

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 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. 99-68
)	
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
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

Independent Telephone & Telecommunications Alliance
1101 Vermont Avenue, NW, Suite 501
Washington, DC 20005
202.898.1920

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SUMMARY

The intercarrier compensation (ICC) and Universal Service Fund (USF) reform plans offered by the Independent Telephone & Telecommunications Alliance (ITTA) in its November 26, 2008, comments are directly consistent with and responsive to the elements around which Commissioners described a growing measure of consensus. The goals of the ITTA proposal are: to ensure the viability of networks serving rural America; to promote the further deployment of broadband throughout the Nation; to enable rational cost recovery for carriers, and; to minimize adverse rate impacts on end-users. In order to achieve these goals, ITTA proposed a comprehensive plan that will reduce incentives for arbitrage by unifying interstate and intrastate terminating access rates, provide a mechanism for carriers to recover the costs of access rate rebalancing, promote more effective distribution of USF by reformulating distributions for mid-sized price cap companies, and speed broadband deployment through the use of pilot programs intended to bring infrastructure to underserved areas. ITTA herein demonstrates support for the parameters of its proposal, as evidenced in the comments of other parties in the instant proceedings.

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REPLY COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

To the Commission:

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby files reply comments in the above-captioned proceedings. ITTA submits that the intercarrier compensation (ICC) and Universal Service Fund (USF) reform plans offered by ITTA in its November 26, 2008, comments are directly consistent with and responsive to the

elements around which Commissioners described a “growing measure of consensus.”¹

The goals of the ITTA proposal are: to ensure the viability of networks serving rural America; to promote the further deployment of broadband throughout the Nation; to enable rational cost recovery for carriers, and; to minimize adverse rate impacts on end-users. In order to achieve these goals, ITTA proposed a comprehensive plan that will reduce incentives for arbitrage by unifying interstate and intrastate terminating access rates, provide a mechanism for carriers to recover the costs of access rate rebalancing, promote more effective distribution of USF by reformulating distributions for mid-sized price cap companies, and speed broadband deployment through the use of pilot programs intended to bring infrastructure to underserved areas. Achievement of these goals will be neither easy nor without some pain: ITTA proposes a transition period in which carriers recover only a portion of their access revenues as they are rebalanced, and reluctantly, but necessarily, introduces increases to the subscriber line charge (SLC). These steps, however, are more reasonable and rational than what would have transpired had the Commission continued on its earlier course and adopted what emerged as Appendix A: Chairman’s Draft Proposal.

¹ *High-Cost Universal Service Support (Docket No. 05-337); Federal-State Joint Board on Universal Service (Docket No. 96-45); Lifeline and Link-Up (Docket 03-109); Universal Service Contribution Methodology (Docket No. 06-122); Number Resource Optimization (Docket 99-200); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Docket 96-98); Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Intercarrier Compensation for IP-Enabled Services (Docket No. 99-68); IP-Enabled Services (Docket No. 04-36); Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate, and Robert M. McDowell (rel. Nov. 5, 2008).*

When the Commission signaled its intent to vote what would subsequently emerge as the contents of Appendix A at a November 4, 2008, meeting, much of industry, backed by many members of Congress, urged the Commission to place the proposals out for public review and comment. As stated by ITTA in its November 26 comments, the breadth and depth of issues considered in the then-revealed Appendices which constituted the FNPRM vindicated the calls for public review. More than 3,000 pages of comments were filed in response to the FNPRM. Several commenters requested deferment of the deadline for reply comments, a request that was ultimately granted.² These requests were certainly reasonable regarding issues that have not been vetted fully, such as the as-yet untested and, as described below, widely opposed “incremental cost” standard. Other issues, however, including access rate unification and the need for an adequate alternative cost recovery mechanism (ARM), have circulated in various forms among the industry with reasonable opportunity for comment on the principal proposals, and should therefore be adopted, consistent with the parameters set forth by ITTA in its initial comments, without delay.

