ 269.

4 *Id.* ¶¶ 274-276. Under the Commission's existing rules, it is presumed that the terminating rates charged by competing carriers will be symmetrical. In the *Local Competition First Report and Order*, the Commission concluded that charges for reciprocal compensation were to be presumptively symmetrical and that it was "reasonable to adopt the incumbent LEC's transport and termination prices as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 1085 (1996) ("*Local Competition First Report and Order*"). At the same time, the Commission has permitted interconnecting carriers to rebut the presumption of symmetry by submitting a forward-looking cost study to show that their costs of termination were higher than the incumbent LEC's. If the interconnecting carrier established that "the costs of efficiently configured and operated systems [were] not symmetrical," the state commission could adopt a "different compensation rate" for the interconnecting carrier. *Id.* ¶ 1089.

5 *Notice* at Appendix C, ¶¶ 240, 257.

6 *Id.* ¶ 234.

Commission directed that the prices of network elements and interconnection should be based on the TELRIC of a particular element plus an allocation of the common costs of the firm, such as overhead, even though common costs, by definition, are not an incremental cost of providing the network element.

In contrast, the LRIC approach will produce rates that more accurately reflect the "additional cost" of transporting and terminating traffic, consistent with the statutory standard. The LRIC methodology outlined in the Appendices, for example, excludes common costs that were included in the application of the TELRIC formulation. The proposed methodology similarly includes only traffic-sensitive costs of switching (and transport), assuming there are such costs. This would eliminate any ambiguity now existing under the TELRIC methodology concerning the allocation of the cost of the switch between traffic sensitive and non-traffic sensitive costs. Rather than relying on any arbitrary allocations, the Commission rightly utilizes a straightforward formula for calculating incremental cost that ensures that the sole criterion for including a cost is whether the total cost of the carrier increases as a result of the increased usage of (or demand on) the network coming from the incremental service.[7] The use of a methodology that focuses on incremental cost increases caused by the transport and termination of traffic should produce rates that are well below the existing mirroring rate for reciprocal compensation of $0.0007.[8]

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7 The Commission's proposed incremental cost formula is as follows: IC (j) = C(N) – C(N-j), where C(N) is the cost of producing every product in the set N and C(N-j) is the cost of producing every product in the set N except product j. *Id.* ¶ 243.

8 *See* Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC Secretary, CC Docket No. 01-92, at 4-5 (Oct. 13, 2008, filed Oct. 14, 2008).

3. *Adopt standards for state suspension of intercarrier compensation rules*

The Commission also proposes guidelines regarding section 251(f)(2) of the Act, which gives state commissions the authority in certain circumstances to suspend or modify the obligations of smaller incumbent LECs under sections 251(b) and (c) of the Act.[9] Comcast strongly supports the Commission's proposed standards that a state commission must apply in determining whether it may relieve an incumbent LEC of its statutorily-imposed, pro-competitive responsibilities under section 251. Specifically, under the Commission's proposal, any suspension or modification of the intercarrier compensation rules must be limited in duration[10] and may be granted only where the intercarrier compensation rules have a "measurably large" adverse net impact on telecommunications users generally.[11] In addition, in assessing whether the rules at issue are "unduly economically burdensome," a state commission must account for all of the economic impacts of the Commission's reforms, including an ILEC's ability to recover lost revenue through alternative income streams (discussed further at § I.A.4 *infra*).[12] Finally, state commissions must scrutinize rigorously any carrier claim of technical infeasibility, and must weigh carefully the ramifications of maintaining opportunities for continued regulatory arbitrage and disputes.[13]

Comcast agrees with the Commission that these conditions are consistent with the statute and vital to safeguarding the benefits of shifting to a single uniform rate for transport and termination. The Commission should also make clear that these limitations apply to all requests

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9 *Id.* ¶¶ 277-285; 47 U.S.C. § 251(f)(2).

10 *Notice* at Appendix C, ¶ 278.

11 *Id.* ¶ 279.

12 *Id.* ¶ 280.

13 *Id.* ¶¶ 281-282.

under section 251(f)(2) for relief from the Commission's interconnection and reciprocal compensation framework, not just requests relating to the Commission's intercarrier compensation reform plan. By adopting these guidelines, the Commission will benefit rural consumers by ensuring that they have a competitive choice.

4. *Revenue recovery for price cap ILECs*

Comcast agrees with the Commission that carriers can and should recover from their customers the costs of transporting and terminating traffic to those customers. Comcast also supports the Commission's view that price cap incumbent LECs are not entitled to a "make-whole" dollar-for-dollar recovery of any revenues previously recovered from intercarrier compensation payments.[14]

The Commission proposes to permit price cap ILECs to increase their interstate subscriber line charges ("SLCs") to specified limits for primary and secondary residential lines as well as single-line and multi-line business services in order to offset reductions in intercarrier compensation revenues.[15] The Commission also proposes that price cap ILECs would have to satisfy certain conditions before they would be eligible to receive additional universal service funding to compensate for revenues "lost" by the reform of intercarrier compensation. Specifically, price cap carriers seeking USF support to replace lost revenues would be required to (i) make a showing that discloses all of their costs and revenues, both regulated and non-regulated, and (ii) demonstrate that their federal SLCs, state SLCs (if any), and state retail local service rates are at the maximum permissible levels.[16] Price cap ILECs could qualify for USF

14 *Id.* ¶¶ 308, 319.

