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 NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON FURTHER NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION AND SUMMARY

On November 26, 2008, over a hundred sets of comments[1] were filed on the Federal Communications Commission ("FCC" or "Commission") Further Notice of Proposed

[1] Comments responded to in these reply comments are denoted according to the "Short Forms" list above at pp. ii-iii. Others were reviewed but are not responded to here.

Rulemaking ("FNPRM") in the above-captioned dockets.[2] This was understandable, because the FNPRM covered the multi-billion-dollar interconnected issues of intercarrier compensation ("ICC") and the federal universal service fund ("USF").

The FNPRM sought comment on

> three specific proposals. The first, attached as Appendix A, is the Chairman's Draft Proposal circulated to the Commission on October 15, 2008, which was placed on the Commission's agenda for a vote on November 4, 2008. This item subsequently was removed from the Agenda on November 3, 2008. The second, attached as Appendix B, is a Narrow Universal Service Reform Proposal circulated to the Commission on October 31, 2008. The third, attached as Appendix C, is a draft Alternative Proposal first circulated by the Chairman on the evening of November 5, 2008. Appendix C incorporates changes proposed in the *ex parte* presentations attached as Appendix D.[3]

In addition, the FNPRM sought

> particular comment on two questions. First, should the additional cost standard utilized under § 252(d)(2) of the Act be: (i) the existing [total element long-run incremental cost] TELRIC standard; or (ii) the incremental cost standard described in the draft order? Second, should the terminating rate for all § 251(b)(5) traffic be set as: (i) a single, statewide rate; or (ii) a single rate per operating company?[4]

Comments were due 14 days after Federal Register publication. Reply comments were due 21 days after publication. Publication occurred on November 12, 2008.[5] This made the initial comments due November 26, 2008, the day before the Thanksgiving holiday, with replies due December 2, 2008.

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[2] FCC 08-262. This document also included an Order on Remand and Report and Order. The Order on Remand responded to the writ of mandamus issued by the D.C. Circuit Court of Appeals directing the Commission to respond to the Court's remand of the Commission's intercarrier compensation rules ("ICC") for Internet Service Provider ("ISP")-bound traffic. *In re Core Communications, Inc.*, 531 F.3d 849, 861-62 (D.C. Cir. 2008). The Report and Order rejected the comprehensive unanimous recommendations of the Federal-State Joint Board on Universal Service released November 20. 2007. 05-337, 96-45, Recommended Decision, 22 FCC Rcd 20477 (JB 2007). (Given the multiplicity of dockets involved here -- both those specified in the caption and those addressed in related filings -- references to, e.g., *In the Matter of High-Cost Universal Service Support*, WC Docket No. 05-337 will be to "05-337".)

[3] 08-262, ¶ 40 (footnote omitted).

[4] Id., ¶ 41.

[5] 73 Federal Register 219 at 66821; see http://edocket.access.gpo.gov/2008/pdf/E8-26849.pdf.

The number and volume of the comments filed underscore the unreasonableness of allowing only one week (actually, four business days) for reply comments. On November 26, 2008, RCA filed a motion requesting an additional 14 days to do reply comments. On November 28, 2008, after having a chance to assess the filed comments, the National Association of State Utility Consumer Advocates ("NASUCA") filed a motion requesting a 21-day extension. On December 2, 2008, the Commission granted an extension until December 22, 2008.[6] NASUCA very much appreciates the extension.

Substantively, as noted by Frontier, the Chairman's Draft Proposal

> is likely to create unintended consequences, particularly for mid-size price cap incumbent ILECs. Such carriers would be required to completely reevaluate their cost structures, capital expenditures and employment, with the likelihood of reduced, rather than increased, investment in both existing and enhanced services in rural areas. In addition, rural customers along with rural carriers would bear the largest burden of lost revenue and the need to recover these revenues from other sources. The beneficiaries would be large carriers that would no longer be required to make fair contributions toward network costs. The proposal would pick clear economic winners and losers.
>
> The five-year 100% broadband build-out requirement would put undue and irresponsible pressures on mid-size price cap ILECs and their customers. In conjunction with the near elimination of access charges, a cap on high-cost Universal Service recovery, and a completely insufficient mechanism to replace lost revenue, the build-out requirement would not bring affordable, high-quality broadband services to rural America. Instead, it would only put at risk the rural ILECs' existing support, to the further disadvantage of rural customers.[7]

By contrast, the largest of those "large carriers" -- AT&T -- describes the impact differently:

> AT&T itself will lose very substantial support under the approach outlined in the *Appendix C Draft Order*. It will lose most of the USF support it now receives as a competitive eligible telecommunications carrier ("CETC"); and, as the largest incumbent local exchange carrier ("ILEC") in the United States, it will lose prodigious access revenues as well. While AT&T may recover some of those access revenue losses by raising its subscriber line charges ("SLCs"), competition will likely constrain AT&T's ability to recover all those losses through SLC increases, and AT&T does not expect to recover them through any additional

[6] DA 08-2631.
[7] Frontier Comments at i.

> universal service support. Moreover, although AT&T's long-distance and wireless operations will pay less to other carriers in the form of termination rates, they will not be able to retain those cost savings. Today's indisputably intense competition among providers of long-distance and wireless services will force them to pass through their access charge savings to consumers in the form of still lower retail rates and/or greater investment in service quality and innovation.[8]

Compared to its size, the CETC support that AT&T will lose, and the "prodigious" access revenue it will also lose, are minor compared to the impact on smaller carriers.[9] And given its size, the amounts AT&T will avoid having to pay to other carriers will be "prodigious," yet the current level of competition in the long-distance and wireless market has not forced pass-throughs of previous access charge savings.[10] Likewise, competition has not forced any ILEC to price its SLCs below the maximum level allowed by FCC regulations.

Under these circumstances, it is understandable why AT&T would support the OPASTCO/WTA proposal in the Appendix C Draft Order[11]; Appendix C contains all that AT&T needs, and "buys off" the opposition of smaller carriers,[12] along with phasing out the support that might have gone to AT&T's competitors. Likewise, it is obvious why OPASTCO and WTA would support Appendix C,[13] given that it provides more guaranteed support to their member companies than the other proposals. As shown in NASUCA's comments and others of the comments as cited herein, however, these measures are not in the public interest.[14]

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[8] AT&T Comments at 3.

[9] This undoubtedly underlies AT&T's preference for a five-year transition period, rather than the ten-year period in the Chairman's Draft Proposal. AT&T Comments at 5. See RICA Comments at 6.

[10] See Dave Burstein Comments at 1-2; Dave Burstein "personal" comments at 1-2; NJ Rate Counsel Comments at 16.

[11] AT&T Comments at 4.

[12] See OPASTCO/WTA Comments at 2; see also WI Coalition Comments at 3.

[13] OPASTCO/WTA Comments at 2. Even OPASTCO/WTA's support is tempered by their demand that the Commission adopt "all of the items included in OPASTCO and WTA's October 29, 2008 ex parte letter." Id. at 4. They also request "certain minor clarifications and modifications…." Id. at 5 and 20-27. (The fact that these clarifications take seven pages to explain suggests that they may not be minor.) And not all small rural carriers support the Alternative Proposal. See RIITA Comments at 4-6.

[14] See COMPTEL Comments at 28-31; Free Press Comments at 18.

Verizon, the other large carrier, does not stake out a position on the draft orders in its comments, stating only that "[i]n prior filings in these proceedings, Verizon has provided its views on these comprehensive issues."[16] Verizon does discuss a number of discrete issues, however, but it is clear that Verizon supports the advantage that the proposals give to AT&T, Verizon and Qwest.

