BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

WARINNER, GESINGER & ASSOCIATES, LLC INITIAL COMMENTS

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I. INTRODUCTION

Warinner, Gesinger & Associates, LLC ("WGA") is a certified public accounting firm that specializes in accounting and regulatory services provided to the telecommunications industry. WGA's focus is directed mainly towards issues faced by rural telephone companies and includes analysis of the proposed reforms for intercarrier compensation and universal service funding issued by the Federal Communications Commission ("Commission" or "FCC") in the dockets listed on the cover of these comments. Upon analysis of the proposals presented by the FCC in Appendix A, B and C of Docket FCC 08-262, WGA finds that the reforms in Appendix C with certain modifications discussed below may allow rural local exchange carriers (RLECs) to remain financially viable in the future while providing quality services to rural consumers that meet the objectives of the Commission. The Commission's reform mandates must address the financial viability of rural carriers who will be obligated to provide services as the carrier of last resort in the most high cost regions of the country.

II. UNIVERSAL SERVICE FUND REFORM

A. Proposal to Freeze Universal Service Support

WGA opposes the FCC's proposal to freeze universal service fund ("USF") support for rural rate-of-return ("ROR") incumbent local exchange carriers (ILECs) based on the support amounts received in 2007, 2008 or 2010.[1] WGA does not believe that it would be appropriate to freeze USF support for ROR rural ILECs because future investments that may be required to meet the FCC's broadband service mandate will not be subject to recovery.[2] Under the FCC's proposals in Appendix A and Appendix C, rural ROR ILECs are required to commit to providing broadband internet access service to all customers in its service area within five years of the implementation of USF reform. By freezing high-cost support, the FCC fails to recognize any additional costs associated with the commitment of ROR carriers to serve all customers in rural areas. WGA knows of several rural ILECs that have suspended significant plant upgrade and modernization projects in light of the USF reform proposals contained in the FCC's Order and Further Notice of Proposed Rulemaking. Absent a recovery mechanism for these additional investment costs, it is highly unlikely that these projects will ever be implemented. As recognized by Commissioner Deborah Tate in her remarks to the NARUC Committee on Telecommunications, the FCC should be encouraging new investments in rural areas, not discouraging them.[3] USF is designed to ensure comparable services at reasonable prices in rural areas. If there is no sufficient recovery mechanism for additional rural loop costs in future years, those costs will have to be born by the ratepayers in rural areas leading to rates that will far surpass the rates in urban areas. As a result, broadband services may be available in rural areas but will most likely be unaffordable for a majority of rural consumers.

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1 App. A (2008), App. B (2007), and App. C (2010 for ROR ILECs).
2 App. C ¶12

While WGA does not believe that a freeze in USF is warranted at this time, the proposal to freeze support at 2010 levels in Appendix C with additional ICLS support available in future years is preferable to the proposals presented in Appendix A and B. However, WGA suggests an alternate remedy to the FCC's proposal to freeze USF in Appendix C that addresses future investments in telephone plant. WGA recommends that the FCC provide an option to update high-cost loop support (HCLS) in conjunction with the supplemental ICLS revenue pool addressed in Appendix C. The FCC should establish a supplemental HCLS pool for companies to update their high-cost loop support in Year 5 of the reform period to coincide with the FCC's review of the second component of the supplemental ICLS revenue pool.[4] This will put rural companies on notice that there is an opportunity to recover future investments in plant over a limited period of time from USF. For those companies that must upgrade their plant facilities to meet the Commission's broadband service requirements, some level of cost recovery will be provided other than increases in local service rates.

B. Requirement To Provide Broadband Internet Access Service

The Commission proposes that all incumbent LECs and auction winners offer broadband Internet access service to all customers in their supported service areas as a condition of receiving universal service high-cost support. (App. C ¶ 22) Broadband Internet Access Service is then defined as "an "always on" service that combines computer processing, information provision, and computer interactivity with data transport, enabling end users to access the Internet and use a variety

3 See Remarks of Commissioner Deborah Taylor Tate, NARUC Committee on Telecommunications, New Orleans, LA, November 17, 2008, page 8.
4 The precondition for receiving supplemental high-cost loop support should be the same as the precondition for

of applications, at speeds discussed elsewhere in this order. We refer specifically to broadband Internet access service—an information service—and not to broadband transmission alone because our goal is to ensure that all Americans have access to the Internet." (App. C ¶ 24)

ILECs today provide wholesale broadband access to Internet service providers through a Digital Subscriber Line ("DSL") tariff. Broadband access is generally provided to Internet service providers ("ISPs") who sell non-regulated broadband internet services to consumers on a retail basis. WGA is concerned that if this proposal is adopted as written by the Commission, ILECs will be required to provide non-regulated information services in order to qualify for the continued receipt of USF support. Does the FCC have the authority to require ILECs to provide non-regulated information services in order to qualify for the continued receipt of existing USF?

In conjunction with App. C ¶ 26, it states that ILECs may offer broadband Internet access service using any technology, or combination of technologies, that meets the requirements for speed set forth in this order. Does this mean that ILECs can offer broadband Internet access services using technologies that were previously considered non-regulated under the Commission's existing rules with no impact to the receipt of future USF support?

C. Proposal To Eliminate the Identical Support Rule

WGA supports the FCC's proposal to eliminate the identical support rule. Competitive local

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receiving supplemental ICLS support. (App. C. ¶ 320) exchange carriers (CLECs) should only be allowed to receive USF support based on their own costs of providing service.[5] Therefore, a CLEC should only qualify for high-cost support after demonstrating that its actual costs exceed the national average cost using the same methods for determining loop costs that apply to ILECs.