Immediate action on these several issues is warranted in light of the cost that further delay will visit upon the industry. There is, understandably, concern that reasonable transitions be provided, especially in the current economic climate. That is a

² *High-Cost Universal Service Support (Docket No. 05-337); Federal-State Joint Board on Universal Service (Docket No. 96-45); Lifeline and Link-Up (Docket 03-109); Universal Service Contribution Methodology (Docket No. 06-122); Number Resource Optimization (Docket 99-200); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Docket 96-98); Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Intercarrier Compensation for IP-Enabled Services (Docket No. 99-68); IP-Enabled Services (Docket No. 04-36); Order, DA 08-2631 (rel. Dec. 2, 2008).*

position emphasized by ITTA, and echoed by others: “The onset of recession certainly is not a reason to abandon reform efforts, but it is cause for special caution, deliberation, and attention to a reasonable transition.”³ But, while the Commission must ensure that impatience does not propel agency action, it must likewise not delay decision where additional rounds of inquiry would bear no material benefit. The Commission should not “remain frozen with indecision because a perfect, ultimate solution remains outside [its] grasp.”⁴ Accordingly, the Commission should act expeditiously to introduce reforms whose parameters have been reviewed and tested adequately by the industry, and defer for additional investigation and comment other nascent elements.

ITTA urges the Commission to act now to unify terminating access rates consistent with the ITTA proposal. Action on other critical issues, including phantom traffic, treatment of IP voice traffic, and reform of CETC regulation, will also bring sweeping benefits to the industry by eliminating incentives for arbitrage and encouraging rational use of USF resources. Inaction, by contrast, will perpetuate inefficiencies and avoid the current opportunity to benefit consumers, carriers, and broadband deployment throughout rural America.

³ Broadview Networks, Inc., Cavalier Telephone, NuVox, and XO Communications at 5.

⁴ *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, FCC 00-193, 15 FCC Rcd 12962, at para. 27 (2000) (CALLS Order).*

II. DISCUSSION

A. INTERCARRIER COMPENSATION REFORM

Rate unification emerged as the leading model for overall ICC reform. Even parties that stated “the Commission should not radically revamp the intercarrier compensation system,” agreed in principle that “establishing a uniform rate for all terminating traffic would eliminate the incentive for such deceptive behavior.”⁵ At issue, however, among commenters and the Commission (as illustrated by Appendices A and C) was the need to ensure that carriers serving rural America are able to recover the costs of their networks in an equitable and reasonable manner. The ITTA ICC and USF proposals remain consistent with widespread interest in maintaining viable networks in rural America and furthering broadband deployment there. Notably, the ITTA ICC proposal continues to support the implementation of unified rates as a proper step toward efficiency and reducing arbitrage, but premises that step on the implementation of modest SLC increases and an ARM.

The ITTA proposal recognizes the need for all parties to “give a little,” and accordingly distributes equitably responsibility for the costs of carrier-of-last-resort (COLR) networks that underpin not only voice telephone communications, but also broadband video, data, and IP-enabled services. The ITTA proposal accomplishes this objective by blending SLC increases with an ARM that stops short of providing 100 percent recovery, and proposing that in the fourth year of a transition plan, the Commission should open a further investigation to determine whether additional rate reductions are warranted. This approach is markedly different than the Commission’s proposals: as noted by several parties, “[a]lthough the Chairman’s plan pays lip service to

⁵ Broadview Networks, et al., at 6, 7.

a 10-year transition plan, the truth is that the adverse impact is heavily front-loaded, and most of the damage would be inflicted during the first two years of the plan.”⁶ By contrast, the ITTA plan enables carriers to absorb and react effectively to the changes. This approach is consistent with the Commission’s five-year phase in of the *CALLS Order*, which “remov[ed] implicit subsidies without jeopardizing universal service.”⁷ In the ITTA proposal, all parties that benefit from the network must share the burden of supporting it; a disproportionate load is not imposed on either carriers or end-users. As noted by an independent industry investment report, “the idea that access can be lowered at least 90% overnight and replaced with a \$1.50 increase in the residential SLC and a \$5 increase in the business SLC does not hold water.”⁸ The Commission has previously crafted alternative cost recovery mechanisms (*i.e.*, ICLS, IAS), and must not refrain from doing so here.

