BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

COMMENTS OF THE CALIFORNIIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA

The California Public Utilities Commission and the People of the State of California (California or CPUC) submit these Comments in response to the *Further Notice of Proposed Rulemaking* (*FNPRM*) released November 5, 2008, by the Federal Communications Commission (FCC or Commission)[1] in the above-captioned proceedings. Because of severe time constraints imposed by the FCC's very tight comment schedule, the CPUC is unable to comment on all issues, and is further limited to narrowly-tailored comments on those issues addressed here. California's silence on particular issues does not connote agreement or disagreement with any of the proposals contained in the *FNPRM*.

I. INTRODUCTION

California appreciates the time and effort that the Commission and all parties to these proceedings have expended trying to find a solution to the problems identified in the programs addressed in the *FNPRM*. Intercarrier compensation (ICC) reform is long overdue, given that the current scheme was conceived and implemented in a bygone era. The current ICC scheme promotes regulatory arbitrage in some areas, is not technology-neutral, and does not create a level playing field for competitors. Further, universal service reform also should be undertaken hand-in-hand with ICC reform. Thus, the CPUC does not wish to delay the adoption of needed changes to these programs, and recommends that the FCC finally adopt reforms.

The aggressive pleading cycle for this *FNPRM*, however, does not provide the CPUC adequate time to fully analyze the potential impact of many of the major changes proposed to the existing intercarrier compensation schemes as well

[1] *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking (Order; FNPRM),* FCC 08-262, Released: November 5, 2008.

as to the federal universal service programs. Therefore we submit comments today on some of the proposals in this *FNPRM*, but reserve the right to comment at a later date on other items in this *FNPRM*.

We note that the *FNPRM* consists of three parts: Appendices A, B, and C. Appendix A is the "Chairman's Proposal"; Appendix B is the "Narrow Universal Service Reform proposal"; and Appendix C is the "Alternate Proposal". California's comments are focused *primarily* on the Chairman's Proposal, referred to throughout these Comments as Appendix A. To the extent that provisions of Appendix A are mirrored in either of the other two appendices, the CPUC's comments apply equally to those parallel provisions. Where Appendix A contains proposals absent from the other Appendices, the CPUC's comments pertain solely to the Chairman's Proposal.

II. CLASSIFICATION OF IP-ENABLED SERVICES

In the portion of Appendix A devoted to "Reform of Intercarrier Compensation", the Chairman proposes the following:

> [To] now classify as "information services" those services that originate calls on IP networks and terminate them on circuit-switched networks, or conversely that originate calls on circuit-switched networks and terminate them on IP networks (collectively "IP/PSTN" services). [Fn. omitted] Such traffic today involves a net protocol conversion between end-users, and thus constitutes an "enhanced" or "information service."

The CPUC has serious concerns about the Chairman's conclusion that IP/PSTN services are "information services". California objects to this proposed classification initially for two reasons: 1) the classification implicates myriad federal and/or state regulations currently applied to IP/PSTN services, and 2) the rationale for the classification is far too broad.

Regarding the Chairman's rationale for the proposed "information service" classification, Appendix A states that because such traffic "involves a net protocol conversion between end-users" it is therefore an information service. This rationale would apply equally to many services which today are not classified as information services. For instance, such a definition would encompass analog-to-digital and wireless-to-wireline conversions. If the Commission adopts the Chairman's proposed classification in a final order in this docket, it must clarify and delineate the basis for the classification of IP/PSTN services as information services. But, California opposes such a classification.

Aside from the fact that the type of protocol conversion Appendix A attributes to calls originating on IP networks and terminating on the PSTN could also be attributed to other services that are plainly "telecommunications services", the proposal to classify IP/PSTN services has vast and far-reaching implications which the *FNPRM* does not acknowledge or address. The potential effects of the Chairman's proposed classification of IP/PSTN service are so extensive that California is compelled to oppose this classification as currently articulated. First and foremost, it appears to cast in doubt a host of federal and/or state regulations pertaining to public safety, universal service funding, regulatory fees, law enforcement, consumer protection, and number portability.[2]