This advantage was confirmed by Dave Burstein, who stated that "the best available analysis of the proposals is that between $1B and $2B per year will flow from consumers to the Bell profits."[17] This massive reduction in consumer welfare should not be countenanced.

Another pithy description of the results of the Chairman's Draft Proposal comes from Integra:

> The net effect of adopting many of the Commission's proposed measures to revamp the current intercarrier compensation regime would be to force some carriers – local exchange carriers – and their customers to subsidize the businesses and customers of other carriers – interexchange carriers ("IXCs"). As such, the FCC's various ICC reform proposals would simply morph the "arbitrage" opportunity presently worrying the Bell Companies (now the country's largest IXCs), into an arbitrage bonanza *for* the Bell Companies. Historically, the balancing sides of the intercarrier compensation debate were … ILECs … and IXCs. Generally, ILECs and [competitive local exchange carriers] CLECs had a common interest in preserving rational revenue streams while IXCs had an interest in lowering their cost of using other carriers' networks. With the merger of the largest ILECs with the largest IXCs, the disparate but off-setting voices have merged into a chorus for reform that is nothing more than an attempt to reduce the amount the largest users of other carriers' networks pay for such access, to the obvious detriment of other LECs, especially their smaller competitors in the local exchange market – CLECs.[18]

The anti-competitive impacts of the proposal should be clear.

The problems inherent in the proposal are exacerbated by the rush to judgment signaled by the brief comment period allowed. Other flaws are pointed out by NJ Rate Counsel, the

[16] Verizon Comments at 2.
[17] Dave Burstein "personal" comments at 1.
[18] Integra Comments at 2 (emphasis in original); see also RNK Comments at 10.

proposals are all lacking in data to show their impacts[19]; very few of the comments provide any data supporting the proposals. Further, as COMPTEL notes, none of the concepts put forth in the proposals have been embodied in draft rules.[20] (The failure to propose draft rules can be a cause of, but also may be caused by, the lack of clarity in much of the proposals, as noted by NASUCA.[21]) Thus none of the three proposals can be adopted.

The RSP is to be commended for its inclusion of a chart where the details of each of the three Appendices and their proposals can be reviewed.[22] NASUCA takes much the same approach here, to display the diversity of views taken in the comments: Charts 1 and 2 on the following pages contain the briefest of descriptions of the parties' positions, on ICC and USF respectively.[23] We will then address some of the specific issues, following the outline in our initial comments.

ITTA asserts that **its** proposals arise from consensus,[24] implying that others' do not. As the charts show, there is very little consensus in any of this.[25] This suggests that the Commission -- and the industry, and consumers -- would be better off by addressing those issues on which there does appear to be consensus -- phantom traffic and traffic stimulation[26] -- and those that must be decided in the short term -- the applicability of ICC to IP-PSTN traffic[27] -- rather than

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[19] NJ Rate Counsel Comments at 8.
[20] COMPTEL Comments at 2.
[21] See, e.g., NASUCA Comments at 11 (uncertainties in transition plan).
[22] RSP Comments at 5-6.
[23] As always, NASUCA apologizes in advance to any party that believes its views have been misrepresented here.
[24] ITTA Comments at 4.
[25] As an example, CTIA supports the Chairman's Draft Proposal for ICC, the Narrow Proposal on the USF contribution mechanism, and the Alternative Proposal on the high-cost USF. CTIA Comments at ii.
[26] Broadview, et al. Comments at 5-9.
[27] Id. at 9-15. See *In the Matter of FEATUREGROUP IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(a)(1), and Rule 69.5(b)*, WC Docket No. 07-257 and *In the Matter of Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption*, WC Docket No. 08-8, which have deadlines for decision early in 2009. Clearly, as discussed here and in NASUCA's initial comments, the decision should not be what is included in the Chairman's Draft Proposal, which is complete federal preemption for that traffic. See NASUCA Comments at 6-8.

attempting "global" measures that are doomed to be overturned on appeal.

Likewise, some commenters' attempts to co-opt the four Commissioners' Joint Statement with the FNPRM as representative of their proposals,[28] is belied by the Joint Statement's generality. There are a lot of ideas that would be consistent with the Joint Statement, other than those in the Chairman's Draft Proposal. NASUCA asserts that its proposals are also -- if not more -- consistent with the statements from the four Commissioners.

Finally, although NASUCA disagrees with Cellular South, et al. on many of the substantive issues here, we very much agree with their characterization of the context and possible result of this proceeding:

> In sum, after years of inaction, the Commission is now attempting to rush through an incredibly complicated set of reforms in a document that is vague and fraught with unintended consequences. Adoption of any of the three proposals will almost assuredly be disastrous for consumers and mire the Commission in litigation for years to come.[29]

[28] E.g., Embarq Comments at 6; NECA Comments at 4; NTCA Comments at 3; Windstream Comments at 13.
[29] Cellular South, et al. Comments at 3.

CHART 1: INTERCARRIER COMPENSATION ISSUES[30]

Issue→ Commenter↓	Uniformity needed	Basis for rates	Preemption of states	Ensure revenue recovery
Ad Hoc				No
AT&T	Proposal C	"	"	Support OPASTCO/WTA
Broadview, et al.		Not incremental	No	Ensure competitive neutrality
BSP	No		No	Also for BSPs
CA PUC				No
CBT	No	Carrier-specific TELRIC		
CenturyTel		Carrier-specific TELRIC		Yes
CityNet, et al.		Not incremental	No	
COMPTEL			No	Oppose OPASTCO
CTIA	Proposal A	"	"	Unless under-earning
Embarq	No	TELRIC	No	Yes
ITTA				Yes (own proposal)
NARUC			No	
NCTA	Yes		No	Yes
NECA	No		No	
OPASTCO/WTA				Proposal C
PUCO	Yes		No	
Sprint	Y	Incremental	Yes	
TW Telecom		Not incremental		Limit and offer to CLECs
USTelecom	Yes			Yes
Verizon				
VON Coalition, et al.	Yes (if for VoIP)	B&K or low rate		
Windstream		Need more comment	Yes	Yes

[30] Charts 1 and 2 are selectively listings of some of the major comments.

REVENUE RECOVERY ISSUES

ISSUE→ **COMMENTER↓**	**SLCs**	**Conditions on SLCs**	**USF**	**Conditions on USF**
Ad Hoc	No			
CenturyTel	Yes		Yes	
NECA	Yes	Base on benchmark	Yes	Base on benchmark
NTCA	Yes	Yes	Yes	Yes
OPASTCO/WTA	Proposal C	"	"	"

CHART 2: USF ISSUES

ISSUE→ COMMENTER↓	Broadband	Cap	Reverse auctions	Numbers-based mechanism	Other
AAPC				Not for paging carriers	
Ad Hoc			Support for all	"Pure" numbers-based (for all)	
Broadview, et al.				Pure numbers or pure revenues	
CA PUC	Penalty draconian	No		Not oppose; has questions[31]	Target support
CBT				"Pure" numbers-based (for all)	
CenturyTel	No				Modify per ITTA; target support
COMPTEL				No connections-based?	No end to CETC support
Connected Nation	Make available to all low-income households; start with states with demand-stimulation				
CRUSIR				No	Oppose all three proposals
CTIA	Support for LL			Proposal B	Separate mobility fund; benchmark