15 *Id.* ¶¶ 293-294.

16 *Id.* ¶ 316. Comcast agrees with the Commission that price cap incumbent LECs operating in states where retail service rates have been deregulated should not be eligible for additional USF support.

support only if they demonstrated that, due to reduced intercarrier charges, they were unable to earn a "normal profit."[17] Comcast agrees with the Commission that this analysis must encompass "the total costs and total revenues of the company as a whole, including those from both regulated and non-regulated sources."[18] In this way, the Commission can ensure that any new universal service subsidies are carefully targeted to the circumstances where they are truly needed.

Those who claim that price cap ILECs are entitled to a subsidy as a dollar-for-dollar "make-whole" replacement of revenues previously recovered from intercarrier payments would have the Commission ignore the immense growth in revenues from unregulated and new regulated services since the interstate price caps regime took effect in 1991. In particular, ILECs now take a substantial proportion of their revenues from data, video, and long distance services, offered both separately as well as in packages. AT&T, for example, last year reported that in California only a small fraction (less than 11%) of its residential revenues were derived from customers that subscribe only to basic service and not other bundled offerings from AT&T or an affiliate.[19] The rapid increase in the revenue streams generated by these new and often unregulated service offerings effectively refutes any claims that price cap ILECs should be entitled to a dollar-for-dollar make-whole subsidy to offset reductions in intercarrier compensation payments.

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17 *Id.* ¶ 317.

18 *Id.* ¶ 318.

19 *Interim Opinion Adopting Reforms to the High Cost Fund-B Mechanism*, Public Utilities Commission of the State of California, Decision 07-09-020, at 37 (Sept. 6, 2007) (citing to AT&T Comments of April 27, 2007, at 3).

B. Certain Aspects of the Reform Proposal Should Be Revised

As discussed above, Comcast supports most elements of the Commission's proposed reform plan, and agrees that comprehensive reform will benefit both consumers and industry participants. Nonetheless, Comcast urges the FCC to revise certain aspects of its proposal, including taking the following steps:

- Adopt a three-year (rather than a ten-year) transition term;
- Clarify that no carrier may charge more for transport and termination during the transition than the rate it is charging at the start of the transition or the applicable interim rate, whichever is less, regardless of any applicable change-of-law provisions;
- Clarify that firms, affiliated or unaffiliated, furnishing wholesale telecommunications services to interconnected VoIP service providers are "telecommunications carriers" under the Act and entitled to all of the rights, and subject to all of the responsibilities, conferred by, *inter alia,* sections 251 and 252 of the Act;
- If it determines the regulatory classification of interconnected VoIP, the Commission should (i) conclude that it is an information service, (ii) clarify that existing compensation arrangements remain in effect and are subject to the reform plan, and that such traffic will not be subject to charges that exceed current levels, and (iii) preempt state commissions from applying "traditional telephone company" or telecommunications regulations, or other rules or policies inconsistent with the FCC's policy of nonregulation of information services;
- Decline to adopt new default interconnection rules;
- Reject the "make-whole" proposal submitted by OPASTCO/WTA; and

- Amend the proposal to prohibit the terminating carrier from assessing the highest possible rate for traffic lacking signaling information where the originating carrier delivered the traffic to the transit carrier with the required signaling information intact.

1. Three-year transition period

As the Commission acknowledges, comprehensive reform of intercarrier compensation has been under consideration since 2001.[20] In the past seven years, the pressures on the existing system, including increasing regulatory arbitrage, growing competition, and changes in technology, have further undermined the existing intercarrier compensation framework. Nonetheless, the Commission inexplicably proposes a decade-long transition plan. Given the broad industry consensus that unifying the intercarrier compensation system is long overdue, coupled with ongoing pressures on the current system, a ten-year transition is far too long.[21] A shorter transition will move the industry as quickly as possible to more economically efficient transport and termination rates for all traffic.

Rather than prolong the harmful and anticompetitive effects of the existing outdated intercarrier compensation system, the Commission should require the industry to complete the transition in three steps over three years. During the first year, each state should reduce intrastate access rates to the levels of interstate rates. During the second year, access rates should be reduced to an interim uniform termination rate set by each state. Finally, all transport and

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20 *Notice* at Appendix C, ¶ 181.

21 *See, e.g.*, Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, FCC Secretary, CC Docket No. 01-92, at 3 (Oct. 23, 2008) ("A ten year transition is far too long given the accelerating erosion of the POTS business model, of which intercarrier compensation is an integral component.").

termination rates should be reduced over the third year to a post-transition uniform rate.[22] A three-year transition would address the critical need for prompt reform of the intercarrier compensation system in an orderly manner that minimizes the risk of abrupt market disruptions. In addition, Comcast agrees with the conclusion in Appendix C that the interim and final rate should be uniform throughout a state.[23]

2. *Carriers should be prohibited from charging more than their current rate or the applicable interim rate, whichever is less, regardless of any applicable change-of-law provision*

A basic principle of the Commission's transition plan is that no carrier should charge more for transport and termination during the transition than it is charging at the start of the transition.[24] Comcast agrees with that principle; there is no public interest benefit to allowing carriers to raise their rates at the beginning or during the transition, only to require them to reduce their rates at the end. In implementing its principle, the Commission should make clear that a carrier, *inter alia,* is prohibited during the transition from charging more for transport or termination than the rate it is charging, pursuant to tariff or agreement, at the start of the transition or the applicable interim rate, whichever is less, regardless of any applicable change-of-law provision. In particular, the Commission should address the following three specific

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22 *Notice* at Appendix C, ¶ 187. Moreover, to the extent that the final reform plan were to authorize such recovery, incumbent LECs should only be allowed to raise their SLCs during the three-year transition period to offset corresponding reductions in intercarrier compensation rates. After the three-year period has lapsed, such increases would no longer be permitted.