The CPUC notes that the FCC has extended to VoIP and IP-enabled services a number of requirements previously imposed on telecommunications service providers, both wireline and wireless. For example, the FCC has required VoIP service providers to contribute to the Federal universal service fund. Once that service is classified as an information service, it arguably would fall outside the contribution methodology set forth in the 1996 Telecommunications Act. Section 254(b)(4) states that "[a]ll providers of *telecommunications services* should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service".[3] The Act contains no comparable provision for "information services". While the FCC has enacted regulations applicable to VoIP and IP-enabled services pursuant to its ancillary jurisdiction pursuant to Title I of the Communications Act, an FCC order cannot modify a statutory provision which mandates that "telecommunications" service providers (and apparently *only* telecommunications service providers) should contribute to universal service. That provision, on its face, simply would not apply to IP/PSTN providers once the service they offer is classified as an "information service".

Similarly, the FCC has required VoIP providers to comply with the Commission's mandates for provision of Telecommunications Relay Service

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[2] This list is not intended to be inclusive.

[3] 47 U.S.C. 254(b)(4), emphasis added.

(TRS), and has required VoIP providers to comply with the FCC's CPNI rules. The Commission has imposed these requirements pursuant to its Title I jurisdiction.[4] (California notes that states have limited jurisdiction under Title I, but extensive jurisdiction under Title II.) As with universal service funding, the FCC has mandated compliance while refraining from classifying IP/PSTN as an information service. The CPUC is concerned that once IP/PSTN services are irrevocably classified as information services, the applicability of those mandates also will be in question, given the statutory definition of "information service", and the scope of both FCC and state jurisdiction delineated in Titles I and II. Perhaps the better path at this point is for the Commission, as it has done in prior cases, to make the necessary changes to the intercarrier compensation and universal service framework without deciding that IP/PSTN services are information services. Indeed, the classification of IP/PSTN is a matter substantial enough to warrant a separate FCC order with appropriate discussion and rationale.

The Chairman offers a nod to the implications of the "information service" classification on universal service. In footnote 536, Appendix A reads as follows:

> For example, states are free to require contributions to state universal service or telecommunications relay service funds through methodologies that are consistent with federal policy.

[4] *See*, for example, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-22, CC Docket No. 96-115, WC Docket No. 04-36, Released: March 13, 2007, ¶¶ 55, "We conclude that we have authority under Title I of the Act to impose CPNI requirements on providers of interconnected VoIP service. Ancillary jurisdiction may be employed, in the Commission's discretion, when title I of the Act gives the Commission subject matter jurisdiction over the service to be regulated … and the assertion of jurisdiction is 'reasonably ancillary to the effective performance of [its] … various responsibilities'."

The Chairman's suggestion that the states could require IP/PSTN service providers to contribute to state universal service programs once the service offered is classified as an information service is questionable. It is unclear how the "information service" classification would affect state authority to collect universal service monies. Traditionally, the CPUC may collect only universal service fees on telecommunication services.[5] Should service from IP/PSTN be classified as information services, the CPUC may be precluded from assessing universal service support contribution fees on these services.

At the same time, the Chairman foresees a fairly substantial role for states, even with regard to the IP/PSTN traffic which he proposes to classify as an "information service". In the Chairman's proposal, states are tasked with establishing "interim, uniform reciprocal compensation rates," and "IP/PSTN traffic ultimately will be subject" to those rates.[6] States should have a role in

[5] At various places (A43-44, ¶¶ 98-101, and A97-98, ¶ 218 and note 564), the Commission references the fact that an information service can have a telecommunications component, invoking the language in 47 USC 153(20) that an information service can be the "offering of a capability for … making available information *via* telecommunications" (emphasis added). The Chairman apparently is proposing that the offering of "telecommunications", as opposed to a telecommunications service", can form the predicate of state authority to assess universal service fees, but the long-term effect of such a classification remains uncertain. *Compare Universal Service Contribution Methodology NPRM*, 21 FCCR 7518, ¶¶ 40-41 and fn. 139 (confusion between "offer" and "provide" in relation to telecommunications service). 47 USC 254(f) concerns state authority with regard to universal service funds, and provides that "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." Telecommunications carriers offer "telecommunications services." 47 USC 153 (44). It is unclear whether the CPUC would have authority to compel an "information service" to pay such fees based on what is at best an input to the service they are offering.

