

combination thereof? What other objectives should the Commission consider and what are the relevant priorities of these objectives?

563. Moreover, in a separate proceeding, the Commission is evaluating reform of the jurisdictional separations process.⁸⁴⁰ For the recovery mechanisms discussed below, we seek comment on how each approach may affect and be affected by the existing separations process and any future separations reform. Specifically, we seek comment on whether the recovery mechanisms under consideration here would affect the costs currently allocated to intrastate categories. Parties should address these and any other issues relevant to the relationship between a recovery approach and the separations process.

B. Determining the Type and Amount of Recovery

564. *Cost Recovery.* In adopting a recovery mechanism we ask, as a threshold matter, whether we should be evaluating carrier costs, carrier revenues, or some combination thereof. The National Broadband Plan references an opportunity for “adequate cost recovery.”⁸⁴¹ Is this the right standard? Should we evaluate a carrier’s costs associated with switching and transport in determining the need for recovery? If so, should we evaluate such costs as intercarrier charges are reduced during the transition or should we evaluate intercarrier revenues at some baseline to determine the need, if any, for alternative recovery during this period?

565. What cost standard or cost components should be considered when determining what recovery should be allowed? Parties supporting a cost-based approach to recovery should address these issues and provide specific data to assist the Commission in determining whether this is the right approach. In particular, parties should focus on the local switching and transport cost characteristics in evaluating the efficiencies that could be achieved as networks transform to all IP, noting particularly any cost differences that may exist in rural networks serving high-cost, insular or Tribal areas. Parties should also consider the extent to which today’s usage of the interoffice transport networks could shift over time to special access or some dedicated transmission alternative.

566. Further, would a cost-based approach provide incentives to make prudent and efficient investment decisions or would carriers be inclined to exaggerate or maximize costs to secure additional recovery? What, if any, are the Commission’s legal obligations concerning recovery of a carrier’s costs and would such obligations change depending on the reform approach adopted? In 2005 and 2008, the Commission sought comment on moving intercarrier compensation rates within the reciprocal compensation framework of section 251(b)(5).⁸⁴² In so doing, the Commission sought comment on interpreting section 252(d)(2)’s statutory language regarding the “additional costs”⁸⁴³ associated with terminating reciprocal compensation calls as an incremental, rather than average, cost standard.⁸⁴⁴ If the Commission focuses on costs, is this the right approach to determining a provider’s costs of originating, transporting and terminating traffic? Although much of the remainder of this section discusses revenue recovery rather than cost recovery, we ask parties supporting a cost recovery approach to address any

⁸⁴⁰ See *2009 Jurisdictional Separations Referral Order*, 24 FCC Rcd at 6167–69, paras. 15–20 (2009). See also *2010 Jurisdictional Separations Public Notice*, 25 FCC Rcd 3336 (2010).

⁸⁴¹ National Broadband Plan at 148.

⁸⁴² See *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4721–23, paras. 78–82; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6588–99, App. A, paras. 207–29; *id.* at 6786–98, App. C, paras. 202–24.

⁸⁴³ Section 252(d)(2) of the Act sets an “additional cost” standard for reciprocal compensation rates under section 251(b)(5). 47 U.S.C. § 252(d)(2)(A). Thus, we seek comment on the relationship, if any, between these (or other) statutory obligations and the recommendation to provide an opportunity for adequate cost recovery.

⁸⁴⁴ See *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4719, paras. 71–73; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6610–18, App. A, paras. 253–267; *id.* at 6806–16, App. C, paras. 248–63.

additional issues raised in this section from a cost recovery rather than, or in addition to, a revenue recovery perspective.

567. *Revenue Recovery.* Existing intercarrier compensation revenues may represent 10-30 percent of some carriers' regulated revenues.⁸⁴⁵ Such revenues may exceed the costs, however defined, of providing origination, transport, and termination functions. As a result, should the Commission focus on recovery of reduced intercarrier compensation revenues instead of or in addition to costs? If we consider intercarrier compensation revenues as the basis for recovery, how should we evaluate or define revenues? For example, should "revenues" include a company's gross intercarrier revenue or should it be based on net intercarrier compensation, which we define as being a company's total intercarrier compensation revenue (including but not limited to interstate access, intrastate access and reciprocal compensation) less its intercarrier compensation expense (including access expenses paid by affiliated long distance and wireless companies, reciprocal compensation payments, as well as pass through access charges via wholesale long distance arrangements)? Should we evaluate only regulated revenues or include non-regulated revenues? We seek comment on these issues, and request data below on intercarrier compensation revenues and expenses to help us evaluate the potential size of any revenue recovery mechanism.

568. As we evaluate revenue recovery, we do not believe that recovery needs to be revenue neutral given that carriers have a variety of regulated (e.g., not only switched but also special access) and non-regulated revenues.⁸⁴⁶ Indeed, some parties question whether and to what extent it is necessary to establish any recovery mechanism specifically to address the effects of intercarrier compensation reform.⁸⁴⁷ We ask whether an adequate opportunity for recovery already exists given the variety of

⁸⁴⁵ See, e.g., NECA Comments in re NBP PN #19, filed Dec. 7, 2009, at 27 (representing that, in 2005, an average 29 percent of its incumbent carriers' revenues came from intercarrier compensation, and some carriers received up to 49 percent of revenues from intercarrier compensation); ITTA Comments in re NBP PN #19, filed Dec. 7, 2009, at 6 ("A survey of ITTA members revealed that approximately 12 percent of member carrier revenues are obtained via ICC.").

⁸⁴⁶ See, e.g., Ad Hoc 2008 ICC/USF FNPRM Comments at 7-8 (stating that revenue neutrality is neither required nor justified); CTIA 2008 ICC/USF FNPRM Comments at 35-37 (urging the Commission to reject calls for revenue neutrality and to take all revenue opportunities into account when targeting support); NCTA 2008 ICC/USF FNPRM Comments at 5 (observing that "[c]arriers generally have numerous retail revenue streams – both regulated and unregulated – from which to recover the costs of operating their networks and that dollar-for-dollar replacement of 'lost' access revenues is unnecessary"); Letter from David C. Bergmann, Assistant Consumers' Counsel, Chair – NASUCA Telecommunications Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, 10-90, GN Docket No. 09-51, at 2 (filed Oct. 15, 2010) (maintaining that "[t]here should be no guaranteed recovery of lost revenues" and that any consideration of lost revenues must "take into account sources of increased revenues (such as from broadband), and intracompany revenues transfers"); Letter from Michael R. Peevey, President, California Public Utilities Commission, *et al.*, to Hon. Kevin Martin, Chairman, FCC, *et al.*, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 04-36, at 5 (filed Oct. 28, 2008) (stating that "California does not support the 'revenue neutrality' concept" and "that recovery of lost revenue should be a net recovery that takes into account such factors as the natural decline in revenue due to competition from other communications technologies such as wireless, VOIP, and CLECs"); Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Public Utility Commission *et al.*, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket Nos. 05-337, 06-122, at 7 (filed Oct. 27, 2008) (arguing that "[t]he premise that ICC reform must equate to revenue neutrality for affected carriers is flawed and should be rejected"). *But see, e.g.*, Windstream 2008 ICC/USF FNPRM Comments at 41-42 (stating that "[a] reasonable recovery mechanism must be part of any significant intercarrier compensation reform" and that "[t]he mechanism need not guarantee 'absolute revenue neutrality' for mid-sized carriers, but it should be sufficient to ensure that these carriers are able to continue providing affordable, quality services in rural areas as required by Section 254 of the Act"); Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68, WC Docket Nos. 05-337, 04-36, Attach. at 5 (filed Sept. 19, 2008) (maintaining that "[r]evenue neutrality and long term revenue stability should be foundational reform goals in order to ensure long term network investment").

⁸⁴⁷ See, e.g., Letter from Ben Scott, Policy Director, Free Press to Marlene H. Dortch, Secretary, FCC, WC Docket (continued....)

regulated and non-regulated services provided over multi-purpose networks. If so, how would the Commission evaluate whether a provider has sufficient revenues so that it does not need any additional recovery? The Commission could, for example, evaluate a price cap company's total switched and special access revenues to determine if recovery from intercarrier compensation reform generally or access to the CAF was warranted. If special access revenues are increasing, the Commission could evaluate whether such increases offset the decline in switched access revenues. But what if special access revenues were declining? Similarly, for a rate-of-return carrier, the Commission could evaluate whether a carrier has the opportunity to earn its authorized rate of return across its switched and special access revenue requirements rather than just switched access.

569. Alternatively, or in addition, the Commission could evaluate total company regulated and non-regulated revenues. Under our "no barriers" policy, a significant portion of rate-of-return carriers' costs, including costs of upgrading the network with fiber for broadband, is allocated to regulated services, even though non-regulated services increasingly have been provided using that same network, and have accounted for an increasing percentage of revenue.⁸⁴⁸ As a policy matter, when evaluating recovery in the context of intercarrier compensation reform, it is unclear why the Commission would simply ignore all revenues earned from such services. If so, what information would the Commission need to collect for privately-held companies to evaluate a provider's total revenues? Should carriers seeking recovery be required to file such data with the Commission or USAC? We seek comment on these and related issues concerning the appropriate role of regulated and non-regulated revenues in any revenue recovery proposal.⁸⁴⁹

570. If the Commission uses a revenue approach for recovery, what should the baseline criteria be for determining whether a carrier qualifies for revenue recovery?⁸⁵⁰ Commission data and the record show that carriers are losing lines and experiencing a decrease in minutes-of-use.⁸⁵¹ Should these patterns be considered as part of any projection and, if so, how should such trends be reflected in a calculation of needed revenue recovery? Alternatively, should we consider intercarrier compensation revenues that are actually billed or received as of a particular point in time? Is it appropriate to consider disputed intercarrier compensation revenues in any calculation of revenues to be recovered? Is there a way to define the revenues subject to recovery in a way to encourage carriers to retain customers and hence, end-user revenues?

571. We also seek comment on whether reductions in intercarrier compensation rates would impact all carriers in a similar manner. Should the recovery approach adopted (i.e., cost-based versus revenue-based) be different depending on the type of carrier or type of regulation? For example, because

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Nos. 05-337, 06-122, CC Docket Nos. 01-92, 96-45 at 8 (filed Oct. 24, 2008); Letter from David C. Bergmann, Assistant Consumer's Counsel, Chair -- NASUCA Telecommunications Committee, to Kevin Martin, Chairman et al., FCC, WC Dockets Nos. 08-152, 07-135, 06-122, 05-337, 05-195, 04-36, 03-109, 02-60, CC Dockets Nos. 02-6, 01-92, 00-256, 99-68, 96-262, 96-45, 80-286 at 4-6 (filed Sept. 30, 2008); Letter from James S. Blaszk, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket No. 05-337, 99-68, 07-135, Attach. at 7-8 (filed Oct. 14, 2008).

⁸⁴⁸ See *supra* para. 52.

⁸⁴⁹ For instance, we seek comment on whether revenues from non-regulated services should be considered as part of any benchmark proposal. See *infra* Section XIV.C.I.

⁸⁵⁰ We note that the proposal to eliminate LSS may impact any baseline we establish in determining whether cost or revenue recovery is necessary. See *supra* Section VI.A.3.

⁸⁵¹ See, e.g., *Sept. 2010 Trends in Telephone Service*, at Table 7.1, Chart 10.1; 2010 Universal Service Monitoring Report at Table 8.1; Letter from Donna Epps, Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135 at 1 (filed Oct. 28, 2010); Letter from Mary L. Henze, Assistant Vice President – 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. at 3-4 (filed Nov. 24, 2009).

of competition, long distance providers experiencing reduced switched access charges will experience cost reductions that may be passed on to purchasers of long distance services—whether wholesale or retail customers. Is it appropriate for the Commission to consider the degree to which cost savings are or should be passed through when determining the necessary amount of revenue recovery? We note that there appear to be significant complexities associated with determining the magnitude of cost savings passed on to consumers.⁸⁵² We seek comment on these issues.

