traffic,[700] ISP-bound traffic[701] and traffic on competitive networks. The wildly varying and disparate rates within the intercarrier compensation system create arbitrage opportunities and introduce layers of regulatory complexity and associated costs, which hinder deployment of IP networks.

497. The history of the current intercarrier compensation system is well-documented in this proceeding, and is only summarized here.[702] For much of the twentieth century, telephone service was viewed as a natural monopoly. Prior to AT&T's divestiture, most telephone subscribers obtained their local services from independent telephone companies or AT&T's Bell Operating Companies (BOCs) and their long distance services from AT&T Long Lines.[703] As discussed above,[704] under this system, regulators allowed high long-distance rates as an offset to ensure lower local rates and promote universal service. Thus, AT&T was allowed to charge above-cost long distance toll rates, and its interstate toll revenues were placed into an interstate settlements pool.[705] AT&T then shared a portion of these interstate revenues with independent telephone companies and AT&T's BOCs.[706]

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[700] The Commission's existing rules include a number of provisions affecting intercarrier compensation for traffic exchanged with CMRS providers. Prior to the 1996 Act, the Commission established rules governing LEC interconnection with CMRS providers. *See Implementation of Sections 3(n) and 332 of the Communications Act and regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*) (subsequent history omitted). Pursuant to its authority under section 201(a) of the Act, the Commission adopted rules requiring mutual and reasonable compensation for the exchange of traffic between LECs and CMRS providers. *See* 47 C.F.R. § 20.11. Further, the Commission decided to forbear from requiring or permitting the filing of tariffs for interstate access services offered by CMRS providers. *See CMRS Second Report and Order,* 9 FCC Rcd at 1480, para. 179; *see also* 47 C.F.R. § 20.15(c). Thus, a CMRS provider is currently entitled to collect access charges from an IXC "only to the extent that a contract imposes a payment obligation" with that IXC. *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192, 13198, para 12 (2002), *petitions for review dismissed, AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003). Following the 1996 Act, the Commission stated that "traffic to or from a CMRS network that originates and terminates within the same Major Trading Area is subject to [reciprocal compensation obligations] under section 251(b)(5), rather than interstate and intrastate access charges." *Implementation of the Local Competition Provisions in the Telecommunications Act of* 1996, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 16016 para. 1036 (1996) (subsequent history omitted); *see also* 47 C.F.R. § 51.701 *et seq.*

[701] *See Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*); *remanded but not vacated by WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002); *see also 2008 Order and ICC/USF FNPRM*, 24 FCC Rcd 6475.

[702] *See, e.g., 2008 Order and ICC/USF FNPRM*, 24 FCC Rcd 6475, 6565-65680, App. A, paras. 159-185 & 6763-6778, App. C, paras. 154-180.

[703] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4688, para. 6 (2005) (*Intercarrier Compensation FNPRM*).

[704] *See supra* Section III.

[705] *See Economic Implications and Interrelationships Arising from Policies and Practices Relating to Customer Information, Jurisdictional Separations and Rate Structures*, Docket No. 20003, First Report, 61 FCC 2d 766, 796–97, paras. 81–82 (1976); *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6567, App. A, para. 162; *id.* at 6765-66, App. C, para. 157.

[706] *2008 Order and ICC/USF FNPRM,* 24 FCC Rcd at 6567 App. A para. 162, *id.* at 6765-66 App. C para. 157. This regime and its assumption that long-distance telecommunications was a natural monopoly, became unsettled with the introduction of competition from Microwave Communications, Inc. (MCI) in the 1970s. In 1974, the Department of Justice filed an antitrust lawsuit against AT&T, which ultimately led to AT&T's divestiture of the BOCs under the Modification of Final Judgment (MFJ). *See 2008 Order and ICC/USF FNPRM,* 24 FCC Rcd at 6567-6568 App. A, para. 163-64, *id.* at 6766 App. C, para. 158-59; *see also United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). The 1982 consent decree, as entered by the court, was called the Modification of Final Judgment because it modified a 1956 Final Judgment (continued….)

498. Following the AT&T divestiture, the BOCs were allowed to maintain monopoly franchises in their local markets, but AT&T's long-distance business was split off, thereby removing the incentive for the BOCs to favor AT&T's long-distance business over that of competitors.[707] In 1983, the Commission eliminated the "existing potpourri of [compensation] mechanisms," and replaced it "with a single uniform mechanism . . . through which local carriers [could] recover the cost of providing access services needed to complete interstate and foreign telecommunications."[708] This formal system of access charge rules provides for the recovery of LECs' costs assigned to the interstate jurisdiction. The rules effectively replaced AT&T's pre-divestiture settlements system and provided the framework for the current interstate and intrastate access charges that exist today.

499. With the 1996 Act, Congress sought to promote and facilitate competition in telecommunications markets.[709] The 1996 Act did not displace the existing access charge rules,[710] but did introduce yet another mechanism through which carriers compensate each other for the exchange of traffic. In particular, section 251(b)(5) of the 1996 Act imposed on all LECs a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[711] Although section 251(b)(5) does not discuss the jurisdiction of calls subject to the reciprocal compensation framework, the Commission initially interpreted this statutory provision to apply to calls that begin and end within the same local calling area such as when a customer of one company makes a call to a customer of a company in the same local calling area.[712]

(Continued from previous page)
against AT&T stemming from a 1949 antitrust lawsuit. MCI introduced competition, but was still dependent on the BOCs to complete long-distance calls to end users and there were disputes over access charges (the fees that an IXC like MCI would pay to the BOCs to originate and terminate long distance calls) arose. *See Access Charge Reform Order*, 12 FCC Rcd at 15991, paras. 19-20.

[707] *See Access Charge Reform Order*, 12 FCC Rcd at 15991, para. 20.

[708] *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 682, 683, para. 2 (1983).

[709] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15505, para. 3 (1996) (*Local Competition First Report and Order*) (subsequent history omitted).

[710] *See* 47 U.S.C. § 251(g).

[711] 47 U.S.C. § 251(b)(5). In the *Local Competition First Report and Order*, the Commission concluded that section 251(b)(5) applied only to local traffic, but recognized that "[u]ltimately . . . the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge." *See Local Competition First Report and Order*, 11 FCC Rcd at 16012, para. 1033. In the *ISP Remand Order*, the Commission reversed course on the scope of 251(b)(5), finding that it was not limited to local traffic, noting that "the term 'local,' not being a statutorily defined category, . . . is not a term used in section 251(b)(5)." *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9167, para. 34 (2001) (*ISP Remand Order*), *remanded, WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002) (*WorldCom*), *cert denied*, 538 U.S. 1012 (2003), *mandamus granted*, 531 F.3d 849 (D.C. Cir. 2008). In 2008, the Commission affirmed this interpretation, finding "that the better reading of the Act as a whole, in particular the broad language of section 251(b)(5) and the grandfather clause in section 251(g), supports our view that the transport and termination of all telecommunications exchanged with LECs is subject to the reciprocal compensation regime in sections 251(b)(5) and 252(d)(2)." *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6482-83, para. 15.

[712] In the *Local Competition First Report and Order*, the Commission defined the local calling area for calls to or from a CMRS network for purposes of applying reciprocal compensation obligations under section 251(b)(5). Accordingly, it determined that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. *See Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; *see also* 47 C.F.R. § 24.202(a) (defining the term "Major Trading Area").

500. The 1996 Act and the Commission's rules prohibit long distance carriers from charging customers in one state a rate different from that in another state.[713] To implement this requirement, long distance carriers charge averaged long-distance rates. Thus, long-distance carriers lack the ability to directly pass on higher access rates to the particular customer making calls to or from areas with higher access rates. Averaged long-distance rates do not provide customers with any incentive to choose a LEC with low switched access charges, since the customer only pays the long-distance charge, but does not pay the access charges directly.

501. Intercarrier compensation has not been reformed to reflect fundamental, ongoing shifts in technology, consumer behavior and competition. The Commission has made incremental efforts to modify interstate access charges to reflect technological changes in the telecommunications network and the advent of competition, but the last intercarrier compensation reform occurred a decade ago in the 2000 *CALLS Order* and the 2001 *MAG Order*. As discussed above,[714] in those orders, the Commission removed certain implicit subsidies from interstate charges and replaced them with explicit cost recovery from customers through increased SLCs[715] and through a new universal service mechanism – IAS for price cap LECs,[716] and ICLS for rate-of-return incumbent LECs.[717] Although the Commission has sought comment on a variety of proposals over the last decade to comprehensively reform intercarrier compensation,[718] such efforts stalled, leaving the current antiquated rules in place.

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[713] *See* 47 U.S.C. § 254(g); 47 C.F.R. § 64. 1801 (providing that "[a] provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state").

[714] *See supra* Section III.

[715] *See supra* Section III.

[716] *See CALLS Order*, 15 FCC Rcd at 13046-49, paras. 201-05 (establishing a "$650 million interstate access universal service support mechanism"). Earlier in this Notice, we propose cutting IAS support over two years, and using those funds to expand broadband coverage through the the first phase of the CAF. *See supra* Section VI.

[717] *See 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, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001) (*MAG Order*), *recon. in part, Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, First Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635 (2002), *amended on recon., Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003); *see also Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service*, CC Docket Nos. 00-256, 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004).

[718] In 2001, the Commission sought comment on possible alternatives to existing intercarrier compensation regimes with the intent of moving toward a more unified system, such as bill-and-keep. In the 2001 Notice, the Commission recognized the need for fundamental reform, observing that, "[i]nterconnection arrangements between carriers are currently governed by a complex system of intercarrier compensation regulations . . . [that] treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services." *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*). In 2005, the Commission sought comment on the various industry proposals, including the Intercarrier Compensation Forum (ICF), the Expanded Portland Group (EPG), and the Alliance for Rational Intercarrier Compensation (ARIC) – Fair (continued….)

502. As a result of this long history, today, there are two primary types of intercarrier compensation regulation: (1) access charges; and (2) reciprocal compensation. However, the rates that apply to traffic under these systems continue to depend on a number of factors including: (1) where the call begins and ends (interstate, intrastate, or "local"); (2) what types of carriers are involved (incumbent LECs, competitive LECs, interexchange carriers (IXCs), wireless); and (3) the type of traffic (wireline voice, wireless voice, ISP-bound, data). The resulting patchwork of rates and regulations is inefficient, wasteful and slowing the evolution to IP networks.

503. Competition and technological advancements have also put additional pressures on the intercarrier compensation system. Originating and terminating minutes on incumbent LEC networks have plummeted in the last decade, as shown in Figure 13:

(Continued from previous page)
Affordable Comprehensive Telecommunications Solution (FACTS) plans, among others, which attempted to reform intercarrier compensation. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005). In 2006, another coalition submitted an alternative comprehensive intercarrier compensation reform proposal, known as the Missoula Plan. *Comment Sought on Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 8524 (2006). Subsequently, the Missoula Plan supporters filed additional details concerning specific aspects of the plan, on which the Commission continued to seek comment. *See Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, CC Docket No. 01-92, Public Notice, 21 FCC Rcd 13179 (2006); *Comment Sought on Amendments to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*, CC Docket No. 01-92, Public Notice, 22 FCC Rcd 3362 (2007). In 2008, the Commission sought comment again on specific proposals to reform intercarrier compensation by bringing all traffic under the reciprocal compensation framework and creating a new methodology for states to set rates. *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6497-6654, App. A; *id.* at 6697-6853, App. C.

