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

REPLY COMMENTS OF THE WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION AND THE OREGON TELECOMMUNICATIONS ASSOCIATION

December 22, 2008

SUMMARY

The Washington Independent Telecommunications Association ("WITA") and the Oregon Telecommunications Association ("OTA") filed Opening Comments on November 26, 2008.[1]

In the Opening Comments, WITA and OTA advocated the following:

1. That the Commission be very careful in crafting reforms to the universal service fund mechanism and intercarrier compensation to be sure that the reforms do not curtail the availability of rural companies to invest in telecommunications infrastructure to serve rural America;

2. That voice traffic that may originate on an IP platform or terminate on an IP platform not be classified as Information Service;

3. That there be a transition of intrastate access rates to interstate access rate levels over three years if a replacement mechanism is created that allows the transition to occur on a revenue neutral basis;

4. That the identical support rule be eliminated;

5. That traffic record rules be adopted to address phantom traffic issues;

6. That the Commission adopt the rural transport rule as set forth in the Missoula Plan; and

7. That the Commission move forward to adopt a universal service funding mechanism based upon working numbers.

WITA and OTA continue to advocate these positions. In order to focus more directly on two matters, WITA and OTA will not be replying to the filed comments on all of the above

[1] The members of the two associations participating in these Reply Comments are set forth in Attachment A.

issues. Rather, WITA and OTA will focus these Reply Comments on the issue of the importance of the availability of investment for rural telecommunications infrastructure in rural America and the grave dangers that are posed by classifying voice traffic that originates or terminates on an IP platform as an information service.

I. THE ABILITY OF RURAL CARRIERS TO INVEST IN RURAL TELECOMMUNICATIONS INFRASTRUCTURE IS LIMITED TODAY AND MUST BE ENHANCED, NOT CURTAILED

The provision of telecommunications in rural areas is a very capital intensive business. It is axiomatic that most rural carriers[2] are not of the size to be able to generate sufficient revenues on their own to produce the funds needed to construct the required rural telecommunications infrastructure. Nor are these operations that independently attract great amounts of equity investment. Instead, the investment in rural telecommunications infrastructure must be assisted, as it is today, from two sources.

One source is the set of lenders that are willing to invest in rural telecommunications infrastructure with the knowledge that the operations of the rural carriers (at least in the past) are sufficiently supported that the investment will be repaid. In the past, these investors have included the Rural Telephone Finance Cooperative, CoBank ACB, and the US Government itself in the form of the Rural Utilities Services. What is not apparent is whether these entities are going to be willing to continue to loan funds in the future if some of the more draconian features of proposed reforms are put in place, such as the potential to lose status as an Eligible Telecommunications Carrier if very high broadband goals are not met or the loss of access revenue if VoIP service is exempted from access charges.

[2] As used in these Reply Comments, the term "rural carriers" has the same meaning as "rural telephone company" set forth in 47 U.S.C. § 153(37).

The second source of funding is the universal service fund itself. Care must be taken that reforms to the universal service fund do not curtail the ability of rural carriers to invest in telecommunications infrastructure.

In a very informative ex parte presentation, two rural companies from Iowa reported the level of investment that they see for rural telecommunications infrastructure.[3] Premier Communications reported that its forecasted capital expenditures for the next five years range from six hundred dollars to over nine hundred dollars per access line. This compares to their 2008 estimated USF draw of approximately three hundred dollars per access line per annum. Winnebago Cooperative Telecom Association reported its five year average investment for the past five years was four hundred eighty dollars per access line per year. This again exceeds the universal service funding it receives, which is stated as three hundred seventy-three dollars per access line per year for the 2008 estimated receipts. Proposed reforms that remove or cap universal service funds will make the needed levels of investment very difficult to obtain.

It is very interesting that these same points are raised by entities that invest in competitive networks. In the Comments of the Telecom Investors filed November 26, 2008, the Telecom Investors state:

> That confidence [to invest] and the confidence of investors in the Commission's commitment to maintaining regulatory stability to foster new investment in competitive providers of telecommunications services is again challenged by the NPRM's proposals to tilt the intercarrier compensation field in favor of the two largest vertically integrated companies [Verizon and AT&T] in the sector at the expense of smaller competitive entrants.[4]

[3] Ex parte presentation of Iowa Telecommunications Association, Winnebago Cooperative Telecom Association and Premier Communications filed December 9, 2008.
[4] Comments of the Telecom Investors at p. 1.

The Telecom Investors go on to cite extensively from ex parte presentations made by investment analysts Balhoff & Williams & Raymond James Associates.[5] The point that the Telecom Investors are making is stated as follows: "The Commission has already been warned that its radical reform proposals threaten to further undermine the already fragile state of investor confidence in the telecom sector."[6]

WITA and OTA urge that the Commission be very sure that its reform proposals do not inhibit the ability of rural carriers to obtain investment funding for telecommunications infrastructure in rural America. Ideally, the reforms that the Commission chooses to adopt should be demonstrated to enhance the availability of investment funding. At the very least, reforms must not inhibit the availability of such investment.