III. INTERCARRIER COMPENSATION REFORM

A. Originating Access

WGA opposes the Commission's proposal to eliminate originating access rates at the conclusion of a ten-year transition.[6] The reduction of intrastate rates to interstate levels should apply to both originating <u>and</u> terminating access, and the changes to both originating and terminating access rates should be commensurate and implemented at the same time. There should be no automatic provision to eliminate originating access at the conclusion of the ten year transition period.

B. VoIP Traffic Must Be Subject to Appropriate Access Charges.

WGA opposes the Commission's proposal to classify Internet Protocol (IP) traffic terminating to the public switched telephone network ("PSTN") as "information service" and to exempt this traffic from access charges.[7] The proposal to classify IP related communications services commonly referred to as Voice Over Internet Protocol ("VoIP") traffic as an information

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5 *See* Appendix A, ¶¶53-56.
6 App. A, ¶¶229, 346.
7 Appendix A ¶¶209-211

service is contrary to the position taken by the FCC in its IP-Enabled services NPRM released in 2004[8] as discussed in the NTCA *ex parte* letter to the FCC dated November 18, 2008. VoIP traffic that mirrors interexchange toll traffic is carried over the same network facilities and incurs the same costs as any other voice traffic terminated to a rural LEC's network. In essence, rural LECs cannot readily differentiate VoIP traffic from other toll traffic when it is delivered by interexchange carriers to the rural LEC's network. The only way to distinguish a terminating VoIP call from any other terminating toll call is based on the information recorded on the call record. In addition, if VoIP traffic is classified as an information service, all future interexchange access traffic will be eliminated as interexchange carriers rush to push all traffic over IP networks.

For these reasons, interexchange VoIP traffic terminating to the PSTN should continue to be treated the same as any other interexchange toll traffic terminating to the PSTN and be subject to the same access rates as any other interexchange call. WGA also concurs with the *ex parte* comments of NTCA urging that the Commission require IP-PSTN and PSTN-IP traffic, and specifically interconnected VoIP traffic, to pay applicable tariffed interstate access rates, intrastate access rates, and reciprocal compensation rates, until such time as there is no longer a PSTN.[9]

C. Phantom Traffic

WGA supports the Commission's proposal to address the issues with phantom traffic in

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8 *IP-Enabled Services,* Notice of Proposed Rulemaking, ¶ 33, WC Docket No. 04-36 (rel. March 11, 2004).
9 *See* NTCA Nov. 18 *ex parte*, p. 6.

Appendix A. (App. A, ¶326-42.) WGA applauds the FCC for recognizing that phantom traffic exists and has proposed rules requiring the passage of Calling Party Number (CPN) information in fields on call records associated with the termination of calls delivered to LECs by interexchange carriers and transit providers. WGA agrees that all carriers should be required to populate, and be prohibited from stripping or altering, CPN information in the SS7 call signaling stream. (App. C. ¶327) WGA supports the Commission's finding that applies these rules to all traffic originating and terminating on the PSTN including jurisdictionally intrastate traffic. (App. C. ¶328) WGA recommends that this rule be applied to VoIP traffic as well. Furthermore, WGA supports the Commission's proposal that if CPN is not included in call records, interexchange carriers and transit providers can be billed for the calls at the highest rate. (App. C. ¶¶332-33) This solution provides the appropriate incentives for intermediate carriers and will ensure that terminating carriers are compensated for the use of their networks.

D. Transit Traffic

The FCC seeks further comment on transit traffic rules and rates. (App. A, ¶347) WGA believes that transit carriers be subjected to the same rules that are to be enforced on ILECs for the pricing of originating and terminating access services. The costs to transit calls should be based on the incremental cost to carry additional minutes using the same "additional costs" methodology recommended for use by the Commission to price interexchange access for rural switching and transport.[10] Accordingly, the FCC should prohibit transit carriers from charging rates that are higher than their reciprocal compensation rates for local transit or access rates for interexchange transport.

IV. CONCLUSION

WGA recognizes that USF and Intercarrier Access reform is imminent and the proposals put forth by the FCC are an initial attempt to address a multitude of issues facing telecommunications carriers today. In the event the Commission is compelled to adopt one of the proposals presented in Docket FCC 08-262, WGA believes that Appendix C with the above modifications to the Commission's reform proposals may enable ILECs to remain financially viable in future years while providing the level of broadband access to rural America that will deliver the speeds necessary to achieve the Commission's objectives for the provision of Broadband Internet Access Services. In the end, financial viability and success of rural ROR ILECs will be measured in terms of their ability to achieve a reasonable rate of return for the provision of quality services to its entire study area. The Commission's reforms for USF and Intercarrier Compensation must allow rural ROR ILECs to achieve a reasonable rate of return on future investments required to meet the Commission's broadband internet access service objectives.

Respectfully submitted,

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10 Should the "Additional Costs" methodology be adopted by the Commission for pricing toll access and reciprocal compensation, it should also apply to the pricing of transit services by interexchange carriers. (App. C.¶¶ 257-260).

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CERTIFICATE OF SERVICE

I, William J. Warinner, hereby certify that copies of WGA's comments were sent on this, the 26th day of November, 2008 by electronic mail, to those listed on the attached sheet.

By: /s/ William J. Warinner
William J. Warinner

SERVICE LIST
WC Docket Nos. 05-337, 03-109, 06-122, 04-36
CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68
FCC 08-262

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