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**
	)	
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**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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December 22, 2008

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REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following reply comments in response to the request by the Federal Communications Commission ("Commission") for comment on its Further Notice of Proposed Rulemaking ("FNPRM") and three attached proposals on intercarrier compensation and universal service reform.[1]

[1] *See Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) ("*Core Remand Order*").

I. INTRODUCTION AND SUMMARY

These reply comments are consistent with Windstream's prior submission of a proposal outlining recommendations for comprehensive intercarrier compensation reform. Windstream repeatedly has urged the Commission to adopt a measured approach to reforming intercarrier compensation and has supported a number of different reasonable approaches, in addition to the one it proposed.[2] All of these proposals would unify and significantly reduce intercarrier compensation rates while permitting affected carriers to recover associated revenue reductions to a significant degree through subscriber line charge ("SLC") increases and an alternative recovery mechanism ("ARM"). Windstream also endorses more limited measures that would enable proper billing by addressing phantom traffic and clarifying that compensation is due for traffic generated by interconnected Voice over Internet Protocol providers.

Windstream's repeated calls for such fair and balanced reforms are reinforced by comments submitted in response to the FNPRM. Many commenters ask the Commission to adopt unified, but varying terminating rates for different classes of carriers, in recognition of significant disparities in costs incurred to provide quality and affordable service in rural and urban areas.[3] A wide variety of parties criticize the new "additional

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[2] The details of Windstream's proposal are outlined in an ex parte filed on October 28, 2007, as well as in comments filed in response to the FNPRM. Letter from Eric N. Einhorn, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 06-122, 99-68, 08-152, 07-135 (filed Oct. 28, 2008) ("Windstream Intercarrier Compensation Ex Parte"); Comments of Windstream Communications, Inc. ("Windstream Comments").

[3] *See, e.g.,* Comments of CenturyTel, Inc. ("CenturyTel Comments") at 12; Comments of Cincinnati Bell Inc. ("Cincinnati Bell Comments") at 13-14; Joint Comments of Citynet, LLC, Granite Telecommunications, Inc., PAETEC Communications, Inc., RCN Telecom Services, Inc. and U.S. Telepacific Corp. ("Citynet et al. Comments") at 11-12; Comments of Embarq ("Embarq Comments") at 7; Comments of Frontier Communications ("Frontier Comments") at 5; Comments of Iowa Telecommunications Services, Inc. ("Iowa Telcom Comments") at 5; Comments of the Independent Telephone & Telecommunications Alliance ("ITTA Comments") at 8; Comments of the National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of Peoples' Counsel, The Utility Reform Network, and the Utility Consumer Action Network on Further

costs" standard proposed by the FNPRM.[4] Moreover, multiple commenters underscore the importance of making a reasonable and significant ARM available to mid-sized price cap carriers.[5]

Without these modifications, the reform proposals attached to the FNPRM would have devastating consequences for telecommunications and broadband services offered in rural regions. Since the majority of mid-sized carriers' revenues are spent to meet fixed carrier of last resort expense obligations, the staggering revenue reductions resulting from the proposed reforms would cripple mid-sized price cap carriers. The weakened carriers would be unable to deploy new broadband services to their customers, let alone maintain the prices and quality of services offered to their customers today. The impact of the proposed revenue reductions is especially significant now that the United States is experiencing one of the largest economic crises in its history.

Notice of Proposed Rulemaking ("NASUCA et al. Comments") at 16; Comments of the National Exchange Carrier Association, Inc. ("NECA Comments") at 25-26; National Telecommunications Cooperative Association Initial Comments ("NTCA Comments") at 42; Comments of TW Telecom Inc., One Communications Corp. and Cbeyond Inc. ("TW Telecom et al. Comments") at 6.

[4] *See, e.g.*, Comments of Broadview Networks, Inc., Cavalier Telephone, Nuvox, and XO Communications, LLC at 29-35; CenturyTel Comments at 16; Cincinnati Bell Comments at 10-13; Citynet et al. Comments at 19-20; Embarq Comments at 42-50; Frontier Comments at 14-17; Iowa Telecom Comments at 3-4; ITTA Comments at 10-13; NASUCA et al. Comments at 9-16; NECA Comments at 26-29; NTCA Comments at 40-41; TW Telecom et al. Comments at 5-6.