[31] Including whether wireless numbers are residential or business

ISSUE→ **COMMENTER↓**	**Broadband**	**Cap**	**Reverse auctions**	**Numbers-based mechanism**	**Other**
ITTA		No			
NECA		No			End ID support; funding from broadband
NTCA	Include in US	No	No		End ID support; expand contrib. base
PUCO					Appendix B (w/ modifications)
Qwest		Yes		Hybrid	Address *Qwest II*
RTG		VZW phase-out will save \$400M; savings from Sprint, too	No		
Sprint		Yes (“right size” first)	No	Modify	
TW Telecom	No			Do not modify for business	
USA/RCA	Unfunded mandate	No	No	Pure connections-based	Respond to 10th Cir; no CETC phase-out; no CETC cost study
USTelecom				Yes	Disaggregation
Vonage	Must offer stand-alone				

II. THE COMMISSION SHOULD NOT ADOPT A UNIFORM INTERCARRIER CHARGE BASED ON INCREMENTAL COST[32]

A. The Commission Cannot Preempt State Authority Over Intrastate Rates.

NASUCA's initial comments relied on filings by NARUC to show that the FCC lacked the power to impose a ratemaking regime on state ICC charges.[33] We are happy to do so again: NARUC's comments are a succinct summary of how

> [t]wo of the proposed orders – the *Chairman's Draft* and the *Alternative Proposal* -- virtually rewrite key sections of the Statute -- overriding literally decades of case law, ignoring express reservations of State authority, and redefining statutory terms in a manner that Congress could never have intended -- to, among other things:
>
> [1] unlawfully constrain State retail rate design by preempting intrastate access charges, building on the flawed legal rationale of the Core Remand order; and
>
> [2] with no factual basis, based on a specious legal rationale, determine that services that (i) use a particular protocol misleadingly labeled as Voice over the Internet Protocol ("VoIP") and which (ii) clearly fit Congress's functional definition of "telecommunications services" in the Telecommunications Act of 1996, are instead "information services" that should be regulated under Title I; and
>
> [3] undermine State universal service and infrastructure deployment programs by revising without caveat the federal contribution mechanism or addressing required adjustments to the Part 36 separations rules.[34]

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[32] Given NASUCA's objections to the fundamentals of the Chairman's Draft Proposal and the Alternative Proposal on ICC, we have not addressed the length of the transition to such unreasonable rates.
[33] NASUCA Comments at 11, citing NARUC ex parte filed October 28, 2008 (at 5-7).
[34] NARUC Comments at 4-5 (footnote omitted).

And NARUC's comments are backed up by those of Broadview, et al.[35]; BSP[36]; CityNet, et al.[37]; COMPTEL[38]; Embarq[39]; MA DTC[40]; NECA[41]; NTCA[42]; NY PSC[43]; PUCO[44]; and NJ Rate Counsel,[45] among others. Such preemption is neither lawful nor appropriate.[46] As NARUC states, "Not one of these proposals is likely to survive judicial review."[47]

B. The Commission Should Not Adopt The Incremental Cost Standard For ICC.

As with the proposals to preempt states, the proposal to use -- only for ICC -- an incremental-cost standard, which includes none of the carrier's joint or common costs, has received resounding rebuttal in the initial comments. The comments of Broadview, et al.[48]; CBT[49]; CenturyTel[50]; CityNet, et al.[51]; Embarq[52]; and tw telecom, et al.[53] all show how the incremental-cost standard is illogical, not supported by law, and anti-competitive.[54] Particularly compelling in this regard are the declarations of August H. Ankum and Oleysa Denney, filed on behalf of PAETEC, and the declaration of Lee Selwyn, on behalf of Broadview, et al. The comments of Sprint and T-Mobile, in favor of incremental cost, and of VON, in favor of the

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35 Broadview, et al. Comments at 16-29.
36 BSP Comments at 6-9.
37 CityNet, et al. Comments at 2-7.
38 COMPTEL Comments at 6-10.
39 Embarq Comments at 29-35.
40 MA DTC Comments at 7-9.
41 NECA Comments at 5-6.
42 NTCA Comments at 8.
43 NY PSC Comments at 7-13.
44 OH PUC Comments at 8-12.
45 NJ Rate Counsel Comments at 22-26.
46 T-Mobile touts the benefits of "a single national termination rate" (T-Mobile Comments at 6), but does not put forth any legal authority that would allow the Commission to establish such a rate.
47 Id. at 5.
48 Broadview, et al. Comments at 29-35.
49 CBT Comments at 10-13.
50 CenturyTel Comments at 10.
51 CityNet, et al. Comments at 19-20.
52 Embarq Comments at 42-50.
53 tw telecom, et al. Comments at 5-7.
54 See also CostQuest Comments at 9-11; NY PSC Comments at 6-7; PA PUC Comments at 21-25; WI PSC Comments at 6-7.

lowest rate achievable, are hardly compelling.[55]

TX OPC crystallizes the issue:

> In the simplistic theoretical construct of perfect competition we assume there are many firms producing identical goods. This assumption does not mean that firms have identical cost structures; we only assume that firms can enter and exit the market without cost. The result that price equals marginal cost at the socially optimal allocation means that the cost of the last unit transacted, as incurred by the firm producing it, is equal to price. This says nothing about the per-unit costs incurred by firms in the production of all other units transacted in the market; in fact, their costs will be at least as low, if not lower, than the cost of the marginal unit. Given this fact, application of marginal-cost pricing on a firm-by-firm basis will *not* duplicate the outcome of a competitive market.[56]

And as tw telecom, et al. state,

> Recent evidence submitted into the record by CLECs demonstrates that TELRIC remains a reasonable approximation of the additional costs of termination. If anything, the current TELRIC methodology appears to underestimate the costs of termination because it excludes the cost of shared loop facilities.[57]

It should be clear that adopting the incremental cost standard only for ICC leaves all other services -- wholesale and retail -- to pick up the costs that ICC should be paying. RSP states,

> To provide accurate price signals, intercarrier compensation rates should incorporate only those costs that vary with usage, not a share of common or overhead costs. Therefore, the proposed "incremental cost" standard will better promote overall economic welfare than the TELRIC standard, for the reasons the FCC points out in its well reasoned and comprehensive discussion.[58]

RSP does not explain, however, why only ICC should avoid paying its share of common or overhead costs. Likewise, RSP characterizes ICC as a "hidden cost,"[59] but does not explain why this cost is any more "hidden" than the costs of constructing a network, the costs of billing

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[55] These are representative of the few commenters supporting the use of incremental cost for pricing ICC. CTIA asserts that joint and common costs are unavoidable for transport and termination of traffic, but avoidable for unbundled network elements, thus justifying not collecting those costs from transport or termination. CTIA Comments at 25. This is contrary to the fundamental concept of joint and common costs.
[56] TX OPC Comments at 4.
[57] tw telecom, et al. Comments at 5.
[58] RSP Comments at 8.
[59] Id.

systems, or the costs of a telephone company's consultants. To make matters worse, the NE PSC points out that rates based on incremental costs will likely be so low as to make the costs of billing higher than the ICC rates themselves.[60]

TSTCI points out that freeing ICC from any responsibility for covering telephone companies joint and common costs signals a violation of 47 U.S.C. § 254(k), which requires that the services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.[61] To the extent that ICC does not pay for joint and common costs, then basic service is bearing more than a reasonable share of those costs.

And in one of the rare inclusions of data in this record, the CA PUC notes that

> [r]ough estimates of the possible impact of the plan in California show, prior to SLC/EUCL offsets, a total loss of almost $60 million in intrastate access revenues for California incumbent companies at the end of two-year Stage 1. At the end of Stage 3, assuming all the incumbent companies are charging the 0.0007 rate for terminating access, the loss of interstate and intrastate access revenues, prior to SLC/EUCL offsets, would be close to $170 million just for California's incumbent local exchange companies. Assuming the incumbent carriers all increase their SLCs/EUCLs up to the new caps, the small rural rate of return carriers would still have a loss deficit of an estimated $34 million. Rural carriers may decide that they will have to increase rates substantially for rural consumers.[62]

That's a lot of money in California alone; the number will be substantially greater nationwide.