Switched Access Minutes for Incumbent LECs (In Billions)[719]

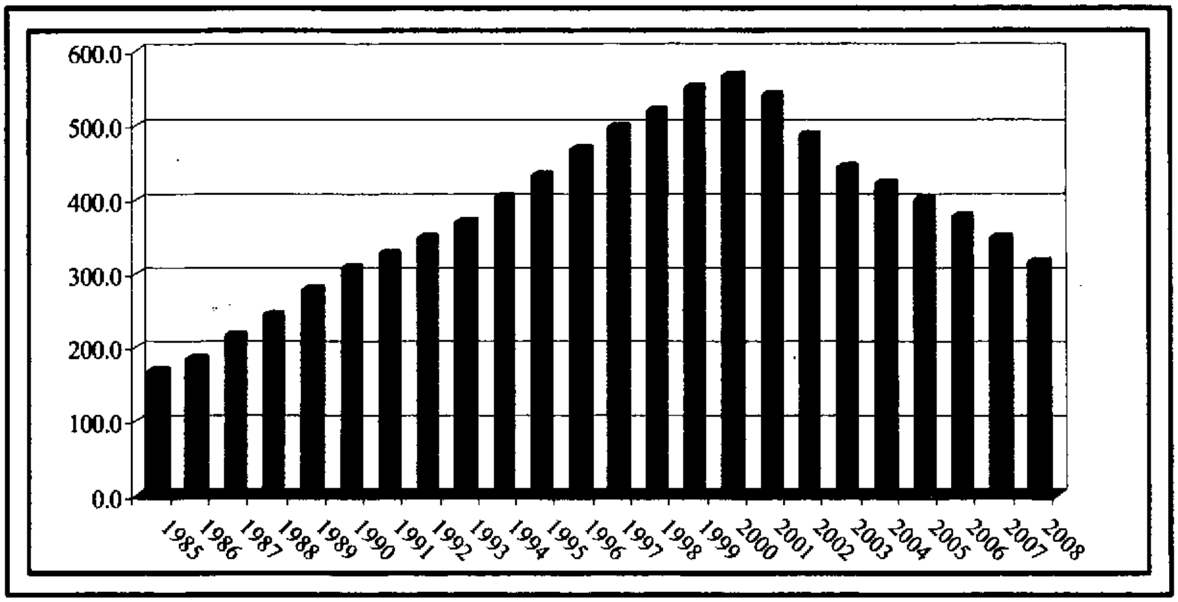

Figure 13

Such decline is due in part to competition and technological advances and the proliferation of alternate means of communicating, such as text messaging and emailing. Broadband also enables consumers to drop switched access lines from incumbent carriers, and the emergence of VoIP provides another alternative to traditional wireline phone service. In addition, wireless minutes of use have increased steadily,[720] as consumers use their wireless service, rather than their wireline phone, to both make and receive long-distance calls.[721]

504. Declining minutes of use affect rate-of-return and price cap carriers in different ways, both of which demonstrate the pressing need for reform. Under rate-of-return regulation, a carrier's interstate access rates are designed to give the carrier an opportunity to earn its authorized 11.25 percent rate of return.[722] Rates are calculated by dividing the company's relevant revenue requirement by the

[719] *See* Sept. 2010 Trends in Telephone Service, at 7-1, 10-1 (indicating that both access lines and interstate switched access minutes have been declining due to a number of reasons, including substitution of services). Specifically, incumbent LEC interstate switched access minutes decreased from 566.9 billion in 2000 to 315.7 billion in 2008. *Id.* at Table 10.1. Similarly, incumbent LEC access lines declined from 187.6 million in 2000 to 121.7 million in 2009. *Id.* at Table 7.1. *See also* OPASTCO Comments in re NBP #19 at 22 (filed Dec. 7, 2010) (stating that intercarrier compensation revenue has became an unreliable source of revenue "due to several factors, including: (1) the arbitrage of disparate access rates, (2) various forms of access avoidance (e.g., unidentifiable and unbillable 'phantom traffic,' the refusal of many interconnected VoIP service providers to pay access charges), and (3) the proliferation of broadband connections, which has caused a drop in the number of traditional access lines as well as a related decline in minutes that originate and terminate on the PSTN").

[720] *See* Sept. 2010 Trends in Telephone Service, at Table 11.3 (showing an increase of average wireless minutes of use per month increase from 255 minutes a month in 2000 to 708 minutes a month in 2008).

[721] *See id.* at Tables 11.3,11.4. *See also Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16452 at n.73 (2007) (describing consumers' options for making a long distance telephone call, such as wireless, wireline, broadband and VoIP technologies).

[722] Specifically, the rules are designed to provide the revenue required to cover costs and to achieve a prescribed rate-of-return on net investment used in the provision of regulated switched access service. *MAG Order*, 16 FCC Rcd at 19623-24, para. 19.

projected or historical minutes of use,[723] which means that as demand increases, prices fall but as demand falls, prices increase. Thus, declining minutes-of-use results in increased interstate access rates to reflect these reductions in demand. Recent filings indicate that rate-of-return carriers' interstate switched access rates increased 9.4 percent in 2010,[724] which follows similar increases during the last few years.[725] Higher rates put further pressure on the system and create new opportunities for arbitrage. Price cap LECs' access rates, on the other hand, are limited by a price cap index (PCI), a form of rate ceiling, that is not affected by the level of investment or changes in demand. Thus, as minutes-of-use decline and demand falls, price cap LECs have no means of offsetting these losses through rate changes.[726] As a result, for price cap carriers, declining interstate access minutes lead to unpredictably declining access revenues, making it more difficult for such carriers to make investment decisions with any level of certainty. Reform will bring greater certainty to the industry, which will ultimately benefit consumers.

505. Consistent with our vision to reform universal service and intercarrier compensation, it is important that intercarrier compensation rules create the proper incentives for carriers to invest in new broadband technologies so that consumers have the opportunity to take full advantage of the new capabilities of this broadband world. Unfortunately, however, the "current [intercarrier compensation] system is not sustainable in an all-broadband Internet Protocol (IP) world where payments for the exchange of IP traffic are not based on per-minute charges, but instead are typically based on charges for the amount of bandwidth consumed per month."[727] We therefore seek to reform intercarrier compensation to ensure that it does not stand as a barrier to the broadband future.

506. Evidence indicates that the current system is hindering progress to all IP networks. For example, the current regime creates the perverse incentive to maintain and invest in legacy, circuit-switched-based, time-division multiplexing (TDM) networks to collect intercarrier compensation revenue, hindering "the transformation of America's networks to broadband."[728] The record suggests that intercarrier compensation reform will encourage carriers to "more rapidly deploy broadband facilities and the IP based services,"[729] and that the current system "motivates some carriers to refrain from

[723] *See Access Charge Reform Order*, 12 FCC Rcd at 15993, para. 25 & n. 4. Rate-of-return companies currently have separate revenue requirements for switched access, special access and common line. The discussion here focuses on switched access.

[724] *See* NECA Transmittal No. 1278, Vol. 1, Description and Justification, at Table 3.

[725] *See* NECA Transmittal No. 1245, Vol. 1, Description and Justification, at Table 3 (showing a 5.8 percent increase in switched access rates in 2009), NECA Transmittal No. 1214, Vol. 1, Description and Justification, at Table 3 (4.6 percent increase in switched access rates in 2008), NECA Transmittal No. 1172, Vol. 1, Description and Justification, at Table 3 (16.8 percent increase in switched access rates in 2007), NECA Transmittal No. 1129, Vol. 1, Description and Justification, at Table 3 (5.8 percent increase in switched access rates in 2006).

[726] *See* National Broadband Plan at 142. The only means of addressing this revenue decline is to lower costs or reduce investment. *See* 47 C.F.R. § 61.45(b).

[727] National Broadband Plan at 142.

[728] *Id.*

[729] *See* Sprint Nextel Comments in re NBP PN #25 at 7-10 (filed Dec. 22, 2009) ("The current intercarrier compensation ("ICC") system provides the wrong incentives to carriers, encourages foot dragging in regard to TDM/IP transition, and results in significant economic waste and inefficiency. … Sprint believes that if ICC were reformed and were to be provided on either a bill-and-keep basis or at rates using the Faulhaber methodology previously outlined by the Commission, that ILECs would more rapidly deploy broadband facilities and the IP based services that are facilitated by this technology."); *see also* Cablevision Comments in re NBP PN #25 at 2 (filed Dec. 22, 2009) ("[E]ven as incumbent local exchange carriers ("ILECs") upgrade their legacy networks to IP, they refuse to provide IP interconnection to their competitors on reasonable terms or at all. As a result, each IP voice call initiated on a competing carriers' network must be reduced to TDM, transmitted over an electrical DS-0 or similar connection, and routed to an ILEC customer over the legacy hierarchical circuit-switched network, with all of its associated costs, inefficiencies, and limitations").

transitioning networks to IP architecture [which] has the compounding effect of forcing interconnecting carriers to also retain legacy TDM network architecture to accommodate the exchange of traffic."[730] The record also suggests that IP interconnection can be more efficient. In particular, the transition to IP can result in cost savings, including reductions in circuit costs, switch costs, space needs, and utility costs, as well as the elimination of other signaling overhead.[731]

507. At the same time, pressure continues to mount to address increasing regulatory arbitrage, particularly from phantom traffic where carriers seek to avoid paying intercarrier charges, and access stimulation where carriers seek to inflate intercarrier revenues. The record indicates that the impact of these arbitrage opportunities is significant and may cost the industry hundreds of millions of dollars each year.[732] For example, Verizon estimates that it will be billed between $66 and $88 million by access stimulators for approximately two billion wireline and wireless long distance minutes in 2010.[733] One of the many benefits of intercarrier compensation reform would be to allow the industry to devote resources currently committed to arbitrage-related disputes and litigation to capital investment and other more productive uses. Moreover, regulatory uncertainty about whether or what intercarrier compensation payments are required for VoIP traffic is hindering investment in and the introduction of new IP-based products and services.[734] Evidence indicates that some providers are taking advantage of this uncertainty and creating new ways to game the system. One provider, for example, relying on the regulatory uncertainty surrounding VoIP traffic, touts that it can provide service at low prices because it collects access charges but does not pay them.[735]

508. The intercarrier compensation system is broken and needs to be fixed. We seek comment below on ways to comprehensively reform the current system to realign incentives and promote investment and innovation in IP networks.

XI. LEGAL AUTHORITY TO ACCOMPLISH COMPREHENSIVE REFORM

509. In this Notice, we seek comment on our legal authority to reform intercarrier compensation, and specifically propose two different transition paths for consideration. For the reasons set forth below, we believe we have the authority to adopt either of these transition paths, and implement a transition away from per-minute intercarrier compensation. We seek comment on these issues.

510. As discussed above, there are many different forms of intercarrier compensation, subject to varying regulatory regimes, even though carriers in each case are performing largely the same call origination or termination functions. For example, some regulations vary based on whether the calls are interstate long distance calls (subject to Commission-regulated access charges); intrastate long distance

[730] *See* PAETEC Comments in re NBP PN # 25 at 3 (filed Dec. 22, 2009).

[731] *See* Letter from Russell M. Blau, Counsel to Neutral Tandem, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, GN Docket No. 09-51 at 1-2, Attach. at 4, 6 (filed Oct. 22, 2010).

[732] *See infra* para. 637.

