

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**COMMENTS  
OF THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The Public Service Commission of Wisconsin (PSCW) respectfully submits these initial comments in response to the Federal Communications Commission's (Commission's) Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned dockets.<sup>1</sup> The FNPRM is included with an Order on Remand in the *ISP Remand Order* case and a Report and Order dismissing the *Comprehensive Reform Recommended Decision* of the Federal-State Joint Board on Universal Service. The FNPRM requests comments regarding three attached proposed orders

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<sup>1</sup> Notice in docket WC Docket No. 05-337, *et. al.*, released November 5, 2008, published in the Federal Register on November 12, 2008, (73 Fed. Reg. 66821).

and associated issues in the numerous captioned dockets. In its many previous submissions in these dockets,<sup>2</sup> the PSCW has commented on a number of the issues, and appreciates the opportunity to do so again. The short time frame provided in which to prepare comments on the most recent notice limits the extent to which the proposals and their voluminous details can be thoroughly reviewed. Therefore, a lack of comment herein on any particular feature should not be considered to be support for that feature.

### **Phantom Traffic**

In the proposals in both Appendices A and C of the FNPRM, the Commission sets forth draft rules to require transiting providers to provide sufficient detail to allow terminating providers to identify, and bill, originating providers. Further, when such call detail is lacking, the Phantom Traffic provisions allow third-party recipients to bill the transit provider. As the PSCW stated in its December 22, 2006, comments on the Missoula Phantom Traffic proposal, indirect exchange of traffic among providers necessitates the exchange of appropriate and accurate information about the traffic that is passing through the network. Wisconsin has a large number of independent local exchange carriers, and the problems related to Phantom Traffic are both serious and pressing for those companies. The proposed Phantom Traffic provisions will substantially advance resolution of these problems. The PSCW applauds the Phantom Traffic proposals in Appendices A and C and recommends that the Commission include that portion of the proposed order in any comprehensive order issued in these dockets. To the extent the Commission does not take comprehensive action in the near future, the PSCW encourages the Commission to issue a stand-alone order adopting the Phantom Traffic proposals set forth in Appendices A and C. These provisions are conceptually similar to earlier proposals on Phantom

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<sup>2</sup> The various comments of the Public Service Commission of Wisconsin are listed in Appendix A.

Traffic that were subject to significant scrutiny and previous comment. The Phantom Traffic proposals presented here can and should be adopted quickly.

### **Universal Service Support for Broadband**

The PSCW agrees that broadband service is of critical importance to both business and residential customers in rural and non-rural areas of the state. The proposals in both Appendices A and C of the FNPRM make continued receipt of existing or new universal service support contingent upon incumbents making a commitment to roll out broadband service over a five-year period. The PSCW is concerned, however, that the timelines of both the expected deployment of broadband and the two-year time frame for large reductions in intrastate access revenues, the potential loss of existing support for various reasons, and the very tight credit market at present will make it difficult for some providers in Wisconsin to afford to make such investments.<sup>3</sup> This further raises concerns about the continued provision of quality, affordable voice services. If the Commission proceeds to mandate broadband deployment, to assure its ubiquitous availability, it would seem necessary that broadband be added to the list of federally-supported services. The reform plan should provide mechanisms to assure there is sufficient funding to roll out broadband services.

### **Assessment of Universal Service Fund Costs Based on Telephone Numbers**

The PSCW notes that this proposal, to change from revenue-based assessments, may well result in a reduction in the burden on both companies and regulatory staff in calculating universal service fund (USF) assessments. The intrastate Universal Service Fund in Wisconsin is funded by an assessment on revenues, and the challenges of the revenue-based approach are understood. The potential of assessing on numbers does offer an intriguing potential for some clarity and

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<sup>3</sup> However, the PSCW also shares the Commission's concern that a guarantee of revenue neutrality is not necessarily reasonable and could overly burden the federal universal service support system.

administrative ease, but there are complexities inherent in that approach also. Although the Commission has outlined the mechanics of an assessable numbers assessment process, this proposal may need ongoing clarifications as to telephone number identification and the allocation of USF responsibilities. Support for the USF should come from those who participate in the telecommunications marketplace and have an impact on the abilities to keep services universally available. A change to numbers, as opposed to revenues, as the determinant for USF payments will shift who supports the USF. Some providers who contributed before will no longer do so and some who did not pay before now will. Evaluating the fairness of that shift in responsibility is key to improving the entire USF process.