572. To support our consideration of a revenue recovery mechanism, the Commission requests data to analyze existing revenues, assess the magnitude of the revenue reductions resulting from the proposed reforms, and determine the appropriate size and scope of a recovery mechanism. In requesting these data, we seek to minimize the burden on commenters while requesting sufficient information to enable the Commission to develop and size a recovery mechanism. In particular, we request information regarding switched access revenue, expense, and minutes of use (MOU), on a by-provider, by-state basis for intrastate access, interstate access, and reciprocal compensation. For NECA pool carriers, this would include both billable and settlement revenue. Additionally, we request total regulated revenue and total revenue to understand the significance of intercarrier compensation revenue as a percent of total regulated revenue and total revenue. We also request information concerning residential rates. All such requests are made for annual data from 2008 to 2010, pro-forma for all mergers, acquisitions and divestitures.⁸⁵³ We recognize the commercially sensitive nature of this information, and have established a protective order in this docket to permit the data to be provided subject to confidentiality protections.⁸⁵⁴

C. Evaluating Reasonable Recovery from End-Users

1. Residential Benchmark

573. Consistent with our goal of reforming universal service to support voice and broadband, we seek comment on how to structure a benchmark to recognize ongoing consumer migration from voice only to voice plus broadband services, and the evolution of circuit-switched networks to IP networks. We seek comment on tools, such as rate benchmarks and imputation of benchmark revenues, that might be used as part of revenue recovery both today, and as the marketplace fully transitions to broadband networks.⁸⁵⁵ In particular, we seek comment on using a rate benchmark based on local rates for voice service at the outset and transitioning to a rate benchmark for voice and broadband at the end of the transition.⁸⁵⁶

574. With respect to state revenue sources, commenters previously have proposed various “local rate benchmarks” to address the considerable variation among states today in their regulation of residential rates. In particular, we note that some states already have reduced intrastate access charges

⁸⁵² See DEBRA J. ARON, *ET AL.*, AN EMPIRICAL ANALYSIS OF REGULATOR MANDATES ON THE PASS THROUGH OF SWITCHED ACCESS FEES FOR IN-STATE LONG-DISTANCE TELECOMMUNICATIONS IN THE U.S. at 6-11, 30-31 (Oct. 14, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1674082.

⁸⁵³ If providers choose to use it, a sample data template will be available on the Commission’s website at <http://www.fcc.gov/wcb/ppd/iccdatatemplate.xls>. We urge that providers file such information with their opening comments.

⁸⁵⁴ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Protective Order, 25 FCC Rcd 13160 (WCB 2010).

⁸⁵⁵ Under a benchmark approach, the benchmarked rate is imputed to the carrier for purposes of determining support, but carriers typically are not required to raise their rates to the benchmark level.

⁸⁵⁶ We seek comment in para. 149 and note 223, *supra*, about developing a rate benchmark for voice and broadband services to satisfy Congress’s requirement that universal service ensure that services are available to all regions, “including rural, insular, and high cost areas,” at rates that are “affordable” and “reasonably comparable” to those in urban areas. 47 U.S.C. §§ 254(b)(1), (3). If the Commission adopts a rate benchmark in this context, should the Commission use this benchmark for purposes of an intercarrier compensation recovery mechanism as well?

significantly, often accompanied by the opportunity to increase end-user charges, receive funds from a state universal service mechanism, or some combination.⁸⁵⁷ A benchmark potentially could help achieve greater equality in the treatment of states that have already undertaken significant intercarrier compensation and universal service reform and those that have not yet done so. In particular, under various proposals, a certain amount of intrastate revenue would be imputed to the carriers in a state that has not reduced intrastate rates, rather than being eligible for recovery through a federal revenue recovery mechanism.⁸⁵⁸ In principle, such a benchmark should encourage states that had not yet undertaken such reforms to begin doing so.⁸⁵⁹ If the Commission adopts a rate benchmark, we propose, consistent with the National Broadband Plan, that benchmark revenues be imputed to carriers, before becoming eligible for additional revenue recovery. Doing so rewards states that have already rebalanced rates and should encourage other states to increase previously subsidized (i.e., artificially low) residential rates.⁸⁶⁰ We seek comment on this proposal and whether imputation adequately rewards states that have rebalanced rates and encourages other states to do the same.

575. We seek comment on how the Commission should select a rate benchmark. The Commission has previously sought comment on the use of a revenue benchmark or threshold in the context of comprehensive intercarrier compensation reform,⁸⁶¹ which was supported by several parties,⁸⁶² and we invite parties to refresh the record on their views of the appropriate rate benchmark. Although most of the proposals in the record date back to 2008,⁸⁶³ we note that the Nebraska Rural Independent

⁸⁵⁷ See, e.g., AT&T Oct. 25, 2010 *Ex Parte* Letter, Attach. 1, 2; Early Adopter State Commission Comments on the Missoula Plan at 6, 10 (describing efforts to reduce intrastate access charges and establish state universal service funds). See also, e.g., In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to Sub. S.B. 162, Case No. 10-2387-TP-COI, Entry, App. A (Ohio Commission Nov. 3, 2010) (providing details of the state Access Restructuring Plan, including a state recovery mechanism); In re Iowa Telecommunications Association, Docket Nos. TF-07-125, TF-07-139, Order Denying Requests for Reconsideration and Denying Motion to Vacate Stay, at 12-16 (Iowa Commission Jan. 8, 2009) (rejecting a request by Iowa Telecommunications Association for a phased-in reduction of access charges).

⁸⁵⁸ See, e.g., National Broadband Plan at 148 (citing proposals to "impute local rates that meet an established benchmark"); see also Letter from Joe A. Douglas, Vice President – Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, Attach. at 7 (filed Jan. 27, 2011) (proposing an urban benchmark to make "rural rates and services reasonably comparable to urban").

⁸⁵⁹ See, e.g., *id.* at 148 (describing the possible state incentives arising from the adoption of a benchmark).

⁸⁶⁰ See generally AT&T Oct. 25, 2010 *Ex Parte* Letter, Attach. at 3 (indicating residential rates of less than \$8).

⁸⁶¹ See 2008 Order and ICC/USF FNPRM, 24 FCC Rcd at 6632-33, App. A, paras. 306-07; *id.* at 6831-32, App. C, paras. 301-02.

⁸⁶² See, e.g., Nebraska Public Service Commission 2008 ICC/USF FNPRM Comments at 8; Windstream 2008 ICC/USF FNPRM Comments at 6, 8; AT&T 2008 ICC/USF FNPRM Reply at 9 n. 19; Minnesota Independent Coalition 2008 ICC/USF FNPRM Reply at 16; North Carolina Telephone Cooperative Coalition 2008 ICC/USF FNPRM Reply at 2; Windstream 2008 ICC/USF FNPRM Reply at 15-16; Letter from Ben Scott, Policy Director, Free Press, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket Nos. 05-337, 06-122, at 7 (filed Oct. 14, 2008).

⁸⁶³ See, e.g., Minnesota Independent Coalition 2008 ICC/USF FNPRM Comments at 11 (supporting a benchmark using either a state-by-state average local rate calculation or adopting the 2008 national average benchmark of \$20.76); NTCA 2008 ICC/USF FNPRM Comments at 3, 10-11 (suggesting a federal benchmark of \$20); TCA 2008 ICC/USF FNPRM Comments at 9 (supporting a benchmark based on the 2008 national urban local exchange rate of \$20.76); USTA 2008 ICC/USF FNPRM Comments at 7-8 (discussing the Missoula Plan's national benchmark of \$25 with a \$20 lower end adjustment); Fred Williamson and Associates 2008 ICC/USF FNPRM Reply at 10 (proposing a \$20 benchmark rate); Windstream 2008 ICC/USF FNPRM Reply at 15-16 (suggesting a benchmark based on the 2008 national urban local exchange rate of approximately \$20.76). See also Letter from Jeffrey S. Lanning, Director – Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, GN Docket No. 09-51, Attach. at 2 (filed Nov. 4, 2010) (noting that the benchmark "must be no higher (continued....)

Companies recently encouraged the Commission to set the rate benchmark at \$19.50 for residential service, which, after SLCs and other fees, is close to \$30, noting “[i]t is important that customers in early-adopter states such as Nebraska that have rebalanced rates are not treated unequally by adoption of a benchmark that is too low.”⁸⁶⁴ We seek comment on this proposal. Commenters advocating a lower benchmark should explain how doing so does not penalize states that have already undertaken intercarrier compensation reform and rebalanced rates.

576. We seek comment on what elements should be included in a rate benchmark and whether we should distinguish between discretionary end-user charges, charges mandated by state or federal regulators, and/or pass-through fees paid by the carrier. Prior benchmark proposals in the record have included various combinations of discretionary and mandatory charges. The proposed elements have included the local residential rate, federal subscriber line charges, SLC-like charges (e.g., interconnection charges or network access fees), mandatory Extended Area Service (EAS) charges, per-line state universal service fund end-user collections, and Telecommunications Relay Service (TRS) charges.⁸⁶⁵ We seek comment on these proposals and on what elements should be included in any rate benchmark. We also seek comment on the timing of the revenue benchmark, and whether it should be implemented and imputed in the first year or whether it should be phased in, as some of the mid-size carriers recommend.⁸⁶⁶

577. As consumers move from voice to broadband, we propose adopting a rate benchmark that gradually increases over time from a benchmark for voice services to a benchmark for voice and

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than competitive levels” and should not exceed \$25); Letter from Jeffrey S. Lanning, Director – Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 05-337, CC Docket Nos. 96-45, 01-92, Attach. to Broadband Now Plan at 3 (filed Jan. 6, 2010) (attaching Letter from CenturyLink, Consolidated Communications, Frontier Communications Corp., Iowa Telecommunications Services, Inc., and Windstream Communications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-47, 09-51, 09-137, CC Docket No. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket No. 03-109, 06-122, 04-36 ((dated Dec. 7, 2009) (setting the residential benchmark at \$23.50 for mid-sized price cap carriers under the Broadband Now Plan) (Broadband Now Plan).

⁸⁶⁴ NE Rural Nov. 12, 2010 *Ex Parte* Letter, at 2 (the local benchmark was originally set at \$17.50 monthly for residential service and \$27.50 monthly for business service, however the residential benchmark for rural areas was increased in 2006 to \$19.95). The benchmarks do not include the federal SLC or the state USF surcharge. *Id.*

⁸⁶⁵ The following parties included at a minimum, the basic service rate, SLC, and mandatory EAS charges in their benchmark. *See, e.g.*, NTCA 2008 ICC/USF FNPRM Comments at 3, 10-11 (also including a per-line contribution to state USF collections and specifying that state and federal SLC are to be included in benchmark); OPASTCO and WTA 2008 ICC/USF FNPRM Comments, Attach. 2 at A-8 (listing similar benchmark components to NTCA above); Rural ETCs in Arkansas 2008 ICC/USF FNPRM Comments at 3-4 (favoring inclusion of 911, universal service and other required state and federal regulatory surcharges into the benchmark); TCA 2008 ICC/USF FNPRM Comments at 9 (contending that the benchmark should also include a per-line contribution to state high-cost fund); USTA 2008 ICC/USF FNPRM Comments at 7-8 (including USF fees dedicated to access reduction as well as state and local SLCs); Fred Williamson and Associates 2008 ICC/USF FNPRM Reply at 10 (specifying that the benchmark should include state and federal SLCs and per line state USF collections); Letter from Melissa Newman, Vice President – Federal Relations, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 07-135, 04-36, GN Docket No. 09-51, Attach. at 7 (filed Aug. 30, 2010) (Qwest Aug. 30, 2010 *Ex Parte* Letter) (proposing the same basic benchmark elements as the others parties listed above: basic local exchange rate, mandatory EAS and a SLC). *See also* Broadband Now Plan at 3 (proposing a benchmark including the basic service rate, subscriber line charges, and mandatory EAS charges); Letter from Susanne A. Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to Chairman Kevin J. Martin *et al.*, FCC, CC Docket Nos. 96-45, 01-92, Attach. at 7 (filed Sept. 12, 2008) (Verizon Sept. 12, 2008 *Ex Parte* Letter) (specifying that federal and any state SLCs would be included in its proposed benchmark).