[733] Letter from Donna Epps, Vice President-Federal Regulatory, Verizon, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135 at 1 (filed Oct. 12, 2010) (Verizon Oct. 11, 2010 *Ex Parte* Letter). The record indicates that there are disputes over payment for these charges. *See, e.g.,* Letter from Ross A. Buntrock, Counsel for Northern Valley Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135 at 1 (filed Oct. 14, 2010) (Northern Valley Oct. 14, 2010 *Ex Parte* Letter) (describing disputes over failure to pay tariffed switched access charges).

[734] National Broadband Plan at 142. *See also* T. RANDOLPH BEARD & GEORGE S. FORD, DO HIGH CALL TERMINATION RATES DETER BROADBAND DEPLOYMENT? (Phoenix Center Policy Bulletin No. 22, Oct. 2008), *available at* http://www.phoenix-center.org/PolicyBulletin/PCPB22Final.pdf.

[735] *See* Sarah Reedy, MagicJack Attacks, CONNECTED PLANET (May 2, 2008), http://connectedplanetonline.com/voip/news/magicjack-attacks-0502/ ("As a VoIP Company, we don't have to pay for access charges . . . . Telephone companies do have to pay access charges to terminate calls to our customers.").

calls (subject to state-regulated access charges); or calls, such as local calls or calls to dial-up ISPs, that are subject to reciprocal compensation (and regulated in part by both the Commission and the states). Regulations also can vary depending upon whether the called party's carrier (terminating carrier) is a rate-of-return carrier, price-cap carrier, competitive carrier, or mobile wireless provider. We conclude that reducing interstate access charges falls well within our general authority to regulate interstate access under sections 201 and 251(g).[736] Further, as discussed below, we believe that we have authority, as appropriate, to reform other categories of intercarrier compensation charges.

511. *Wireless Termination Charges*. We first address whether we could take action to reduce intercarrier compensation charges paid by or to CMRS or wireless providers, including intrastate and interstate access charges (which we refer to collectively as "wireless termination charges"). We believe that we plainly have authority under sections 201 and 332 to regulate charges with respect to interstate traffic involving a wireless provider, as well as charges imposed by wireless providers regarding intrastate traffic. In addition, there is support for the proposition that section 332 of the Act also gives the Commission authority to regulate the intercarrier compensation rates paid by wireless carriers for intrastate traffic—including charges that otherwise would be subject to intrastate access charges. In a 1996 decision, the Eighth Circuit construed the Act to authorize the Commission to issue "rules of special concern to the CMRS providers," including reciprocal compensation rules that encompass intrastate charges imposed by wireline providers on wireless providers.[737] In reaching that decision, the court relied on: (a) section 332(c)(1)(B), which obligates LECs to interconnect with wireless providers "pursuant to the provisions of section 201;" (b) section 2(b), which provides that the Act should not be construed to apply or to give the Commission jurisdiction with respect to charges in connection with intrastate communication service by radio "[e]xcept as provided in . . . section 332;" and (c) the preemptive language in section 332(c)(3)(A), which prohibits states from regulating the entry of or the rates charged by CMRS providers.[738] In addition, in the 2005 *T-Mobile Order*, the Commission relied upon its authority under sections 201 and 332 of the Act to adopt a rule prohibiting LECs from imposing compensation obligations for non-access traffic pursuant to tariff.[739] We seek comment on whether the Commission has authority under sections 201 and 332 to take measures to reduce wireless termination charges for both intrastate and interstate traffic.

512. *Reciprocal Compensation and Intrastate Access Charges*. As discussed below, the Commission has jurisdiction to determine a methodology for establishing the rates applicable to the exchange of reciprocal compensation traffic. We also believe that the Commission could apply section 251(b)(5) to all telecommunications traffic exchanged with LECs, including intrastate and interstate access traffic. Thus, the Commission could bring all telecommunications traffic (intrastate, interstate, reciprocal compensation, and wireless) within the reciprocal compensation framework of section 251(b)(5), and determine a methodology for such traffic. Or, the Commission could maintain the separate regimes of access charges and reciprocal compensation, and set a different methodology for traffic subject to reciprocal compensation.

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[736] *See* 47 U.S.C. §§ 201, 251(g).

[737] *See Iowa Util. Bd. v. FCC*, 120 F.3d 753, n.21 (1997), *vacated and remanded in part on other grounds, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). For example the court concluded that rule 51.703, which *inter alia* prohibits a LEC from "assess[ing] charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network," was validly grounded in section 332 of the Act. *Id.*

[738] *Id.*

[739] *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4863, para. 14 (2005) (*T-Mobile Order*) ("We take this action pursuant to our plenary authority under sections 201 and 332 of the Act. . . ."), *petitions for review pending, Ronan Tel. Co. et al. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005).

513. Section 251(b)(5) imposes on all LECs the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[740] The Act broadly defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[741] The reference to "telecommunications" in section 251(b)(5) is not limited in geographic scope (e.g., "local," "intrastate," or "interstate") or confined to particular services (e.g., "telephone exchange service,"[742] "telephone toll service,"[743] or "exchange access"[744]). Had Congress intended to exclude certain types of telecommunications traffic from the reciprocal compensation framework, it could have easily done so by using more restrictive terms to define the traffic subject to section 251(b)(5). In the *2008 Order and ICC/USF FNPRM*, the Commission concluded that "[b]ecause Congress used the term 'telecommunications,' the broadest of the statute's defined terms, ... section 251(b)(5) is not limited only to the transport and termination of certain types of telecommunications traffic, such as local traffic."[745] The Commission also concluded that section 251(b)(5) is not limited to traffic exchanged between LECs; it applies to all traffic exchanged between a LEC and another carrier.[746] Consistent with those findings, we could apply the duty to provide reciprocal compensation under section 251(b)(5) to all telecommunications traffic exchanged with LECs. We seek comment on this issue.

514. We believe that section 251(g) provides further support that we have authority to apply section 251(b)(5) to all telecommunications, including access traffic. Section 251(g) singles out access traffic for special treatment and temporarily grandfathers the pre-1996 rules applicable to such traffic, including rules governing "receipt of compensation."[747] Presumably, Congress would not have needed to preserve those compensation rules against the effects of section 251 if section 251(b)(5) did not in fact address the "receipt of compensation" for the access traffic covered by section 251(g).[748] We believe that section 251(g) should be read to encompass not just interstate access, but also intrastate access. Section 251(g) preserves all pre-existing "equal access and nondiscriminatory interconnection ... obligations (including receipt of compensation) ... under any court order, consent decree, or regulation, order, or policy of the Commission, until such ... obligations are explicitly superseded by regulations prescribed by the Commission."[749] The intrastate access charge regime, like its interstate counterpart, was established by the 1982 AT&T consent decree.[750] Given that fact, section 251(g) appears to cover intrastate as well

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[740] 47 U.S.C. § 251(b)(5).

[741] *Id.* § 153(43).

[742] *Id.* § 153(47).

[743] *Id.* § 153(48).

[744] *Id.* § 153(16).

[745] *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6480, para. 8.

[746] *Id.* at 6480-81, para. 10.

[747] 47 U.S.C. § 251(g).

[748] Applying basic principles of statutory construction, courts have repeatedly rejected statutory interpretations that would render a statutory provision meaningless. *See, e.g., Halverson v. Slater*, 129 F.3d 180, 185 (D.C. Cir. 1997) ("Congress cannot be presumed to do a futile thing"); *RCA Global Commc'ns, Inc. v. FCC*, 758 F.2d 722, 733 (D.C. Cir. 1985) (a proposed statutory construction that "would deprive" a statutory exemption "of all substantive effect" would produce "a result self evidently contrary to Congress' intent").

[749] 47 U.S.C. § 251(g).

[750] *See United States v. AT&T Co.*, 552 F. Supp. 131, 227, 232-34 (D.D.C. 1982); *MTS and WATS Market Structure*, 93 F.C.C.2d 241, 246, para. 11 (1983). The court order accompanying the AT&T consent decree made clear that the decree required access charges to be used in both the interstate and intrastate jurisdictions: "Under the proposed decree, state regulators will set access charges for intrastate interexchange service and the FCC will set access charges for interstate interexchange service." *AT&T*, 552 F. Supp. at 169 n.161. Because both the interstate and (continued....)

as interstate access obligations. The D.C. Circuit has read section 251(g) "to provide simply for the 'continued enforcement'" of certain restrictions and obligations that predated the 1996 Act, "including the ones contained in the consent decree that broke up the Bell System, until they are explicitly [superseded] by Commission action implementing the Act."[751] Under that reading of the statute, the Commission has authority to supersede all access charge obligations preserved by section 251(g), including intrastate access requirements, by adopting rules to implement the reciprocal compensation requirements of section 251(b)(5). We seek comment on these issues.

515. Because section 251(b)(5) applies to all traffic exchanged between a LEC and another carrier, we believe that we have authority to regulate reciprocal compensation arrangements involving intrastate as well as interstate traffic. Section 201(b) of the Communications Act empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[752] In upholding the Commission's authority to promulgate pricing rules to implement section 252(d)(1), the Supreme Court declared that "the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'"[753] The Court there held that insofar as provisions of the Communications Act (including those added by the 1996 Act) governed intrastate telecommunications services, the Commission has authority under section 201(b) to adopt rules covering intrastate services.[754] Proceeding from the premise that the broad term "telecommunications" in section 251(b)(5) encompasses both intrastate and interstate services, we believe that section 201(b) authorizes the Commission to adopt reciprocal compensation rules governing all telecommunications traffic (whether interstate or intrastate). We seek comment on this issue.

516. We also believe that the Commission has authority to adopt a methodology for traffic that is within the scope of section 251(b)(5). Section 252(d)(2) prescribes standards for setting charges for the transport and termination of traffic under section 251(b)(5),[755] and section 252(d)(2)(B)(i) expressly authorizes all regulatory "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."[756] Although section 252(c)(2) directs the states to establish rates in accordance with the standards set forth in section 252(d),[757] the Supreme Court made clear in *Iowa Utilities Board* that "the Commission has jurisdiction to design a pricing methodology" under section 252(d).[758] As a result, in place of the current patchwork of compensation rules governing different types of services, we propose to transition to a new methodology. We seek comment below on the appropriate methodology. We ask whether we should move to a bill-and-keep methodology but also seek comment on alternative methodologies that are consistent with the goals of moving away from per-minute charges.

517. Although section 251(b)(5) refers only to transport and termination of telecommunications, not to origination, we do not think that the statute precludes us from moving originating access charges to a new methodology. We believe that pursuant to section 251(g), the "regulations prescribed by the Commission" to replace the current access charge system may permit the

(Continued from previous page)
intrastate access charge systems were created by the same consent decree, it is reasonable to conclude that both systems were preserved by section 251(g).

[751] *WorldCom*, 288 F.3d at 432.

[752] 47 U.S.C. § 201(b).

[753] *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 at 378 (1999).

[754] *Id.* at 377-85.

[755] 47 U.S.C. § 252(d)(2).

[756] *Id.* at § 252(d)(2)(B)(i).

[757] 47 U.S.C. § 252(c)(2).

[758] *AT&T v. Iowa Utils. Bd.*, 525 U.S. at 385.

reduction of originating access charges or adoption of a bill-and-keep methodology or some other methodology for all rates.

518. We also could adopt a new methodology that would reduce reciprocal compensation charges but could leave the categories of telecommunications traffic that are currently subject to the reciprocal compensation obligation under section 251(b)(5) unchanged.[759] Doing so would leave intrastate and interstate access charges under their current regulatory structures and could permit separate glide paths for all three types of traffic. We seek comment on the policy merits of doing so.