Finally, the NE RIC point out an adverse consequence of pricing ICC near zero:

> Carriers terminating any type of traffic onto rural networks will have no reason to constrain their traffic when rates are far below costs at near-zero levels. The Nebraska Companies know of no analysis that has been done by the Commission to quantify the likely substitution from services priced on a non-usage-sensitive basis to services priced on a per minute of use basis. With the latter priced at a

[60] NE PSC Comments at 7.
[61] TSTCI Comments at 18.
[62] CA PUC Comments at 14.

> near-zero rate level, market participants will alter their behavior and terminate more traffic using services priced at the near-zero per-minute of use rate level.[63]

These impacts are substantial, and the Commission should approach such results with extreme caution.

C. The Commission's Ruling On The Nature Of IP Traffic Is Not Essential To Its ICC Ruling Here.

NASUCA has consistently opposed the Commission's various assertions that VoIP service and/or IP-to-PSTN traffic is an information service.[64] As NCTA points out, however, under the Commission's theories, such a finding is not necessary to making such traffic subject to the ICC regime.[65] More commenters oppose the information service classification[66] than support it.[67]

Again, TX OPC frames the issue well:

> The Chairman's Draft Proposal classifies IP/PSTN services as "information services" and goes on to state: "…we preempt any state efforts to impose 'traditional "telephone company" regulations' as they relate to IP/PSTN information services as inconsistent with our generally unregulated treatment of information services." Such a proposition will generate the market distortions the Proposal is geared to correct -- carriers will exploit this regulatory arbitrage opportunity by choosing the technology by which traffic is carried in order to receive their favored regulatory treatment. Classification of services as "telecommunications services" or "information services" should be a substantive one based on the nature of the services and not just on the protocols used in their provision.[68]

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[63] NE RIC Comments at 5; see NASUCA Comments at 11..
[64] NASUCA Comments at 12-13.
[65] NCTA Comments at 7-8.
[66] CA PUC Comments at 48; see also COMPTEL Comments at 17-19; MA DTC Comments at 9-13 (focusing on fixed VoIP); NARUC Comments at 11-22; NE RIC Comments at 16-20; NECA Comments at 29-37; NY PSC Comments at 15 (also focusing on fixed VoIP); OH PUC Comments at 8-12; RICA Comments at 10-12; TSTCI Comments at 20-27; tw telecom Comments at 11-14; WI PSC Comments at 8-10.
[67] USTelecom Comments at 8; Verizon Comments at 5-28; Vonage Comments at 2-8; VON, et al. Comments at 4.
[68] TX OPC Comments at 3 (footnote omitted).

IP-to-PSTN traffic (and vice versa) **depends** on the lack of change in the communication[69]; few VoIP customers depend on any of the advanced features that are available. (In this respect, VoIP is similar to POTS service, which can also be offered with information service adjuncts, like voice mail.[70]) Voice IP traffic should not be classified as an information service. As WITA/OTA state, "Use of a particular technology, such as … VoIP … cannot be advanced as the reason for giving one set of carriers a free ride in the use of other carriers' networks."[71]

RNK points out the many unanswered questions regarding ICC under the Chairman's Draft Proposal:

> No mention is made in the *Further Notice* of what rates may be charged for terminating IP/PSTN or PSTN/IP calls during the transition. Is the higher terminating access rate due? The lower reciprocal compensation rate? From the perspective of a net payer of such intercarrier charges, it is necessary to predict what it might pay out for terminating a particular call. It should not have to wait for its bill in order to determine what traffic falls within a particular jurisdiction or is subject to a particular rate. Payers of intercarrier services should not be forced to expend additional time, money and resources in order to investigate whether or not calls are PSTN calls, and which may originate on IP networks -- technical carrier information to which the paying carrier would not have access.[72]

Indeed, as the MA DTC notes, the rationale on IP-based traffic in the Chairman's Draft Proposal is essentially the same as that contained in the accompanying *ISP Remand Order*.[73] Therefore, it would be premature for the Commission to adopt that rationale in the broader rulemaking before the D.C. Circuit has approved of it in review of the latest *ISP Remand Order*.

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[69] See NY PSC Comments at 18-19.
[70] See AT&T Comments at 24 (VoIP services "increasingly include Internet-enhanced features… made possible 'only through use of an advanced IP communications network'"). The fact that beginning in the '80's plain old telephone service ("POTS") was offered over networks that allowed carriers to sell pricey advanced new service ("PANS") did not change the POTS into PANS.
[71] WITA/OTA Comments at 3.
[72] RNK Comments at 11; see also SureWest Comments at 3-4.
[73] MA DTE Comments at 6-7.

III. THE PROPOSALS FOR RECOVERY OF LOST ICC REVENUE MUST BE REJECTED.

NASUCA agrees with AdHoc that

> [t]he inter-carrier compensation reform proposals are plagued by an apparent commitment to "revenue neutrality." Revenue neutrality may sound innocuous, but it is anything but innocuous. It is predicated not on cost recovery or on assuring just and reasonable rates. Instead, revenue neutrality protects carrier interests without any quantitative analysis demonstrating that the resulting rates would satisfy the just and reasonable standard embedded in section 201 of the Communications Act.[74]

Also, the carriers – especially the larger carriers -- have not actually shown any need for revenue recovery.

AT&T raises practical problems with proposals to offset access revenue losses with access savings, such as those proposed by Free Press.[75] That merely underscores the fundamental one-sided unfairness of the lost revenue recovery proposals.

NASUCA rejects as unsound, both theoretically and on a public-policy basis, RSP's suggestions for revenue recovery.[76] NASUCA also rejects, for the same reasons, AT&T's assertion that "[t]his methodological shift will thus make each carrier more accountable to its subscribers for any inefficiencies in its network and will let consumers, rather than intercarrier compensation rules, pick winners and losers in the marketplace.[77] Similarly, Sprint asserts that "[r]equiring a carrier to recover its costs from its own subscribers rather than from its competitors is economically rational…."[78] ICC makes **all** customers who use carriers' networks responsible for those networks, both retail and wholesale. AT&T's and Sprint's approach would limit this

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[74] AdHoc Comments at i.
[75] AT&T Comments at 20-21.
[76] RSP Comments at 2 (given an expansive "economic" definition of "waste and inefficiency").
[77] AT&T Comments at 5.
[78] Sprint Nextel Comments at 23; see also Leap Comments at 9 ("As long as LECs are authorized to recover their costs from other carriers rather than from the LECs' own end user customers, imaginative companies will find a way to skew the compensation system to their financial advantage.").

responsibility to the retail end-user customers of the carrier and some wholesale customers (those who purchase unbundled network elements and special access), while excluding ICC wholesale customers and **their** end-users.