23 *See, e.g., id.* ¶ 190; *see also* Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC Secretary, CC Docket No. 01-92 (Oct. 13, 2008, filed Oct. 14, 2008) (suggesting that, with the deployment of IP networks, per-unit costs should not vary substantially among service providers with different traffic volumes).

24 *See, e.g., Notice* at Appendix C, ¶ 188 (to the extent a carrier's existing intrastate terminating access rate is already below its interstate terminating access rate, then the carrier will charge its existing intrastate terminating access rate, rather then the higher rate that would otherwise apply under stage one of the transition).

situations: (1) bill-and-keep arrangements, (2) "evergreen" interconnection agreements, and (3) instances in which providers are paying terminating access charges for traffic delivered to incumbent LECs.[25]

Bill-and-Keep Arrangements. Comcast has a number of bill-and-keep agreements for the transport and termination of traffic. These agreements typically contain change-of-law provisions that allow for renegotiation of the agreements upon adoption of new FCC rules and/or dispute resolution in the event that the parties are unable to agree on language to implement the new rules.[26] It would be inconsistent with the Commission's goal of transitioning rates to lower uniform rates if carriers were permitted to invoke change-of-law provisions to abrogate a negotiated bill-and-keep agreement and assess a positive interim rate. Allowing carriers to nullify bill-and-keep agreements during the transition would undermine the goals of intercarrier compensation reform by increasing the likelihood of arbitrage and carrier disputes. Consequently, the Commission should clarify that, for existing bill-and-keep arrangements, carriers are prohibited from assessing a positive charge for such traffic until the end of the transition – when the state commission establishes a default uniform rate – regardless of any applicable change-of-law provision. By making this clear, the Commission will ensure that carriers do not churn their rates up and down by raising their rates during the transition. The Commission's clarification will also allow the parties to avoid protracted change-of-law renegotiations and dispute resolutions.

Further, the Commission should make explicit that a state commission may choose, based on its particular circumstances, to implement a bill-and-keep system as its uniform statewide

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25 Because the Commission affirmed its mirroring rule in the order portion of the item adopted on November 5, 2008, the requirement also would remain in effect indefinitely. *Order on Remand* ¶ 29.

26 *Notice* at Appendix C, ¶ 287.

transport and termination rate at the end of the transition. In Comcast's view, bill-and-keep arrangements for the transport and termination of all traffic should be the ultimate goal of this comprehensive reform effort. If the Commission decides not to mandate bill-and-keep on a nationwide basis, it should not preclude a state commission from electing that option based on the specific facts and circumstances introduced into the record of its section 252 proceeding.

Evergreen Agreements. The Commission should also clarify that when an interconnection agreement expires, but remains in effect pending renegotiation and/or entry into a new contract (*i.e.*, in "evergreen" status) during the transition, carriers may charge no more to terminate traffic than the lower of their current rates (*e.g.*, the rates in interconnection agreements or other commercial arrangements) or the interim transition rates. To avoid rate churn, when a contract rate is lower than the interim rate, the carrier should charge no more than the contract rate.

Access Charges. The Commission similarly should ensure that providers do not use change-of-law provisions to attempt to avoid the glide path for lowering access charges. Specifically, where providers today pay access charges for the termination of certain traffic delivered to ILECs, those charges would be reduced over time in accordance with the established reform schedule. This rule would apply regardless of whether a provider is purchasing such services pursuant to an interconnection agreement or a tariff, and regardless of any applicable change-of-law provision.

3. Rights of wholesale providers under sections 251 and 252

As noted above, Comcast currently provides its competitive Digital Voice service to more than six million consumers. Comcast's ability to provide this competitive alternative to the ILECs and save American consumers billions of dollars is directly dependent on Comcast's exercise of its rights to interconnection, number porting, and other services and safeguards under sections 251 and 252 of the Act.

Thus, regardless of the regulatory classification of interconnected VoIP services, one of the most important pro-competitive actions the Commission should take in its order is to make it unequivocally clear that firms, whether affiliated or unaffiliated, that furnish wholesale telecommunications services to VoIP service providers are "telecommunications carriers" under the Act and entitled to all of the rights, and subject to all of the responsibilities, conferred by, *inter alia,* sections 251 and 252 of the Act.