Calls for implementation of an ARM emerged from numerous parties. As described by USTelecom,

Price cap carriers merely seek, and certainly deserve, a viable replacement opportunity for mandated revenue reductions . . . an appropriate way to comply with the Act by making implicit subsidies explicit and assuring carriers an opportunity to obtain the implicit subsidy revenue required to meet the additional costs imposed through carrier of last resort and other social obligations.⁹

⁶ Broadview Networks, et al, at 2.

⁷ *CALLS Order* at para. 36.

⁸ Broadview Networks, et al., Appendix A: “Telecommunications Services Wireline Industry Brief: Intercarrier Compensation Reform: Potential Impact From an FCC Order,” Raymond James & Associates, Oct. 27, 2008, at 2 (St. Petersburg, FL) (Raymond James Report). The “\$5” noted in the quote was a predicative statement.

⁹ USTelecom at 6.

The National Exchange Carriers Association (NECA) noted that the FNPRM, while declaring the need for rapid rate reductions, failed to propose specific rules for any recovery mechanism that might be implemented, and indeed was “unclear when such rules would be promulgated.”¹⁰ And, GVNW described the different needs of carriers that serve rural areas as contrasted against those that serve mostly densely populated urban areas.¹¹ These parties recognized the need to ensure that regulatory realignments do not leave carriers bereft of revenues necessary to deploy and maintain necessary networks. Indeed, these concerns underlay the negotiated agreements evident in Appendix C, which offered revenue assurance to the Nation’s smallest carriers.

The modifications effected in Appendix C were described as “vital to . . . rural consumers.”¹² But, that same Appendix also ignored more than one-half of consumers living in rural areas who would have been dealt devastating impacts of either steep rate increases or carrier efforts to curb costs in the absence of adequate access revenues. The approach taken in Appendix C would result in a lack of support for numerous wire centers that by any other definition would be considered rural areas. Like the Nation’s smallest carriers, ITTA members serve the “wide open spaces” of the United States, even where those areas may not be considered rural because of a proximate metropolitan area.

¹⁰ NECA at 38.

¹¹ GVNW at 8.

¹² *Developing a Unified Intercarrier Compensation Regime; High-Cost Universal Service Support; Federal-State Joint Board on Universal Service: Ex Parte Presentation of OPASTCO and WTA*, CC Docket No. 01-92, WC Docket No. 05-337, CC Docket No. 96-45, at 3 (Oct. 29, 2008).

While Embarq serves Las Vegas, it also serves Searchlight, Nevada (pop. 576);¹³ Frontier serves Rochester, but it also serves in New York State alone 96 wire centers with fewer than 2,000 lines. As noted in its November 26 comments, ITTA supports targeting that will deliver appropriate support to the areas that need it most. Averaging support requirements across high-cost and low-cost study areas results in under-funded high-cost areas and distorts the ability to deliver support appropriately. The myopic approach of Appendix C represents a missed opportunity to target sufficient support to all rural high-cost areas and furthers the divide by elevating the needs of some rural areas over others.