AT&T's position on the "single, statewide rate" question should also be rejected. AT&T states,

> The Commission should likewise adopt the *Appendix C Draft Order*'s decision to maintain a "single, statewide rate" for termination rather than "a single rate per operating company" (*Further Notice* ¶ 41). As the European experience has shown, experimentation with rates that vary by carrier or carrier type would produce inefficient, competitively biased cross-subsidies and regulatory uncertainty.[79]

The laws of this republican Nation are, of course, quite different from the European structure. And "rates that vary by carrier or carrier type" would vary by that carrier's costs; in a truly competitive environment, that is what rates are supposed to be based on.[80]

A. The Commission Should Not Increase SLCS As A Means Of Revenue Recovery.

AdHoc recognizes -- as did NASUCA -- the crucial flaw in the claim in the Chairman's' Draft Proposal that competition had restrained SLCs because they were below the hard cap the Commission had required in the *CALLS Order* and the *MAG Order*.[81] As AdHoc states,

> Appendices A and C would confront residential and business consumers with major … SLC … increases, not the modest increases suggested in Appendices A and C. Those Appendices seem to misperceive the role of "caps" and costs under currently effective rules. Carriers must charge the lesser of cost-based SLCs or SLCs capped pursuant to Commission rule. The average SLCs for all of the RBOCs are below the capped levels, i.e. the cost-based SLCs are lower than the capped SLCs. Raising the cap and allowing the RBOCs to price up to the cap

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[79] AT&T Comments at 14; see also Global Crossing Comments at 5-6.
[80] See ITA Comments at 19-20.
[81] *In the Matter of Access Charge Reform*, CC Docket No. 96-262, et al., Sixth Report and Order, et al., FCC 00-193, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"); *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *et al.*, Second Report and Order, *et al.* FCC 01-304, 16 FCC Rcd 19613 (2001) ("*MAG Order*").

> without regard to the cost of providing the providing SLCs would result in about a 110% increase for multi-line business service customers. These astonishing increases must be evaluated against the backdrop of excessive RBOC earnings on interstate services in 2007 (25% to 53%) and the dire conditions affecting the entire economy.[82]

Similarly, NJ Rate Counsel

> urges the Commission to resist solutions that shift billions of dollars in carriers' cost recovery to consumers based on speculative predictions of gain and minimal tangible benefits. Under the contemplated proposals, primary residential and single-line business consumers would pay $128 million more in subscriber line charges … each month, translating into over $1.5 billion in new annual consumer costs. Multi-line business consumers would face an additional $91 million in subscriber line charges each month, translating into approximately $1.1 billion in new annual costs for multi-line business customers. The total new annual cost to consumers would be approximately $2.8 billion in subscriber line charges.[83]

This is a revenue transfer of immense proportions, and should not be countenanced, even under the shibboleth of economic efficiency.[84]

At base, the idea of SLC increases as a means of lost revenue recovery is fundamentally wrong, as AdHoc points out:

> In discussing SLC increases, Appendices A and C attempt to justify the proposal to allow the ILECs to "recover at least a part of their lost intercarrier compensation revenues" from increased SLCs with language used to justify the initial creation of the SLC during the initiation of access charges. The reference to a 1983 finding "that users of the local telephone network should be responsible for the costs that they actually cause" does not justify the instant proposal to increase SLCs specifically to recover **revenues** that have no demonstrated relationship at all to the "costs" caused by the purchaser of a SLC loop. **The proposed SLC increase is all about "revenue neutrality" and not at all about "cost recovery."**[85]

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[82] AdHoc Comments at i; see also id. at 8-10.
[83] NJ Rate Counsel Comments at 7 (footnotes omitted).
[84] GVNW states that "[d]espite the objection of parties such as NASUCA, we contend that such modest increases to the SLC cap level are properly targeted to allow carriers to recover a portion of the revenues lost from mandated access charge reductions." GVNW Comments at 9. But beyond this flat statement of its contention, GVNW provides no support, especially for the crucial legal and policy question of whether the interstate SLC can be used to recover intrastate revenue losses.
[85] AdHoc Comments at 4 (emphasis added; footnote omitted).

RNK argues that, in fact, the "previous SLC cap increases attributable to the *CALLS Order* should also be eliminated. Surely, the Commission should not be subsidizing these carriers indefinitely and they have had ample time with which to address this lost revenue."[86] NASUCA could not agree more.

On a related note, although its comments are not a model of clarity, it appears that Qwest would like the Commission to allow it to increase its SLCs in one study area (or one state?) to allow recovery of lost revenues from another study area or another state.[87] This stretches the idea of lost-revenue recovery beyond all reason, and must be rejected. Indeed, NASUCA agrees with AT&T to some extent that **if** the Commission allows SLC increases -- which it should not --

> [t]he Commission … should clarify that resort to the federal SLC increase is available with respect to any lines for which the ILEC has no intrastate pricing flexibility, without regard to potential increases that might be applied to lines with *unconstrained* pricing flexibility; increases on the rates for the latter lines are required only to make up for the average access revenue loss per line on *those* lines.[88]

SLC increases -- if allowed -- should be allowed only to recover revenues lost from those lines; a carrier should not be allowed to recover through SLC increases lost revenues from other lines. It is also not clear what AT&T means by "unconstrained pricing flexibility"; if there are no constraints on **any** services in an area -- rather than all services -- the carrier should be required to use that "market-based" recovery mechanism, rather than increasing the SLC.

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[86] RNK Comments at 10.
[87] See Qwest Comments at 10, and ¶ 302 of red-lined draft order attached to Qwest's comments.
[88] AT&T Comments at 40 (footnote omitted).

B. The Commission Should Not Allow Explicit Recovery Of Lost ICC Revenue Through The USF.[89]

RICA argues that USF replacement revenue must be available to CETCs as well as ILECs.[90] Given NASUCA's position that ILECs should not have automatic access to the USF when they lose ICC revenue, there is no reason to allow such recovery by CLECs. In the end, as NASUCA argued, there is no necessary connection between lost revenues and the directive in Section 254 that rural rates be reasonably comparable to urban rates. Therefore, although NASUCA disagrees with Sprint Nextel in many other respects, we agree that "[t]here is nothing in the Act which expands the mission of the USF to guaranteeing a revenue stream to high-cost support recipients generally, much less to a particular class of carriers. It is thus entirely appropriate for the Commission to adopt stringent eligibility standards for any carrier seeking revenue replacement support from the USF."[91]

Further, T-Mobile points out the fundamental problem with using the USF as a means of revenue recovery:

> The addition of even more non-portable ICLS and IAS funds would violate the statutory requirement of "competitively-neutral funding," undermine the pro-competitive goals of those funds, and result in "protection [of the ILECs] from competition, the very antithesis of the Act." The Commission's attempted justification for non-portability -- that CETCs have more discretion than ILECs to recover reduced access revenue through higher end user charges -- fails because all high-cost universal service funds are intended "*to benefit the customer, not the carrier*." The purpose of ICLS and IAS is to cover the cost of serving high-cost *customers*, irrespective of which *carrier* provides the service or the regulatory treatment of the serving carrier. Moreover, because *Alenco* holds that any USF support must be portable, any fund that is not available to all CETCs by definition cannot be treated as a universal service fund under Section 254. The Commission thus has no authority under Section 254(d) to require carriers to contribute to a

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89 Dave Burstein provides an analysis of the revenue impacts on carriers, focusing on the assertions by ITSI, and showing its claims to be unsupported. Dave Burstein Comments at 3-4.

90 RICA Comments at 6-8.

91 Sprint Nextel Comments at 24.

non-portable fund.[92]

T-Mobile also points out the even more egregious provisions of the Alternative Proposal that would give replacement revenue to rural rate-of-return ILECs without conditions and would replace not only lost revenue resulting from reduced ICC but also "from any reductions in minutes of use or loss of access lines."[93] These provisions are clearly unreasonable.