This clarification would not break new ground. The Wireline Competition Bureau and the Commission itself have affirmed previously that wholesale telecommunications service providers are telecommunications carriers.[27] Nonetheless, as the Commission is aware, some ILECs and state commissions have continued to question the eligibility of wholesale telecommunications carriers to request interconnection, the porting of numbers, and other services specified in sections 251 and 252.[28] As a result, Comcast and other firms that operate wholesale competitive LECs are forced to divert valuable resources to litigating these issues

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27 *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*, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶¶ 9-14 (WCB 2007) ("*Time Warner Declaratory Ruling*") (affirming that wholesale providers of telecommunications services are telecommunications carriers for purposes of sections 251(a) and (b) of the Act); *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, 22 FCC Rcd 19531, ¶ 23 (2007) (interpreting section 251(b)(2) to include a number porting obligation even when the switching of "carriers" occurs at the wholesale rather than retail level).

28 *See* Petition for Declaratory Ruling of Vermont Telephone Co., WC Docket No. 08-56 (Apr. 11, 2008) (challenging the right of a wholesale, certificated provider to obtain interconnection pursuant to sections 251 and 252); *Time Warner Declaratory Ruling* ¶¶ 3, 5-7 (describing state commission decisions finding that ILECs were not required to interconnect with wholesale providers pursuant to sections 251 and 252).

before state commissions and in court. This clarification would significantly advance the Commission's overriding pro-competitive objectives.

Further, the Commission should make clear that such wholesale providers are telecommunications carriers so long as they offer a telecommunications service to the public for a fee, whether through a tariff or some other means that reasonably advises potential customers of the availability of the offering, such as by a posting on the carrier's web site. The Wireline Competition Bureau previously reached this conclusion in a case involving an interconnected VoIP provider and an unaffiliated wholesale telecommunications service provider.[29] The fact that the interconnected VoIP provider and wholesale service provider are affiliated, however, is irrelevant as long as the wholesale affiliate's practices comply with the above-stated requirements of telecommunications service offerings. The test for determining whether an entity is a telecommunications carrier is whether its offerings are generally available, not the number of customers that have subscribed to the offerings. Thus, the Commission should also clarify that a wholesale provider of telecommunications services can establish its eligibility by showing, through a filed tariff or a generally available offering on its web site, that it is offering the wholesale services to unaffiliated entities.

4. *Classification of interconnected VoIP traffic*

If the Commission were to decide the regulatory classification of interconnected VoIP service, it is essential that it take the three steps described below. Without these three steps, the potential adverse effects of a Commission classification decision on competition are far-reaching. It would be a serious mistake for the Commission to decide the classification without considering all of the potential ramifications of the decision for, *inter alia,* interconnection rights,

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[29] *See Time Warner Declaratory Ruling* ¶ 12.

state and federal jurisdiction, and intercarrier compensation. Consequently, it is essential that the Commission be certain that it has adequate time to develop a comprehensive analysis of the classification issue and all of the related issues. Absent such certainty, the prudent course would be to defer a decision until that analysis can be completed.

First, the Commission should conclude that interconnected VoIP is an information service under long-standing FCC and judicial precedent.[30] As the *Notice* recognizes, the Commission consistently has classified services that provide a net protocol conversion as information services.[31] The courts and the Commission have held repeatedly that services that involve a net protocol conversion are information services. The Commission, for example, explicitly concluded in its initial order in the *Non-Accounting Safeguards* rulemaking that an offering that involves a net protocol conversion should be classified as an information service

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30 *Notice* at Appendix C, ¶ 209 & accompanying citations. *See, e.g., Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, ¶¶ 11-14 (2004); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 15 (2005); *National Cable & Telecommunications Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶¶ 104-106 (1996) ("*Non-Accounting Safeguards Order*"); *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 39 (1998) ("[W]hen an entity offers transmission incorporating the 'capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,' it does not offer telecommunications. Rather, it offers an 'information service' even though it uses telecommunications to do so.").

31 Comcast disagrees with the suggestion in Appendix C (paragraph 204) that terminating traffic that falls outside the definition of interconnected VoIP service, *i.e.*, a service that permits users to originate calls on a circuit-switched network and terminate on an IP-based network, also should be classified as an information service. In prior decisions involving VoIP providers' obligations to comply with CALEA, contribute to universal service, and obtain access to numbering, the Commission has framed the issue in the context of the provision of interconnected VoIP service. The draft item offers no explanation for departing from this consistent approach. The Commission, therefore, should limit the scope of its classification decision to interconnected VoIP service offerings.

under the Act.[32] Federal courts similarly have affirmed the finding that a protocol conversion involves the "transformation" of an end user's information.[33]

Although the Commission proposes to base its classification of interconnected VoIP service solely on the protocol conversion, it properly acknowledges that such a finding may be based on other grounds as well.[34] In the case of Comcast's Digital Voice offering, for example, the service is integrated with a web-based "Digital Voice Center" through which users are able to perform a variety of functions, such as listening to voice mails, managing their account online, and forwarding voice mails as attachments to e-mails. These are the same types of innovative "integrated" capabilities that the Commission identified in the *Vonage Order* as central to its finding that VoIP service was not a traditional telecommunications service.[35] Consequently, these features provide a separate, independent basis for a finding that VoIP service offerings are information services.

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32 *Non-Accounting Safeguards Order* ¶¶ 104-106. Prior to passage of the 1996 Act, the Commission classified such net protocol conversion services as "enhanced." The Commission ruled in that same order that "all of the services that the Commission has previously considered to be 'enhanced services' are 'information services.'" *Id.* ¶ 102.