⁸⁶⁶ *See* Broadband Now Plan at 4.

broadband services.⁸⁶⁷ We note that carriers have advocated the Commission include broadband revenues in a rate benchmark,⁸⁶⁸ and seek comment on whether the non-regulated revenues should be limited to broadband or include other non-regulated revenues. How would the benchmark level of non-regulated revenues be established? As the marketplace increasingly transitions to broadband networks and services, how should the benchmark change over time to reflect this evolution? For example, could a benchmark increase by \$1.00 or \$2.00 each year to phase in a transition from a benchmark reflecting retail voice service rates to one reflecting retail broadband service rates? What impact would such a rate benchmark approach have on Tribal lands, which are historically economically disadvantaged areas with telephone penetration rates below the national average? At the same time, we note that not all consumers do or will subscribe to broadband. If this approach is adopted, how should we account for consumers that subscribe to voice-only services?

578. Finally, we note that Nebraska has adopted separate benchmarks for residential and business rates.⁸⁶⁹ We seek comment on this approach and whether it would be useful to incorporate a business rate benchmark into any framework we adopt. Parties supporting adoption of a business rate benchmark should address how to select a business revenue benchmark, what services and elements should be included, and how it should be implemented.

2. Interstate Subscriber Line Charges

579. The Commission's prior reforms of interstate access charges often allowed carriers to recover at least part of their costs through an increased interstate subscriber line charge or SLC, which is a flat-rated charge that recovers some or all of the interstate portion of the local loop from an end user. We seek comment on the role that interstate SLCs should play in intercarrier compensation reform and the ongoing relevance of the SLC as the marketplace moves to IP networks.

580. Currently, SLCs charged by incumbent LECs are subject to an absolute cap that varies based upon whether the line is: (a) a primary residential or single-line business (\$6.50); (b) a non-primary residential line (\$7.00 for price cap LECs); or (c) a multi-line business or Centrex line (\$9.20).⁸⁷⁰ We seek comment on whether there are ways to modify the operation of SLCs to enable additional end-user recovery before increasing the SLC cap. For example, should the Commission consider allowing (or requiring) carriers to set each SLC at its respective cap before allowing additional recovery through other

⁸⁶⁷ In the past, certain providers recommended that a benchmark be used to consider certain non-regulated revenues. See, e.g., CTIA 2008 ICC/USF FNPRM Comments at 36; Verizon Sept. 12, 2008 *Ex Parte* Letter, Attach. at 7.

⁸⁶⁸ See, e.g., Verizon Sept. 12, 2008 *Ex Parte* Letter, Attach. at 6-7 (urging the adoption of a \$22-26 benchmark for average urban flat-rate residential local service, or a benchmark that incorporates the LEC's average revenue per local exchange line from all sources including vertical features and broadband services).

⁸⁶⁹ See NE Rural Nov. 12, 2010 *Ex Parte* Letter, Attach. at 2.

⁸⁷⁰ See *supra* paras. 47. The current SLC ceilings, \$6.50 for residential and single-line business customers and \$9.20 for multi-line business and Centrex customers, were adopted as part of the 2000 *CALLS Order* and 2001 *MAG Order*. See *CALLS Order*, 15 FCC Rcd at 12991, 13004, paras. 76, 105-06; *MAG Order*, 16 FCC Rcd at 19634, 19638, paras. 42, 51.

The actual SLC cap may be lower than the absolute cap, however. For LECs subject price cap regulation, the actual cap is equal to "the Average Price Cap CMT Revenue per Line month as defined in § 61.3(d)" if it is lower than the absolute cap. See generally 47 C.F.R. § 69.152 (d), (e), and (k). Average Price Cap CMT Revenue per Line month is calculated using the maximum total revenue a filing entity would be permitted to receive from End User Common Line charges under § 69.152, Presubscribed Interexchange Carrier charges (PICCs) under § 69.153, Carrier Common Line charges under § 69.154, and Marketing under § 69.156, as of July 1, 2000, using Base Period lines. This amount excludes Universal Service Contributions assessed to local exchange carriers pursuant to § 54.702 and may be adjusted for exogenous cost changes. See 47 C.F.R. §§ 69.3(c), (cc).

For rate-of-return LECs, the actual cap is equal to the projected monthly revenue requirement for an end user common line" if that amount is less than the absolute cap. See generally 47 C.F.R. § 69.104(n) and (o).

sources, such as federal universal service funds?⁸⁷¹ We also seek comment on whether there are benefits associated with further disaggregating the categories of SLCs or making other changes to the structure of the SLC. For example, should the Commission establish separate residential and single-line business SLCs?⁸⁷² Should the Commission establish a non-primary residential line SLC for rate-of-return carriers?

581. We invite comment on whether the Commission should permit carriers to assess SLCs that, instead of being a flat charge for all customers, could vary depending on a customer's usage of the network. Adopting a range of SLCs could reduce the SLC rate for certain consumers that are light users of the network today. For example, should the Commission adopt rules permitting carriers to assess differing SLC levels depending on a customer's local switching and transport network usage? Parties supporting this approach are invited to comment on how many SLC rate levels would be appropriate, and why, and how the rates for each level should be developed. For example, if the Commission were to maintain a residential rate category with three rate levels, should residential customers be classified in equal groups reflecting low, medium, and high usage? How would those usage levels be determined? Or, is there a usage level that should be associated with each rate level? We also ask parties to suggest alternate approaches for implementing variable SLC increases.

582. Many parties have urged the Commission to increase SLC caps as a means of recovery. Most commenters supported the *2008 Order and ICC/USF FNPRM* proposal to increase the residential SLC by \$1.50 and a multiline business increase of \$2.30,⁸⁷³ and some parties have urged a residential SLC increase of up to \$4.00 depending in part on the operation of a benchmark mechanism.⁸⁷⁴ We seek comment on those proposals. If the Commission were to modify the SLC caps, how much should particular SLC caps change, and how would those changes be implemented? For instance, should any SLC increases be phased in over time and should the timing be different for discrete SLC caps?

583. We note that the National Broadband Plan suggested that the Commission consider whether to deregulate SLC caps in areas where states have deregulated local service rates.⁸⁷⁵ We seek comment on that suggestion. We also recognize that many states have already undertaken reform to reduce intrastate access rates, and several states have reduced intrastate access rates to interstate rate levels.⁸⁷⁶ Should the Commission limit SLC increases in the initial stages to states that have not

⁸⁷¹ *2008 ICC/USF FNPRM*, 24 FCC Rcd at 6639 App. A para. 320; *id.* at 6838, App. C, para. 316.

⁸⁷² *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8655, para. 60 n.185.

⁸⁷³ See *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6630, App. A, para. 298; *id.* at 6828-29, App. C, para. 293 (describing a \$1.50 increase to the residential SLC, a \$1.50 increase to the non-primary residential SLC and a \$2.30 increase to the multiline business SLC). A number of parties supported these increases. See, e.g., Embarq 2008 ICC/USF FNPRM Comments at 7; Frontier 2008 ICC/USF FNPRM Comments at 6; ITTA 2008 ICC/USF FNPRM Comments at 9; USTA 2008 ICC/USF FNPRM Comments at 7. More recently, the mid-size carriers proposed a SLC increase of \$1.50. See *Broadband Now Plan* at 3-4. Specifically, a carrier would be permitted to increase its total retail rate, including the SLC, by no more than \$1.50 each year until it reached a final benchmark rate of \$23.50 and the carrier would be imputed revenue equal to that amount regardless of whether it actually increased its rates for purposes of determining whether it would receive any additional USF support. *Id.*

⁸⁷⁴ See, e.g., Verizon Sept. 12, 2008 *Ex Parte* Letter, Attach. at 6 (proposing SLC increases of up to \$4.00 or more depending on whether the benchmark amount is reached); Letter from Brian J. Benison, Director, Federal Regulatory Affairs, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68, WC Docket Nos., 05-337, 06-122, 07-135, Attach. (filed Oct. 24, 2008) (describing reform model scenarios whereby SLCs would be increased by \$1.50 (residential) and \$2.30 (multiline business)).

⁸⁷⁵ See *National Broadband Plan* at 148 (suggesting that "[t]o offset the impact of decreasing ICC revenues, the FCC should permit gradual increases in the subscriber line charges (SLC) and consider deregulating the SLC in areas where states have deregulated local rates").

⁸⁷⁶ See AT&T Oct. 25, 2010 *Ex Parte* Letter, Attach. at 1-2; Letter from Shana Knutson, Legal Counsel, Nebraska Public Service Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, WT Docket No. 10-208 at 1 (filed Oct. 18, 2010).

undertaken intercarrier compensation reform? Or, should we increase the federal SLC as a means of offsetting reduced intrastate revenues? If so, how would such SLCs be structured, what should the increase be, and should we do so as an incentive to encourage states to reform?

584. We also seek comment on how any changes to incumbent LEC SLCs might impact competitive carrier charges and on how changes to the SLC might affect subscribership. In particular, how might such changes impact subscribership in areas in which the telephone penetration rate lags below the national average and where significant low-income populations exist (e.g., on Tribal lands or insular areas)? For instance, would increases to the SLC caps lead to lower take rates among certain populations? Further, we invite comment on any other questions, issues or concerns surrounding the role of SLCs in any revenue recovery mechanism.

D. Criteria for Recovery from the Connect America Fund

585. We seek comment above on comprehensive reform of our high-cost universal service programs to create the CAF. As we reform intercarrier compensation, we seek comment on how to ensure that any intercarrier compensation revenue recovery from the federal universal service fund fulfills our objectives of ensuring that Americans in all parts of the Nation, especially those in rural, insular and high-cost areas,⁸⁷⁷ have access to modern communications networks capable of delivering the services that support necessary applications that empower them to learn, work, prosper, and innovate.

586. We recognize that, as part of some prior intercarrier compensation reform efforts, the Commission created new high-cost universal service mechanisms – specifically, IAS and ICLS – to move implicit intercarrier compensation support from interstate access charges to explicit federal subsidies.⁸⁷⁸ We seek comment on the relationship between any universal service support received as part of the CAF and any support that might be provided as a result of intercarrier compensation reform.

587. Consistent with the proposed principles of increased accountability and transparency and to avoid waste, fraud, and abuse in the future, we believe there is benefit in creating a more objective, auditable standard to determine whether a provider qualifies for access to explicit universal service support for intercarrier compensation cost or revenue recovery. On the one hand, access to explicit support may be necessary for carriers in areas where costs exceed potential revenues. On the other hand, we want to create incentives for companies to move away from relying on intercarrier revenues as the market shifts from telephone service to broadband. Is there an objective and auditable metric that balances the policy goal of a gradual migration away from the current intercarrier compensation system while not putting undue pressure on a provider's ability to repay debt and make investment in IP facilities that were made in reliance on these revenue flows? To minimize such concerns, we seek comment on whether we should apply any criteria at the outset, before reform begins, to determine which providers are eligible to receive recovery from the CAF and which providers are not. We seek comment on whether any such criteria could be based on objective metrics, e.g., generally accepted accounting principles (GAAP) as established by the Financial Accounting Standards Board (FASB). If so, what should such criteria be and how could they be structured to encourage carriers to move away from relying on intercarrier revenues?