[6] Appendix A, ¶¶ 194-95, and fn. 564.

establishing such rates, similar to their role in setting rates for unbundled network elements. But once IP/PSTN service is classified as an information service, California would not have regulatory authority over such traffic unless the FCC delegated appropriate authority, or Congress enacted relevant legislation.

Finally, the classification of IP-PSTN traffic as an "information service" raises questions about the interconnection rights of the providers of such services. Section 251(a) of the Communications Act (47 U.S.C.) requires that "telecommunications carriers" interconnect with all "other telecommunications carriers," but is silent as to the rights of information services, if any, to compel such interconnection.[7] This distinction was the subject of the Vermont Telephone Company (VTel) Petition for Declaratory Ruling submitted to the FCC in April 2008.[8] In its Petition, VTel asserted that it was not compelled by the provisions of 47 U.S.C. 251 and 252 to interconnect with a company which represented itself as a VoIP provider. The Chairman's proposed classification of IP/PSTN services as "information services", without any further explication of the ramifications of the classification, could provide telecommunications providers with a basis to deny interconnection to VoIP or IP-enabled service providers. Such a result would neither enhance competition nor place the voice providers on a level playing field.

[7] When the 1996 Act was passed, information service providers who offered voice services constituted a nascent industry.

[8] Petition of Vermont Telephone Company for Declaratory Ruling Whether Voice over internet Protocol Services Are Entitled to the Interconnection Rights of telecommunications Carriers, WC Docket No. 08-56, filed April 11, 2008.

III. UNIVERSAL SERVICE REFORM

A. Cap on High Cost Fund

The Commission proposes to cap high cost support in LEC service areas at the total amount of high-cost support disbursed to the incumbent LEC ETC in December 2008 on an annualized basis. Funding for competitive ETCs would be based on their own costs as compared to the relevant high cost thresholds. In addition, the FCC would cap the overall size of the high-cost mechanism "to protect customers in all areas of the nation from increasing universal service contribution assessments."[9]

California does not support a permanent across-the-board cap on federal high-cost support because such a step would not appropriately target the subsidies to the actual high-cost areas. The first step to be taken in correcting the federal high-cost support program is to determine with more granularity the actual high-cost areas existing today, and to target more narrowly support only to those areas. Capping all five legacy high-cost support mechanisms across the board at current levels would be an arbitrary cap. A more effective long-term solution would be to reform the program to deliver high-cost support to truly high cost areas. In particular, the current methodologies for High Cost Loop, Local Switching, and Interstate Common Line Support are not well targeted, and provide support to companies whose costs are simply above average, but not truly high. The concept of a benchmark contemplated in the Joint Board's *Recommended Decision* is a

[9] *NPRM*, Appendix A, ¶ 12.

positive step, but more needs to be done to ensure support only goes to truly high cost areas.[10] A temporary cap on high cost support while the Commission determines the appropriate methodologies to better target support may be an appropriate short-term fix. A permanent cap will simply fix in place the flaws inherent in the current system and would not be a positive step toward a permanent long-term solution

California recommends that the FCC establish a process and a timetable to review and modernize the existing high-cost mechanisms for rural and non-rural carriers, with the objective of developing a coherent system that can be applied to all incumbent carriers, as recommended by the Federal-State Universal Service Joint Board in its November 2007 *Recommended Decision.*[11]

B. Eliminate the "Identical Support" Rule

The CPUC refrains from commenting on this issue at this time as a similar issue is pending before the CPUC in the California High Cost Fund-B proceeding, Rulemaking (R.) 06-06-028.

C. Condition High Cost Support on a Requirement that the ETC Commit to Deploy Broadband to 100% of Service Territory in Five Years

California strongly supports deployment of broadband to all areas of the state and, indeed, has initiated a state program to subsidize infrastructure

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[10] In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service; WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision (FCC 07J-4), adopted November 19, 2007, released November 20, 2007.
[11] *Id* at ¶ 23.

deployment in unserved and underserved areas of California.[12] While the goal is laudable and well supported by federal and California laws and policies, the penalty strikes us as draconian, given that there will be a transition period that may cause rural providers some financial hardships. The FCC's comment schedule has not afforded California sufficient time to fully analyze the impact of the proposal in this *FNPRM* to condition ETC high cost support on the requirement that the ETC commit to deploy broadband throughout its service area within five years. The CPUC will continue to analyze the impact of this proposal, as well as the OPASTCO/WTA proposal to provide increased high cost support to rural rate-of-return carriers for such deployment, to determine the impact on California carriers and ratepayers. We reserve the right to comment on these proposals in our Reply comments or at some other appropriate time.