33 *See, e.g., Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055, 1081-82 (E.D. Mo. 2006) ("A net-protocol conversion occurs when 'an end-user [can] send information into a network in one protocol and have it exit the network in a different protocol.' That conversion 'transforms' information, and therefore provides an 'enhanced' and an 'information' service.") (citation omitted); 47 U.S.C. § 153(20) (defining an information service as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications"); *Vonage Holdings Corp. v. Minnesota Pub. Util. Comm'n*, 290 F. Supp. 2d 993, 999 (D. Minn. 2003) (concluding that Vonage's VoIP service is an information service because, among other things, "calls in the VoIP format must be transformed into the format of the PSTN before a POTS user can receive the call. For calls originating from a POTS user, the process of acting on the format and protocol is reversed.").

34 *Notice* at Appendix C, ¶ 204 n.520.

35 *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 25 & n.93 (2004) ("*Vonage Order*").

Second, the Commission should make clear that compensation arrangements now governing interconnected VoIP traffic should remain in effect and, where applicable, be subject to the overall reform plan, and that such traffic should not be subject to charges that exceed current levels during the transition period. For example, since Comcast today pays access charges for the termination of certain traffic that it delivers to incumbent LECs, those charges would be reduced over time in accordance with the established schedule. To the extent Comcast pays reciprocal compensation or has entered into a bill-and-keep arrangement for the transport and termination of certain traffic, then those terms would continue to govern, subject to the rate remaining at or below the applicable rate adopted under the transition.

Third, in the case of IP-enabled offerings, the Commission should also preempt state commissions from applying "traditional telephone company" or telecommunications regulations, or other rules or policies inconsistent with the FCC's policy of nonregulation of information services. The FCC has repeatedly stressed its commitment to encouraging the deployment of innovative services and fostering the widespread availability of broadband service. If states were to regulate facilities-based interconnected VoIP offerings, there would be a substantial risk of subjecting them to up to 51 different and potentially conflicting sets of state economic regulatory regimes. Application of this hodge-podge of rules to interconnected VoIP services would be especially undesirable since Comcast and other facilities-based interconnected VoIP providers offer nationwide services, and would be particularly burdensome for bundled offerings involving multiple services given that state telephone regulation was designed for a single service offering.[36] Preemption would promote the goals of section 706 by encouraging increased

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[36] Comcast does not, however, oppose requiring VoIP providers to contribute to state universal service or telecommunications relay service funds through methodologies that are consistent with federal policy. *See Notice* at Appendix A, ¶ 211 & n.536.

investment in and deployment of the infrastructure necessary to support broadband services.[37] It would also further Congress' directive that the "Internet and other interactive computer services [remain] unfettered by Federal or State regulation."[38]

5. Reject backward-looking default interconnection rules

Comcast urges the Commission not to adopt its proposed "default" interconnection and network edge rules.[39] These proposals, which would not become effective until the end of the transition period,[40] are based on an already outdated circuit-switched network hierarchy – a network architecture that is rapidly being supplanted by IP networks deployed by both incumbent and non-incumbent providers. Moreover, these proposals are insufficiently detailed and fail to address the complexities of interconnected networks that are the product of years of technological development, negotiations, arbitrations, and state commission and FCC orders. If adopted, this overly simplistic, backward-looking approach would likely have a significant negative effect on provider investment and deployment decisions.

Moreover, the proposed default rules do not specifically provide for the exchange of IP-based traffic and, among other deficiencies, completely ignore the structure of competitive networks. For example, competitive LEC points of interconnection ("POIs") within an incumbent LEC serving territory may be no more than a virtual point on the network, with no ability or capacity to accommodate physical interconnection by another carrier (*i.e.,* an originating carrier that chooses to send its traffic via direct interconnection). The proposed default rules, however, would require the called-party service provider either to permit

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37 Section 706 of the Act, 47 U.S.C. § 157 nt.

38 47 U.S.C. § 230(b)(2).

39 *Notice* at Appendix C, ¶ 270.

40 *Id.* ¶ 270 n.717.

interconnection at its edge or to provide transport at no charge to that edge.[41] This will force competitors to build economically inefficient physical infrastructure in tandem serving areas to allow other CLECs, ILECs and wireless carriers to exercise the option of direct interconnection, or require competitors to transport the traffic from the originating carrier's edge at no charge. As discussed below, by effectively ceding control over the point of interconnection to the ILECs, the proposed rules could eliminate or render ineffective hundreds if not thousands of interconnection agreements, encourage the inefficient use of network facilities, and subvert the Commission's overriding goal of promoting a robustly competitive marketplace. In so doing, the proposed rules would thwart investment and deployment decisions that are based on economic efficiency, and encourage carriers to build their networks according to regulatory fiat.

The proposed default rules fail to account for the complexity of existing interconnection arrangements and ignore current network configurations designed to achieve network efficiencies.[42] In particular, the proposed default rules permit the calling-party service provider, *at its sole discretion*, to choose whether to interconnect directly or indirectly with the called-party service provider.[43] While the Commission claims that its proposed default rules would merely codify the status quo,[44] this calling-party provider discretion would in fact be inconsistent with the existing statutory assignment of duties among telecommunications carriers, local exchange carriers, and incumbent local exchange carriers under the section 251/252 framework. In particular, this aspect would conflict directly with section 251(c) of the Act, which requires

41 *Id.* ¶ 270.