Mid-sized price cap carriers were singled out for attention not only in the FNPRM, but also by independent industry analysts who are positioned to offer third-party viewpoints of regulatory actions. Raymond James Financial, Inc., released the following reaction to the possibility that the Commission might adopt access rate unification without an alternative cost recovery mechanism for mid-sized price cap carriers:

We believe the mid-sized price cap carriers (CTL, FTR, WIN, IWA, CNSL, and FRP) have the most to lose and standing to have an “unfunded obligation.” This means they have regulatory-imposed obligations [to] be the carrier of last resort (COLR) in their service territory but will not be able to service those obligations without losing money. . . . One major aspect of our analysis is the conservative application of the \$2.38 weighted average SLC increase across all access lines. We would argue that the access changes impact all lines relatively impartially, but the competitive dynamics in a significant percentage of rural markets may make a \$5 SLC increase (or higher) for a local small business and a very visible \$1.50 SLC increase on residential customers untenable, exacerbating the impact of lost access revenue. Other price increases would face state PUC scrutiny as well.¹⁴

¹³ <http://www.census.gov/tiger/tms/gazetteer/places2k.txt> (last viewed Dec. 22, 2008, 14:24)

¹⁴ Raymond James Report, at 3.

The Commission's release of the FNPRM was appropriate; it did not, however, resolve the uncertainty surrounding publicly-traded telecommunications companies and the consequent impact on market perceptions. That overhang is still present, and will endure until the Commission takes reasonable action that assures consumers, carriers, and investors of the continued viability of carriers serving rural America. Accordingly, ITTA urges the Commission to move forward toward adoption of the ITTA proposals on ICC and USF. The ITTA proposal includes a balanced five-year transition plan and rate unification that reflects the need of the particular carrier. The result is reduced incentives for arbitrage, less pressure on the ARM, and a commitment to reopen the proceeding after four years to determine, on the basis of then-gained experience, whether additional measures are necessary. These proposals will ensure rational distribution of responsibility, support networks serving rural areas, and further broadband deployment throughout the Nation, and should be adopted now.

B. INCREMENTAL COST STANDARD

In initial comments, ITTA cautioned that the Commission's proposed new "additional cost" standard, referred to as the "incremental cost" method, would eliminate the prospect of reasonable cost recovery for carriers' termination of traffic. The incremental cost methodology rejects inclusion of common, overhead, and non-traffic sensitive costs; moreover, by supposing a full fiber network, the Commission's proposal intends to support the type of network that is not generally deployed by ITTA members. The proposal was characterized by one carrier as a "seismic shift in cost allocation [that]

ignores the historical basis upon which telephone rates have been established.”¹⁵ The methodology would absolve delivering carriers from obligations to tender compensation for use of networks upon which they rely, and instead shift that responsibility principally to end-users if the carrier seeks to recover those costs. Others joined ITTA in a round of objections. Cincinnati Bell, Inc., highlighted that “[b]y drawing the conclusion that only incremental costs be consider in developing a rate for transport and termination, the Commission has indirectly undone all separations analysis.”¹⁶ The Texas Statewide Telephone Cooperative (TSTCI) warned, “[e]limination of joint and common costs from the new costing standard will likely shift the burden for recovering these costs to the universal service fund and customer rates. . . . TSTCI does not see how the Commission can avoid a statutory directive to allocate joint and common costs to all services . . .”¹⁷ ITTA noted in its November 26 comments that the “incremental cost” logic apparently assumes incorrectly that carriers deploy switches primarily to terminate local calls originated from their customers and destined to their customers; other parties agreed. For example, Cincinnati Bell stated, “[t]he network that would be built to serve every customer in the local area (which is the assumption required by TELRIC) would look very different from a network built only to support the actual customers of the ILEC.”¹⁸ And, the Washington Independent Telecommunications Association and the Oregon

¹⁵ Cincinnati Bell at 12.

¹⁶ Cincinnati Bell at 11.

¹⁷ Texas Statewide Telephone Cooperative, Inc., at 18.

¹⁸ Cincinnati Bell at 11.