[5] *See, e.g.*, CenturyTel Comments at 14-18, 22-24; Cincinnati Bell Comments at 2-3; Embarq Comments at 7, 26; Frontier Comments at 5, 8-10; ITTA Comments at 5-9; Iowa Telecom Comments at 4-5; Comments of the United States Telecom Association ("USTelecom Comments") at 6. *See also* Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (asking the Commission to "establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out"); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that are "available to all carriers of last resort, regardless of company size, structure or regulatory classification"); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) (proposing a plan that included a recovery mechanism, which could be used by mid-sized carriers).

Following its prior critique of proposals attached to the FNPRM,[6] Windstream submits reply comments in response to parties' arguments regarding core elements of intercarrier compensation reform. Windstream addresses only three items: (1) the amount of the terminating rate, (2) the necessity of an ARM for mid-sized price cap carriers, and (3) increases to SLCs. These reply comments – given the voluminous record in this proceeding – are by no means intended to be comprehensive, but they nonetheless demonstrate that the Commission must make significant modifications before adopting comprehensive reforms considered by the FNPRM.

II. SUPPORTERS OF A UNIFORM NEAR-ZERO TERMINATING RATE STILL FAIL TO PRODUCE DATA THAT JUSTIFY ITS ADOPTION.

Comments by the leading proponents of a uniform terminating rate at or below $0.0007 fail to establish a rational basis for applying this rate to all carriers. Like the Commission's proposals, parties' comments in support of this low rate are based on unsupported assertions,[7] or rely upon facts that only apply to the very largest incumbent local exchange carriers ("ILECs"). This paltry support does not provide legitimate ground for adopting a uniform, near-zero rate.

A. Negotiated Market Outcomes Indicate that Mid-Sized Carriers Warrant a Terminating Rate Significantly Higher Than $0.0007.

Verizon asserts that "evidence of negotiated, market outcomes" supports a uniform $0.0007 terminating rate.[8] But the evidence cited by Verizon fails to demonstrate that $0.0007 is an appropriate compensable rate for all carriers. At best

[6] *See* Windstream Comments at 27-47; Windstream Intercarrier Compensation Ex Parte at 3-4.

[7] *See, e.g.,* Comments of Sprint Nextel Corporation at 6-7 (relying on statements in the Appendix A draft order to support adoption of the proposed additional costs standard); Comments of Comcast Corporation at 6 (offering its support for the new pricing methodology, but not citing any evidence that would provide a rational basis for this new methodology).

[8] Comments of Verizon and Verizon Wireless ("Verizon Comments") at 49.

Verizon's market evidence suggests that Regional Bell Operating Companies ("RBOCs") like Verizon could appropriately be subject to a uniform $0.0007 rate.

Verizon's evidence is limited to interconnection agreements that it has entered into with (premerger) AT&T and Level 3 for terminating local traffic and ISP-bound traffic, and 25 competitive local exchange carriers ("CLECs") for terminating traffic generally.[9] Such evidence is far from representative for small or mid-sized ILECs. Verizon fails to provide any evidence that small or mid-sized carriers – which realize far smaller economies of scale – have agreed to exchange local traffic at the $0.0007 rate in their interconnection agreements or that such rates reflect these carriers' circumstances. Moreover, most of the CLEC agreements cited by Verizon are bill and keep arrangements,[10] which typically are entered into when traffic is mostly in-balance.[11] It would be inappropriate for the Commission to conclude that those arrangements should be the basis for establishing a uniform rate for all carriers within a state.

With respect to small and mid-sized carriers, evidence of negotiated rates for local traffic, using Verizon's logic, indicates that these carriers should *not* be subject to a uniform near-zero terminating rate. Most of these carriers have lawfully negotiated interconnection rates that are significantly higher, in the range of $0.005 to $0.012. Their reciprocal compensation rates are set closer to interstate terminating access levels. In particular, reciprocal compensation rates lawfully negotiated by Windstream are no

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[9] *Id*. at 49-50.

[10] *See id*. at 50, n.65 (noting that 22 of 25 CLEC agreements cited are bill and keep arrangements).