588. If a carrier is eligible for CAF support as part of a recovery mechanism, the baseline criteria we seek comment on above for recovery would help determine the amount of CAF support. We also propose that a provider first seek recovery through reasonable end-user charges, if adopted, before receiving support under the CAF. Thus, if the Commission adopts a residential benchmark that increases over time from a voice to a broadband benchmark, the amount of support a carrier receives from the CAF would likewise decrease each year. We seek comment on this issue.

⁸⁷⁷ 47 U.S.C. § 254(b).

⁸⁷⁸ See *MAG Order*, 16 FCC Rcd at 19621-2, para. 15; *CALLS Order*, 15 FCC Rcd at 12964 para. 3.

589. We note that such an approach is consistent with some states' reforms. For example, Nebraska established a state universal service fund as part of intrastate access reform that was initially designed to help carriers replace required reductions in intrastate access charges,⁸⁷⁹ but after a transition period,⁸⁸⁰ the Nebraska Universal Service Fund was then directed to target support to high-cost areas.⁸⁸¹ Should the Commission adopt a similar approach? Commenters should also explain whether any federal universal service funding for reduced intrastate revenues should be ongoing or only for a limited number of years as a transitional matter. What would be the appropriate number of years if adopted as a temporary measure?

590. Finally, we seek comment on what obligations should apply to any universal service funding a carrier receives as part of intercarrier compensation reform. To the extent such funding is provided outside of the CAF, should there be specific public interest conditions and/or reporting tied to receipt of such universal service funds, such as broadband build-out requirements, and if so, what conditions would further the Commission's goals? Should those conditions be the same or different than those public interest obligations proposed above for the CAF?⁸⁸² Should the oversight and accountability provisions discussed in section VIII above apply equally to funding that is designed to provide revenue recovery associated with intercarrier compensation reform? What other obligations or conditions should apply to receipt of any universal service funding as part of any intercarrier compensation recovery mechanism?

591. *Long-Term Reform.* In section VII, we seek comment on alternative proposals to determine ongoing support for the CAF, including competitive bidding, a right of first refusal followed by competitive bidding, if necessary, and alternative approaches specific to particular classes of carriers, among others.⁸⁸³ We ask parties that advocate for federal universal service support as part of any recovery proposal to comment on the relationship between those universal service reform proposals and the intercarrier compensation reform proposals described herein and how to harmonize such reforms.

592. We propose completing the transition away from current per-minute charges consistent with the implementation of long-term CAF reform. Under competitive bidding, as discussed in section VII.C.1, we seek comment on whether the competitive bid should encompass all explicit universal service support necessary to provide affordable service in a particular geographic area to avoid the need for separate universal service funding mechanisms to address recovery for intercarrier compensation reform (i.e., that all bids account for any necessary explicit support in the absence of per-minute intercarrier compensation rates) and to ensure that bids could be evaluated and compared on equal terms. Similarly, under a right of first refusal, should funding include all explicit universal service support necessary to provide affordable service in a particular geographic area?

593. If the glide path away from per-minute charges is not complete before we commence long-term CAF reforms, how does this impact the competitive bidding and right of first refusal reforms? For example, if a provider had not reduced all of its intercarrier compensation rates at the time of the competitive bidding or right of first refusal, should carriers be required to reduce all rates as a condition of receiving new CAF support? Or, should some funding equal to then-existing intercarrier compensation

⁸⁷⁹ See Nebraska Comm'n 2008 ICC/USF FNPRM Comments at 8; *Nebraska Access Charge Reform Order*, 1999 WL 135116, *7.

⁸⁸⁰ The Nebraska access reform required carriers to conform to rate benchmarks and provided separate transition periods for rural and non-rural carriers to reduce their access charges. *Nebraska Access Charge Reform Order*, 1999 WL 135116 at *7 (non-rural carriers had a three-year transition period and rural carriers had a four year transition period).

⁸⁸¹ Nebraska Comm'n 2008 ICC/USF FNPRM Comments at 8.

⁸⁸² See *supra* Section V.C.

⁸⁸³ See *supra* Section VII.C.

revenues or some other metric be withheld until such time that the provider reaches the end-point of intercarrier compensation reform to prevent double recovery? We also seek comment on alternative proposals and means of harmonizing intercarrier compensation and universal service reform.

594. Finally, we invite additional comment on any other questions, issues or proposals related to recovery.⁸⁸⁴ For example, parties should address whether any recovery mechanisms adopted as part of intercarrier compensation reform should serve as a transitional mechanism and if so, how the Commission should determine when such recovery is no longer necessary. Similarly, we seek comment on whether the Commission should commit to re-examining any recovery mechanism within a specified timeframe. If so, what would be the appropriate timeframe?

E. Specific Recovery Considerations for Rate-of-Return Carriers

595. We also seek comment on whether any cost or revenue recovery mechanism could provide rate-of-return carriers greater incentives for efficient operation. As discussed above, a number of variables can affect the manner and level of revenue recovery under a reformed intercarrier compensation system for carriers generally. In the specific context of rate-of-return carriers, however, there are additional issues on which we seek comment.⁸⁸⁵ In particular, under the transition proposed as part of comprehensive intercarrier compensation reform, intercarrier compensation rates would be defined by the terms of the glide path, rather than a rate-of-return calculation. The issue for rate-of-return carriers, then, is not whether intercarrier compensation *rates* should be set under a rate-of-return methodology—under the proposal, they would not be. Rather, the question is what framework should be used in determining *cost or revenue recovery* with respect to reduced intercarrier compensation revenues, particularly through CAF funding, if such recovery is found to be appropriate. Thus, with respect to rate-of-return carriers, we seek comment on whether the Commission's policy determinations regarding the cost or revenue recovery variables discussed above should be implemented through a rate-of-return framework, or if they instead should be implemented through an approach based on incentive regulation.

596. For much of the twentieth century, the Commission sought to ensure that incumbent LECs' rates remained "just and reasonable" as required by the Communications Act through the use of rate-of-return rate regulation. Under rate-of-return regulation, "rate levels are directly linked to a carrier's embedded or accounting costs" and the associated rates "are designed to provide the revenue required to cover costs and to achieve a prescribed return on investment."⁸⁸⁶ Beginning in the late 1980s, the Commission began considering alternative forms of rate regulation in light of concerns about certain shortcomings of rate-of-return regulation and perceived benefits of incentive regulation.⁸⁸⁷ Other regulators as well, have trended away from rate-of-return regulation.⁸⁸⁸

⁸⁸⁴ See, e.g., Qwest Aug. 30, 2010 *Ex Parte* Letter, Attach. at 6-8 (stating that carriers should have adequate recovery of reduced intercarrier compensation revenues and setting forth proposals for SLC increases, benchmarks, and access replacement funding).

⁸⁸⁵ We note that in April, 2010 the Commission sought comment generally on shifting rate-of-return carriers to incentive regulation in the context of universal service reform. See *USF Reform NOI/NPRM*, 25 FCC Rcd 6657, 6679-80, paras. 54-55. The issues discussed below focus specifically on interstate switched access service, and not regulation of other services, such as special access. The proposals discussed in the CAF section above seek comment on alternative ways to reform rate of return rather than shifting such carriers to incentive regulation.

⁸⁸⁶ *MAG Order*, 16 FCC Rcd at 19623-24, para. 19.

⁸⁸⁷ See, e.g., *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Notice of Proposed Rulemaking, 2 FCC Rcd 5208 (1987); Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 3 FCC Rcd 3195 (1988); Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873 (1989); Supplemental Notice of Proposed Rulemaking, CC Docket No. 87-313, 5 FCC Rcd at 2176 (1990).

⁸⁸⁸ See, e.g., *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 2892, para. 35 (continued....)

597. Although widespread in its use historically by telecommunications regulators,⁸⁸⁹ rate-of-return regulation has, over time, been subject to a number of criticisms. For example, because both decreases and increases in company costs are passed on to consumers, a rate-of-return regulated carrier has little incentive to manage inputs efficiently.⁸⁹⁰ Further, if the authorized rate-of-return exceeds the carrier's actual cost of capital, it may have an incentive to expand its rate base uneconomically.⁸⁹¹ As discussed above, these problems can be exacerbated by the current operation of certain universal service funding mechanisms.⁸⁹² In addition, absent sufficient oversight, the accounting requirements needed to implement rate-of-return regulation can enable excessive earning by a regulated carrier. For example, where regulated prices reflect reported costs, a carrier may have an incentive to exaggerate costs to secure higher prices.⁸⁹³ And rate-of-return regulation on a subset of a carrier's services can entail arbitrary cost allocation,⁸⁹⁴ and enable carriers to shift some of the costs of their non-regulated, competitive services to the captive customers of their rate-of-return regulated services.⁸⁹⁵ Nonetheless, rate-of-return regulation does provide certain benefits to the regulated carrier, for example by providing revenue certainty, stability, and predictable support.⁸⁹⁶ Such certainty, stability, and predictability arises both through the operation of rate-of-return regulation itself, as well as through additional risk sharing mechanisms for

(Continued from previous page)

(1989) (*AT&T Price Cap Order*) ("Regulators in the United Kingdom have administered price cap regulation successfully since 1984."); see also, e.g., Lilia Pérez-Chavolla, *State Retail Rate Regulation of Local Exchange Providers as of December 2006*, NATIONAL REGULATORY RESEARCH INSTITUTE Report #07-04, <http://nrri.org/pubs/telecommunications/07-04.pdf> (2007) (discussing state approaches to telecommunications rate regulation); CHUNRONG AI, SALVADOR MARTINEZ & DAVID E. M. SAPPINGTON, *Incentive Regulation And Telecommunications Service Quality*, JOURNAL OF REGULATORY ECON., 26(3), 263–285 (2004) (same); DAVID E. M. SAPPINGTON, *Price Regulation*, in THE HANDBOOK OF TELECOMMUNICATIONS ECONOMICS VOLUME I: STRUCTURE, REGULATION, AND COMPETITION at 225-293 (M. Cave, S. Majumdar, & I. Vogelsan, Eds. 2002) (same); HANK INTVEN & MCCARTHY TÉRAULT, *Price Regulation (Module 4)* at 4-24, in TELECOMMUNICATIONS REGULATION HANDBOOK, available at <http://www.infodev.org/en/Publication.22.html> (2000) (discussing foreign regulators' approaches to telecommunications rate regulation).

⁸⁸⁹ See, e.g., DAVID E. M. SAPPINGTON & DENNIS L. WEISMAN, DESIGNING INCENTIVE REGULATION FOR THE TELECOMMUNICATIONS INDUSTRY, 1 (1996) (SAPPINGTON & WEISMAN).

⁸⁹⁰ See MICHAEL A. EINHORN, *Introduction*, in PRICE CAPS AND INCENTIVE REGULATION IN TELECOMMUNICATIONS at 2-3 (Michael A. Einhorn, ed., 1991) (Einhorn, Price Caps); *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6789, para. 22 (1990) (*LEC Price Cap Order*) (stating that rate-of-return regulation lacks incentives for carriers to become more productive); *AT&T Price Cap Order*, 4 FCC Rcd at 2889-90, para. 30 (illustrating the "distorted incentives" created by rate-of-return regulation); *Price Cap Further Notice*, 3 FCC Rcd at 3218-19, 3222, paras. 38, 43 (describing how the incentive to operate efficiently is "sacrificed" under rate-of-return regulation).