519. If the Commission moves all traffic within the section 251(b)(5) reciprocal compensation framework, we seek comment on the impact of section 251(f)(2), which permits states to suspend or modify the reciprocal compensation obligations for carriers with less than two percent of the nation's subscriber lines.[760] In particular, a state may suspend or modify any of the requirements of section 251(b) and (c) if the state finds that doing so is consistent with the public interest and "is necessary: (i) to avoid a significant adverse economic impact to the users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible."[761] The suspension or modification provision in section 251(f)(2) could permit a state to suspend or modify the intercarrier compensation reform obligations for smaller carriers. Doing so could undermine the reforms we propose today, particularly if the Commission moves all traffic within the reciprocal compensation framework.

520. We note that the Commission has not interpreted the section 251(f)(2) statutory language for determining whether a suspension or modification is appropriate. In the *Local Competition First Report and Order,* the Commission "decline[d] . . . to adopt national rules or guidelines" regarding the specific implementation of section 251(f), but explained that the Commission "may offer guidance on these issues at a later date, if we believe it is necessary and appropriate."[762] Should the Commission interpret section 251(f)(2) to require that any suspension or modification be for a limited "duration"[763] and not indefinite?[764] Should the Commission offer guidance regarding the substantive standards that state commissions must apply when evaluating requests pursuant to section 251(f)(2) for a suspension or modification of section 251(b) or (c)?[765] In light of possible ambiguities in section 251(f)(2), should the Commission adopt rules specifically addressing certain of the implications of a suspension or modification of intercarrier compensation rules?[766] We seek comment on these issues.

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[759] *See infra* Section XIII.A.

[760] 47 U.S.C. § 251(f)(2).

[761] 47 U.S.C. § 251(f)(2)(A). Specifically, section 251(f)(2) of the Act permits a "local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide" to "petition a State commission for a suspension or modification of the application of a requirement or requirements of [section 251] (b) or (c)." 47 U.S.C. § 251(f)(2).

[762] *Local Competition First Report and Order*, 11 FCC Rcd at 16118, para. 1263; 47 U.S.C. § 251(f)(2). In 2008, the Commission sought comment on possible guidelines regarding the application of section 251(f)(2). *2008 ICC/USF FNPRM*, 24 FCC Rcd at 6623-26, App. A, paras. 282-90; *id.* at 6822-25, App. C, paras. 277-85. Only a few parties provided comment in opposition to the proposed guidelines, claiming that they were contrary to the plain language of the statute and would improperly limit state authority. *See, e.g.*, SDTA 2008 ICC/USF FNPRM Comments at 7.

[763] 47 U.S.C. § 251(f)(2) (indicating that the state commission shall "grant such petition to the extent that, and for such duration as, the [s]tate commission determines").

[764] *2008 ICC/USF FNPRM*, 24 FCC Rcd at 6624 App. A para. 283; *id.* at 6822-23 App. C para. 278.

[765] *2008 ICC/USF FNPRM*, 24 FCC Rcd at 6624-26 App. A paras. 284-87; *id.* at 6823-24 App. C paras. 279-282.

[766] *2008 ICC/USF FNPRM*, 24 FCC Rcd at 6626 App. A paras. 288-90; *id.* at 6824-25 App. C paras. 283-285.

521. *Authority to Set a Transition Plan.* In addition to our authority to reform interstate access charges, wireless termination charges, and reciprocal compensation to eliminate per-minute rates, we also believe we have authority to establish a transition plan for moving toward that ultimate objective in a manner that will minimize market disruptions.[767] As the D.C. Circuit has recognized, avoiding "market disruption pending broader reforms is, of course, a standard and accepted justification for a temporary rule."[768] In our judgment, it would be prudent to adopt interim, temporary rules that provide for a gradual, phased implementation of our proposed reforms. We believe that interim rules are needed to mitigate market disruption that might occur during the transition away from per-minute intercarrier compensation rates. It is particularly appropriate for the Commission to exercise its authority to craft a transition plan in this context, where the Commission is acting, as it has in prior orders, to reconcile the "implicit tension between" the Act's goals of "moving toward cost-based rates and protecting universal service."[769] We seek comment on our authority to implement a plan for easing the transition to comprehensive intercarrier compensation reform.

522. Section 251(g) supports our view that the Commission has authority to adopt a transitional scheme with regard to access charges. We agree with the D.C. Circuit that section 251(g) created a "transitional enforcement mechanism,"[770] that preserves the access charge regimes that pre-dated the 1996 Act "until [they] are explicitly superseded by regulations *prescribed by the Commission.*"[771] Because section 251(g) contemplates that the Commission may take action to end the grandfathered access charge regimes, we think it reasonable to conclude that the Commission may also take steps to smooth the transition to a new regulatory scheme. We seek comment on this interpretation of section 251(g).

XII. CONCEPTS TO GUIDE INTERCARRIER COMPENSATION REFORM

523. We seek comment below on the ultimate end-point once the transition away from per-minute intercarrier compensation rates is completed. We begin by identifying key concepts to inform our evaluation and then seek comment on alternative end-points for comprehensive intercarrier compensation reform that could further these goals.

A. Concepts to Guide Sustainable Reform

524. *Addressing Arbitrage and Marketplace Distortions.* A number of problems arise from intercarrier compensation rates set above incremental cost and predicated on the recovery of average costs on a traffic sensitive, per-minute basis. Under average cost pricing, a network can invest in facilities to attract subscribers and recover some of those costs from subscribers of other, potentially competing, networks. As competition has increased, the ability to shift the recovery of costs to competitors through intercarrier charges increasingly distorts the competitive process.[772] This also creates arbitrage opportunities and other marketplace distortions.[773] These problems arise from a combination of

[767] *See* National Broadband Plan at 148.

[768] *Rural Cellular Ass'n v. FCC,* 588 F.3d 1095, 1106 (D.C. Cir. 2009) (quoting *Competitive Telecommc'ns Ass'n v. FCC,* 309 F.3d 8, 14 (D.C. Cir. 2002)); *see also ACS of Anchorage, Inc. v. FCC,* 290 F.3d 403, 410 (D.C. Cir. 2002); *Competitive Telecommc'ns Ass'n v. FCC,* 117 F.3d 1068, 1073-75 (8th Cir. 1997); *MCI Telecommc'ns Corp. v. FCC,* 750 F.2d 135, 141 (D.C. Cir. 1984).

[769] *Southwestern Bell Tel. Co. v. FCC,* 153 F.3d 523, 538 (8th Cir. 1998).

[770] *WorldCom,* 288 F.3d at 433

[771] 47 U.S.C. § 251(g) (emphasis added).

[772] *See Intercarrier Compensation FNPRM,* 20 FCC Rcd at 4694, para. 16.

[773] For example, some incumbent LECs may receive approximately one-third of their regulated revenues from access charges, while mobile wireless carriers generally must recover all costs from their end users. *See, e.g., Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area,* WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8681-
(continued….)

intercarrier compensation rates set above incremental cost and the terminating access monopoly that exists today, which allows LECs to recover revenues through charges that cannot be disciplined by competition.[774] For example, the ability of companies to design business plans driven almost entirely by the profits from access charges[775] or reciprocal compensation[776] suggest just how far above incremental cost those rates can be. In addition, the varying regulatory regimes that apply to different providers, and different types of traffic, can lead to efforts to evade compliance with the existing system.[777] The long-term endpoint for reform should address the flaws in the current system of intercarrier compensation.

525. *Cost Causation.* Underlying historical pricing policies for termination of traffic was the assumption that the calling party was the sole beneficiary and sole cost-causer of a call.[778] More recent analyses, however, have recognized that both parties generally benefit from participating in a call, and therefore, that both parties should share the cost of the call.[779]

526. *Providing Appropriate Pricing Signals.* Many of the problems that have arisen in the current intercarrier compensation system would have been far less likely to occur if the party that chooses the service provider received appropriate pricing signals about the costs associated with their provider. For example, the Commission has recognized that customers have little incentive to choose a carrier with

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82, para. 116 n.339 (2010) (*Qwest Phoenix Forbearance Order*). *Cf.* Body of European Regulators for Electronic Communications, BEREC Common Statement on Next Generation Networks Future Charging Mechanisms / Long Term Termination Issues, at 39 (June 2010) (describing how certain intercarrier compensation reforms in European markets would eliminate the advantage that mobile operators currently have over fixed operators because mobile termination rates currently are higher than fixed termination rates) (BEREC Common Statement). Further, some have contended that above-cost access charges could create competitive advantages for IXCs that are affiliated with LECs. *Cf. Intercarrier Compensation NPRM*, 16 FCC Rcd at 9617-18, para. 15.

[774] For a more detailed discussion of the problems arising under the current regulatory regime from the terminating access monopoly, *see, e.g., Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8664, 8678-79, paras. 79, 112; *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 9935-38, paras. 31-40 (2001) (*CLEC Access Charge Reform Order*); *Intercarrier Compensation NPRM*, 16 FCC Rcd 9610, at 9616-17, paras. 13-14; Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime*, OPP Working Paper Series No. 33 at 7-8,(Dec. 2000), *available at* http://www.fcc.gov/Bureaus/OPP/working_papers/oppwp33.pdf (DeGraba).

[775] *See supra* para. 507; *infra* Section XV.C

[776] Indeed, the Commission found it necessary to adopt a regime providing a cap of $0.0007 for reciprocal compensation rates for dial-up traffic bound for ISPs to address arbitrage in that context. *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6477, para. 3. And carriers now are expressing concerns about other possible reciprocal compensation arbitrage problems. *See infra* Section XV.C.2.b.

[777] *See infra* Section XV.B.

[778] *See, e.g., Intercarrier Compensation NPRM*, 16 FCC Rcd at 9626, para. 42 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, 16028-29, paras. 1063-64 (1996) (*Local Competition Order*)); DeGraba at 15.

[779] *See, e.g.,* BEREC Common Statement at 2 n.6, 27-30; DeGraba at 15-17. *See also* Stephen C. Littlechild, *Mobile Termination Charges: Calling Party Pays versus Receiving Party Pays, in* TELECOMMUNICATIONS POLICY, Vol. 30, 242 – 277 (2006); J. Scott Marcus, *Interconnection in an NGN Environment*, ITU/02, (Apr. 2006) *available at* http://www.itu.int/osg/spu/ngn/documents/Papers/Marcus-060323-Fin-v2.1.pdf; David Harbord & Marco Pagnozzi (2008), *On-net / Off-net Price Discrimination and "Bill-and-Keep" vs. "Cost-Based" Regulation of Mobile Termination Rates* (Jan. 2008) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1374851; J. Scott Marcus and Dieter Elixmann, WIK-Consult, *The Future of IP Interconnection: Technical, Economic, and Public Policy Aspects*, Final Report, Study for the European Commission (Jan. 2008) *available at* http://ec.europa.eu/information_society/policy/ecomm/doc/library/ext_studies/future_ip_intercon/ip_intercon_study_final.pdf.

lower access charges because the market does not provide them accurate pricing signals.[780] Indeed, in some cases carriers actually have subsidized customers to entice them to obtain service from them, rather than another, possibly lower-cost provider.[781]

527. *Consistent with All-IP Broadband Networks.* Most fundamentally, the long-term approach to intercarrier compensation reform also must be consistent with the exchange of traffic on an IP-to-IP basis. A methodology that is consistent with IP networks is important because the record suggests that the current intercarrier compensation system may be disrupting a market-driven transition to more efficient forms of interconnection, such as IP-to-IP interconnection.[782] Voice traffic exchanged on an IP-to-IP basis can simply involve the exchange of packets, and does not require occupying an entire circuit for the duration of the call as in a circuit-switched network. Current policies, however, have resulted in per-minute intercarrier compensation charges, which make little sense for IP traffic. Specifically, certain carriers may require an interconnecting carrier to convert IP traffic to time-division-multiplexed traffic even if IP-to-IP interconnection would be more efficient, to ensure continued collection of intercarrier compensation.[783] The National Broadband Plan encouraged the Commission, as part of intercarrier compensation reform, "to determine what actions it could take to encourage transitions to IP-to-IP interconnection where that is the most efficient approach."[784]

528. *Other Concepts.* We also seek comment on any additional concepts that should guide the Commission's evaluation of the appropriate end-point for comprehensive intercarrier compensation reform. Parties proposing such concepts should describe how they advance, or are consistent with, the transition to all-IP networks, as well as the other reforms discussed in this Notice.