[11] *See* 47 U.S.C. § 252(d)(2)(B)(I) (describing "bill and keep" as "arrangements that waive mutual recovery" of costs through "offsetting of reciprocal obligations").

where near $0.0007 for any agreement. Windstream's composite reciprocal compensation billing rate is $0.0089.[12]

B. The Proposed Methodological Shift, Coupled with the Absence of a Meaningful Alternative Recovery Mechanism, Would Indiscriminately Punish All Mid-Sized Carriers Primarily Focused on Serving Rural Areas.

AT&T asserts that the Commission's proposed "methodological shift will reward efficient carriers and punish inefficient ones" by "compelling most carriers to rely primarily on their own end users for recovery of their network costs . . . ."[13] This claim, however, overlooks the fact that carriers serving primarily rural areas incur substantially greater costs than those in urban areas. When this significant difference is taken into account, it is evident that the primary impact of the proposed methodological shift would be to reward urban carriers at the expense of rural carriers, efficiency notwithstanding.

The RBOCs – as compared to small and mid-sized ILECs – are subject to significantly different cost characteristics. Costs on a per line basis are much higher for carriers that serve primarily rural areas. A comparison of Windstream and AT&T is illustrative. Subscriber density is far lower for Windstream: Windstream's average subscriber density is approximately 21 lines per square mile, while AT&T's is approximately 99 lines per square mile.[14] Windstream, therefore, cannot benefit from the same economies of scale as AT&T. Windstream on average serves approximately 2,700

[12] The cited composite billing rate is based upon 11 months actual billing from January through November, 2008.

[13] Comments of AT&T Inc. ("AT&T Comments") at 11.

[14] These subscriber density statistics are based upon an analysis conducted in December, 2007. Verizon's subscriber density at that time was even greater than AT&T's: Verizon's subscriber density was approximately 120 lines per square mile.

lines per exchange, and 70 percent of its exchanges serve less than 2,000 lines.[15] AT&T's average exchange, in contrast, serves more than 12,000 lines. So even if Windstream is operating at the same level of efficiency as AT&T, Windstream will have significantly higher per line operating costs than its urban counterpart.

Due to different cost characteristics and the absence of a meaningful ARM, *all* mid-sized carriers primarily focused on serving rural areas, and their customers in these areas, would be punished by the one-size-fits-all, near-zero rates under the new methodology. These carriers would suffer substantial revenue reductions, which would directly impact consumers served by affected carriers. In particular, Windstream estimates that the Commission's proposed intercarrier compensation reforms would reduce Windstream's revenues by hundreds of millions of dollars over the foreseeable future, with little or no ability to recoup much of these substantial losses.[16] These reductions would be felt directly be consumers through higher rates and service impacts.

Mid-sized carriers would struggle to offset these losses. AT&T fails to appreciate the cost characteristics of mid-sized carriers when it suggests efficient carriers would be rewarded when carriers are forced to either "reduce their costs to the prescribed compensation level or incorporate those costs in their own retail rates."[17] AT&T's claim does not hold true for any mid-sized carrier.

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[15] Exchange figures referenced are based upon an analysis conducted in December, 2007. Aggregate statistics for the same time period are similarly revealing. Windstream has approximately 23 percent of the exchanges that AT&T has (approximately 1,100 as compared to 4,700), but 5 percent of the lines (approximately 3.1 million lines versus 57.2 million lines).

[16] For 2008, Windstream's terminating intercarrier compensation revenues will comprise roughly six percent of its annual revenues, whereas all of its federal high-cost support will comprise less than three percent of its annual revenues.

[17] AT&T Comments at 11.

First, mid-sized carriers cannot reduce costs to the prescribed compensation level. Network maintenance costs and deployment needs do not go away if intercarrier compensation revenues are eliminated. In order to reduce costs anywhere near the suggested compensation level, mid-sized carriers would have to effectively stop maintaining some of their existing networks and cut back on purchases of new equipment. Both of these measures would jeopardize not only the terminating switching services provided to other carriers, but also basic dial-tone service offered to end users.