Telecommunications Association concluded that the “methodology ignores the existence of the network and the investment required to produce that network.”¹⁹

These concerns were illustrated by Broadview Networks, et al., whose analysis provided an example of the type of proper study the new standard demands. Drawing on an external study, Broadview Networks, et al, stated that the “Faulhaber principle” is inapposite to the determination of long-run incremental costs in the current regulatory environment.”²⁰ The inclusion of only “product-specific” elements that would not be deployed absent the need to serve traffic of other carriers only contributed to the “sheer absurdity of this concept.”²¹ In its November 26 comments, ITTA identified flaws in the incremental cost proposal and the hazards that would accrue were it to be adopted. The identification by others of similar concerns affirms the fact that the results of the proposal would undermine rational cost recovery; indeed, that much can be discerned simply by noting that the result of the incremental cost approach is to force costs to near-zero. The Commission should reject attempts to implement the incremental cost standard, and thereby avoid actions that prevent carriers’ proper cost recovery.

C. PHANTOM TRAFFIC

ITTA recognizes the reality that certain regulatory changes will require transition phases in order to blunt the impact of major regulatory overhaul. Certain regulatory reform, however, begs immediate implementation: specifically, ITTA urges the Commission to implement as soon as practicable rules governing traffic signaling in

¹⁹ Washington Independent Telecommunications Association and Oregon Telecommunications Association, at 14.

²⁰ Broadview Networks, et al. at 33 (internal citation omitted).

²¹ Broadview Networks, et al., at 32 (internal citation omitted).

order to bring a quick and decisive halt to the unacceptable practice of phantom traffic. As outlined in previous ITTA comments, phantom traffic is, by definition, impossible to size accurately. But, there can be no doubt that the continued proliferation of phantom traffic, which relies to a great degree on the disparity between access rate jurisdictions, imposes upon carriers lost revenues as well as deep forensic costs expended in the effort of identifying and billing for such traffic. The Commission has within the appropriate records sensible, workable, and achievable plans; by contrast, there is no discernible reason for further Commission delay in this regard.

Phantom traffic received widespread attention in filed comments: Verizon, like ITTA, supports the USTelecom proposal, and urged the Commission to “adopt either the USTelecom consensus proposal on phantom traffic or the phantom traffic proposal solution proposed in the draft orders.”²² Frontier also called on the Commission to act now on phantom traffic, stating, “the network’s integrity is being marginalized by carriers that are intentionally manipulating traffic and sending it to carriers to terminate in ways that avoid the assessment of the proper or, in a growing number of cases, any access charges.”²³ Phantom traffic remained a concern of small carriers, as well, as expressed by various associations. The Iowa Telecommunications Association noted that “Call Signaling rules assist in resolving the current issues related to phantom traffic,”²⁴ but noted, as did ITTA, that the IP-PSTN resolution as proposed by the Commission would

²² Verizon at 43.

²³ Frontier at 6.

²⁴ Iowa Telecommunications Association at 22.

create more harm than good.²⁵ State commissions, too, expressed strong support for a resolution of phantom traffic issues.²⁶ The Nebraska Public Service Commission stated, “[t]he Commission should require carriers to label traffic sent over the PSTN and such a requirement should be implemented as soon as practicable.”²⁷ The Public Service Commission of Wisconsin, in fact, “encourage[d] the Commission to issue a stand-alone order adopting the Phantom Traffic proposals set forth in Appendices A and C.”²⁸

ITTA has consistently urged the Commission to adopt a resolution for phantom traffic. As described in its November 26 comments, mid-size carriers have been at the forefront of developing workable phantom traffic solutions. In the past year, USTelecom and NECA each submitted solutions to resolve phantom traffic; ITTA supported, and continues to support, the USTelecom solution and urges the Commission to adopt it. Notwithstanding the abiding debate regarding certain of the Commission’s more complicated proposals, the Commission can seize victory from the jaws of complacency now by adopting call signaling rules that will evaporate incentives for phantom traffic. ITTA submits that failure to take action now on phantom traffic would be the Commission’s abdication of an opportunity to introduce meaningful reform.