⁸⁹¹ See, e.g., *Price Cap Further Notice*, 3 FCC Rcd at 3219-20, paras. 39-40; *AT&T Price Cap Order*, 4 FCC Rcd at 2889-90, para. 30; Einhorn, Price Caps at 3.

⁸⁹² See *supra* Section VI.A.1.

⁸⁹³ See, e.g., *LEC Price Cap Order*, 5 FCC Rcd at 6790, paras. 29-30; *AT&T Price Cap Order*, 4 FCC Rcd at 2889-90, paras. 30-31.

⁸⁹⁴ See, e.g., *AT&T Price Cap Order*, 4 FCC Rcd at 2890-91, para. 32.

⁸⁹⁵ See, e.g., *Price Cap Further Notice*, 3 FCC Rcd at 3223-24, para. 48; Einhorn, Price Caps at 3.

⁸⁹⁶ See, e.g., *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, First Order on Reconsideration, CC Docket No. 00-256, Twenty-Fourth Order on Reconsideration, CC Docket No. 96-45, Report and Order, 17 FCC Rcd 5635, 5636, para. 2 (2002).

rate-of-return carriers such as NECA pooling.⁸⁹⁷ Rate-of-return carriers also cite this form of regulation as underlying their “success in . . . deployment and provision of broadband services to rural areas.”⁸⁹⁸

598. At the same time, there are a number of benefits with incentive regulation. As the Commission has recognized, “[t]he attractiveness of incentive regulation lies in its ability to replicate more accurately than rate-of-return the dynamic, consumer-oriented process that characterizes a competitive market.”⁸⁹⁹ An incentive regulation system can better encourage efficient operation, because “[c]arriers that can substantially increase their productivity can earn and retain profits at reasonable levels above those [allowed] for rate-of-return carriers”⁹⁰⁰ although under some forms of incentive regulation “earnings above a certain level are shared or returned.”⁹⁰¹ Incentive regulation also can reduce the necessary reliance on accounting regulation, mitigating regulatory concerns about the enforcement of those requirements.⁹⁰² On the other hand, concerns sometimes are expressed that forms of incentive regulation can lead carriers to reduce costs by reducing investment.⁹⁰³

599. In light of the relative strengths and weaknesses of rate-of-return regulation and incentive regulation, and given the direction of proposed universal service reforms, we believe that it may be possible to adopt a recovery framework that provides incentives for carriers to operate efficiently, while still providing reasonable certainty and stability. We therefore seek comment below on an alternative framework for determining such recovery, as well as any alternative proposals that commenters would recommend. Specifically, we seek comment on a possible revenue recovery framework for rate-of-return carriers that departs from traditional rate-of-return principles. As set out in greater detail in Appendix D, this framework could be used to offset some reduced interstate intercarrier compensation revenues, some reduced intrastate intercarrier compensation revenues, or both, based on the policy determinations made by the Commission with respect to the recovery issues raised in this section. The framework would, for one, establish a formula to determine the magnitude of reduced intercarrier compensation revenues a carrier might recover through new universal service funding. In implementing this framework, the magnitude of revenues at issue could be calibrated in several ways, consistent with the revenue recovery considerations discussed above,⁹⁰⁴ to reflect, for example, an offsetting of actual or imputed end-user revenues, or by incorporating measures to encourage carriers to retain customers.⁹⁰⁵ And any support from a CAF mechanism under this framework during the intercarrier compensation reform transition—if determined to be appropriate under the considerations discussed above—would not guarantee carriers a specified rate-of-return.

⁸⁹⁷ *Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket No. 92-135, Report and Order, 8 FCC Rcd 4545, 4546, para. 9 (1993). “In a pooling environment, rates are based upon the total costs and total demand of all participating companies. Each company receives its actual costs, plus its share of the pool’s earnings. The major reason companies want to participate in pools is to share risks, by providing a high degree of assurance that the company will recover its costs.” *Id.* at 4546, para. 8.

⁸⁹⁸ NECA *et al.* USF Reform NOI/NPRM Comments at 46.

⁸⁹⁹ *AT&T Price Cap Order*, 4 FCC Rcd at 2893, para. 36.

⁹⁰⁰ *LEC Price Cap Order*, 5 FCC Rcd at 6789, para. 22.

⁹⁰¹ *See id.*; *see also Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294, 5298, para. 8 (2008) (*Windstream Order*); *AT&T Price Cap Order*, 4 FCC Rcd at 2893, para. 36; Einhorn, Price Caps at 8.

⁹⁰² *See, e.g., LEC Price Cap Order*, 5 FCC Rcd at 6791, para. 34; *AT&T Price Cap Order*, 4 FCC Rcd at 2893, para. 37; Einhorn, Price Caps at 8.

⁹⁰³ *See, e.g., MAG Order*, 16 FCC Rcd at 19705, para. 220.

⁹⁰⁴ *See supra* Section XIV.B.

⁹⁰⁵ *See Appendix D.*

600. Given the Commission's long-term vision for the CAF, we anticipate that intercarrier compensation replacement funding would not exist as a distinct CAF component. Rather, as discussed above, such funding could be subsumed within the support provided to serve a particular geographic area under either a right of first refusal or competitive bidding approach.⁹⁰⁶ If the Commission were to adopt a different long-term approach to the CAF, however, a way to determine ongoing intercarrier compensation replacement CAF support could be needed. We seek comment on alternatives in that regard. For example, once intercarrier compensation reform was complete, could ongoing intercarrier compensation replacement CAF support be set periodically (such as every five years) to generate an appropriate return for an efficient carrier (unrelated to that currently prescribed for rate-of-return regulation)? If so, how would the appropriate return be established and calculated? Would it be appropriate under such an approach to adopt policies or procedures to enable changes within the review periods,⁹⁰⁷ and if so, how should those be defined?

601. We seek comment on the merits of this possible framework generally, and on specific implementation considerations.⁹⁰⁸ For example, we note that some carriers, in addition to experiencing lost intercarrier compensation *revenues*, also could experience reductions in intercarrier compensation *expenses*. Should those cost reductions be reflected in this framework, and if so, how? Could this be implemented in a way that would avoid competitive distortions arising from the variation in cost savings among different carriers? Additionally, the formulas in Appendix III explicitly address only interstate and intrastate switched access. Should the framework also address reciprocal compensation, and if so, how?

602. We also seek comment on ways that the forgoing framework might be modified and on other proposed frameworks for revenue recovery that do not rely on traditional rate-of-return methodologies. For each alternative, we ask commenters to explain why it is preferable to the alternative discussed above, how the magnitude of revenues at issue could be calibrated, and how, administratively, it would be implemented. Further, unless otherwise reformed, interstate common line support (ICLS) would continue to operate based on a rate-of-return framework. Would it instead make sense to shift recovery from ICLS to any new, incentive-based CAF mechanism the Commission might create in this context? If so, should that occur at some point in the reform transition, or after the other reforms have been completed? We also note that this Notice raises issues of revenue recovery for price cap carriers, and we seek comment on whether some form of the framework discussed above, or an alternative proposal, might be appropriate for these carriers, as well.

⁹⁰⁶ See *supra* Section XIV.D.

⁹⁰⁷ For example, if the annual rate of economy-wide inflation exceeds a specified threshold, these CAF payments might be adjusted automatically on an annual basis between the periodic reviews to account for inflation. The Commission might also allow carriers to request a defined number of low-end earnings adjustments during the period between reviews of such CAF payments. If warranted, such a low-end earnings adjustment could modify a carrier's CAF payment to ensure that the carrier earns a return on relevant investment that is not too far below the prevailing appropriate return most recently specified by the Commission. A carrier's request for a modification of its CAF payment might be entertained only if its return on relevant investment has been sufficiently low for a sufficiently long period of time (e.g., more than three percentage points below the appropriate return most recently specified by the Commission for at least one year).

⁹⁰⁸ In addition, as noted, implementation of such a framework will be impacted by decisions regarding issues discussed above, which bear on the magnitude of reduced intercarrier compensation revenues to be recovered in particular ways, such as through SLC increases or from state sources; how particular benchmarks might be established and change over time; the extent to which non-regulated revenues are considered; the relationship of CAF recovery to offset reduced intercarrier compensation revenues to broader universal service reform; etc. See *supra* Section XIV. We also recognize that certain data would be necessary both in evaluating this possible framework and in implementing it, and as part of the consideration of broader data collection issues below we seek comment on how best to obtain those data. See *supra* para. 572.

XV. REDUCING INEFFICIENCIES AND WASTE BY CURBING ARBITRAGE OPPORTUNITIES

603. The comprehensive intercarrier compensation reforms on which we seek comment in this Notice would, if adopted, significantly reduce and eventually eliminate opportunities and incentives for arbitrage. We believe, nevertheless, consistent with the recommendations in the National Broadband Plan, that we should take action to address arbitrage until such reform is fully implemented.⁹⁰⁹ In this section, we therefore seek comment on rules intended to curb arbitrage opportunities and thereby reduce inefficiencies and wasteful use of resources enabled by the current intercarrier compensation system.

604. First, the Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic. This uncertainty has led to numerous billing disputes and litigation and may be deterring innovation and the introduction of new services.⁹¹⁰ Thus, we seek comment on the appropriate intercarrier compensation framework for voice over Internet protocol (VoIP) traffic.

605. Second, significantly different rates for terminating traffic create the incentive for service providers to disguise the nature, or conceal the source, of the traffic being sent to avoid or reduce payments to other service providers. This type of arbitrage is referred to as “phantom traffic.”⁹¹¹ We seek comment below on revisions to the Commission’s call signaling rules to reduce phantom traffic.

606. Third, intercarrier rates above incremental cost are an incentive to increase revenues through arrangements such as “access stimulation,” in which carriers seek to inflate the amount of traffic they receive subject to intercarrier compensation payments. For example, a LEC with high switched access rates will agree to share its access revenues with a company that expects to receive large numbers of incoming calls, such as a company providing an adult chat line. Because these incentives exist, investment is directed to arbitrage activities, such as “free” conference calling services, the cost of which are ultimately spread among all customers whether they use any of these offerings or not. As US Telecom noted, “[s]ignificant levels of regulatory arbitrage are an indictment of a poorly constructed or enforced regulatory regime and an unproductive use of financial and intellectual capital. It results in a great deal of resources of both communications providers and state regulators and courts being devoted to brokering and litigating disputes stemming from this archaic system.”⁹¹² We therefore seek comment on a proposal to amend the Commission’s access charge rules to address access stimulation and help ensure that rates remain just and reasonable as required by section 201(b) of the Act.

607. In addition to these proposals, we also invite comment on other arbitrage issues that we should consider. In particular, parties should provide information about other arbitrage schemes present in the market or that might arise in the future.

A. Intercarrier Compensation Obligations for VoIP Traffic

608. In this section, we seek comment on the appropriate intercarrier compensation framework for voice over Internet protocol (VoIP) traffic. The Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such

⁹⁰⁹ The National Broadband Plan recommends that as a part of comprehensive intercarrier compensation reform, the Commission should adopt interim rules to reduce arbitrage in the intercarrier compensation regime, including prohibiting carriers from eliminating information necessary for a terminating carrier to bill an originating carrier for a call. National Broadband Plan at 148.

⁹¹⁰ See *infra* para. 608.

⁹¹¹ See *supra* para. 620.