B. Intercarrier Compensation Methodologies for All-IP Networks

529. We seek comment below on possible intercarrier compensation methodologies that the Commission might adopt as an end-point for comprehensive reform. We also encourage commenters to submit alternative methodologies that are consistent with the concepts identified above.

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[780] *See, e.g., Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9935-36, para. 31 (2001) (*CLEC Access Reform Order*).

[781] *See, e.g.,* Level 3 Petition for Declaratory Ruling Regarding Access Charges by Certain Inserted CLECs for CMRS-Originated Toll-Free Calls, CC Docket No. 01-92 at 2, 12-15 (filed May 12, 2009) (Level 3 Declaratory Ruling Petition).

[782] *See* National Broadband Plan at 142 (observing that "the current system creates disincentives to migrate to all IP-based networks"). *See also, e.g.,* PAETEC Comments in re PN #25 at 3 (filed Dec. 22, 2009) (arguing that "[c]ompensating carriers at different rates for use of their network based on the type of traffic motivates some carriers to refrain from transitioning networks to IP architecture. This has the compounding effect of forcing interconnecting carriers to also retain legacy TDM network architecture to accommodate the exchange of traffic"); Sprint Nextel Comments in re NBP PN #25 at 7-10 (filed Dec. 22, 2009) (maintaining that "[t]he current intercarrier compensation ("ICC") system provides the wrong incentives to carriers, encourages foot dragging in regard to TDM/IP transition, and results in significant economic waste and inefficiency").

[783] *See* National Broadband Plan at 142. *See also* Cablevision Comments in re NBP PN # 25 at 2 (filed Dec. 22, 2009) (stating that an "IP voice call initiated on a competing carriers' network must be reduced to TDM, transmitted over an electrical DS-0 or similar connection, and routed to an ILEC customer over the legacy hierarchical circuit-switched network, with all of its associated costs, inefficiencies, and limitations"); Global Crossing Comments in re NBP PN #19 at 9-10 & n.13 (filed Dec. 7, 2009) (describing how Global Crossing has to convert its IP traffic back to TDM in order to hand it off to its access vendors); Sprint Nextel Comments in re NBP PN #25 at 5 (filed Dec. 22, 2009) (observing that incumbent LECs are slow to deploy IP or do so inefficiently in order to hold on to access revenues).

[784] National Broadband Plan at 49. *See also* Letter from Russell M. Blau, Counsel for Neutral Tandem, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, GN Docket No. 09-51 at 1-2 (filed Oct. 22, 2010) (describing the costs and benefits of IP interconnection among voice providers).

530. *Bill-and-Keep Methodology.* The Commission previously has sought comment on forms of bill-and-keep methodologies.[785] At a high level, under a bill-and-keep methodology, carriers would not impose charges on other service providers to recover the costs of transporting telephone calls from a specified point in the network or for originating or terminating those calls.[786] Instead, they would recover such costs from their own end users, possibly in conjunction with CAF support. This is roughly akin to the manner in which wireless providers already operate today.[787] We seek comment on the merits of a bill-and-keep methodology. We also seek comment on the scope of functions provided by a carrier that should be encompassed by the bill-and-keep framework.[788] For example, under some circumstances, certain special access services may be viewed as substitutes for certain switched access services today, and we seek comment on whether, and how, to address such circumstances if the Commission were to adopt a bill-and-keep approach.[789] We also seek comment on how any bill-and-keep methodology could be crafted in a way that is sufficiently flexible to accommodate evolving network architectures. In this regard, we note that there are a number of technical issues associated with developing a particular bill-and-keep methodology, and we seek more detailed comment on those issues below.[790] We also seek

[785] *See generally Intercarrier Compensation NPRM*, 16 FCC Rcd 9610; *see also, e.g.*, *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4703-04, 4705-07, 4711-12, 4714-15, paras. 37-38, 40-44, 54-55, 59.

[786] The carrier handing off traffic for termination would be responsible for transporting the traffic to that specified point in the network, which could include payment for the use of other carriers' networks for that transmission. We seek comment below on how to define the specified point in the network where traffic would need to be delivered before "bill-and-keep" would apply. *See infra* Section XVI.

[787] Wireless providers are prohibited from filing interstate access tariffs, *see* 47 C.F.R. § 20.15(c), and may collect access charges from an IXC only if both parties agree to do so pursuant to contract. *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192, 13198, para. 12 (2002) (*Sprint/AT&T Declaratory Ruling*), *petitions for review dismissed*, *AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003). Practically speaking, this means that CMRS providers generally do not collect access charges for calls that originate or terminate on their networks. CMRS providers are, however, able to receive reciprocal compensation for eligible traffic that terminates on their networks, although the record indicates that many of those arrangements are bill-and-keep. *See, e.g.*, Letter from Tamara Preiss, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135 at 6, 10 (filed June 28, 2010); Letter from Norina Moy, Dir., Gov't. Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket No. 04-36, at 1 (filed Sept. 19, 2008).

[788] *See, e.g.*, COMPTEL 2008 ICC/USF FNPRM Comments at 23 (arguing that as a result of the conversion to IP-based networks the proposed default "edge" rules may not even be relevant at the end of the transition period); NCTA 2008 ICC/USF FNPRM Comments at 19-21 (arguing that the 2008 Edge interconnection proposal would not work for IP-based networks).

[789] For example, at sufficient traffic volumes a carrier that previously interconnected and delivered traffic via a tandem switch, paying switched transport charges, might instead purchase a special access connection to deliver traffic directly to the relevant central office. *See, e.g.*, Cincinnati Bell 2008 ICC/USF FNPRM Comments at 17-18. We note that questions regarding the appropriate regulation of price cap carriers' special access services more generally remains the subject of a pending proceeding. *See Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005); *Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking*, WC Docket No. 05-25, RM-10593, Public Notice, 22 FCC Rcd 13352 (2007); *Parties Asked to Resolve Analytical Framework Necessary to Resolve Issues in Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, 24 FCC Rcd 13638 (2009); *Data Requested in Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice DA 10-2073 (rel. Oct. 28, 2010); *Clarification of Data Requested in Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, DA 10-2413 (rel. Dec. 23, 2010).

[790] *See infra* Section XVI.

comment on our legal authority to adopt a bill-and-keep methodology either for particular traffic, or for all traffic generally.[791]

531. *Flat-Rated Intercarrier Charges.* The Commission also previously has sought comment on proposals that involved converting per-minute interstate access charges into flat-rated intercarrier charges imposed on long distance, interexchange carriers.[792] We note, however, that the marketplace has evolved significantly since the time of those proposals, with end-user customers increasingly shifting from stand-alone long distance service to bundled packages including local and long distance voice service, frequently at flat rates.[793] At least one proposal discussed in the 2005 *Intercarrier Compensation FNPRM* did suggest the use of flat intercarrier compensation charges for all traffic, however.[794] Would any such flat intercarrier charge proposals make policy sense, and be administrable, in the present context as customers transition to broadband? Would such changes facilitate, or hinder, the transition from circuit-switched to IP networks? We also seek comment on our legal authority to implement a particular flat charge proposal.

532. *Other Alternative Methodologies and Transition Proposals.* We seek comment on alternative methodologies consistent with the guiding concepts for long-term reform, and which would provide us with authority to adopt the transition proposals set forth below. Various alternative approaches to reform have been proposed in the record, which would retain some form of per-minute intercarrier compensation charges.[795] We seek comment on these and other proposed approaches to intercarrier

[791] As discussed above, the Commission could bring all traffic within the section 251(b)(5) reciprocal compensation framework and adopt a new pricing methodology. *See supra* Section XI. Section 252(d)(2) prescribes standards for setting charges for the transport and termination of traffic under section 251(b)(5), and section 252(d)(2)(B)(i) expressly authorizes all regulatory "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waiver mutual recovery (such as bill-and-keep arrangements)." 47 U.S.C. § 252(d)(2)(B)(i). Citing this provision, the D.C. Circuit has declared that "there is plainly a non-trivial likelihood that the Commission has authority to elect" a bill-and-keep system. *WorldCom* 288 F.3d at 434. Although section 252(c)(2) directs the states to establish rates in accordance with the standards set forth in section 252(d), the Supreme Court made clear in *Iowa Utilities Board* that "the Commission has jurisdiction to design a pricing methodology" under section 252(d). *AT&T v. Iowa Utils. Bd.*, 525 U.S. at 385; *see also id.* at 384. We thus believe that the adoption of a federal bill-and-keep mandate would fall comfortably within our jurisdiction to develop a pricing methodology for transport and termination charges. *See supra* Section XI.

[792] *Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 98-63, 98-157, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, at 14328-30, paras. 211-16 (1999) (*Pricing Flexibility Order and NPRM*) (seeking comment on converting from per-minute rates to capacity-based charges); *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4707-08, paras. 45-47 (discussing the Expanded Portland Group (EPG) proposal, which would transition to flat charges for access traffic and retain per-minute charges for local and extended area service traffic).

[793] *See, e.g., Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5217-19, paras. 15-19 (2007) (noting that long distance service purchased on a stand-alone basis is becoming a fringe market).

[794] *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4710-11, paras. 52-53 (discussing the Home Telephone Company and PBT Telecom (Home/PBT) proposal that carriers tariff flat capacity-based interconnection charges to be paid by any interconnecting carrier).

[795] *See, e.g.*, Letter from Tiki Gaugler, Senior Manager & Counsel, XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135, Attach. at 2 (filed Sept. 10, 2010) (XO Sept. 10, 2010 *Ex Parte* Letter); Letter from Tamar E. Finn, Counsel, PAETEC to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 1-2 (filed Sept. 24, 2010). Some suggest that such reforms include reconsideration of the Commission's interpretation of section 254(g) to, among other things, allow carriers to send price signals to their customers about the costs of delivering calls for termination. *See, e.g.*, Letter from Tamar E. Finn, counsel for PAETEC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, Attach. at 5 (filed Jan. 14, 2010).

compensation reforms. To what extent would these proposals that retain per-minute rates make policy sense, given the National Broadband Plan recommendations concerning the elimination of per-minute charges and the Commission's goal of accelerating the transition to all-IP networks? To what extent would particular plans be administrable? We seek comment on our legal authority to adopt these and other proposals in the record, and also ask interested parties to provide alternative transition proposals.[796]

XIII. SELECTING THE PATH TO MODERNIZE EXISTING RULES AND ADVANCE IP NETWORKS

533. In this section, we seek comment on how to begin the transition away from the current per-minute intercarrier compensation rates to facilitate carriers' movement to IP networks consistent with the guiding concepts identified above. There are multiple dimensions of any transition plan, each of which can be calibrated in a variety of ways. For one, there are a range of roles that could be played by state and federal policy makers. We also believe it is important for any transition to be gradual enough to enable the private sector to react and plan appropriately.[797] In significant part, this can be accommodated by the sequencing and timing of rate reductions. We seek comment on how each of these dimensions should be addressed as part of the intercarrier compensation reform transition.