Second, mid-sized carriers would be challenged by regulatory and economic factors if they sought to incorporate the joint and common costs in their retail rates. From a regulatory standpoint, state commissions are not likely to allow end user rate increases that would enable carriers to recover the revenue reductions resulting from the proposed new cost methodology. In addition, even if the states were to allow such increases, it would be near impossible for mid-sized carriers like Windstream to recover these sizable costs from their far smaller pool of end users, or for those rural consumers to afford the burden – an issue that AT&T glosses over.

C. The Commission Is Capable of Policing Artificial Traffic Stimulation Schemes Without Moving Compensation to a Near-Zero Level.

Commenters' suggestions that a single statewide rate is needed to stop arbitrageurs that specialize in terminating traffic schemes, such as free chat lines and teleconferencing services, is shallow.[18] Such parties are essentially arguing that the only way to stop the small minority of LECs that are cheating is to force every other LEC, i.e.,

[18] *See, e.g.*, Verizon Comments at 41 (asserting that "it is only through a uniform rate – applied equally to all carriers and all traffic – that the Commission can . . . eliminate the fraud and arbitrage that plague today's intercarrier compensation regime"); AT&T Comments at 9 (arguing that "the proposed 'incremental cost' standard is far superior to TELRIC as a means of setting intercarrier compensation rates . . . because it will dramatically reduce the competitive distortions that can arise from any regulatory rate-setting regime").

the vast majority of carriers that are abiding by the rules, to give access to the terminating network for free. While this measure may substantially eliminate the possibility of such cheating, the intercarrier compensation response endorsed by these commenters is an overly broad solution to address the problem at hand, unduly harmful to LECs providing the terminating services, and excessively generous to carriers using those terminating services.

The Commission does not need to condition elimination of traffic stimulation on larger intercarrier compensation reforms. Traffic stimulation schemes violate the Commission's rules requiring just and reasonable rates, and should be eliminated immediately.[19] Specifically the Commission should require suspected violators to include terms and conditions in their access tariffs that require carriers to recalculate access rates if they meet certain thresholds for abnormal increases in access minutes.[20] This reform would prevent carriers from reaping the profits associated with illegal traffic stimulation by triggering an immediate recalculation of their access rates. Qwest proposes additional, appropriate safeguards that the Commission could use to curtail

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[19] *See* Letter from Trent Boaldin, EpicTouch Co., et al. to Kevin Martin, Chairman, FCC, et al. (dated April 30, 2007) (industry letter opposing traffic pumping, which was signed by Windstream and fourteen other telecommunications companies).

[20] Language included in access tariffs could mirror language adopted by carriers subject to an access stimulation investigation last year. After the Commission suspended their tariff filings in response to access stimulation concerns (*July 1, 2007 Annual Access Charge Tariff Filings*, Order, 22 FCC Rcd 11619, ¶ 7 (rel. June 28, 2007)), some of the carriers involved agreed to recalculate local switching and transport rates if their monthly interstate local switching minutes exceeded a 100 percent increase over the same month the previous year. *See Investigation of Certain 2007 Annual Access Tariffs*, Order, 22 FCC Rcd 21261, ¶ 2 (rel. Nov. 30, 2007) (terminating the access stimulation investigation when all ILECs involved either rejoined the NECA pool or adopted "tariff language that committed them to modify their local switching and transport rates in the event they experience an increase in demand above a threshold level"). Carriers modifying their tariff language stated they would make rate revisions within 60 days of meeting the above threshold.

these illegal practices.[21] Such measures would stop destructive arbitrage activity, without making innocent carriers and customers the casualties of overbroad reform.

D. Commission Precedent Regarding Rate Symmetry Does Not Support Establishment of One Terminating Rate Per State.

Despite AT&T's suggestion to the contrary,[22] there is no current Commission practice or rule that sets a precedent for establishing one terminating rate per state. The Commission has never required rate uniformity for intrastate and interstate access, when the termination of traffic at issue is between two totally different geographic regions (within a state) with distinct cost characteristics.[23] Instead, Commission requirements for rate symmetry are limited to reciprocal compensation – and are based upon the assumption that both carriers have similar switching investment and costs in the same local calling area due to similar subscriber density, carrier size, and calling scopes.[24]

Expanding the logic for the symmetry rule to all terminating traffic (access and local) across an entire state at the same rate is illogical and inconsistent with past American practice regarding rate development. The Commission has a longstanding

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[21] *See* Comments of Qwest Communications International Inc. ("Qwest Comments") at 11-14 (proposing multiple rule changes that "deal individually with the access stimulation issue," because "the intercarrier compensation reforms proposed in the ICC proposal will not have a meaningful impact on access stimulation for several years").