⁹¹² US Telecom Comments re NBP PN #19 at 7 (filed Dec. 7, 2009).

traffic. There is mounting evidence that this lack of clarity has not only led to billing disputes and litigation,⁹¹³ but may also be deterring innovation and introduction of new IP services to consumers.⁹¹⁴

609. Consistent with the National Broadband Plan recommendation to specify the treatment of VoIP for purposes of intercarrier compensation, we seek comment on the appropriate treatment of interconnected VoIP traffic for purposes of intercarrier compensation. In particular, as we are undertaking intercarrier compensation and universal service reform and as the market is evolving toward broadband, all-IP networks, we need a framework for VoIP traffic that is consistent with those overarching changes. We therefore seek comment below on a range of approaches, including how to define the precise nature and timing of particular intercarrier compensation payment obligations.

1. Background

610. Since 2001, the Commission has sought comment in various proceedings on the appropriate intercarrier compensation obligations associated with telecommunications traffic that originate or terminate on IP networks.⁹¹⁵ Even so, the Commission has declined to explicitly address the intercarrier compensation obligations associated with VoIP traffic.⁹¹⁶ Given this lack of clear resolution,

⁹¹³ See, e.g., Letter from Stephen Brown, Counsel for 3 Rivers Telephone Cooperative, Inc., et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket Nos. 01-92, 99-68 at 1 (filed June 24, 2009) (citing *Three Rivers Tel. Coop., Inc. v. Commpartners, LLC*, Case No. 08-68-M-DWM (D. Mont.) (filed May 21, 2008)); Letter from Hank Hultquist, Vice President, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 99-68, 07-135, 04-36, GN Docket No. 09-51 Attachment at 7 (filed Mar. 15, 2010) (describing a “litigation bonanza”); Letter from Colin Sandy, Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket No. 01-92 Attach. at 9-10 (filed Aug. 12, 2009) (describing pending cases). See also, e.g., CenturyLink, Inc., Form 10-Q (filed Nov. 5, 2010) (“subsidiaries of CenturyLink filed two lawsuits against subsidiaries of Sprint Nextel to recover terminating access charges for VoIP traffic owed under various interconnection agreements and tariffs which presently approximate \$32 million”); *Pleading Cycle Established for Comments on Global NAPS Petition for Declaratory Ruling and for Preemption of The Pennsylvania, New Hampshire and Maryland State Commissions*, WC Docket No. 10-60, Public Notice, 25 FCC Rcd 2692 (2010) (seeking comment on request for declaratory rulings regarding “controversies between Global and several local exchange carriers (‘LECs’) regarding the tariff treatment of Voice over Internet Protocol (‘VoIP’) traffic”).

⁹¹⁴ National Broadband Plan at 142. “Because providers’ rates are above cost, the current system creates disincentives to migrate to all IP-based networks. For example, to retain ICC revenues, carriers may require an interconnecting carrier to convert [VoIP] calls to time-division multiplexing in order to collect intercarrier compensation revenue. While this may be in the short-term interest of a carrier seeking to retain ICC revenues, it actually hinders the transformation of America’s networks to broadband.” *Id.* See also AT&T Comments in re NBP PN #25 at 12 (filed Dec. 22, 2009) (maintaining legacy regulatory structures diverts resources from the investments necessary to achieve broadband deployment); Global Crossing Comments in re NBP PN#19 at 5 (filed Dec. 7, 2009) (outdated regulations undermine incentives for carriers to transition to IP-based networks); *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6581-82, para. 189 (because carriers receive significant revenues from terminating telecommunications traffic they have reduced incentives to upgrade their networks or to negotiate to accept IP traffic because both will reduce their intercarrier compensation revenues); Qwest Aug. 30, 2010 *Ex Parte* Letter, Attach. at 3 (“Current ICC system crippled by inefficiencies and arbitrage. Current ICC system never designed to promote broadband deployment.”); Verizon Comments in re NBP PN #19 at 18 (filed Dec. 7, 2009) (it no longer makes sense to maintain a system that allows the application of different rates to different traffic types based on antiquated reasons).

⁹¹⁵ See, e.g., *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9629, para. 52; *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4903-05, paras. 61-62; *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4722, para. 80; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6618-20, paras. 269-75.

⁹¹⁶ See, e.g., *Feature Group IP Petition for Forbearance From Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission’s Rules*, WC Docket No. 07-256, Memorandum Opinion and Order, 24 FCC Rcd 1571 at 1575-76, paras. 7-10 (2009) *pet. for review denied*, 25 FCC Rcd 8867 (2010), *pet. for review pending*, *Feature Group IP et al., v. FCC*, No. 10-1257 (D.C. Cir. filed Aug. 23, 2010) (Order denying forbearance because the request would cause a regulatory void in contradiction of the plain language of the Communications Act since the Commission has not yet taken affirmative action to address intercarrier compensation (continued....))

particularly as consumer demand for VoIP services continues to increase,⁹¹⁷ disputes increasingly have arisen among carriers and VoIP providers regarding intercarrier compensation for VoIP traffic. As AT&T observes, for example, various parties have taken “extreme all-or-nothing positions” regarding the compensation obligations associated with VoIP traffic.⁹¹⁸ Thus, although some LECs contend that this traffic is subject to the same intercarrier compensation obligations as any other voice traffic, other carriers contend no compensation is required.⁹¹⁹ In addition, there is some evidence of asymmetrical revenue flows for traffic exchanged between a traditional wireline LEC and a VoIP provider, with the VoIP provider (or its LEC partner) collecting access charges, for example, but refusing to pay them.⁹²⁰

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regulation for VoIP traffic). *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 at 3520-21, para. 15 (2007) (Order in which the Commission refused to classify VoIP service, finding that doing so was unnecessary to decide an interconnection dispute involving completing VoIP traffic). We note that the Commission has addressed the classification, and thus the intercarrier compensation obligations, associated with certain traffic that uses IP transport. *See, e.g., Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 at 7457-58, para. 1 (2004) (Order finding that calls dialed on a 1+ basis, using IP technology in the middle and that meet three criteria are telecommunications service, not information service).

⁹¹⁷ *See, e.g.,* Sept. 2010 Trends in Telephone Service at Table 8.3.

⁹¹⁸ Letter from Henry Hultquist, Vice President-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 99-68, 01-92, WC Docket Nos. 04-36, 05-337, 07-135 at 2 (filed July 17, 2008) (AT&T July 17, 2008 *Ex Parte* Letter). *See also id.*, Attach. 1 at 4, 8-9. *See also* NECA Comments in re NBP PN #19, at 28-30 (filed Dec. 7, 2009) (noting that many billing disputes arise from a refusal to pay when a carrier claims that traffic is “enhanced” because of the use of IP-based technology and the Commission has not decided the appropriate compensation for such traffic).

⁹¹⁹ *See, e.g.,* Letter from Joseph A. Douglas, Vice President-Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 04-36, Attach. at 2 (filed May 23, 2008); Letter from Kristopher E. Twomey, Regulatory Counsel, CommPartners, to Marlene H. Dortch, FCC, CC Docket No. 01-92 at 1 (filed Dec. 12, 2007); Letter from Joseph A. Douglas, Vice President-Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 04-36, Attach. at 6 (filed May 2, 2007); Letter from Gregory J. Vogt, counsel for CenturyTel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 96-98, 99-68, WC Docket No. 05-337 at 4-5 (filed Oct. 20, 2008); Windstream Comments, CC Docket Nos. 94-68, 96-45, 96-98, 99-68, WC Docket Nos. 04-36, 05-337, 06-122, 07-135, 08-152 at 14-15 (filed Aug. 21, 2008); Letter from Stuart Polikoff, Director of Government Relations, OPASTCO, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket No. 05-337, Attach. at 3 (filed Oct. 16, 2008); AT&T July 17, 2008 *Ex Parte* Letter, Attach. 1 at 11; Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68, 01-92, WC Docket Nos. 05-337, 06-122, 07-135 at 9-10 (filed Oct. 23, 2008); Letter from Colin Sandy, Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket No. 01-92 at 1 (filed Sept. 23, 2009); Letter from Tom Karalis, Fred Williamson & Associates, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137, 10-66, CC Docket Nos. 09-45, 01-92 Attach. at 11 (filed Apr. 7, 2010).

⁹²⁰ *See, e.g.,* AT&T July 17, 2008 *Ex Parte* Letter, Attach. 2 at 7-8, 18-19; Letter from James C. Smith, SBC, to Chairman Powell, FCC, WC Docket No. 03-266, Attach. at 16 (The possibility that access charges “may flow from PSTN carriers to VoIP providers and their CLEC partners but never in the opposite direction . . . could lead to the same type of economically irrational arbitrage opportunity the Commission thought it had stamped out when it reduced reciprocal compensation rates for dial-up ISP-bound traffic, for which compensation flows were similarly unidirectional. Where an opportunity for arbitrage exists, moreover, the industry tends not to tarry long before it finds a means to exploit it. The result, again, would be discriminatory, inimical to the interests of consumers, and at war with the public interest.”) *cited in* AT&T July 17, 2008 *Ex Parte* Letter, Attach. 2 at 8 n.20; Connected Planet, MagicJack Attacks, 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.”). *See also* Letter from Samuel L. Feder, counsel for Cox *et al.*, to Marlene H. (continued....)

611. There is also evidence that the uncertainty may be affecting IP innovation and investment, in particular. For example, some commenters observe that “[b]oth new entrants and established incumbents seeking to offer VoIP products and services are hampered by continued regulatory uncertainty. As the VoIP industry has shown over the past few years, the impact of regulation affects whether consumers will have access to innovative features and functionalities offered by VoIP providers at the edge or if they will have access only to very limited VoIP products that merely mimic the circuit-switched offerings of the past.”⁹²¹ Likewise, Verizon notes “that the uncertainty and complexity endemic to the existing intercarrier compensation system may well deter providers from rolling out advanced services.”⁹²²

2. Discussion

612. *Scope of VoIP Traffic.* In addressing these compensation issues, we propose to focus specifically on the intercarrier compensation rules governing interconnected VoIP traffic. Interconnected VoIP services, among other things, allow customers to make real-time voice calls to, and receive calls from, the public switched telephone network (PSTN),⁹²³ and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services.⁹²⁴ We seek comment on whether the proposed focus on interconnected VoIP is too narrow or whether the Commission should consider intercarrier compensation obligations associated with other forms of VoIP traffic, as well. We also seek comment on whether the Commission should distinguish between facilities-based “fixed” and “nomadic” interconnected VoIP.⁹²⁵

613. *Defining the Appropriate Intercarrier Compensation Regime.* There is considerable dispute about whether, and to what extent, interconnected VoIP traffic is subject to existing intercarrier compensation rules. These disputes have been costly and resulted in uncertain or unexpectedly reduced revenue streams for some carriers that may rely on those revenues for network investments. We also note that the Commission has recognized the need to move away from today’s intercarrier compensation system. Balancing these concerns suggests a spectrum of possible outcomes. The alternative approaches

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Dortch, Secretary, FCC, CC Docket No. 01-92 at 1-2 (filed Feb. 1, 2011) (expressing concern about nonpayment of access charges for traffic exchanged in TDM where the traffic is alleged to be “IP-originated or IP-terminated,” including on the part of companies with competing local exchange carrier operations).

⁹²¹ High Tech Associations 2008 ICC/USF FNPRM Comments at 9-10.

⁹²² Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 04-36, 05-337 CC Docket Nos. 96-45, 01-92 at 1 (filed Dec. 11, 2009).

⁹²³ Interconnected VoIP service “(1) [e]nables real-time, two-way voice communications; (2) [r]equires a broadband connection from the user’s location; (3) [r]equires IP-compatible customer premises equipment (CPE); and (4) [p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.” 47 C.F.R. § 9.3.