42 *See id.*

43 *Id.*

44 *See Notice* at Appendix C, ¶ 270 n.717 (noting that the default rules do not "alter any obligations of incumbent LECs' to interconnect at any technically feasible point, nor does the rule alter carriers' ability to request interconnection").

the ILEC to interconnect with a CLEC at any technically feasible point. As a result, the default rules could disrupt interconnection arrangements, including efficient two-way trunking arrangements and fiber meet arrangements, that are working today and were reached after years of negotiation and litigation. Substantial traffic is exchanged today at rates of $0.0007 or less or pursuant to bill-and-keep agreements, at mutually agreed upon interconnection locations. The Commission's proposal to give ILECs control over the point of interconnection also could encourage the inefficient use of network facilities. Section 51.321 of the Commission's rules, for example, require ILECs to make interconnection available either through collocation or at a meet point. Neither the Commission's rules nor the statute confer on ILECs the right to directly interconnect at a point on a CLEC's network, but the proposed default rules could be interpreted to permit that result.

The default rules, as proposed in Appendix C, also would impose an asymmetric obligation on competitive LECs that exchange traffic with rural rate-of-return ILECs. Under the default interconnection rule proposed in Appendix A, an originating carrier would have an obligation to deliver traffic to the edge of the terminating carrier, either an end office or tandem switch owned by the terminating carrier.[45] Under the rule proposed in Appendix C, however, a rural rate-of-return ILEC could insist that other carriers pick up the rural ILEC's *originating* traffic at the rural ILEC's edge, rather than the edge of the terminating carrier.[46] Consequently, carriers seeking to exchange traffic with rural rate-of-return ILECs through indirect interconnection would be required to pay for tandem transit service for traffic that originates as well as traffic that terminates on the carrier's network.[47]

45 *Notice* at Appendix A, ¶ 275.

46 *Notice* at Appendix C, ¶ 270.

47 *Id.*

The Commission should decline to adopt these backward-looking default interconnection rules. The Commission instead should use the next several years to monitor and evaluate marketplace developments to determine whether default interconnection rules are even needed. In the alternative, the Commission could seek comment as part of a further notice in this proceeding on the need for new default interconnection rules.

6. *Reject the OPASTCO/WTA subsidy proposal*

In an October 29, 2008 *ex parte*, the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") and the Western Telecommunications Association ("WTA") suggested that rural rate-of-return ILECs should be given access to revenue streams that serve only one purpose: shielding them from the effects of competition.[48] Under their proposal, rate-of-return ILECs would be entitled to USF support to replace "all of the revenues lost as a result of the mandated reductions in intercarrier compensation that are not otherwise recoverable through increases in SLCs" throughout the ten-year transition, *regardless of the carriers' overall costs and revenues*.[49] Rate-of-return ILECs committing to the Commission's five year broadband build-out requirement for ILECs would also be compensated for losses in access lines and interstate and intrastate minutes of use, using 2008 as the base year.[50]

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48 Letter from John Rose, OPASTCO, and Kelly Worthington, WTA, to Marlene H. Dortch, FCC Secretary, CC Docket No. 01-92 (Oct. 29, 2008).

49 *Notice* at Appendix C, ¶ 321.

50 *Id.* This second component of the OPASTCO/WTA proposal would remain in effect for the first five years of the transition and would be capped at $100 million in year one, $200 million in year two, $300 million in year three, $400 million in year four, and $500 million in year five. Prior to year five, the Commission would conduct a proceeding to determine if modifications are required.

This proposed "make-whole" subsidy for rate-of-return ILECs would serve no public interest goal. Most importantly, this anachronistic approach ignores the fact that in the 21st century, ILEC profitability no longer depends exclusively on the revenues and costs of local exchange service. Just like price cap ILECs, most rate-of-return ILECs now use their network plant to provide numerous services to rural customers that are not subject to price regulation, including long distance voice, broadband Internet access, and multichannel video service. In addition, many states have deregulated local exchange rates, permitting ILECs to raise those rates. The Commission should account for *all* of these revenues in considering any replacement funding for rate-of-return ILECs. Certainly, the Commission should not presume in its order that subsidies are necessary to enable rate-of-return ILECs to provide service as the carrier of last resort ("COLR"), but should instead thoroughly evaluate the availability of revenues from other sources to sustain the latter goal. On a forward-looking basis, the carrier of last resort responsibility is unlikely to require a subsidy at the same level as the sum of current implicit and explicit subsidies. These subsidies were based on the deficit between historic costs and historic revenues. Thus, these subsidies did not take into consideration the revenue potential from unregulated or lightly-regulated services, or the potential for cost reductions and cost sharing using new technology. Finally, even if a "make-whole" paradigm is applied to rate-of-return regulated carriers, this paradigm would have to reduce the size of any subsidy in order to adjust for the steep decline in the net book value of the rate base, which has occurred as a result of the substantial growth in depreciation reserves.[51]

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[51] The ratio of plant reserves to total plant for Telephone Companies subject to the FCC's Represcription Process, has grown from 37.7% in 1990 to 73.6% in 2007. *See* ARMIS Report 43-02 Table B1.