II. THE COMMISSION SHOULD NOT CLASSIFY VOICE OVER INTERNET PROTOCOL AS AN INFORMATION SERVICE

One Commenter described this issue as the elephant in the room.[7] It is the position of WITA and OTA that Voice over Internet Protocol ("VoIP") traffic should not be classified as an information service. A very excellent analysis of this issue was presented by a set of leading VoIP providers. The Comments of TW Telecom Inc., One Communications Corp. and CBeyond Inc. provide a very good analysis of why VoIP services should not be classified as information service.[8] The analysis contained in these Comments is well thought out and is based on a

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[5] The Telecom Investors cite to Ex Parte Letter from Michael Balhoff, CFA, to Marlene H. Dortch, Secretary, FCC, Docket Nos. 01-92, 99-68, 96-45 and 05-337 (filed October 28, 2008) and "Intercarrier Compensation Reform: Potential Impact From an FCC Order" by Frank G. Louthan IV, Mark DeRussy and Jason Fraser at Raymond James & Associates, Inc. attached to Ex Parte Letter from Joshua Seidemann, Vice President Regulatory Affairs, Independent Telephone & Telecommunications Alliance to Marlene H. Dortch, Secretary, FCC, Docket Nos. 01-92, 96-45 and 05-337 (filed October 28, 2008).

[6] Telecom Investors at p. 2.

[7] Comments of Broadview Networks, Inc., Cavalier Telephone, NuVox and XO Communications, LLC filed November 26, 2008 at p. 9.

[8] Comments of TW Telecom Inc., One Communications Corp. and CBeyond Inc. filed November 26, 2008 ("VoIP Provider Comments"), beginning at p. 11.

fundamental principle: "there are no fundamental differences between circuit-switched and VoIP services."[9] As the VoIP Providers explain, "the fact that there is some "mere presence" of protocol conversion in IP/PSTN traffic is not a sound basis for classifying IP/PSTN traffic as an information service."[10] The VoIP Providers point out that traffic exchanged between a CMRS network and the PSTN is another example of where a protocol conversion takes place. However, CMRS traffic is clearly a telecommunications service. So, too, is the voice traffic using VoIP platforms.

The National Exchange Carrier Association, Inc. ("NECA") also provides a very sound set of comments on the issue.[11] The bottom line is that VoIP service starts as voice traffic and ends as voice traffic. While there are protocol conversions within the process, there is no difference in the end result.

Not only is the classification of VoIP service as a telecommunications service rather than an information service the right answer technically and legally, it is an extremely important answer from a financial perspective. The issue that is raised by classifying VoIP services as an information service is whether those services are then subject to access charges. This is a point, in fact, that some VoIP providers make in their comments, arguing that their traffic should not be subject to access charges.[12] To except VoIP services from access charges would be devastating to rural carriers.

NECA described the classification of VoIP services as information services as resulting in "small LECs [will] see their access revenues dry up overnight."[13] NECA goes on to describe

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[9] VoIP Providers Comments at p. 12 citing to an Ex Parte Letter of Thomas Jones, Counsel, tw telecom inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 01-92, 96-45 and 05-337 filed October 23, 2008.
[10] VoIP Providers Comments at p. 11.
[11] Comments of the National Exchange Carrier Association, Inc. beginning at p. 29.
[12] See, for example, Comments of the Von Coalition, CCIA, ITL, Net Coalition, Technet, and TIA dated November 26, 2008, beginning at p. 4.
[13] Comments of the National Exchange Carrier Association, Inc. filed November 26, 2008, at p. 36.

that a potential affect a Commission decision classifying VoIP traffic as information traffic could have on small carriers:

> In any event, the classification decision described in the *Further Notice* should not be adopted because it utterly fails to consider the dramatic and adverse consequences such a determination would have on rural RoR carriers and their customers. Carriers are already embroiled in disputes with smaller providers who refuse to pay access for interexchange calls on the basis such calls are "IP originated" and hence exempt from access charges. Larger carriers are starting to make the same claims with respect to their interexchange traffic as well. The proposed classification decision could, if adopted, therefore dramatically increase such claims and drastically decrease access revenues in a short timeframe, as virtually all carriers would attempt to claim "information services" status for their traffic. This will create an avalanche of billing disputes and lost access revenue as competitive market pressures force other carriers to follow suit, swamping small rural carriers who lack the resources to dispute such claims. (Emphasis supplied.)[14]

Classification of VoIP services as information services exempt from access charges would be the exception that swallows the rule. Rural carriers would be financially devastated.

There are some VoIP providers that try to draw a middle ground, saying that the service should be classified as an information service, but that the Commission should clarify that such traffic, even though it may be classified as an information service, is subject to access charges.[15] It should be noted that this set of Comments goes on to state that the presumption should be that VoIP service is a telecommunications service as a "continuation of the evolution of basic telephone service along the lines forged previously by the introduction of SS7, Intelligent Network, and Advanced Intelligent Network technologies."[16]

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[14] Comments of the National Exchange Carrier Association, Inc. at p. 35-36.