C. Intrastate Revenue Recovery Should Be Up To The States.

NASUCA agrees with the OH PUC in its statement recommending

> the adoption of a far simpler and more direct alternative, which is that any increase in the interstate SLC be used only to recover any reduction in interstate intercarrier compensation revenues, and to leave it to each state to address lost intrastate intercarrier compensation revenues as appropriate under state law.[94]

Under this approach, states would be free to deny recovery by companies that had been declared competitive,[95] or whose services had been declared competitive. Where some but not all of a carrier's services have been declared competitive, in order to comply with 47 USC § 254(k), recovery must be shared among competitive and non-competitive services.

The NE PSC points out the many complications embodied in the approach(es) taken in the Chairman's Draft Proposal: They ignore the actions of states that have already taken actions to reduce intrastate access rates (so-called "early adopter" states)[96]; they reduce end-user rate comparability among states[97]; and they are vague in terms of requiring states to have "maximum

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[92] T-Mobile Comments at 19-20 (footnotes omitted, emphasis in original). Contrary to T-Mobile's view, the statute (47 U.S.C. § 254) does not explicitly require competitive neutrality; that principle was added by the FCC.
[93] Id. at 20.
[94] OH PUC Comments at 58. Contrary to the implications of the OH PUC's statement, recovery of interstate access losses should not be allowed through the SLC.
[95] See BSP Comments at 10-11.
[96] NE PSC Comments at 8-10; see also Home/PBT Comments at 4-5 (state actions where states have already reduced intrastate access charges); NY PSC Comments at 4.
[97] NE PSC Comments at 10-11.

allowable rates" under state law.[98] These are all reasons why the proposals cannot be adopted as they are proposed. The OK CC accurately describes the "impossible logic" in the Chairman's Draft Proposal:

> [T]he FCC would reform intercarrier compensation and allow affected carrier's to recoup a portion of their losses through: I) increased subscriber line charges, 2) increased retail rates to the maximum level allowed by state law, and 3) recovery from intrastate funding mechanisms, i.e., state universal service funds. The impossible logic here is that in order to avoid potential rate increases due to excessive subsidization, consumers will see an increase in local rates to the highest level allowed by state law, increase in subscriber line charges, and also an increase in the contribution rates for state universal service funds.[99]

The Chairman's Draft Proposal must be rejected.

IV. THE COMMISSION'S BROADBAND PROPOSALS NEED RETHINKING.

A. Broadband Deployment

In initial comments, the WI PSC bemoaned the lack of federal funding for "rural areas of non-rural providers in Wisconsin," and blamed that for the fact that "Wisconsin consumers [of non-rural carriers] are less likely to have ubiquitous broadband service than customers of rural carriers."[100] Dave Burstein provides a trenchant response:

> The [WI PSC] uses this datapoint to suggest the failure of the Bells to provide broadband suggests they should receive a subsidy. It should suggest the opposite: the Bells are not investing. They are among the most profitable companies in the world, with AT&T on track to earn over $10B this year. So there is no doubt they have the funds to invest, but have chosen to use them for other things. AT&T has bought back $B's of stock and consistently raised dividends. That suggests any subsidy would more likely accrue to the shareholders of the company than necessary broadband investment. In fact, the key Bell in the state, AT&T, has

[98] Id.; see also NY PSC Comments at 3. Interestingly, the NY PSC seems to believe that "competitive rates" are inevitably higher than current rates. Id. So much for the promise of competition to bring lower prices to consumers! (See the Preamble to the '96 Act.)
[99] OK CC Comments at 12; see NASUCA Comments at 30-31.
[100] WI PSC Comments at 5.

> consistently spent less on capex than depreciation, indicating the lack of broadband is a failure to invest, not an inadequacy of available funds.[101]

There is no suggestion that depriving these carriers of any high-cost USF dollars they may receive -- AT&T in Wisconsin gets no high-cost support[102] -- will promote broadband deployment beyond what is occurring today. The OK CC correctly uses the "U-M" phrase -- "unfunded mandate" -- to describe this aspect of the Chairman's Draft Proposal.[103] As asserted in NASUCA's comments, as to the broadband deployment mandate in the Chairman's Draft Proposal

> The key question is, however, whether that risk is sufficient to produce certification and compliance with the build-out requirements.
>
> The answer is, "Probably not," at least for the non-rural carriers. As shown in the Appendix, the support many of these carriers receive on a per-line basis is low enough that they would likely make the economically rational choice to forgo high-cost support in order to avoid having to comply with the buildout requirements. …
>
> And the non-rural carriers that receive no support will not be covered at all.
>
> Thus the gaps in the Chairman's Draft Proposal virtually guarantee that the broadband needs of many rural customers, especially the rural customers served by AT&T, Verizon and Qwest, will not be met. The proposal embodies the wrong approach (removing support if coverage is not achieved) and covers too few problem areas (only hitting carriers whose high-cost receipts are themselves high) to achieve the goals "to spur deployment and ensure that all Americans have access to broadband."[104]

B. The Lifeline And Link-Up Broadband Pilot Is Not Ready For Implementation

The Lifeline and Link-Up Broadband Pilot in the Chairman's Draft Proposal attracted comments

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[101] Dave Burstein Comments at [7].
[102] See Appendix to NASUCA Comments.
[103] OK CC Comments at 9.
[104] NASUCA Comments at 40-41 (footnotes omitted).

in support for the concept,[105] but also many questions and criticisms as to how it might be implemented.[106] It appears that tw telecom is the only outright naysayer.[107] The diversity of other comment is substantial: AT&T favors a Lifeline credit towards the monthly Internet access subscription cost but opposes Link-Up support for a Broadband Internet access device.[108] CA PUC would require broadband service providers to contribute to the USF, if USF support is available to increase broadband subscription among low-income households.[109] NJ Rate Counsel criticizes the amount of federal USF funding for the proposed pilot as inadequate.[110] Connected Nation proposes that the annual funding be distributed first to states "that have implemented a comprehensive broadband education and demand stimulation program that addresses low-income households."[111] The MA DTC recommends that the FCC skip a pilot phase and instead should reform Lifeline and Link-Up

> to permit consumers to use the subsidy in the most cost-effective method for them and which would not lock them into any one technology. In other words, Lifeline/Link-Up should be made available for a variety of phone services, one subsidy per household, which can be used for wireless, wireline, a broadband connection, or a bundled package.[112]

Windstream views the policy questions of USF support for broadband and affordability of

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[105] T-Mobile Comments at 17 (viewing the Pilot as "far superior " to M2Z Networks, Inc.'s free broadband proposal); WITA/OTA Comments at i, 10 (the Pilot is an "innovative idea" and should be adopted).
[106] AT&T Comments at 51-56; Free Press Comments at 24 ("this proposal deserves more consideration"); Verizon Comments at 32; Qwest Comments at 40 ("The goal of making broadband Internet access service more accessible to low-income customers is an admirable one. But the Broadband Lifeline/LinkUp Pilot Program as proposed does not seem well designed for success.").
[107] tw telecom, et al. Comments at 2, 7.
[108] AT&T Comments at 51-53.
[109] CA PUC Comments at 12.
[110] NJ Rate Counsel Comments at 56. TracFone favors more support per low-income household, up to $250 per device and $30 per month to provide affordable access. TracFone Comments at 3-4; see also TracFone December 3, 2008 ex partes at 3. Qwest recommends that the Commission "analyze existing rates for broadband Internet access service in order to evaluate what support amounts will provide 'affordable' broadband Internet access service for qualifying low-income customers." Qwest Comments at 24.
[111] Connected Nation Comments at 3, 4-6.
[112] MA DTC Comments at 27.

broadband service among low-income consumers as intertwined.[113] But Windstream concludes,

> The Commission's specific plan for the Lifeline/Link Up Pilot Program, however, falls short of its potential and the Commission's stated objectives. Without modification, the Pilot Program will do little to promote broadband access to low income consumers residing in high-cost, rural areas.[114]

Connected Nation would allow the Pilot to support Lifeline Broadband even in service areas where deployment is not complete.[115]

NASUCA supports the concept of the Lifeline Broadband Pilot but it is far from ready to implement. At its best, the Pilot would bring low-income consumers in parts of the United States more affordable access to broadband service. Connected Nation, Sorenson, and GoAmerica have articulated the benefits to consumers and the nation which increasing broadband subscription among low-income households, including those with special communications needs, may provide.[116] The plan to make both Lifeline and Link-Up support available for broadband Internet access should be retained. No states should be given priority in the distribution of USF support under the Pilot. Compromises may have to be made to allow the Pilot to proceed, such as allowing support for an ETC offering Lifeline and Link-Up Broadband even if the ETC has not yet ubiquitously deployed broadband.