Moreover, the OPASTCO/WTA proposal is not competitively neutral. By perpetuating rate-of-return ILECs' access and transport revenues at current levels, this flawed plan would give these carriers an assured revenue stream that is insulated from the competitive pressures that would otherwise encourage these ILECs to reduce costs and improve the quality of their services. In contrast, Comcast and other competitors not only would be required to contribute to underwriting the cost of this subsidy, but also would be ineligible for such recovery revenues themselves. This would deter competitors from extending their services into more remote, high cost areas. Certainly, at a time that the Commission is attempting to halt the accelerating growth of the USF, it would be bad policy to establish a new, competitively-biased element to this program. Instead of adopting the OPASTCO/WTA proposal, the Commission should follow the approach outlined in Appendix A of the *Notice* for rate-of-return carriers; there, the Commission proposed that rate-of-return ILECs would be eligible for additional USF support only if they could establish that, absent such support, they will not have a reasonable opportunity to earn a fair rate of return.[52]

In any event, the Commission should make clear that rate-of-return ILECs, just like all other ILECs, have an obligation to enter into interconnection agreements with Comcast and other requesting CLECs.[53] This obligation encompasses agreements that address not only intercarrier compensation, but also number porting and other rights and responsibilities under section 251(b).

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52 *Notice* at Appendix A, ¶ 322.

53 *See, e.g., supra* note 27; Comments of Comcast Corporation, WC Docket No. 08-56, at 1 (May 19, 2008) ("wholesale providers of telecommunications services, such as Comcast's certificated affiliate in Vermont, are entitled to request and obtain interconnection with other telecommunications carriers, pursuant to sections 251 and 252 of the Communications Act of 1934, as amended").

7. *No penalty for traffic delivered with required call information*

To discourage service providers from attempting to avoid their financial obligations by mislabeling or concealing the source of traffic, the Commission proposes to allow terminating service providers to charge their highest terminating rates to intermediate providers that deliver traffic without required call information, or that otherwise fail to provide such information.[54] The Commission proposes that, if the intermediate provider is subject to this "highest rate rule," the intermediate provider could, in turn, pass along the higher terminating charge to the provider that delivered the inadequately labeled traffic to it.[55] As discussed below, the Commission should clarify that it will not permit a terminating carrier to charge its highest terminating rate, or an intermediate carrier to pass on the higher terminating charge, if the originating carrier delivered the traffic to the intermediate carrier with the required call information intact.

In Comcast's experience, there are instances in which it delivers traffic to an intermediate transit carrier with the necessary signaling information, but the terminating carrier claims that it is unable to determine the originating point of the traffic. There may be a variety of technical reasons that cause this problem, none of which is attributable to Comcast. For example, the terminating carrier's end office may lack the technical capability to record the signaling information transmitted by the intermediate carrier.[56] In other cases, the intermediate carrier may furnish to the terminating carrier only summary information that does not include an indication of the jurisdiction of the traffic. These problems may arise when the traffic is

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54 *Notice* at Appendix C, ¶ 322.

55 *Id.*

56 *See, e.g.*, "Verizon's Proposed Regulatory Action to Address Phantom Traffic," attached to Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC Secretary, CC Docket No. 01-92, at 9 (Dec. 20, 2005) (acknowledging that call information may be "lost somewhere in the call path, because the originating carrier or an intermediate carrier employs multi-frequency ("MF") trunks, which do not have SS7 capability").

delivered by the intermediate carrier to the terminating carrier via Extended Area Service or local trunk groups, rather than Feature Group D trunk groups that contain Carrier Identification Codes.

Regardless of the technical reason that the terminating carrier is unable to determine the identity of the originating carrier or the regulatory classification of the traffic, the basic point is that the problem is not the result of any action or inaction by Comcast. Consequently, the terminating carrier should not be permitted to assess its highest terminating charges for such traffic. Similarly, in the event that the terminating carrier is allowed to charge its highest terminating rate to the intermediate provider, the intermediate provider should be prohibited from passing along that charge to an originating provider that delivered the traffic with the required call information intact.[57]

C. The Commission Should Affirm that Transit Arrangements are Subject to the Section 251/252 Negotiation and Arbitration Process

The Commission requests comment on whether its proposed reforms necessitate the adoption of any rules or guidelines for "transit service."[58] "Transit" refers to the transmission arrangements through which providers such as Comcast are able to interconnect indirectly with other voice providers where the traffic volumes do not justify a direct connection. These arrangements are vital to the ability of Comcast and other competitive facilities-based providers to offer ubiquitous termination to their customers. As the Commission has recognized, transit is the only practical and economical way for a competitive carrier to originate and terminate calls

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57 Verizon recently proposed to limit the "highest rate" remedy to situations in which the intermediate provider fails to furnish any information to the terminating carrier. *See* Letter from Susanne Guyer, Verizon, to Kevin Martin, FCC Chairman, *et al.*, CC Docket No. 01-92, at 6 (Oct. 28, 2008). In the event that the FCC were to adopt the proposed limit, it similarly should ensure that, where an originating carrier has furnished the required information to the intermediate carrier, the originating carrier will not be held liable for the higher rate.