[22] AT&T Comments at 14 (contending that the Commission should "adhere to the consistent American practice of ensuring rate uniformity for all carriers within a given geographic area – and . . . extend that practice to all traffic").

[23] For example, Windstream operates two operating companies in the state of Ohio. Each has its own interstate and intrastate access rates, notwithstanding the fact that they operate in the same state. Because Windstream has not adopted $0.0007 for reciprocal compensation, each has its own reciprocal compensation rates. Neither the Commission nor the Public Utilities Commission of Ohio has implemented this so-called symmetry practice. At best, some state commissions have required ILECs to mirror some of their interstate access rate elements.

[24] *See* 47 C.F.R. § 51.711 (the symmetry rule for reciprocal compensation); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 1085 (rel. Aug. 8, 1996) (explaining the rationale for the symmetry rule).

practice of recognizing cost differences in the context of not only intercarrier compensation, but also in the context of universal service support.[25] Failure to continue recognizing this distinction would be contrary to economic reality for any type of switching, through softswitches or through traditional time division multiplexing ("TDM") switches.[26]

III. COMMENTS OFFER SIGNIFICANT SUPPORT FOR PROVIDING MID-SIZED CARRIERS WITH ACCESS TO AN ALTERNATIVE RECOVERY MECHANISM.

Multiple commenters, in addition to Windstream, have produced significant record evidence in support of an ARM for mid-sized price cap carriers. Both the Independent Telephone & Telecommunications Alliance ("ITTA") and the United States Telecom Association ("USTelecom") explain that these carriers need a viable revenue replacement opportunity to continue to meet their voice service obligations and deploy new broadband services.[27] Absent adequate recovery mechanisms, ITTA reports that

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[25] *See, e.g.*, 47 CFR 54.301(a) and *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 212 (rel. May 8, 1997) (establishing local switching support in recognition that carriers serving rural areas must incur higher switching costs to provide voice service to an individual customer); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45; 15 FCC Rcd 12962, ¶ 162 (rel. May 31, 2000) (recognizing differences between urban and rural price cap ILECs when establishing different interstate average traffic sensitive charges for different classes of carriers). *See also* C. A. Bush et al., Computer Modeling of the Local Telephone Network, App. B, 39 (Oct. 1999), *available at* http://www.fcc.gov/wcb/tapd/hcpm/welcome.html (describing how the forward-looking universal service cost methodology responds to differences in switching costs incurred by carriers of different sizes).

[26] The incremental cost of termination is near zero under the proposed additional costs standard not due to the degree of blocking or scalability of a type of switch, but instead due to the fact that the proposed standard classifies a much greater proportion of switching-related costs as joint and common and then excludes these costs from the calculation of additional costs. *See* Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) (explaining how the proposed standard would overlook significant costs incurred in switching traffic via softswitches, as well as traditional TDM switches).

[27] ITTA Comments at 9 (proposing an ARM for mid-sized price cap carriers to provide them with an opportunity to recover revenue reductions from access rate reductions); USTelecom Comments at 6 (stating that mid-sized price cap carriers deserve a viable replacement opportunity for mandated rate reductions).

mid-sized price cap carriers would have to cut capital and operational costs and increase prices.[28] It asserts that the proposed reforms, as a result, would "retard broadband deployment, rather than promote it . . . ."[29] In addition, USTelecom finds that the proposed revenue mechanism for mid-sized price cap carriers fails to recognize carrier of last resort obligations.[30] USTelecom concludes that the proposed reforms would diminish these carriers' "ability to maintain the prices and quality of services currently offered to their customers and will severely harm their ability to further deploy advanced services."[31]