D. Implement Reverse Auctions

As we have noted in past comments to the Commission, in 2007 the CPUC concluded that a reverse auction process ultimately offers a superior solution to cost proxy model updating as a basis for determining support levels in certain high-cost areas of California. However, because the CPUC is currently considering issues regarding the appropriate rules for, and the design of, a reverse auction mechanism, we cannot at this time comment on the specifics of the reverse auction proposals in this *FNPRM*.

[12] CPUC Decision (D.) 07-12-054.

E. Establish a Three-Year $900 Million Pilot Program to Provide Link-up/Lifeline Subsidies For Internet Access

The CPUC takes no position on this proposal here because we have had inadequate time to analyze the potential effects on the California draw on the universal service fund. We reserve the right to address this question in reply comments. At the same time, the CPUC urges the FCC, should it adopt such a program, to require all broadband providers to contribute to the fund.

F. Moving to a Numbers-Based Universal Service Contribution Methodology

Appendix A proposes to adopt a numbers-based system for collecting universal service support. The Chairman's proposal would create a new category of numbers, "assessable" numbers, with the new definition augmenting the six number categories the FCC created in its first *Report and Order* in the Numbering Resources Utilization docket, CC Docket No. 99-200.[13] Carriers would be expected to assess $1.00 per *residential telephone number* per month. The Chairman's proposal contemplates a different approach for business services, i.e., "these services should be assessed based on their connection to the public network".[14] The CPUC does not oppose this approach, but as outlined in the *FNPRM*, the approach raises some questions.

[13] *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-104, CC Docket No. 99-200, Released: March 31, 2000.

[14] *FNPRM*, Appendix A, ¶ 131.

First, it is not entirely clear how the category of "assessable" numbers would interface with the other definitions. Specifically, the FCC has not stated whether carriers will be expected to report "assessable numbers" in their NRUF reports submitted bi-annually to the North American Numbering Plan Administrator (NANPA). In truth, assessable numbers will serve a purpose – forming the basis for contributing to universal service support - very different from the purpose of other number categories – intended to show how efficiently carriers are using numbers. Nonetheless, the FCC should clarify whether carriers will be expected to report on their assessable numbers to the NANPA.

Second, the FCC has proposed the flat monthly rate for residential customers and a connections-based approach for business customers. Further, Appendix A proposes an alternative methodology for telephone numbers "assigned to handsets under a wireless prepaid plan".[15] But, nowhere in Appendix A does the Chairman's proposal articulate how *wireless* carriers are to be treated. Wireless providers consistently represent that they do not provide either "residential" or "business" services. Rather, they just provide "wireless service". Given that, the Commission should clarify in a final order by what mechanism wireless providers are to contribute to universal service – via a $1.00 per month per number, or via a yet-to-be-established "connection-based" plan.

[15] *FNPRM*, Appendix A, ¶ 135.

IV. INTERCARRIER COMPENSATION REFORM

A. Transition to Unified Terminating Rates

California strongly supports efforts to reform the intercarrier compensation regime. We agree it must be overhauled. The CPUC, however, has some concerns about the proposal in Appendix A to move terminating rates to uniform rates over a ten-year period. However, as proposed in Appendix A, the plan favors the large carriers, yet could have substantial negative financial consequences for small rural carriers and their subscribers, as well as for some mid-size companies.

We note that the proposed end default terminating rate of between 0 and 0.0007 per minute of use is far below the current rates of California's rural carriers. Rough estimates of the possible impact of the plan in California show, prior to SLC/EUCL offsets, a total loss of almost $60 million in intrastate access revenues for California incumbent companies at the end of two-year Stage 1. At the end of Stage 3, assuming all the incumbent companies are charging the 0.0007 rate for terminating access, the loss of interstate and intrastate access revenues, prior to SLC/EUCL offsets, would be close to $170 million just for California's incumbent local exchange companies. Assuming the incumbent carriers all increase their SLCs/EUCLs up to the new caps, the small rural rate of return carriers would still have a loss deficit of an estimated $34 million. Rural carriers may decide that they will have to increase rates substantially for rural consumers.