⁹²⁴ See *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039 at 6045-46 n.36 (2009) (citing a House of Representatives survey that in 2007 over nine million consumers used VoIP service as a substitute for traditional telephone service); see also *Local Telephone Competition: Status as of December 31, 2009*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at 3 (Jan. 2011) (“Between December 2008 and December 2009 – the first full year of mandatory interconnected VoIP reporting – interconnected VoIP subscriptions increased by 22% (from 21 million to 26 million) and retail switched access lines decreased by 10% (from 141 million to 127 million). The combined effect was an annual decrease of 6% in wireline retail local telephone service connections (from 162 million to 153 million).”).

⁹²⁵ 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, 8650, para. 54 & n.163 (2010) (*Qwest Phoenix Order*) (distinguishing between, on the one hand, “facilities-based” VoIP services, such as those provided by cable operators, and, on the other hand, “over-the-top” or “nomadic” VoIP services).

discussed below vary along two main dimensions: (1) the appropriate timing for specifying the intercarrier compensation obligations applicable to interconnected VoIP traffic; and (2) the appropriate magnitude of intercarrier compensation charges that should apply to interconnected VoIP traffic. As noted in our discussions of each alternative below, we also seek comment on any aspects of existing law that would need to be addressed to define an appropriate intercarrier compensation regime for interconnected VoIP traffic. In addition, we seek comment on how the various options below would be administered. For example, could terminating carriers identify interconnected VoIP traffic – as distinct from other traffic – for purposes of intercarrier compensation? Are there technical issues that would need to be resolved to enable a terminating carrier to identify whether traffic originated as VoIP? We seek comment on these issues.

614. We recognize the need for the Commission to move forward expeditiously with reform and understand that disputes regarding compensation for interconnected VoIP traffic have increased during the time these issues have been pending. We recognize that such disputes could impede the industry's ability to make an orderly transition to a reformed intercarrier compensation system. Accordingly, nothing in the instant Notice should be read to encourage, during the pendency of this proceeding, unilateral action to disrupt existing commercial arrangements regarding compensation for interconnected VoIP traffic. Such actions could create additional uncertainty for investments in broadband-capable networks and fuel further disputes, which is counter to our goal of developing a predictable framework for reform, and we strongly discourage such actions. Given that some parties have negotiated different rates to resolve the treatment of VoIP traffic, we seek comment on how the different options we seek comment on here may impact these existing commercial arrangements. We also seek comment on whether particular reform options would have retroactive effect, and whether such retroactivity would be counterproductive.

615. *Immediate Adoption of Bill-and-Keep for VoIP.* Under one alternative, the Commission could adopt bill-and-keep for interconnected VoIP traffic. We note that section 251(b)(5) requires LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications,"⁹²⁶ and that interconnected VoIP traffic is "telecommunications" traffic, regardless of whether interconnected VoIP service were to be classified as a telecommunications service or information service.⁹²⁷ Moreover, the Commission can specify that VoIP traffic is within the section 251(b)(5) framework even if one of the parties is not a LEC.⁹²⁸ Could and should the Commission bring interconnected VoIP traffic within the section 251(b)(5) framework and immediately apply the bill-and-keep methodology? Is there other legal authority by which to adopt such an approach? What factual and policy basis would justify this approach for interconnected VoIP traffic? How would such a regime be administered? Are there technical issues associated with a bill-and-keep methodology that would need to be resolved to implement such an approach?

616. *Immediate Obligation to Pay VoIP-Specific Intercarrier Compensation Rates.* Alternatively, the Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation charges under a regime unique to interconnected VoIP traffic.⁹²⁹ For example, should all

⁹²⁶ 47 U.S.C. § 251(b)(5). Although section 251(g) preserved the pre-1996 Act regulatory regime that applies to access traffic, including rules governing "receipt of compensation," 47 U.S.C. 251(g), section 251(g) "is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act." *WorldCom*, 288 F.3d 429, 430.

⁹²⁷ See, e.g., *Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-40, paras. 39-41 (2006).

⁹²⁸ See, e.g., *Local Competition First Report and Order*, 11 FCC Rcd at 16005, para. 1023 (bringing LEC-CMRS traffic exchange within the section 251 framework as it relates to intraMTA (including interstate intraMTA) traffic).

⁹²⁹ We understand that some commercial arrangements apply a specific rate for VoIP traffic. See Joan Engebretson, *Verizon, Bandwidth.com Interconnection Deal Could Be Precedent Setting*, ConnectedPlanet.com (Jan. 20, 2011), (continued....)

interconnected VoIP traffic be subject to intercarrier compensation rates equal to interstate access charges; reciprocal compensation rates; or some other defined rate, such as \$0.0007 per minute? If rates equal to interstate access charges are applied to VoIP traffic, would that create an incentive to originate all voice traffic as VoIP—or simply declare it to be originated as VoIP—such that little traffic ultimately would be billed at the higher rates?⁹³⁰ What impact would a VoIP-specific intercarrier compensation rate have on investment in and deployment of broadband facilities? How should those interconnected VoIP-specific rates decline as intercarrier compensation rates decline more generally as part of comprehensive reform? Could the Commission rely on section 251(b)(5) for its legal authority in this context, given questions about the extent to which the Commission can set particular rates rather than a methodology under that legal framework?⁹³¹ We recognize that, even for traffic subject to section 251(b)(5), the Commission retains its authority to set rates for certain forms of traffic.⁹³² Are there other sources of legal authority to adopt such an approach for all interconnected VoIP traffic, consistent with relevant precedent? Alternatively, is there legal authority for the Commission to adopt such an approach for a subset of interconnected VoIP traffic? What factual and policy basis would justify any such approach specifically for interconnected VoIP traffic, and how would such a regime be administered?

617. *Obligation to Pay Intercarrier Compensation As Part of Future Glide Path.* The Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation—whether standard rates⁹³³ or VoIP-specific rates—but only as of some future date. In particular, we note that, as discussed above, this Notice proposes a gradual transition away from the current intercarrier compensation system to help ensure predictability for providers and investors.⁹³⁴ What flexibility, if any, does the Commission have to adopt the intercarrier compensation obligations for interconnected VoIP traffic specific to some future point in that glide path? What legal authority would enable the Commission to adopt this alternative?

618. *Immediate Obligation to Pay Existing Intercarrier Compensation Rates.* The Commission could determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges—intrastate access, interstate access, and reciprocal compensation—as other voice telephone service traffic both today, and during any intercarrier compensation reform transition. Although this outcome potentially could result if interconnected VoIP services were classified as telecommunications services, we recognize that the Commission thus far has not addressed the classification of interconnected VoIP services.⁹³⁵ Given that, we seek comment on whether the

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<http://connectedplanetonline.com/independent/news/verizon-bandwidthcom-interconnection-could-set-precedent-0120/#>.

⁹³⁰ We note that some carriers have expressed concern about other providers making overstated claims about the portion of their traffic that is VoIP. See, e.g., D&E Communications 2008 ICC/USF FNPRM Comments at 4-6; USTelecom 2008 ICC/USF FNPRM Comments at 8 n.11.

⁹³¹ See *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. I*), *rev'd in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (rejecting proxy rates established by the Commission for use until states completed pricing proceedings because “the Act clearly grants the states the authority to set the rates for interconnection, unbundled access, resale, and transport and termination of traffic,” and thus “the FCC has no valid pricing authority over these areas of new localized competition”).

⁹³² See *Core Communications Inc. v. FCC*, 592 F.3d 139, 143-45 (D.C. Cir. 2010); *Iowa Utils. I*, 120 F.3d at 800 n.21.

⁹³³ See *infra* para. 618.

⁹³⁴ See *supra* Section XIII.

⁹³⁵ The Commission has only addressed the statutory classification of two forms of VoIP, neither of which are interconnected VoIP. For one, the Commission classified as an “information service” Pulver.com’s free service that did not provide transmission and offers a number of computing capabilities. *Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Order and Opinion, 19 FCC Rcd 3307 (2004) (*Pulver.com Order*). The Commission also (continued....)

Commission could achieve this outcome without classifying interconnected VoIP. For example, would this alternative result if the Commission held that the “ESP exemption”⁹³⁶ did not encompass interconnected VoIP traffic? Could the Commission rely on section 251(b)(5), or some other legal authority, to adopt such an approach? Depending upon the approach used by the Commission, would it need to clarify jurisdictional issues associated with interconnected VoIP traffic?⁹³⁷

619. *Alternative Approaches.* We also seek comment on other approaches that have been proposed for addressing the intercarrier compensation obligations associated with VoIP traffic. For example, AT&T has proposed that, in the absence of comprehensive intercarrier compensation reform, the Commission should adopt a regime under which terminating LECs charge interstate access and reciprocal compensation for VoIP traffic, as well as intrastate access for such traffic if those charges are at or below the level of the carrier’s interstate access rates.⁹³⁸ By comparison, PAETEC has proposed that, if a carrier adopts a unified intercarrier compensation rate, it should have the clear right to charge that rate for all traffic it terminates, including IP-originated traffic.⁹³⁹ XO has proposed that all carriers be required to transition to IP-based interconnection within five years, with a unified default compensation rate for all

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has found that certain “IP-in-the-middle” services are “telecommunications services” where they: (1) use ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originate and terminate on the public switched telephone network (PSTN); and (3) undergo no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology. *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*); *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7297, para. 18 (2006) (*Prepaid Calling Card Order*). Even though the Commission has not addressed the classification of VoIP traffic, we note that some states have made their own determinations regarding the statutory classification of VoIP. See, e.g., *Investigation into Whether Providers of Time Warner ‘Digital Phone’ Service and Comcast ‘Digital Voice’ Service Must Obtain Certificate of Public Convenience and Necessity to Offer Telephone Service*, Docket No. 2008-421, Order (ME PUC rel. Oct. 27, 2010).

⁹³⁶ In developing the access charge regime, the Commission recognized that certain companies, such as enhanced service providers (ESPs), had “been paying the generally much lower business service rates” and “would experience severe rate impacts were we immediately to assess carrier access charges up on them.” *First Reconsideration of 1983 Access Charge Reform Order*, 97 FCC 2d 682, 715, para. 83. Thus, the Commission established the so-called “ESP exemption,” which permits enhanced service providers to purchase local business access lines from intrastate tariffs as end-users, or to purchase special access connections, and thus avoid paying carrier-to-carrier access charges. See, e.g., *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2632-33, para. 13 (1988) (*ESP Exemption Order*); *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, 16133, para. 345 (1997) (*Access Charge Reform Order*).

⁹³⁷ *Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, Declaratory Ruling, FCC 10-185, paras. 5-10, 12-16, 22 (rel. Nov. 5, 2010).

⁹³⁸ See generally *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption,”* WC Docket No. 08-152 (filed July 17, 2008) (AT&T VoIP Petition) (see also Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. 2 (filed July 17, 2008) (attaching Petition for inclusion in open dockets)). AT&T proposed that revenues lost from reductions in intrastate access charges be recovered through increases in the interstate SLC or interstate originating access charges. AT&T VoIP Petition at 8-10.

⁹³⁹ See Letter from Tamar E. Finn, Counsel to PAETEC, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-92, WC Docket 07-135 at 1 (filed Mar. 26, 2010).

carriers and all traffic.⁹⁴⁰ We seek comment on these and other alternatives for addressing intercarrier compensation for interconnected VoIP traffic.