The PSCW also notes that the proposal calls for residential customers to pay a fixed rate --a rate which varies between Appendices--while business customers would pay a “residual” rate. The PSCW recommends that those numbers be calculated so that the proportional contributions to universal service made by residential customers and by business customers are not significantly altered by this new contribution method.

Finally, the Commission avers that the numbers-based approach to USF support will benefit number conservation. The PSCW suggests that this justification needs further scrutiny. While the users of numbers will in general have to support the USF, with the “carve outs” and exceptions embedded in the proffered numbers-based approach, it is not a certainty that this change to the USF funding mechanism will automatically and categorically translate to number conservation. Changing the USF assessment process to a numbers-based approach, as opposed to revenues may be supported by administrative improvements; it is not a guarantee that it also will conserve the scarce resource of numbers and area codes.

### **High Cost Support Funding for Rural Areas Served by Non-Rural Providers**

The PSCW previously<sup>4</sup> raised the concern that no funding is currently available for the rural areas of non-rural providers in Wisconsin. The PSCW has shown that Wisconsin consumers served by non-rural providers are less likely to have ubiquitous broadband service than customers of rural carriers. The proposed reverse auction approach fails to address this deficiency. Even if the non-rural providers sell off these areas--a result which is not unlikely if these providers are indeed compelled to invest in broadband--the draft rules still appear to set the reserve price for these areas at zero.

The Commission must commit to assuring there is a provider of broadband services for all Wisconsin consumers. While the approach of reexamination and the list of possible actions given at paragraph 47 of Appendix A seem like plausible solutions, nowhere does the proposal actually require the Commission to implement any of these actions. The Commission needs to rectify that oversight, and commit to implementing these actions to ensure that a broadband provider can be found for all areas throughout Wisconsin and the nation.

### **The Additional Costs Standard Utilized Under § 252(d)(2) of the Act**

The PSCW sees no need for discarding the Total Element Long-Run Incremental Cost (TELRIC) rules. The current wide range of usage-based rates is not due to any fundamental flaw in TELRIC itself. Instead, it is due to the inclusion of non-traffic sensitive costs (other than line port costs)<sup>5</sup> in traffic sensitive rates. If the Commission now determines that only traffic sensitive costs should be included in usage based rates, it can merely make that adjustment to its TELRIC rules. The Commission has not identified anything fundamentally wrong with TELRIC.

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<sup>4</sup> Most recently in comments dated May 18, 2008, June 28, 2007, both in WC Docket No. 05-337, and elsewhere.

<sup>5</sup> 47 C.F.R. § 51.509(b)

The new “additional costs” standard that the Commission is proposing is critically, if not fatally, flawed. It is not possible to separate the service of the origination of a call from the service of the termination of a call. Every single call that is completed must be both originated and terminated. The public switched telephone network, or a network of similar functionality, provides for two-way interactive communications. The network is not intended to broadcast calls to be heard by any random recipients or by all parties connected to the network. Any attempt to model origination without termination would be based on unrealistic and arbitrary assumptions. If the one product cannot be produced without also producing the second product, then economic theory does not support an attempt to model them separately. The “additional costs” standard should not be adopted without further consideration.

The PSCW also sees little factual basis for the conclusion that a fiber and soft switch-based network must be the lowest cost option for all providers and in all areas. Even the Commission proposed rules--which offer exceptions for satellite-based services and which contemplate that no providers will bid on some areas--indicate that technologies other than fiber and soft switch networks will persist as the least-cost technologies in some areas. In selecting a methodology, the Commission should not be dictating that particular factual conclusions should be made. Development of a complete record is needed to serve as a factual basis for conclusions regarding least cost technologies.