Individual carriers also provide noteworthy support for an ARM. First, Embarq endorses both USTelecom's and ITTA's proposals to implement an ARM for mid-sized price cap carriers.[32] It observes that Commission precedent recognizes that "a sufficient, reliable recovery mechanism is a vital component of any intercarrier compensation reform plan that reduces intercarrier compensation revenues."[33] Second, CenturyTel, in support of the ITTA plan, explains that the Commission in the past always has indicated that some form of access replacement fund may be necessary whenever considering reductions to intercarrier compensation rates.[34] CenturyTel adds that such a mechanism is important to a wide variety of carriers, as high-cost characteristics exist regardless of whether a carrier is price cap or rate of return regulated, or whether the company is public

[28] ITTA Comments at 7.

[29] *Id*.

[30] USTelecom Comments at 6.

[31] *Id*.

[32] Embarq Comments at 7.

[33] *Id*. at 26.

[34] CenturyTel Comments at 12, 14.

or private.[35] Third, Frontier calls upon the Commission to recognize challenges facing mid-sized price cap carriers and the need to ensure these carriers have an opportunity to recover network costs.[36] Frontier supports ITTA modifications that would implement an ARM for mid-sized price cap carriers.[37] Finally, Cincinnati Bell declares that "recovery mechanisms are inadequate, particularly for mid-size ILECs."[38] "If the Commission truly wants to make broadband available to all Americans," Cincinnati Bell asserts that the Commission "must reexamine the impacts of its ICC reform proposals on the mid-size companies, particularly the mid-size ILECs, which have long held carrier of last resort obligations that place extra burdens on them, but will likely suffer the most significant uncompensated and unrecoverable losses . . . ."[39]

Commenters opposing meaningful recovery do not identify any legitimate policy rationale for distinguishing mid-sized price cap carriers from mid-sized rate of return carriers.[40] Free Press, for example, fails to establish a rational basis for distinguishing price cap carriers from rate of return carriers, as proposed in the ill-considered "compromise path" suggested in its comments.[41] This path would afford rate of return carriers a revenue neutral mechanism, while price cap carriers' recovery would be limited to a $150 million ARM that would be eliminated after five years. The impact of this

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[35] *Id*. at 15.

[36] Frontier Comments at 9 (citing "problems of areas served with low customer densities and networks with long transport routes that are dependent on the tandem of others").

[37] *Id*. at 9.

[38] Cincinnati Bell Comments at iv.

[39] *Id*. at 2-3.

[40] Indeed, many parties – both proponents and opponents of an ARM for mid-sized carriers – agree that price cap and rate of return carriers should be treated the same for cost recovery purposes. *See, e.g.*, Mercatus Center Public Interest Comment on Intercarrier Compensation and Universal Service at 10 (arguing that all mid-sized carriers should be subject to a single mechanism and that mechanism should not consider non-regulated revenues/costs in its determination of whether an ARM is warranted).

proposal would be disastrous for mid-sized price cap carriers and their customers.[42] The ARM recommended would not provide the financial stability needed to continue investing in the network. This temporary support would have a negative impact on rural consumers and further broadband deployment – contrary to the very principles Free Press endorses.[43]

IV. AFFORDABILITY CONCERNS ARE BETTER ADDRESSED WITH A RATE BENCHMARK, RATHER THAN UNDUE CONSTRAINTS ON SUBSCRIBER LINE CHARGES.

Many parties offer general support for using SLC increases as the first source of funding recovery of intercarrier compensation reductions.[44] Specifically Windstream supports the proposal to increase SLCs by $1.50 for residential and single line businesses and by $2.30 for multi-line businesses.[45] Although competition restrains full recovery of permitted SLC increases in many circumstances,[46] allowing carriers to increase SLCs in this manner would give them the opportunity to recover at least some of their reduced intercarrier compensation through increases to their end user rates.

To the extent there is opposition to SLC increases, much of this opposition is focused on affordability and comparability of consumer rates. For example, Free Press

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[41] Comments of Free Press ("Free Press Comments") at 16.

[42] *Id*. at 17.

[43] *See id*. at 5 (arguing the Commission should "rationalize its regulatory structure in a manner that protects consumers and fosters the universal deployment of affordable advanced information and telecommunications technologies"). Free Press also recommends that the Commission "consider phasing out all IAS support." Free Press Comments at 17. Only price cap carriers receive IAS support, thus adopting this recommendation would only exacerbate problems created by the proposed order.