However, as set forth in the NASUCA Comments, there should be no compromise on questions of preservation of telephone service or other consumer protection concerns when a low-income consumer accepts Lifeline and Link-Up Broadband assistance from a

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[113] Windstream Comments at 54.
[114] Id. at 55.
[115] Connected Nation Comments at 3-4.
[116] Id.; GoAmerica Comments at 2; Sorenson Comments at 2.

qualified ETC.[117] Although NASUCA supports a pilot phase, NASUCA agrees with the MA DTC that the ultimate result should be a Lifeline and Link-Up program which allows each low-income household the maximum flexibility and choice in the purchase of telephone and broadband service with USF support, either as stand-alone services or bundles.

NASUCA urges the Commission to redesign the Lifeline and Link-Up Broadband Pilot and put the matter out for further comment.

V. THE COMMISSION SHOULD NOT ADOPT A NUMBERS-BASED USF CONTRIBUTION MECHANISM

In a November 21, 2008 ex parte, AT&T and Verizon assert that there is "almost complete unanimity within the industry that the Commission should move universal service contributions to a numbers-based methodology."[118] As Chart 2 above shows, the unanimity is far from complete.

The AT&T/Verizon position is based, once again, on a proposition that gains no more credibility through repetition. They say that

> [t]he failings of the existing contribution methodology should be so well known as to make their recitation unnecessary. The Commission's existing revenues-based contribution methodology is simply inadequate to the task of supporting universal service, whether of the 20th or 21st century. For years, providers have warned the Commission about the ever increasing problems with identifying interstate end-user telecommunications service revenues and have cautioned that a revenues-based methodology is unsustainable.[119]

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[117] NASUCA Comments at 55-61.
[118] 06-122 AT&T/Verizon ex parte (November 21, 2008) at 1.
[119] Id.

Never once have the proponents of a numbers-based mechanism backed up these claims with facts.

First there were the claims of a death spiral. But that didn't happen. And then there were wailings and lamentations when the revenue-based mechanism contribution factor increased (because of increased demand on the fund).[121] But that has moderated, because of the "patches" the Commission has applied -- although as previously noted by NASUCA, the "patches" were appropriate adjustments based on changes in the industry.[122] And there are other things the Commission could do -- such as assessing broadband service to fund broadband deployment.[123]

There is simply nothing in this record -- other than conclusory statements like AT&T's/Verizon's -- to show that the numbers-based mechanism is not sustainable.[124] No facts, no data, no demonstration at all. None.[125] As ATSI asserts,

> the "analysis" and "justification" set forth in the Attachments to the FNPR fall far short of adequately supporting the wholesale changes that those attachments would bring about. As an initial matter, ATSI points out that the foundational claim in the Attachments, that that the current contribution system is "broken," is at best result-oriented rhetoric rather than reasoned analysis. The decline in

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[121] See ATSI Comments at 9 (emphasis in original) ("If the increased USF disbursements were warranted and in the public interest, they do *not* suggest that the contribution system is "broken". Rather, in such case they would simply mean that the USF program is relatively broader and more expensive in 2006 than in 2000, and therefore that it was necessary to increase the contribution factor in order to generate the increased revenues needed to pay for the more expensive 2006 USF program.")

[122] NASUCA Comments at 64; see also ATSI Comments at 10 ("ATSI knows of no reason to believe that 'safe harbor' allocations are not simple and effective solutions to the intrastate/interstate revenue issue; and the proposals do not claim otherwise. Thus, the proposals' complaint that distinguishing interstate from other revenues now is 'difficult if not impossible' is, at best, a gross exaggeration.")

[123] See 05-337/96-45 NASUCA Comments on Recommended Decision (April 17, 2008) at 19-20.

[124] ATSI provides a detailed review of the history of the proposals for a numbers-based mechanism. ATSI Comments at 2-4.

[125] PAETEC asserts that the current mechanism requires each of its three operating entities to expend 20 hours each quarter completing Form 499-A. CityNet, et al. Comments at 24. This says nothing about how much of this time is devoted to resolving jurisdictional issues and how much to providing other necessary information.

> assessable revenues from $79.0 billion in 2000 to $74.5 billion in 2006, cited and relied upon in the Attachments, is only a 5.7% decline over a six-year period. On its face that hardly constitutes a "breakdown" of the current contribution system. Quite to the contrary, to generate the same contribution of $4.5 billion in 2006 that was needed in 2000, the contribution factor would have increased only from the 5.9% factor used in the first quarter of 2000 to a 6.0% contribution factor in 2006. Again, that hardly constitutes a "breakdown" of the current contribution system.[126]

Indeed, as RTG notes,

> the FCC's decision to phase out high cost support to Verizon Wireless will eventually save the universal service fund ("USF") approximately $400 million per year, easing pressure on USF. Further, the FCC's determination in the Sprint/Clearwire merger to require Sprint to phase out high cost support, or demonstrate its own costs if it desires high cost support, also reduces the size of USF and eliminates any rationale for an immediate USF "fix."[127]

If the revenues-based mechanism were to be replaced, what would replace it? As Chart 2 shows, there is no unanimity or consensus on that score.[128] The Chairman's Draft Proposal was for a hybrid system (numbers-based for residential customers, revenues moving to connections for business); the Narrow Proposal would immediately use numbers and connections for business.[129] But each of these has significant opposition (indeed, even AT&T would modify the Narrow Proposal[130]). For example, COMPTEL asserts that a connections-based system "would have a grossly disproportionate impact on smaller business customers."[131]

[126] ATSI Comments at 8 (footnote omitted).
[127] RTG Comments at 3-4; see also Corr Comments at 5-6.
[128] The NE PSC raises the important question of the impact of any Commission decision changing the contribution mechanism on state USF contribution mechanisms. NE PSC Comments at 17.
[129] See AdHoc Comments at iii (unfairness of assessing businesses for both numbers and connections, compared to residential customers being assessed only on numbers).
[130] AT&T Comments at 46-51.
[131] COMPTEL Comments at 24-28; see also Hughes/Inmarsat Comments at 13-14 (connections-based proposal "would have a punitive effect on satellite broadband providers"); Megapath Comments.