534. In particular, we propose to work in partnership with the states to reform intercarrier compensation, and we seek comment below on two general options for addressing the various elements of the transition. Under the first option, the transition would be implemented through reliance on the existing roles played by the states and the Commission with respect to regulation of rates. The Commission would reduce interstate access charges, and adopt a methodology that states would implement to reduce reciprocal compensation rates; but the categories of traffic under the reciprocal compensation framework would remain unchanged. We also seek comment on whether we should determine a rate for wireless termination charges (including intrastate access charges paid by wireless carriers). States would otherwise continue to be responsible for reforming intrastate access charges. We seek comment on including incentives for states to complete reform of intrastate access charges. We also propose a backstop mechanism through which, after a specified period of time such as four years, the Commission would take action if states have not done so. Under the second option, the Commission would use the tools provided by sections 251 and 252 in the 1996 Act to unify all intercarrier rates, including those for intrastate calls, under the framework of reciprocal compensation. In this framework, the Commission establishes a methodology for intercarrier rates, which states then work with the Commission to implement.

535. We seek comment on the benefits and disadvantages of each approach and the potential rule changes necessary to implement each alternative. In discussing or proposing particular alternatives, we ask commenters to discuss how particular approaches balance several potentially competing considerations: (a) harmonizing rates and otherwise reducing arbitrage opportunities; (b) minimizing disruption to service providers, including litigation and revenue uncertainty; and (c) minimizing the impact on consumers and on the Commission's ability to control the size of the universal service fund.

[796] *See* Letter from James S. Blaszak, Attorney for Ad Hoc Telecommunications Users Committee to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 05-337, GN Docket No. 09-51 at 1-2 (filed Sept. 29, 2010) (Ad Hoc Telecommunications Users Committee (Ad Hoc) suggests that the Commission implement intercarrier compensation reform in two phases. Specifically, Ad Hoc suggests that in the first phase the Commission "apply [intercarrier compensation reform] to the major local exchange carriers" and "[n]ot until the second phase would the Commission impose [intercarrier compensation reform] on small rural local exchange carriers.").

[797] This is consistent with the National Broadband Plan, which observed that "[s]udden changes in USF and ICC could have unintended consequences that slow progress" and that "[s]uccess will come from a clear road map for reform, including guidance about the timing and pace of changes to existing regulations, so that the private sector can react and plan appropriately." National Broadband Plan at 141. *See also id.* at 135-36, 143.

536. Finally, we emphasize that the Commission intends to use a data-driven process to analyze the proposed reforms. As a result, commenters should submit data to explain and substantiate their position or concerns.

A. Reform Based on the Existing Jurisdictional Framework

537. Under this approach, both the Commission and states would be responsible for taking steps, consistent with their existing jurisdictional roles, to reform intercarrier compensation charges as described below. By focusing on areas that the courts have made clear are within the Commission's jurisdiction, this option could minimize the risk of litigation and disputes, providing greater stability regarding the reform. On the other hand, although we discuss a possible Commission backstop below, intrastate rates will continue to be different as states grapple with different ways to reform intrastate access, which could result in different transitions and varying rates, potentially allowing continued arbitrage based on the disparity in rates for different jurisdictions. We thus seek comment on the overall strengths and weaknesses of such an approach, as well as the implementation considerations discussed below.

1. Reforms Undertaken by the Commission

538. Under this option, the Commission would exercise its broad authority to determine the transition, stages, and future state for reforming the current interstate access charge rules to eliminate per-minute rates, including any necessary cost or revenue recovery that might be provided through the CAF. Likewise, the Commission would create a new methodology for reciprocal compensation, although the scope of traffic encompassed by the reciprocal compensation framework would not change. We recognize that these reductions could be sequenced and staged in different ways, and we seek comment on the strengths and weaknesses of particular approaches. For example, reducing interstate access charges at the outset has the advantage that arbitrage related to interstate access charges would be addressed and eliminated earlier in the transition,[798] thereby realizing the benefits of reform earlier in the transition. An initial focus primarily on interstate access reductions also could be more consistent with a limited CAF, depending upon how the details of recovery are resolved.[799] Reductions in reciprocal compensation rates potentially could occur from the start of the transition, as well. Depending upon the reciprocal compensation methodology chosen, however, this could increase the complexity of issues that need to be addressed earlier in the transition process, as compared to an approach that deferred reciprocal compensation rate reforms until later in the process.[800] Under any approach, as to staging, reductions could occur through equal increments, an equal annual percentage, or other mechanisms.

539. In addition to interstate access and reciprocal compensation, there is support for the proposition that section 332 of the Act gives the Commission authority to regulate wireless termination charges—that is, intercarrier compensation charges paid to wireless carriers, or paid by wireless carriers—including charges that otherwise would be subject to intrastate access charges.[801] We seek comment on whether the Commission should address all wireless termination charges or whether we must or should leave wireless intrastate access charges within the states' jurisdiction. We also seek comment on whether wireless termination charges—whether arising under section 20.11 of the Commission's rules,

[798] As discussed below, we also propose rules to further minimize access stimulation while the broader reforms are occurring. *See infra* Section XV.C.

[799] *See infra* Section XIV.B.

[800] For example, in the Interconnection and Related Issues section below, we seek comment on whether new rules regarding physical points of interconnection or the network edge would be required for particular reform proposals. *See infra* Section XVI. We also seek comment on the effect, if any, a glide path applicable to reciprocal compensation traffic should have on current interconnection and other traffic exchange agreements between parties. *Id.*

[801] *See supra* Section XI.

the access charge regimes, or reciprocal compensation—should be separately dealt with in the transition process.[802] We note that, today, there is some dispute regarding certain wireless termination charges.[803] If wireless termination charges are subject to their own transition, would it still be necessary or appropriate to clarify those issues?

540. The overall timing for the Commission to reduce those rates subject to its jurisdiction could be structured in various ways, as well.[804] We propose completing the transition away from the current per-minute framework before the Commission implements its long-term vision for CAF reform.[805] We believe doing so is in the public interest because it will remove implicit subsidies from the current intercarrier compensation system consistent with the transition to explicit support provided under the CAF mechanisms proposed in this Notice.

541. We seek comment on whether the transition for wireless termination charges, if reduced separately, should be subject to distinct transition timing. For example, should we adopt an alternative or more accelerated transition for wireless termination charges?[806] We note, for example, that we propose to rationalize CETC support over five years. Since reducing wireless termination charges could result in cost savings to wireless providers, should the Commission seek to reduce such charges so that those cost savings are realized in parallel with the elimination of CETC support?

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[802] *See* 47 C.F.R. § 20.11(b) (requiring "reasonable compensation" for traffic exchanged between LECs and CMRS carriers).

[803] These include debates about the relationship between sections 20.11 and 51.701 of the Commission's rules, 47 C.F.R §§ 20.11, 51.701, and what constitutes a "reasonable" rate under section 20.11. *See* Letter from Tamara Preiss, Vice President--Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135 at 1, 7 (filed June 28, 2010) (asking the Commission to adopt CMRS-CLEC compensation rules either on an interim basis or in the context of more comprehensive intercarrier compensation reform); Letter from L. Charles Keller, Counsel to CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135, Attach. at 3 (filed Aug. 26, 2010) (describing the need for clarification concerning section 20.11). *See also infra* Section XV.C.2.b. In addition, there are pending petitions for clarification or reconsideration of the Commission's 2005 *T-Mobile Order*. *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005) *petitions for review pending*, *Ronan Tel. Co. et al. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005); American Association of Paging Carriers Petition for Reconsideration, CC Docket No. 01-92 (filed Apr. 29, 2005); MetroPCS Petition for Limited Clarification or for Partial Reconsideration, CC Docket No. 01-92 (filed Apr. 29, 2005); MSTCG Petition for Reconsideration, CC Docket No. 01-92 (filed Mar. 25, 2005); RCA Petition for Clarification, or in the Alternative, Reconsideration, CC Docket No. 01-92 (filed Apr. 29, 2005); T-Mobile Petition for Clarification, or in the Alternative Reconsideration, CC Docket No. 01-92 (filed Apr. 29, 2005).

[804] We note that the National Broadband Plan proposed a 10-year transition to eliminate per-minute charges. *See* National Broadband Plan at 148. Specifically, it suggests that in 2010-2011 the Commission "adopt a framework for long-term intercarrier compensation (ICC) reform that creates a glide path to eliminate per-minute charges while providing carriers the opportunity for adequate cost recovery, and establish interim solutions to address arbitrage." *Id.* The National Broadband Plan recommends that in 2012-2016 the Commission "begin a staged transition of reducing per-minute rates for intercarrier compensation." *Id.* at 149. From 2017-2020 the National Broadband Plan recommends that the Commission "continue reducing ICC rates by phasing out per-minute rates for the origination and termination of telecommunications traffic." *Id.* at 150.

[805] *See supra* Section VII.

[806] For example, some industry members believe that a 10-year transition, as proposed in the National Broadband Plan, is too long. *See, e.g.*, Letter from Norina Moy, Director, Government Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-135, 05-25, CC Docket No. 0-192, GN Docket No. 09-51 at 1 (filed Sept. 28, 2010). *See also* Letter from Tiki Gaugler, Federal Regulatory Counsel, XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 3 (filed Nov. 23, 2010) (proposing a five-year transition for comprehensive intercarrier compensation reform).

542. The timing of the transition also could vary by the type of terminating carrier, given that some carriers' rates are higher at the outset. For example, distinct transition timing could be adopted for price cap versus rate-of-return carriers.[807] Although price cap carriers' rates are limited by a price cap index,[808] a form of rate ceiling, rate-of-return carriers' interstate rates have been increasing the last few years as demand has declined.[809] Rate-of-return carriers' interstate access rates are higher than price cap carriers' interstate access rates, and continue to increase every year. Should the Commission consider giving rate-of-return carriers additional time? If so, what should the glide path be and why?[810] Or, are there countervailing policy considerations that counsel in favor of reducing all rates along a similar glide path?

2. Reforms Undertaken by the States

543. States that have undertaken intrastate access charge reform measures have pursued a variety of approaches, underscoring states' ability to account for the unique characteristics of their state and the impact on local consumers in setting a glide path for reform. Nebraska, for example, reduced intrastate rates and established a state universal service fund initially designed to help carriers replace required intrastate rate reductions.[811] To be eligible to receive support under the state Universal Service Fund, Nebraska adopted residential and business rate benchmarks and established separate transition periods for rural and non-rural carriers to reduce their access charges.[812] Following a transition period, the Nebraska Universal Service Fund was then directed to target support to high-cost areas of the state.[813] Indiana has adopted a policy by which small incumbent LECs "mirror the rates and rate structure applicable to their interstate access services for their intrastate access services."[814] The state also developed a universal service program to assist rural LECs with revenue recovery.[815] Under that program, recovery of intrastate revenue shortfalls is available to eligible rural LECs that undergo rate

[807] *See Intercarrier Compensation FNPRM,* 20 FCC Rcd at 4737, para. 118.