The broad support for a phantom traffic solution is revealed by NASUCA’s comparison of Appendix A and the Joint Statement of Commissioners Copps, Adelstein, Tate, and McDowell: “If the Chairman’s Draft Proposal is examined in this light, it fails

²⁵ Iowa Telecommunications Association at 22; *see* ITTA at 17.

²⁶ Oklahoma Corporation Commission at 13.

²⁷ Nebraska PSC at 21.

²⁸ Public Service Commission of Wisconsin at 2

to meet **any** of the criteria identified by the other Commissioners, except perhaps eliminating the identical support rule and addressing phantom traffic.”²⁹ It is clear that there exists no discernible reason for the Commission to delay action on phantom traffic. The Commission should act now.

D. REGULATORY PARITY FOR VOICE TRAFFIC

The Commission must also take action to ensure regulatory parity among providers of voice services. As noted by ITTA in its initial comments, classification of VoIP as an information service will short-circuit any attempt to achieve meaningful and effective ICC reform. ITTA urged the Commission to rule specifically that all voice traffic, whether originated on a PSTN or IP network, is subject to access charges.³⁰ In the first instance, regulatory parity demands no less. As noted by Broadview Networks, et al., “Basic voice telephone services always has been viewed as the classic common carrier offering regardless of the underlying physical characteristics of the network or the transmission protocols used.”³¹ The Rural Independent Competitive Alliance agreed, stating, “there is no public policy reason why a service that exactly mimics its telecommunications competitor should be encouraged to engage in regulatory arbitrage by rules that are not competitively or technologically neutral.”³² The Commission has also stated a similar approach: “[A]ny service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic

²⁹ NASUCA at 7 (emphasis in original).

³⁰ ITTA at 15-17.

³¹ Broadview Networks, et al., at 13.

³² Rural Independent Competitive Alliance, at 11, 12.

originates on the PSTN, on an IP network or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.”³³ Absent a blanket ruling, providers will be encouraged to either shift *all* traffic to IP platforms or, worse, *identify fraudulently* traffic originating on the PSTN as IP-originated traffic. ITTA is not alone in these concerns. As expressed by NTCA, “Determining that IP/PSTN traffic exchange is not required to pay access charges is tantamount to creating a super-arbitrage incentive to gut any rational transition plan.”³⁴ The Commission should act to ensure that regulatory parity is imposed on all providers of voice services.

E. CETC REFORM

ITTA has in various filings urged the Commission to adopt meaningful changes to the standards by which USF support is tendered to CETCs. As noted by ITTA, CETC support represented (until the Commission imposed an interim cap on CETC support) the fastest-growing element of USF. In fact, support to incumbent carriers was *declining* in the years during which CETC support increased rapidly. The interim cap on CETC support was the proper first step toward rational reform of CETC processes; the ITTA USF proposal, described in ITTA’s November 26 comments, would be a next comprehensive step toward reforming support for both incumbent carriers and CETCs. These ITTA proposals are based on information already in the record that has been available for Commission and industry review, and stand ready to be adopted.

³³ *IP-Enabled Services: Notice of Proposed Rulemaking*, FCC 04-28, 19 FCC Rcd 4863, at para. 33 (2004).

³⁴ NTCA at 15.

III. CONCLUSION

For the reasons stated above, ITTA urges the Commission to adopt the ITTA ICC and USF proposals. Action on these proposals, as well as swift adoption of call signaling rules, regulatory parity for IP voice traffic, and CETC reform, will ensure the viability of networks serving rural America, promote the further deployment of broadband throughout the Nation, enable rational cost recovery for carriers, and minimize adverse rate impacts on end-users.

Respectfully submitted,

s/ Joshua Seidemann

Joshua Seidemann

Vice President, Regulatory Affairs

Independent Telephone &

Telecommunications Alliance

1101 Vermont Avenue, NW, Suite 501

Washington, DC 20005

202-898-1920

www.itta.us

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