[15] See, e.g., Comments of Broadview Networks, Inc., Cavalier Telephone, NuVox, and XO Communications, LLC filed November 26, 2008, at p. 12-13.

[16] Ibid, discussion at p. 13. The Comments leave the door open for a provider to prove by specific facts that its service should be classified as an information service.

AT&T takes this middle road position that VoIP service should be classified as information service, but be subject to access charges.[17] AT&T describes the scope of the problem as follows:

> ...providers have disagreed for many years about whether and when VoIP traffic – which LECs terminate over the PSTN in exactly the same way they terminate all other traffic – should be subject to access charges under existing rules. Even worse, some CLECs that serve VoIP providers try to gain the system by imposing access charges on the PSTN/IP traffic they terminate to their VoIP provider customers while insisting that they should pay only reciprocal compensation charges on the IP-to-PSTN traffic that originates from their VoIP providers.
>
> ...these problems can only multiply as IP-based services continue their explosive growth trend.
>
> ...as this traffic expands, vastly increasing amounts of IP-originated traffic will be terminated on the PSTN and vice-versa. The financial consequences for the affected carriers could not be starker.[18]

Even AT&T, with all its resources, recognizes the stark financial consequences of exempting VoIP services from access charges. Thus, AT&T argues that while VoIP traffic can be classified as an information service, it must be subject to access charges.

Even though the record in these dockets is voluminous, the Commission does not have the necessary record before it on which to make a decision that exempts VoIP service from access charges. The Commission does not have any quantification of the lost access revenue that rural carriers would face and the consequences from that lost access revenue. The Commission should recognize that VoIP service is a voice service. Thus, it is a telecommunications service, not an information service. At the very least, the Commission must clarify that VoIP service traffic is subject to access charges just as any other voice traffic is subject to access charges.

[17] Comments of AT&T Inc. filed November 26, 2008, beginning at p. 23.
[18] Comments of AT&T Inc. at p. 27-28.

CONCLUSION

WITA and OTA appreciate the opportunity to provide these Reply Comments. For the reasons set forth above, the Commission should not classify traffic that originates or terminates on an IP platform as information service.

In addition, the Commission should move forward to eliminate the identical support rule, adopt rules relating to traffic records to address phantom traffic issues, adopt the rural transport rule as set forth in the Missoula Plan, adopt a universal service funding mechanism based upon working numbers, and adopt a transition of intrastate access to interstate access rate levels over three years on a revenue-neutral basis. If the Commission adopts any other reforms, it must be absolutely certain that such reforms will not impede the ability of rural carriers to invest in telecommunications infrastructure in rural America and, ideally, should enhance the ability of rural carriers to obtain investment.

Thank you for the opportunity to comment.

Respectfully submitted this 22nd day of December, 2008.

By: _____

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ATTACHMENT A

Washington Independent Telecommunications Association

Asotin Telephone Company d/b/a TDS Telecom
CenturyTel of Cowiche, Inc.
CenturyTel of Inter-Island, Inc.
CenturyTel of Washington, Inc.
Ellensburg Telephone Company d/b/a FairPoint Communications
Embarq
Hat Island Telephone Company
Hood Canal Telephone Co., Inc. d/b/a Hood Canal Communications
Inland Telephone Company
Kalama Telephone Company
Lewis River Telephone Company, Inc. d/b/a TDS Telecom
Mashell Telecom, Inc. d/b/a Rainier Connect
McDaniel Telephone Co. d/b/a TDS Telecom
Pend Oreille Telephone Company
Pioneer Telephone Company
St. John Co-operative Telephone and Telegraph Company
Tenino Telephone Company
The Toledo Telephone Co., Inc.
Western Wahkiakum County Telephone Company d/b/a Wahkiakum West
Whidbey Telephone Company
YCOM Networks, Inc. d/b/a FairPoint Communications

Oregon Telecommunications Association

Asotin Telephone Company d/b/a TDS Telecom
Beaver Creek Cooperative Telephone Company
Canby Telephone Association d/b/a Canby Telcom
Cascade Utilities, Inc. d/b/a Reliance Connects
CenturyTel of Oregon, Inc.
CenturyTel of Eastern Oregon, Inc.
Clear Creek Mutual Telephone Company
Colton Telephone Company d/b/a Coltontel
Eagle Telephone System, Inc.
Embarq
Gervais Telephone Company
Helix Telephone Company
Home Telephone Company d/b/a TDS Telecom
Midvale Telephone Exchange
Molalla Communications Company
Monitor Cooperative Telephone Company
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Co.
Oregon-Idaho Utilities, Inc.
Oregon Telephone Corporation
People's Telephone Co.
Pine Telephone System, Inc.
Pioneer Telephone Cooperative
Roome Telecommunications Inc.
St. Paul Cooperative Telephone Association
Scio Mutual Telephone Association
Stayton Cooperative Telephone Company
Trans-Cascades Telephone Company