[808] *See supra* para. 504.

[809] *See supra* para. 504 & notes 726-27.

[810] *See* Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc. and Charles W. McKee, Vice President, Government Affairs, Federal and State Regulatory, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 4 (filed Jan. 21, 2011) (T-Mobile/Sprint Nextel Jan. 21, 2010 *Ex Parte* Letter) (suggesting that BOCs and "service providers that operate in any of the []BOCs' service areas" should be given four years to transition, while rural and other LECs should have ten years).

[811] *See* Nebraska PSC 2008 ICC/USF FNPRM Comments at 8; *Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, 1999 WL 135116, *7 (Neb. Pub. Serv. Comm'n 1999) (*Nebraska Access Charge Reform Order*).

[812] *Nebraska Access Charge Reform Order*, 1999 WL 135116 at *7.

[813] Nebraska Comm'n 2008 ICC/USF FNPRM Comments at 8; *Nebraska Public Service Commission on Its Own Motion, Seeking to Establish a Long-Term Universal Service Funding Mechanism*, Applications No. NUSF-26, Findings and Conclusions (Neb. Pub. Serv. Comm'n 2004) *available at* http://www.psc.state.ne.us/home/NPSC/usf/Orders/NUSF26.2004.11.03.Findings%20and%20Conclusions.doc. Specifically, non-rural carriers were required to eliminate their Carrier Common Line (CCL) charge immediately and phase out the Transport Interconnection Charge (TIC) over a three-year period. Rural carriers were required to reduce their CCL and phase it out over four years, and phase out the TIC to other transport elements. *See* Letter from Cheryl L. Parrino, Counsel to Nebraska Rural Independent Companies, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, Attach. at 1 (filed Nov. 12, 2010) (NE Rural Nov. 12, 2010 *Ex Parte* Letter).

[814] *Universal Service Reform*, Cause No. 42144, 2004 WL 1170315, *3 (Ind. Util. Reg. Comm'n 2004) (subsequent history omitted).

[815] *Id.*

rebalancing.[816] Further, in Iowa, intrastate access rates for local exchange companies were reduced in the context of a tariff proceeding.[817] Notably, no recovery mechanism was established in the proceeding because affected LECs did not provide cost data to substantiate the need for recovery.[818] We seek comment on the status of intrastate access reform, as well as different approaches and best practices of states that have undertaken intrastate access reform.[819]

544. *Incentives for States to Act.* Considering the variety of approaches that states have undertaken to achieve reform, we seek comment on what steps the Commission should take to encourage states to reduce intrastate intercarrier compensation rates and how we could do so without penalizing states that have already begun the difficult process of reforming intrastate rates or rewarding states that have not yet engaged in reform. We seek comment above on ways the Commission could structure the first phase of the CAF to reward states that take action to advance our broadband goals, and here we likewise seek comment on how the first phase of the CAF preferences might create incentives for states to reduce intrastate access charges. Would a preference for receipt of the first phase of the CAF funds be an appropriate and sufficient incentive to encourage states or carriers to act to reduce intrastate intercarrier compensation rates?[820] If so, how should the Commission determine if a state has undertaken intrastate access reform? Would states need an order or similar regulation setting forth a transition to reduce intrastate rates, or should the Commission require a more specific schedule of reductions? Or, for example, should the Commission require that a certain percentage of providers in the state have reduced

[816] *Id.* at *3-*5. Similarly, in furtherance of a statutory requirement for intrastate access rates to mirror interstate rates, Maine provides state universal service funding to assist rural LECs with revenue recovery. ME. REV. STAT. ANN. tit. 35, § 7101-B. Under this mechanism, a rate proceeding is required for eligible carriers seeking support. 65-407 ME CODE R. Ch. 288, § 3(C).

[817] *Iowa Telecommunications Association*, Docket Nos. TF-07-125, TF 07-139, Final Order, 2008 WL 4489065 (Iowa Utils. Bd. 2008) (*Iowa 2008 Final Order*), Order Denying Requests for Reconsideration and Denying Motion to Vacate Stay, 2009 WL 2141213 (Iowa Utils. Bd. 2009) (*Iowa 2009 Order*).

[818] *Iowa 2008 Final Order*, 2008 WL 4489065 at *6 ("[T]he Board cannot determine, based on the record provided, if a reduced revenue level resulting from reduced intrastate access services rates would fail to adequately recover the costs of providing service. In the absence of that evidence, the Board cannot take any steps to consider replacement of those revenues."); *Iowa 2009 Order*, 2009 WL 2141213 at *6 ("[Iowa Telecommunications Association (ITA)] claims that it would be arbitrary and capricious for the Board to reduce its members' access rates without an opportunity for the affected companies to provide cost information that would show that the reduced access rates would not cover their costs and consequently ask for a gradual phase in of the reductions. The Board finds that this case presented an adequate opportunity for ITA to produce cost data. ... ITA had the opportunity throughout this proceeding to produce cost data to support its tariffed rates and chose not to do so.").

[819] *See, e.g.*, Letter from Brian J. Benison, Director – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 05-337, GN Docket No. 09-51, Attach. 1, 2 (filed Oct. 25, 2010) (AT&T Oct. 25, 2010 *Ex Parte* Letter) (providing information on access reform in the states and noting that few states have moved to complete parity between intrastate and interstate switched access rates and structures). AT&T asserts that Alabama, Alaska, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New Mexico, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, Texas, Virginia, Wisconsin, and West Virginia have taken varied approaches to embrace intrastate/interstate parity or lower intrastate access rates. *Id. See also* Wyoming Comm'n and WTA Comments Responding to AT&T *Ex Parte*, CC Docket No. 01-92, WC Docket No. 05-337, GN Docket No. 09-51 (filed Dec. 7, 2010) (describing access charge reform efforts); Early Adopter State Commission Comments on the Missoula Plan at 6, 10 (describing certain state efforts to reform intrastate access charge). The Commission requests accurate information concerning the status of intrastate access state reform activity to determine which states would be eligible to participate in the first phase of the CAF should the Commission adopt CAF preferences as an incentive for state action. *See supra* Section VI.F.

[820] Regardless of prior state action or the glide path established for intrastate access charges (or other rates), carriers in states that do not regulate, or have deregulated, intrastate access charges may be free to eliminate per-minute intercarrier charges more quickly.

rates to satisfy the requirement for state action? Should we require intrastate rates be reduced to a certain level, such as mirroring interstate rates? What other alternative determinations or criteria should the Commission consider?[821]

545. What other incentives for intrastate intercarrier compensation reform might be appropriate and effective for the Commission to adopt? For example, should we explore matching some CAF dollars to a state universal service fund for states that are using such a fund to reform intrastate access charges? If so, how could such a match be structured, particularly given our commitment to control the size of the CAF? We note, for instance, that NECA submitted data from a survey of its members (rate-of-return companies) estimating that if the NECA companies reduced their current intrastate access charges to the level of their current interstate access rates, they would, in the aggregate, lose approximately $361 million in annual intercarrier compensation revenues.[822] We seek comment below on possible recovery of reduced intercarrier compensation through a variety of mechanisms, including through end-user charges such as modifications to the interstate SLC cap.[823] If the SLC cap is modified, should we permit recovery via the federal SLC to offset intrastate revenues reduced through access reform? If so, how could this incentive be structured, and should it decrease over time? We seek alternative proposals on what actions we can take to provide effective incentives to states to lower intrastate access rates.

546. We also seek comment on whether the Commission should provide guidance to states as they reform intrastate rates. Should we, for example, provide guidance on the timing of the transition or encourage states to set up a state universal service fund and/or rebalance local rates? For example, we seek comment on adopting a rate benchmark as part of a recovery mechanism in Section XIV below. If the Commission adopts a rate benchmark, should that be used as a guide for states that undertake rate rebalancing? Are there other guidelines the Commission should adopt? We seek comment on these issues.

547. We also seek comment on how the Commission can work in partnership with state public utility commissions that lack jurisdiction over intrastate access rates. Should carriers in these states be responsible for reducing charges or should there be a process for states or carriers to petition the Commission to set a glide path? Should the Commission act on its own to set a glide path when it is clear the state will not act to reduce intrastate access rates? How would we make the determination to act?

548. *Timeframe for State Action.* Although we would strive to work in collaboration with states, we are mindful that some state commissions may decline to act—possibly because they lack jurisdiction over intrastate rates—and such lack of action could frustrate our national goals associated with intercarrier compensation reform. We seek comment on whether, after initially relying on states to act pursuant to their historical role, the Commission should bring traffic within the reciprocal compensation framework if states fail to act within a specified period of time, such as four years. We seek comment on the merits of adopting such a "backstop" under this alternative, and how we could minimize its effects on those states that had acted to reform intrastate access. How could the Commission set a glide path that would constrain only those states that had not undertaken reform, while allowing states that had already adopted transitions to continue on the glide path determined by each state? For example, the Commission could set a glide path as a "floor" for reform and enable states that have already begun reform to adopt alternative approaches. We also seek comment on how much time would be sufficient for states to initiate proceedings and begin reform before adopting such a "backstop." Is four years sufficient time? Should we wait until after the first phase of the CAF auctions are complete? We seek comment on these questions and invite any alternate proposals.

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[821] As discussed above, we seek comment on requiring the provision of certifications or documentations that state action has occurred for participation in the first phase of the CAF. *See* Section VI.E.3.b.

[822] *See* NECA Dec. 29, 2010 *Ex Parte* Letter, Attach.

[823] *See infra* Section XIV.

549. How could the Commission structure any incentives for state action to ensure that states are encouraged to undertake appropriate reforms within the allotted time rather than simply waiting for the Commission to intervene in the future? For example, should the Commission decline to provide any revenue recovery for intrastate rate reductions for states that have not begun intrastate access reform by a specified date?[824] Should the Commission continue to limit access to the CAF only to states that have undertaken intrastate access reforms? Or should (or could) the Commission phase out federal high-cost funding in states that have not implemented reform?

B. Reform Based on the 1996 Act Framework

550. As an alternative, the Commission could use the mechanism established by section 251 of the 1996 Act to work with the states on intercarrier compensation reform. As discussed above, although section 251(g) of the Act preserved the historical intercarrier compensation rules that existed prior to 1996 on an interim basis, section 251(b)(5) established an intercarrier compensation framework broad enough to ultimately encompass the various forms of intercarrier compensation that are regulated separately today.[825] Under this alternative, the Commission would bring all traffic within the reciprocal compensation framework of section 251(b)(5) at the initiation of the transition, and set a glide path to gradually reduce all intercarrier compensation rates to eliminate per-minute charges (including any necessary cost or revenue recovery that might be provided through the CAF). The Commission would adopt a pricing methodology to govern these charges, which ultimately would be implemented by the states. We seek comment on the relative advantages and disadvantages of this alternative, as well as any implementation considerations.

551. In contrast to the first option—where the state and federal roles would vary based on the intercarrier compensation charge at issue—under this approach, both the state and federal roles would be the same for all types of traffic. In seeking comment on this type of approach in the past, the Commission considered whether it retained authority to regulate rates subject to its jurisdiction, such as for interstate traffic and CMRS traffic, notwithstanding the decision to bring all traffic within the section 251(b)(5) framework.[826] We seek further comment on that interpretation, and on the circumstances, if any, when it might be appropriate for the Commission to exercise such authority.