The PSCW also notes, with serious concern, that changing the cost standard for intercarrier compensation which will produce results much lower than TELRIC, while keeping TELRIC pricing for other services (like UNEs,) will create a further disparity in cost recovery, and may well result in a distorted market, opportunities for arbitrage, and disparate advantages and disadvantage for incumbents and new entrants. The Commission needs to examine the

probable impacts that such a change could have on the market--and then consider whether the TELRIC cost standard needs to be retained, modified or replaced for *all* services.

### **Statewide or Per-Company Terminating Rate**

The PSCW notes that the Telecommunications Act of 1996 (the Act), allows the “consolidation of state proceedings . . . to reduce administrative burdens on telecommunications carriers, other parties to proceedings, and the State commission.”<sup>6</sup> However, nothing allows the Commission to require a determination of a single, statewide rate<sup>7</sup> for reciprocal compensation and, in fact, rates must be determined separately for each carrier. The Act requires that the terms and conditions for reciprocal compensation must provide for “the mutual and reciprocal recovery by *each carrier* of costs associated with transport and termination” (emphasis added).<sup>8</sup> It may be the case that costs are sufficiently uniform to create a single, statewide rate, but that conclusion can only result from a study of each carrier’s costs.

### **Sufficiency**

The reverse auction proposal caps the total amount of federal universal service support. The FNPRM justifies the cap as necessary “to ensure that unsubsidized users who contribute to the fund are not harmed by excessive subsidization,” and states that “to manage the high-cost support mechanism effectively, we must control its growth . . .” However, neither of these factors outweigh the requirement of 47 U.S.C. § 254 that sufficient funding must be provided such that reasonably comparable services are available at reasonably comparable rates in all regions of the nation. Simply put, the PSCW disputes the FNPRM’s conclusion, “capping support in the manner discussed below will provide specific, predictable, and sufficient support

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<sup>6</sup> 47 U.S.C. § 252(g)

<sup>7</sup> As raised for comment at Para. 41 of the FNPRM.

<sup>8</sup> 47 U.S.C. § 252(d)(2)(A)(i)

to preserve and advance universal service.” The reform mechanism must be modified to meet the requirements of 47 U.S.C. § 254.<sup>9</sup>

The PSCW has repeatedly pointed out that its own USF High Rate Assistance Credit (HRAC) Program<sup>10</sup> has operated for over a decade, provides sufficient support to ensure that all customers have affordable access to supported services (which include data transmission), and does so without having subsidized providers unnecessarily. The HRAC program is available to all providers, and is efficient, affordable and effective. Once again, the PSCW recommends that the Commission consider such a program.

### **IP/PSTN Traffic as Information Service**

This sweeping classification<sup>11</sup> of calling between IP-enabled networks and the traditional circuit-switched networks (IP/PSTN) is not consistent with the facts or with sound public policy. For nearly the past 30 years, and thus for substantial periods before and after the 1996 passage of the Act, traditional telecommunications services have technologically evolved with increasing use of protocol conversion as part of the conversion to digital “packetized switching” for network transmission. The FNPRM strongly suggests one protocol conversion suffices to make a communication into an information service.<sup>12</sup> This statement has no logical policy limit, lending credible support to arguments that *any* telecommunications involving a single protocol conversion--which would cover easily more than 95 percent of current telecommunications traffic--should arguably be an information service.

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<sup>9</sup> In Reply Comments in WC 05-337, filed on May 16, 2008, the PSCW noted “. . . the FCC must bear in mind that ultimately the sufficiency of funding will need to be evaluated within the context of meeting the requirements of universal service.”

<sup>10</sup> See Wis. Admin. Code ch. PSC 160; specifically Wis. Admin. Code § PSC 160.09, therein.