California supports an approach that uses different transition tracks for carriers based on economic differences, similar to the three-track approach in the Missoula Plan. The FCC must take into account the high costs and lack of competition in the study areas of some rural rate-of-return carriers. Because Federal law requires that rural rates be reasonably comparable to urban rates, California is concerned about the impacts on rural rates that may ensue. Alternately, the carriers may feel they will need to reduce capital investment and/or cut labor costs, impacting broadband rollout in rural areas, service quality, and customer service. Given the desire to encourage broadband deployment and the state of the national economy, we are concerned about the adverse impacts of such an access charge reduction plan.

The CPUC is analyzing the OPASTCO/WTA proposal noted in Appendix C to automatically permit rural rate-of-return carriers to recover through supplemental Interstate Common Line Support (ICLS) the lost revenues not otherwise recoverable through increases in SLCs.[16] This proposal would appear to provide a reasonable solution to avoid rate shock or economic distress to carriers in rural areas during the ten-year transition. We reserve the right to comment on this proposal in our Reply comments or at some other appropriate opportunity.

California does not support the "revenue neutrality" concept. Recovery of lost revenue should be accomplished on a net basis, taking into account such factors as the natural decline in revenue resulting from competition from other

[16] *FNPRM*, Appendix C, ¶¶ 320, 321.

communications technologies such as wireless and VOIP. Interstate access revenue has been declining in recent years, and any recovery must take into account the downward trend in ILEC wireline minutes of use and declining line counts. Any federal recovery mechanism should reflect these declining revenue trends.

California also urges the Commission to require interexchange carriers to pass through to their subscribers any savings from the reductions in terminating access charges. If these carriers are not required to pass through these savings, then the amount saved should at least be deducted from any revenue loss figures.

Furthermore, recovery of lost revenues (both intrastate and interstate) through SLCs/EUCLs presents a problem because such revenue is booked to interstate revenues only. To ensure fairness, an appropriate allocation of these monies should be made to intrastate revenues – otherwise California's universal service programs would be adversely impacted.

B. Phantom Traffic Solution

The Chairman proposes to fix the Phantom Traffic problem by modifying its rules to prohibit stripping or altering information in the SS7 call signaling stream. Appendix A also expands the scope of its existing rule regarding passing CPN, which currently applies only to service providers using SS7, and only to interstate traffic. It extends these requirements to all traffic originating or terminating on the PSTN, including jurisdictionally intrastate traffic. Appendix A also proposes to amend the FCC's rules to require service providers using MF signaling to pass CPN information, or the charge number (CN) if it differs from the CPN, in the Multi Frequency Automatic Number Identification (MF ANI) field.

California supports these phantom traffic solutions in the FNPRM and urges the FCC to adopt and implement the new rules as soon as possible.

C. Use of TELRC Methodology or Incremental Cost Standard

The FCC asks whether the additional cost standard utilized under § 252(d)(2) of the Act should be: (i) the existing TELRIC standard; or (ii) the incremental cost standard described in the draft order. California is still analyzing the implications of the FCC's proposed Incremental Cost Standard. We reserve the right to comment on this proposal in our Reply comments or at some other appropriate opportunity.

D. Single Statewide Reciprocal Compensation Rate v. Single Rate Per Operating Company

The FCC asks for comment on whether the terminating rate for reciprocal compensation traffic should be set as (i) a single, statewide rate; or (ii) a single rate per operating company. The CPUC is still analyzing the two approaches. California recommends, however, that the states be given substantial flexibility to determine the appropriate reciprocal compensation or terminating rates for

California carriers. We reserve the right to comment on this proposal in our Reply comments or at some other appropriate opportunity.

V. CONCLUSION

For the reasons stated, the CPUC urges the FCC to modify its proposal consistent with the positions advocated in these comments. If the Commission does not act in response to these comments, it should allow additional time for comment so that all parties can analyze the various proposals contained in the *FNPRM*, and then modify the plan in light of those additional comments.

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