B. Rules To Address Phantom Traffic

620. The current disparity of intercarrier compensation rates gives service providers an incentive to misidentify or otherwise conceal the source of traffic to avoid or reduce payments to the terminating service provider.⁹⁴¹ In this section, we propose amending the Commission's rules to help ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the originating provider for the call. Our proposal, including the specific rules contained in Appendix B, balances a desire to facilitate resolution of billing disputes with a reluctance to regulate in areas where industry resolution has, in many cases, proven effective. The requirements proposed here are intended to facilitate the transfer of information to terminating service providers, and to improve their ability to identify providers from whom they receive traffic, without imposing unduly burdensome costs. Our proposal is similar, in many respects, to the proposal on which comment was sought in November 2008, which had support from many stakeholders.⁹⁴² The industry, however, has changed dramatically even in the last two years. Indeed, interconnected VoIP subscriptions increased by 22 percent from 2008 to 2009.⁹⁴³ Yet, the proposal we sought comment on in 2008 did not explicitly contemplate applying rules to Internet Protocol signaling for VoIP traffic. As a result, we believe it is necessary to seek comment on the proposed rules, which build upon the 2008 proposal but also apply to Internet Protocol signaling.⁹⁴⁴ This will best ensure that our rules will be an effective, technologically neutral, and forward-looking solution to the problem and will not introduce unintended consequences.

1. Background

621. A service provider needs certain information to bill and receive intercarrier payments for traffic that terminates on its network. In particular, a terminating service provider must be able to identify the appropriate upstream service provider, and the geographic location of the caller (or a proxy for the caller's location), which is necessary to determine the appropriate charge under existing intercarrier compensation rules to bill the appropriate upstream provider for the call.⁹⁴⁵ Service providers get this

⁹⁴⁰ See XO Sept. 10, 2010 *Ex Parte* Letter, Attach. at 4-8.

⁹⁴¹ We use the term "service providers" in this section to refer both to traditional telecommunications carriers, as well as providers of interconnected VoIP service (for which the Commission has not yet clarified the statutory classification).

⁹⁴² 2008 Order and ICC/USF FNPRM, 24 FCC Rcd at 6641-49, App. A, paras. 326-342; *id.* at 6841-48, App. C, paras. 322-338; see also, e.g. Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 9 ("the Joint Commenters endorse the rule modifications intended to end the so-called "Phantom Traffic" problem outlined in the Chairman's Draft Proposal."); Verizon 2008 ICC/USF FNPRM Comments at 63 ("The draft orders represent a reasonable approach to addressing phantom traffic that could be adopted as part of a broader order or on a standalone basis"); Windstream 2008 ICC/USF FNPRM Comments at 24 ("Windstream largely supports the phantom traffic reform measures proposed by the Commission."); *but see* AT&T 2008 ICC/USF FNPRM Comments at 35-39 (suggesting modifications to the proposal); ITTA 2008 ICC/USF FNPRM Comments at 14 n.27 (urging that terminating providers should not be allowed to charge their highest rate where traffic lacks required information); RNK 2008 ICC/USF FNPRM Reply at 12-19 (suggesting that carriers should be allowed to block phantom traffic in limited circumstances).

⁹⁴³ See Jan. 2011 Local Competition Report at 6 (showing interconnected VoIP subscriptions from 2008 to 2009).

⁹⁴⁴ Though our proposed rule revisions would apply to service providers originating or transmitting interconnected VoIP traffic, they do not specify what, if any, intercarrier compensation obligations apply to any interconnected VoIP call. We seek comment in this Notice about the appropriate intercarrier compensation obligations for interconnected VoIP traffic. See *supra* section XV.A.

⁹⁴⁵ Although this Notice seeks comment on the elimination of per-minute intercarrier compensation charges, it anticipates a multi-year transition, during which these issues remain relevant.

information from one of several sources: signaling used to set up calls, industry standard billing records sent by tandem switch operators to terminating service providers, and session initiation protocol (SIP) messages for VoIP calls.⁹⁴⁶ A pathway across the PSTN is typically set up for PSTN calls using the Signaling System 7 (SS7) call signaling system, which is a separate, or “out of band,” network that runs parallel to the PSTN. The SS7 system performs the function of identifying a path across the PSTN a dialed call can take after the caller dials the called party’s telephone number. Once the SS7 system identifies a path across the PSTN, it signals the originating caller’s network to notify it that a call path is available, and the call is established over the path.⁹⁴⁷ Technical content and format of SS7 signaling is governed by industry standards rather than by Commission rules, although Commission rules require carriers using SS7 to transmit the calling party number (CPN) to subsequent carriers on interstate calls where it is technically feasible to do so.⁹⁴⁸ SS7 was designed to facilitate call routing and was not designed to provide billing information to terminating service providers.⁹⁴⁹ Industry standard billing records are the other common source of information that terminating service providers not directly connected to originating service providers receive about calls sent to their networks for termination.

622. Billing records are typically created by a tandem switch that receives a call for delivery to a terminating network.⁹⁵⁰ Service providers delivering billing records typically use the Exchange Message Interface (EMI) format created and maintained by the Alliance for Telecommunications Industry Solutions Ordering and Billing Forum (ATIS/OBF), an industry standards-setting group.⁹⁵¹ Billing records are also transmitted to terminating service providers for traffic delivered using IP protocols.⁹⁵² When the originating and terminating networks are not directly connected, as is the case when calls are delivered via tandem transit service, complications with transmitting and receiving billing information

⁹⁴⁶ See RFC 3261, SIP: Session Initiation Protocol (2002) at www.ietf.org/rfc/rfc3261.txt.

⁹⁴⁷ The following steps typically occur when SS7 sets up a call path for a wireline LEC to wireline LEC call originating and terminating on the PSTN. When a wireline LEC customer dials a call destined for an end user served by a different wireline LEC, the calling party’s LEC determines, based on the dialed digits, that it cannot terminate the call. The SS7 call signaling system then begins the process of identifying a path that the call will take to reach the called party’s network. SS7 identifies each service provider in the call path and provides each with the called party’s telephone number and other information related to the call, including message type and nature of connection indicators, forward call indicators, calling party’s category, and user service information if that information was correctly populated and not altered during the signaling process.

⁹⁴⁸ 47 C.F.R. § 64.1601.

⁹⁴⁹ See Letter from L. Charles Keller, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Sept. 13, 2005) (Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter).

⁹⁵⁰ Tandem switches transmitting traffic in TDM format create billing records by combining CPN or Charge Number (CN) information from the SS7 signaling stream with information identifying the originating service provider to provide terminating service providers with information necessary for billing. See Verizon, *Verizon’s Proposed Regulatory Action to Address Phantom Traffic* at 5–7 (Verizon Phantom Traffic White Paper), attached to Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Dec. 20, 2005). The tandem switch creating the billing record identifies service providers from whom it receives traffic using the trunk group number (TGN) of the trunk on which a call arrives. Cf. Verizon Phantom Traffic White Paper at 4. The tandem switch translates the TGN into one of two codes identifying the originating service provider: Carrier Identification Code (CIC) if the originating service provider is an IXC, or Operating Company Number (OCN) for non-IXC calls. The appropriate CIC or OCN is then added, by the tandem switch if it is equipped to record such information, to the billing record for the call, which is then forwarded to the terminating service provider. See Verizon Phantom Traffic White Paper at 4; see also Verizon *ICC FNPRM* Reply at 16.

⁹⁵¹ See ATIS Exchange Message Interface 22 Revision 2, ATIS Document number 0406000-02200 (July 2005).

⁹⁵² See RFC 3398, Integrated Services Digital Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping (2002) at <http://www.rfc-editor.org/rfc/rfc3398.txt>.

related to a call can arise.⁹⁵³ In some instances, the operation of these systems can—intentionally or unintentionally—result in traffic arriving for termination with insufficient identification information, which makes it difficult or impossible for the terminating provider to identify and bill the originating provider.

623. Numerous parties have described receiving traffic with insufficient information to ensure proper billing.⁹⁵⁴ A cross section of the communications industry has called for Commission action to address this problem of unidentifiable traffic⁹⁵⁵ and the National Broadband Plan recommended that the Commission adopt rules to address these concerns.⁹⁵⁶ One significant source of billing problems is traffic routed through an intermediate provider that does not include calling party number or other information identifying the calling party.⁹⁵⁷ In addition, commenters describe several examples of other situations where traffic arrives for termination with insufficient information to identify the originating service provider.⁹⁵⁸ Several commenters also allege that they receive traffic in which the billing information intentionally has been altered or stripped before the call reaches the terminating service provider.⁹⁵⁹ One

⁹⁵³ See, e.g., Letter from Patrick J. Donovan, Counsel for PacWest Telecomm, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 3–4 (filed Oct. 14, 2005).

⁹⁵⁴ See, e.g., Letter from Glenn T. Reynolds, Vice President, Policy, USTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008) (USTA Feb. 12, 2008 *Ex Parte* Letter). See also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, NECA Petition for Interim Order (filed Jan. 22, 2008) (NECA Petition); Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 6 (“the current disparity in intercarrier compensation rates creates both an opportunity and an incentive to misidentify or conceal the source of traffic in order to avoid or reduce payments to other service providers”); NCTA 2008 ICC/USF FNPRM Comments at 5 (“additional requirements . . . needed are signaling rules to facilitate the ability of a terminating carrier to determine who is responsible for paying any termination charges”); Verizon 2008 ICC/USF FNPRM Comments at 64 (“some carriers . . . engage in deliberate misconduct to disguise jurisdictional information in an attempt to pay a lower rate or to get paid a higher rate than properly applies to the traffic”); Windstream 2008 ICC/USF FNPRM Comments at 25 (“reforms would help ensure the proper labeling of traffic so carriers can appropriately bill for carrying it”).

⁹⁵⁵ See, e.g., Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 10-90, 05-337, 01-92 at 1 (filed Sept. 30, 2010); AT&T 2008 ICC/USF FNPRM Reply at 35; Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 2, 6-9; ITTA 2008 ICC/USF FNPRM Reply at 13-14; NCTA 2008 ICC/USF FNPRM Comments at 5; OhioComm’n 2008 ICC/USF FNPRM Comments at 55-57; USTelecom 2008 ICC/USF FNPRM Comments at 9-10; Verizon 2008 ICC/USF FNPRM Comments at 63-67.

⁹⁵⁶ See National Broadband Plan at 145.

⁹⁵⁷ The Commission recognized that the ability of service providers to identify the provider to bill appropriate intercarrier compensation payments depends, in part, on billing records generated by intermediate service providers. Thus, the Commission sought comment on whether current rules and industry standards create billing records that are sufficiently detailed to permit determinations of the appropriate compensation due. See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4743, para. 133.

⁹⁵⁸ For example, when a call bound for a number that has been ported to a different service provider is delivered without the responsible service provider performing a local number portability (LNP) query, the call may be delivered to the wrong end office and then may be re-routed to a tandem switch for delivery to the correct end office. See Verizon Phantom Traffic White Paper at 18–19. According to Verizon, neither the end office that re-routes the call nor the tandem switch receiving the rerouted call are able to route the call over an access trunk; the call must be sent over a local interconnection trunk. See *id.* In this scenario, the terminating service provider may have difficulty billing the appropriate charges to the service provider responsible for payment.

⁹⁵⁹ See, e.g., Balhoff and Rowe 2008 ICC/USF FNPRM Reply at 10; California Small LECs 2008 ICC/USF FNPRM Comments at 9; Montana Independent Telecommunications Systems (MITS) *et al.* 2008 ICC/USF FNPRM Comments at 14, 20; NECA 2008 ICC/USF FNPRM Comments at 16; Rural Alliance 2008 ICC/USF FNPRM Comments at 108; SureWest 2008 ICC/USF FNPRM Comments at 7; TDS 2008 ICC/USF FNPRM Comments at 10.