552. The options for sequencing and staging rate reductions under this approach are largely the same as those under the prior approach, except that the Commission would have the ability to determine the glide path for all traffic, including traffic currently subject to intrastate access charge regimes. In the alternative, the Commission could set the methodology and defer to each state to determine the transition. In addition to the alternatives discussed above, we seek comment on how the Commission should address the sequencing of intrastate rate reductions under this approach. For example, we seek comment on reducing intrastate access rates to interstate levels (leaving all other rates unchanged),[827] and then reducing all intercarrier rates until per-minute rates are eliminated. There is

[824] *See Legislative Hearing on a Discussion Draft of the "Universal Service Reform Act of 2009" Before the Subcomm. On Communications, Technology, and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. 12-13 (2009) (statement of Ray Baum, Commissioner, Oregon Public Utility Commission on behalf of the National Association of Regulatory Utility Commissioners) (suggesting that the Commission encourage states to reform intrastate access charges by "condition[ing] receipt of federal high-cost support on the State reducing in stages intrastate access charges to mirror Federal rates").

[825] *See supra* Section XI.

[826] *See 2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6592, App. A, para. 215; *id.* at 6790-91, App. C, para. 210.

[827] *See, e.g.*, *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6582, App. A, para. 192; *id.* at 6780-81, App. C, para. 187. *See also* National Broadband Plan at 148 (recommending that intercarrier compensation reform begin by reducing intrastate rates to interstate levels).

general industry sentiment that intrastate rates should be reduced first because they are the highest,[828] and because eliminating the discrepancy between intrastate and interstate access charges could reduce arbitrage, such as phantom traffic. On the other hand, if interstate access rates remain unchanged during the initial stage of the transition, arbitrage such as access stimulation that is based on absolute rate levels (rather than on jurisdictional differences) would be more likely to continue. And addressing the possible need for cost or revenue recovery associated with reduced intrastate access revenues could be a significant undertaking.[829] We note, however, that the Commission has not previously used the federal universal service fund to offset reforms to intrastate access charges; rather, states have addressed intrastate recovery on a case-by-case basis.[830] We question whether the Commission has any legal obligation to offset reductions to intrastate revenues, particularly given our commitment to control the size of USF. Even so, we seek comment on whether we should offset such reductions as a policy matter.

553. Alternatively, all categories of intercarrier compensation rates could be reduced from the beginning of the transition period. In principle, depending upon the pace at which particular rates are reduced,[831] this potentially could both reduce the existing disparities among different intercarrier compensation rates and also help address arbitrage arising from existing intercarrier compensation rate levels. However, reducing all rates concurrently may increase any recovery from the CAF needed early in the transition, as well as the complexity of issues that need to be addressed earlier in the transition process, as compared to an approach that deferred certain types of rate reductions until later in the process. As an alternative, we seek comment on the advantages and disadvantages of reducing intrastate and interstate access rates at the same time, as well as other variations that commenters might propose.[832]

554. We also seek comment on how rate reductions should be structured and implemented if all traffic is brought under the reciprocal compensation framework. For example, because all of the traffic would be section 251(b)(5) traffic, would the reductions be negotiated by the carriers and reflected in interconnection agreements? Are individual negotiations preferable to a uniform glide path set by the Commission? Alternatively, should the Commission propose a default glide path for reductions, such as a percentage per year for a certain number of years, but leave carriers free to negotiate alternate arrangements? If we adopt a default glide path for rate reductions, what impact, if any, would that glide path have on existing agreements between carriers? We also seek comment on alternative approaches to structuring a glide path to eliminate per-minute intercarrier compensation rates under this approach. We

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[828] *See* Letter from Malena F. Barzilai, Regulatory Counsel & Director, Federal Regulatory Affairs, Windstream to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 1 (filed Aug. 24, 2010) (Windstream Aug. 24, 2010 *Ex Parte* Letter); Letter from Joe A. Douglas, VP, Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (filed Sept. 2, 2010) (Rural Alliance Sept. 2, 2010 *Ex Parte* Letter); Verizon and Verizon Wireless Comments in re NBP PN #19 at 19-20 (filed Dec. 7, 2009).

[829] *See supra* para. 545 (citing estimates from a NECA survey).

[830] The Commission has sought comment on whether and how intrastate access revenues could be replaced using some sort of federal mechanisms, but has not adopted those mechanisms. *See, e.g., 2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6628-34, App. A, paras. 294-310; *id.* at 6827-32, App. C, paras. 289-305; *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4735-36, paras. 114-15.

[831] For example, both interstate and intrastate access charges could be reduced at the same pace—such as equal annual increments or percentage reductions—over a staged transition. Alternatively, if intrastate access rates currently are higher than interstate access rates, intrastate access rates could be reduced more quickly until they are at the same level as interstate rates. Of course, given the magnitude of intrastate access charges, accelerated intrastate access rate reductions may have a larger financial impact for certain carriers.

[832] Indeed, even with respect to access charge reductions, the Commission potentially might distinguish among the different *components* of access charges. For example, rate reductions might focus initially on terminating access, with originating access rates addressed later in the transition.

also seek comment on whether there are any technical issues that we would need to address at the beginning of the transition in order to begin reforming reciprocal compensation rates at that time.[833]

555. Finally, one industry proposal recommends that the Commission establish a glide path to reduce intrastate rates to interstate levels and then reassess the status of intercarrier compensation before finalizing the transition. Specifically, they suggest that the Commission "decline to set further rate reductions (beyond the interstate level) until after it can assess financial conditions in the wake of the first stage of reforms."[834] We seek comment on this suggestion, as well as our legal authority to do so.

C. Other Transition Issues

556. As a general matter, we seek comment on how our interstate access rules applicable to rate-of-return and price cap carriers would need to be revised as part of the interstate access rate reduction process. We request that commenters identify specific rule sections that would need to be revised and explain what revisions would, in their view, be required. We invite parties to submit proposed rule changes with their comments and identify the timing of the proposed transition and the methodology used to reduce rates during the glide path. We also invite comment on whether any changes to intrastate access rules—such as rules governing intrastate access rate structures—would be needed under particular alternatives.

557. More specifically, we also seek comment on the need to cap interstate access rates. If, during the transition period over which the glide path operates, interstate minutes of use continue to decline, rate-of-return carriers' interstate access rates would continue to increase.[835] Therefore, if intercarrier compensation reform begins by reducing intrastate access rates, we seek comment on whether the Commission should cap rate-of-return carriers' interstate access rates at existing levels during stage one of the transition.[836] We seek comment on any other issues we should consider in conjunction with such a cap, and ask whether changes to our rate-of-return rules would be necessary to effectuate such a freeze and, if so, what rule changes would be necessary or appropriate under those circumstances.[837]

558. If commenters do not believe a cap is the best way to prevent an increase in intercarrier compensation rates prior to rates being put on a declining glide path, what alternative measures are available to ensure that carriers do not increase intercarrier compensation rates prior to the start of the transition? Do commenters see any other possible arbitrage opportunities created by the transitions proposed above? In Section VI.A above, we seek comment on eliminating local switching support, or combining LSS with HCLS.[838] What impact would such a proposal have on interstate access rates? Does such a proposal impact commenters' opinions on whether or not we should cap interstate access rates?

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[833] We seek comment below on technical issues associated with intercarrier compensation reform. *See infra* Section XVI.

[834] Windstream Aug. 24, 2010 *Ex Parte* Letter at 2; *see also* Letter from CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc. and Windstream Communications, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 3-4 (Dec. 7, 2009) (Broadband Now Plan).

[835] *See supra* Section I.

[836] *See* Rural Alliance Sept. 2, 2010 *Ex Parte* Letter (suggesting one of the near-term steps to intercarrier compensation reform the Commission could take is capping interstate access rates at their existing levels). In response to the *2008 Order and ICC/USF FNPRM,* NTCA suggested allowing state commissions to voluntarily lower intrastate access rates and "[f]reezing interstate tariffed access rates . . . in order to keep cost-based rates from increasing as a result of demand decreases." NTCA 2008 ICC/USF FNPRM Comments at 8.

[837] *See supra* Section XIV.

[838] *See infra* Section VI.

XIV. DEVELOPING A RECOVERY MECHANISM

559. In this section, we seek comment on how to structure a recovery mechanism as part of comprehensive reform, including threshold questions of how to evaluate the need for recovery of reduced intercarrier compensation (whether focusing on costs, revenues, or both), and how to structure such recovery with the appropriate incentives to accelerate the migration to all IP networks, including IP interconnection. We discuss proposals for recovery first from end users, such as through a rate benchmark as a means of accounting for existing revenue streams, and the appropriate role, if any, of interstate SLCs. At the same time, we also recognize that some high-cost, rural, insular, and Tribal areas may lack a private sector business case to provide service at affordable rates and seek comment on whether providers may need additional support from the CAF and, if so, the criteria that should be met to receive such support. In commenting on the proposals below, we reiterate our commitment to controlling the size of the universal service fund. In section VI.E.3 above, we seek comment on rationalizing CETC support over five years, cutting IAS support over two years, and using those funds to expand broadband coverage through the CAF. During the transition period to long-term CAF reform, any universal service support associated with intercarrier compensation reform would also derive from the same sources – savings realized from reductions to existing support mechanisms. We ask commenters how best to structure any CAF support for recovery of reduced intercarrier compensation, and, in particular, how best to balance the goals of expanding broadband coverage, ensuring adequate recovery for providers, and controlling the size of the CAF.

A. Threshold Considerations

560. Various possible mechanisms for recovery may be appropriate either as intercarrier compensation reform is ongoing, or once reform is complete. As an initial matter, however, we consider certain threshold issues that will inform our analysis of specific recovery alternatives.

561. In contrast to interstate access charge reform a decade ago, today we are faced with a telecommunications industry transitioning to all-IP networks. And the universal service reforms proposed above seek to reinforce, and facilitate, this trend. In this environment, non-regulated services are an increasingly important source of revenues derived from multi-purpose networks. Consequently, our analysis of recovery needs should not be limited to the voice-centric approach that has tended to characterize prior reform efforts. We seek comment below regarding the development of a recovery framework to accompany intercarrier compensation and universal service reform that reflects the ongoing marketplace evolution, including the data necessary to meaningfully develop and analyze such recovery mechanisms.

562. As an initial matter, we seek comment on the objectives for any recovery mechanism and, relatedly, any Commission obligations with regard to recovery from both a legal and policy perspective. Specifically, what are the Commission's legal obligations with regard to recovery? Would these obligations vary depending on the reform approach ultimately adopted? Certainly, one primary consideration is the need to maintain affordable end-user rates.[839] In addition, should our objectives for recovery be focused on providing incentives to transition to broadband, ensuring the ability of carriers to continue to provide voice service, securing investment and developing advanced services, or some

[839] In prior intercarrier compensation reforms, for example, the Commission sought to balance the role of cost-causation principles in setting economically rational rates with concerns about the impact on subscribership from increased end-user charges. *See, e.g., Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 15992-93, 16004–07, paras. 24, 54–66 (1997) (*Access Charge Reform Order*) (subsequent history omitted); *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Memorandum Opinion and Order, 97 FCC 2d 682, 688–89, para. 10 (1983) (*First Reconsideration of 1983 Access Charge Order*) (subsequent history omitted); *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241, 253, para. 35 (1983) (*1983 Access Charge Order*).