[44] *See, e.g.*, CenturyTel Comments at 23; Embarq Comments at 7; Frontier Comments at 6; ITTA Comments at 9; NECA Comments at 6; Qwest Comments at 5-9; TW Telecom et al. Comments at 9; USTelecom Comments at 7.

[45] *See Core Remand Order*, App. A at ¶ 298, App. C. at ¶ 293 (proposing these SLC increases).

[46] Rate increases are restrained by competition, because consumers will leave carriers if their services are not competitively priced.

voices concerns that SLC increases would "unfairly burden local ratepayers."[47] Some state commissions likewise worry about how consumers would be impacted by SLC increases.[48] The National Association of State Utility Consumer Advocates, joined by other consumer advocacy organizations, adds that proposed SLC increases should not allow customers in one state to replace revenue losses from another state.[49]

Reducing the level of all possible SLC increases, however, is not the best way to address these concerns regarding consumer rates. A preferable route is to use rate benchmarks.[50] As noted in proposals considered by the FNPRM, the Commission could establish a national benchmark for affordability and comparability, and then constrain SLC increases that would cause customers' rates to exceed the benchmark.[51] If a carrier would require revenue recovery in addition to increases above a SLC cap or rate benchmark, it then could look to the ARM. This benchmark could be set at $20.76, the amount that represents the national average urban residential rate as determined by the Commission,[52] or at some other reasonable level. Using such a benchmark would begin to eliminate existing, significant rate inequities between consumers of different carriers

[47] Free Press Comments at 4. *See also* Letter from Chris Murray, Consumers Union, and Mark Cooper, Consumer Federation of America, to Kevin J. Martin, Chairman, FCC, et al., CC Docket Nos. 01-92, 96-45 (filed Oct. 27, 2008) at 1 (questioning whether a SLC increase is "fair for consumers").

[48] Comments of the Nebraska Public Service Commission ("NPSC Comments") (worrying that consumers could be "unfairly penalized" by SLC increases); Comments of the Pennsylvania Public Utility Commission at 14 (expressing concerns that SLC increases could signify a "considerable cost increase" for consumers).

[49] NASUCA et al. Comments at 20.

[50] Many commenters suggest that the Commission should consider using some form of a rate benchmark. *See, e.g.*, CenturyTel Comments at 23; Comments of CTIA—The Wireless Association at 36; NECA Comments at 6-7; NTCA Comments at 3, 10-11; USTelecom Comments at 7-8.

[51] *Core Remand Order*, App. A at ¶ 307, App. C. at ¶ 302.

[52] *See* Letter from Joshua Seidemann, Independent Telephone and Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45; WC Docket No. 05-337 (filed Oct. 20, 2008) at 2 (proposing a SLC benchmark rate that excludes taxes and fees, but includes SLCs).

and consumers in different states. Such disparities are the product of the different local rate setting policies in individual states.

Comments of the Nebraska Public Service Commission ("NPSC") provide useful elaboration on why a national rate benchmark is needed.[53] NPSC argues that "[c]onsumers should not be burdened with rate increases, particularly in states where rates are high in comparison to other states' rates."[54] As explained by NPSC, increasing SLCs without regard to a national benchmark would penalize consumers residing in states like Nebraska, which already have reduced state access with application of local rate benchmarks and state universal service funding.[55] In contrast, NPSC observes that "[c]onsumers in surrounding states" would "benefit[] from their states not taking the initiative to rebalance rates and reduce access charges consistent with the 96 Act."[56]

V. CONCLUSION

The Commission should act now to adopt fair and balanced reforms supported by Windstream. The record before the Commission provides significant reinforcement for a more measured approach to reforming intercarrier compensation and universal service. Reforms recommended by Windstream would remove implicit subsidies and tighten the link between costs and rates, without jeopardizing communications services offered in rural areas.

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[53] NPSC Comments at 8-10.

[54] *Id*. at 2.

[55] *Id*. at 9-10.

[56] *Id*. at 10.

Respectfully submitted,

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December 22, 2008

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