58 *Notice* at Appendix C, ¶ 344.

with all other providers.[59] Were this service unavailable, a competitive service provider would have to connect directly with every ILEC, CLEC and CMRS provider in each local market before it could even begin to deploy services. Constructing such a large number of direct connections for often minimal amounts of traffic is cost prohibitive and highly inefficient.[60]

The remaining regional Bell operating companies ("RBOCs") are dominant in the provision of transit service. They are uniquely positioned to provide this service, and they have the incentive and ability to raise prices unilaterally in order to disadvantage competitors. Currently, Comcast uses tandem transit service provided by the larger ILECs to exchange switched voice traffic with almost every other CLEC and many rural ILECs throughout the country. Comcast also uses tandem transit to exchange traffic with wireless carriers in many markets, as well as competitive carriers that act in partnership with interconnected VoIP providers. Because Comcast and other voice providers have no ubiquitous alternative to incumbent LEC tandem transit service to interconnect with CLECs and other carriers, tandem transit service is a bottleneck controlled by the incumbents.

In light of these circumstances, the most effective, pro-competitive action the Commission could take at this point with respect to transit service would be to affirm unequivocally that transit arrangements are subject to the section 251/252 negotiation and arbitration process. Under sections 251 and 252, the Commission has clear authority to mandate the provision of transit service by ILECs. Section 251(b)(5) requires all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications," and section 251(c)(2) imposes on ILECs an obligation to provide interconnection "for the

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59 *See, e.g., Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, ¶¶ 125-126 (2005).

60 *Id.* ¶ 126.

transmission and routing of telephone exchange service and exchange access."[61] Nothing in the language of either statutory provision suggests that the obligation is confined to traffic that originates or terminates on the ILEC's own network. Under the statute, an ILEC must allow direct interconnection for the transmission or routing of traffic to and from other networks, and it must agree to just and reasonable compensation arrangements for the transport and termination of such traffic to or from any carrier with which it is interconnected.

Given the RBOCs' control over this bottleneck service, it is crucial that the Commission confirm an ongoing transit obligation on ILECs pursuant to sections 251(b)(5) and 251(c)(2). This action would promote facilities-based competition by ensuring a fair, cost-based pricing standard for transit service and the availability of a dispute resolution mechanism at the state commissions.

II. Comcast Supports the Commission's Proposal to Implement a Numbers-Based System for Assessing Contributions for Residential Customers to the USF

As required by the Commission's decision in 1997, telecommunications providers currently contribute to the universal service fund based on their interstate and international end-user telecommunications revenues.[62] As the Commission describes, however, two key issues in recent years have raised serious questions about this USF contribution approach. First, the total assessable revenue base has declined over time, from about $79.0 billion in 2000 to about $74.5 billion in 2006.[63] In combination with the growth of USF disbursements, this decrease has resulted in a steady rise in the contribution factor used to determine USF contribution amounts,

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61 47 U.S.C. §§ 251(b)(5), 251(c)(2).

62 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 843-844 (1997).

63 *Notice* at Appendix C, ¶ 90.

jeopardizing the stability and sustainability of the USF mechanism.[64] In addition, changes in technology and services have made the revenue-based contribution mechanism difficult to administer. Revenues from interstate telecommunications services are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services.[65] With the emergence of technologies such as wireless and interconnected VoIP that are incompatible with rigid jurisdictional boundaries, the distinction between interstate and intrastate revenues has blurred even further.

Comcast applauds the Commission's shift to a universal service contribution mechanism that reflects and complements marketplace and technological developments as much as possible. In the *Notice*, the Commission responds to the developments described above by adopting a telephone numbers-based methodology under which contributors would pay a flat-rate based on the number of telephone numbers "that are actually in use by end users for services that traverse a public interstate network."[66] Comcast supports this approach and believes that this change would yield considerable benefits for both contributors and end users. Comcast agrees that this new methodology is competitively and technologically neutral, and that it would simplify the contribution process and provide predictability regarding the size of parties' universal service contributions and the pass-through charges for end users. This shift would eliminate the

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64 *Id.*

65 *Id.* ¶ 91.

66 *Id.* ¶¶ 101, 112. In Appendix C of the *Notice*, the Commission sets the per-number assessment at the fixed rate of $1.00 per residential number per month. *Id.* ¶ 101. In its alternative USF proposal in Appendix B of the *Notice*, the Commission proposes an initial per-number assessment of $0.85 per residential number per month. *Notice* at Appendix B, ¶ 59.

incentives under the revenue-based approach for providers to move to services and technologies that are either exempt from contribution requirements or are subject to safe harbors.

Comcast also supports the Commission's decision to request comment on an appropriate contribution methodology for providers of business services. Specifically, the Commission asks whether these providers should be required to contribute to the USF on a per-connection basis.[67] Comcast agrees with the Commission that it is necessary to develop a full record on this novel approach before reaching a decision on this issue. Until that decision, providers of business services should continue to contribute based on interstate and international revenues.

CONCLUSION

For the foregoing reasons, the Commission should take the steps outlined above in order to ensure that its twin goals of a sustainable universal service regime and a uniform intercarrier compensation regime that benefit consumers as well as carriers are met.

Respectfully submitted,

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November 26, 2008

67 *Notice* at Appendix C, ¶ 340.

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 26th day of November, 2008, I caused true and correct copies of the foregoing Comments of Comcast Corporation to be mailed by electronic mail addressed to:

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