<sup>11</sup> As part of the scheme for comprehensive compensation reform, the proposals in Appendix A, pages A-92 to A-95, ¶¶ 207-211, and Appendix C, pages C-90 to C-93, ¶¶ 202-206, classify calling between IP-enabled networks and the traditional circuit-switched networks (IP/PSTN) as an “information service” because such calls entail a protocol conversion between end-users.

<sup>12</sup> See, e.g., A-93, ¶ 209 (“Such traffic today involves a net protocol conversion between end-users, and thus constitutes an ‘enhanced’ or ‘information service.’”).

The proposed separate treatment of IP/PSTN-type traffic among the various forms of network traffic, on the record as it now stands, has no demonstrated legitimate technological difference that could justify different regulatory treatment. In its amicus brief to the Eighth Circuit Court of Appeals regarding the treatment of Voice over Internet Protocol (VoIP) for universal service assessment by a state, the Commission noted that “[q]uestions of regulatory classification are ‘complex, technical, and *dynamic*’”(emphasis added).<sup>13</sup> However, reliance upon the 25-year old *Protocols Order*<sup>14</sup> to demonstrate how IP/PSTN is different, does not recognize the dynamic nature of telecommunications in general, and is arguably a false premise because the exceptional situation recognized there was at the virtual dawn of digital, “packetized” switching. In distinct contrast, the Commission noted only ten years ago, in 1998 the onset of the digital revolution:

*Increasingly, all electronic communications are becoming digital. Print, audio, video, voice and data can all be transmitted in digital form, as collections of ones and zeros. Digitized information can be efficiently transmitted by means of “packet switching.” Instead of maintaining an end-to-end channel of communications for the length of the information transfer, packet switching break the information up into smaller packets that are transmitted separately over the most efficient route available, and then reassembled, microseconds later, at their destination. Packet-switched transmission of digitized information promises a revolution in information, communications services, and entertainment.*<sup>15</sup>

Now, IP-enabled digital transmission is commonplace in national networks. Treating IP/PSTN as an information service seemingly takes no regard of the “dynamic” changes in protocol conversion usage in telecommunications networks. In relying on a 1983 decision, the

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<sup>13</sup> Brief for Amici Curiae United States and Federal Communications Commission Supporting Appellants’ Request for Reversal, pages 19-20, dated August 5, 2008, filed in *Vonage Holdings Corp. et al. v. Neb. Pub. Serv. Comm’n*, Case No. 08-1764 (8<sup>th</sup> Cir.) (*pending oral argument*), citing, *National Cable and Telecomms. Ass’n v. Brand X Internet Servs.* 545 U.S. 967, 1002-03 (2005), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-284738A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284738A1.pdf)

<sup>14</sup> *Communications Protocols under Section 64.702 of the Commission’s Rules and Regulations*, 95 FCC 2d 584, ¶ 16 (1983).

<sup>15</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 F.C.C.R. 24,012, 24, 025-16, ¶ 6 (1998) (footnotes omitted) (subsequent history omitted) (*Deployment Order*).

Commission is essentially saying that the single protocol conversion for IP/PSTN traffic suffices for information service classification; in other words, “once new and different, always different.” Such a rationale fails to account for dramatic telecommunications network technology changes that the Commission itself recognized.

The proposed treatment of IP/PSTN as an information service has at least two other undesirable effects. First, it advances a technological distinction within voice communications that impairs the Act’s objectives of both technological neutrality and competitive neutrality.<sup>16</sup>

Second, the artificial distinction proposed for IP/PSTN traffic is likely to increase confusion for consumers about their rights and remedies. Side-by-side neighbors could be subject to wholly different regulatory and consumer protection regimes because one neighbor’s provider offers a federal “information service,” and the other neighbor’s provider offers a state-regulated traditional telecommunications service. Customers having an “information service” would have to ask the Commission for help regarding any complaint as to consumer protection or service quality, because an information service is arguably not “telecommunications service” subject to state oversight under 47 U.S.C. § 253(b), which protects competitively neutral and necessary state regulations regarding, among other things, provider service quality and the “rights of consumers.”