It is important to note that a "hybrid" system -- combining revenues and numbers -- has problems all its own.[132] As AT&T states, the approach in the Chairman's Draft Proposal "would be problematic because there is often and increasingly no workable distinction between 'residential' and 'business' telephone numbers, and the proposal would thus be nearly impossible to implement."[133] Broadview Networks, et al. and CA PUC both note that the concept of "residential" and "business" subscribers is foreign to the wireless paradigm.[134] A hybrid mechanism would thus be **more** difficult to administer.[135]

Some argue for a "pure" numbers-based mechanism applied to all.[136] But the record shows the harms that could result from such an approach: to hospitals, universities and government agencies,[137] to automotive safety communications providers,[138] to paging carriers and their clients,[139] to DID users,[140] and to low-use residential customers.[141] Most of the explanations of the harms that would result make sense. Indeed, the Chairman's Draft Proposal would exempt Lifeline customers and free Community Voice Mail from numbers-based assessment.[142] But the

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[132] See Alpheus/Covad Comments at 3-4; Integra Comments at 24-25.
[133] AT&T Comments at 7; see also Global Crossing Comments at 12; VON, et al. Comments at 16.
[134] Broadview Networks, et al. Comments at 56; CA PUC Comments at 13; see also CBT Comments at 20.
[135] Broadview Networks Comments at 48-49. IDT points out the problems with the Commission classifying prepaid calling cards -- that are mostly used by residential customers -- as business services. See generally, IDT Comments.
[136] For example, CTIA supports a "pure numbers- and connections-based contribution methodology," but still wants special provisions for prepaid wireless and wireless family plans. CTIA Comments at ii; see also T-Mobile Comments at 15-16; Centennial Comments at 5. Purity, like beauty, is in the eye of the beholder. And Sprint Nextel wants an exemption for telephone numbers used to provide wireless Internet access service. Sprint Nextel Comments at 40.
[137] Integra Comments at 25.
[138] ATX Comments; Toyota Comments.
[139] AAPC Comments; ATSI Comments; USA Mobility Comments. See also 06-122, USA Mobility ex parte (October 24, 2008) (attaching letters from hospitals and other customers on harms from numbers-based mechanism).
[140] CRUSIR Comments at 12-14.
[141] NTCH Comments at 2-4.
[142] Chairman's Draft Proposal, ¶¶ 141-142.

more exemptions or adjustments made, the more complicated the system becomes.[143] And Broadview Networks, et al. demonstrate some of the complexity involved in a "simple" numbers-based mechanism.[144]

Global Crossing says that "[i]f the Commission believes that it cannot, consistent with Section 254 of the Act, 47 U.S.C. § 254, mandate contributions based solely on telephone numbers, then Global Crossing urges the Commission nevertheless to … adopt a connections-based system…."[145] If the Commission lacks the authority to adopt a numbers-based mechanism, nothing in the Act would grant authority for a connections-based mechanism. The Narrow Proposal does not cite any authority not cited in the Chairman's Draft Proposal.[146]

NASUCA has definitively shown that the claimed benefits for consumers of a numbers-based mechanism are illusory.[147] Even the Chairman's Draft Proposal supposedly benefits residential consumers only because it artificially locks in a fixed monthly amount, while leaving business customers as the residual source for funding.[148] As CRUSIR states, the numbers-based mechanisms

> shift the burden from a properly neutral percentage-of-revenue basis onto one that divorces fees from both cost and value, which would likely put some competitive service providers out of business while benefiting the very largest incumbents. Neither numbers nor connections should be subject to fixed fees; the percentage-

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[143] CBT proposes a lower USF assessment for prepaid wireless customers. CBT Comments at 22. Leap discusses its prepaid service that would not fit into the model discussed in the Chairman's Draft Proposal (¶ 137). Leap Comments at 4-7. USA Mobility proposes for paging services either revenue-based assessments or a "carve-out" similar to that proposed for prepaid wireless. USA Mobility Comments at 11-12.
[144] Broadview Networks, et al. Comments at 54-55.
[145] Global Crossing Comments at 13.
[146] Compare Chairman's Draft Proposal, ¶¶ 98-105 to Narrow Proposal, ¶¶ 45-51.
[147] 06-122, NASUCA ex parte (September 25, 2007) at 8-10 and Attachment 3. See Alpheus/Covad Comments at 2-3 for a brief discussion of the supposed benefits of a numbers-based mechanism.
[148] See, e.g., AdHoc Comments at ii.

> based USF fee structure should be left intact.[149]

In sum, as NTCA asserts,

> The [numbers-based] proposal is backward looking, and by basing USF contributions on legacy telephone numbers while exempting broadband, future USF contributions will be limited. On the other hand a revenues-based assessment methodology is technologically neutral, and will not be overly influenced by the ongoing migration to IP technologies.[150]

In the end, it is simply not credible to claim, as AT&T/Verizon do, that the adoption of a numbers-based mechanism

> is just as critical to the nation's broadband future as the other reforms under discussion because the universal service fund (USF) cannot be used to promote broadband deployment as envisioned in the draft orders unless it is supported by a stable, sustainable, and technology-neutral contribution methodology.[151]

Apart from the fact that the promotion of broadband deployment in the "draft order" is inadequate and wrong-headed, it should be clear that a numbers-based, connections-based, or hybrid, methodology is no more stable, sustainable, or technology-neutral than the current revenues-based methodology.

VI. CONCLUSION

Rather than attempt the huge restructuring that is contained in the Chairman's Draft Proposal -- which regardless of intentions does not address nearly all the key issues -- the Commission should take a piecemeal approach, and address those items clearly within FCC jurisdiction. This would include first addressing the related issues of phantom traffic[152] and

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[149] CRUSIR Comments on USF at 2. NetworkIP supports a numbers-based mechanism for many express reasons, but does not disclose that its responsibility to fund the USF will be minimized or eliminated under such a system, because it does not use numbers. See NetworkIP Comments at 2.
[150] NTCA Comments at 28.
[151] 06-122 AT&T/Verizon ex parte (November 21, 2008) at 1.
[152] Broadview Networks, et al. Comments at 2; WI PSC Comments at 2-3.

traffic stimulation.[153]

The Commission must also fix the model under which high-cost support is calculated, as addressed at length by CostQuest.[154] This will go further to addressing the *Qwest II* remand[155] and the other requirements of Section 254 than any of the steps in the Chairman's Draft Proposal.

USTelecom says that the Commission should task a "new Joint Board" with resolving these issues.[156] Given the Commission's brusque dismissal of the efforts of the Universal Service Joint Board, the creation of a new, similar body would appear to be futile.[157]

Finally, NASUCA agrees with RTG:

> RTG suggests that the Commission take the time necessary to digest industry comments concerning the outgoing FCC Chairman's three proposed Orders. In fact, the last-minute nature of the proposed new rules, and questionable legal foundation for many of them, makes any hasty December decision on such major universal service and intercarrier compensation issues a risk that the FCC should not take and a paradigm shift that the rural telecommunications industry, given the current state of the United States' economy, may be unable to survive.[158]

These issues are so important that a rush to judgment may well be a rush to disaster for consumers, many parts of the industry, and the nation as a whole.

Respectfully submitted,

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153 See AT&T/RICA ex parte (November 25, 2008); Verizon Comments at 67.
154 Which is not to say that CostQuest is entirely correct. CostQuest's use of Ohio as an example of how the current system does not work is misplaced; Ohio's highest-cost areas in non-rural ILEC territories do not need federal support. (This is especially true given that CostQuest appears to be looking only at high-cost model support, rather than IAS.)
155 *Qwest Communications International v. FCC*, 398 F.3d 1222 (10th Cir., 2005).
156 USTelecom Comments at ii.
157 On the other hand, NASUCA agrees with Global Crossing's suggestion that, however the Commission resolves these issue, it should create a "Working Group … composed of subject matter experts from a broad cross section of industry participants" to help it resolve implementation issues. Global Crossing Comments at 13. Consumer representatives -- like NASUCA and its members -- should be a part of any such group.
158 RTG Comments at 2.

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