The PSCW urges the Commission to classify IP/PSTN traffic only after a full factual investigation of all IP-enabled services and their role in competitive telecommunications markets.

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<sup>16</sup> See *Deployment Order*, ¶ 11, and *In the Matter of the Federal-State Joint Board on Universal Service*, 12 F.C.C.R. 8776, 8802, ¶ 49 (1997) (subsequent history omitted) (“principle of competitive neutrality . . . should include technological neutrality”).

## **Conclusion**

The Commission has placed before itself an assemblage of important and complex issues. Many of these issues have been pending for years, and the PSCW applauds the Commission's stated intention to address these matters. It is important that there be movement, and some regulatory clarity, on many of these issues. It is equally important of course that such movement takes us forward, and that it receives an adequate vetting and proper revision to assure that it serves the public interest and does not, due to hasty review, simply replace an existing flawed system with a new system fraught with inconsistencies, deficiencies, and ambiguities.

The PSCW appreciates this opportunity to further comment on these very important issues.

Dated at Madison, Wisconsin, November 26, 2008

By the Commission:

*/s/ Sandy J. Paske*

Sandra J. Paske  
Secretary to the Commission

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## Appendix A

### List of Prior Comments by the Public Service Commission of Wisconsin

#### List of Comments:

Comments of the Public Service Commission of Wisconsin, CC Docket **01-92**, May 19, 2005. These comments were provided in response to an FCC FNPRM released March 3, 2005, (*ICC Reform Notice*).

Reply Comments of the Public Service Commission of Wisconsin, CC Docket No. **01-92**, July 19, 2005. These comments were provided in response to an FCC FNPRM released March 3, 2005, (*ICC Reform Notice*).

Reply Comments of the Public Service Commission of Wisconsin, CC Docket **96-45**, October 28, 2005. These comments were provided in response to the Federal State Joint Board on Universal Service's Public Notice 05J-1 (*Joint Board Four Proposals Notice*).

Comments of the Public Service Commission of Wisconsin, WC Docket No. **05-337**, March 23, 2006. These comments were provided in response to the FCC's Further Notice of Proposed Rulemaking, released December 9, 2005 (*Qwest I & II FNPRM*).

Reply Comments of the Public Service Commission of Wisconsin, WC Docket No. **05-337**, May 25, 2006. These comments were provided in response to the FCC's Further Notice of Proposed Rulemaking, released December 9, 2005 (*Qwest I & II FNPRM*).

Comments of the Public Service Commission of Wisconsin, CC Docket **01-92**, October 25, 2006. These comments were provided in response to an FCC Notice released July 25, 2006, (*Missoula Plan Notice*).

Reply Comments of the Public Service Commission of Wisconsin on the Missoula Plan Phantom Traffic Proposal, CC Docket No. **01-92**, Dec. 22, 2006. These comments were provided in response to an FCC Public Notice released November 8, 2006 (*Phantom Traffic Notice*).

Reply Comments of the Public Service Commission of Wisconsin on the Missoula Inter-carrier Compensation Reform Plan, CC Docket **01-92**, January 26, 2007. These comments were provided in response to an FCC Notice released July 25, 2006, (*Missoula Plan Notice*).

Comments of the Public Service Commission of Wisconsin, CC Docket No. **01-92**, March 16, 2007. These comments were provided in response to an FCC Notice released Feb. 16, 2007 (*Federal Benchmark Notice*).

Reply Comments of the Public Service Commission of Wisconsin, WC Docket No. **05-337**, June 28, 2007. These comments were made in response to the Federal State Joint Board's Public Notice 07J-2 released May 1, 2007, (*Joint Board 2007 Notice*).

Reply Comments of the Public Service Commission of Wisconsin, WC Docket No. **05-337**, May 18, 2008. These comments were made in response to the FCC's three companion Notice of Proposed Rulemakings, released Jan. 29, 2008 (*Identical Support Rule NPRM, Reverse Auctions NPRM, Recommended Decision NPRM*).