Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates	)	WC Docket No. 07-135
for Local Exchange Carriers	)	
	)	
High Cost Universal Service Support	)	WC Docket 05-337
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS OF
SUREWEST COMMUNICATIONS

SureWest Communications, by its attorneys, hereby submits these Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceedings, released February 9, 2011 ("*NPRM*"). In these Comments, SureWest addresses intercarrier compensation ("ICC") for IP traffic terminated on the public switched telephone network ("Interconnected VOIP"), and urges the Commission to rule that such Interconnected VOIP traffic should, during any ICC "transition" period and beyond, be treated the same for ICC purposes as other sorts of traffic.[1] Regulation should not favor a call originated in IP format and terminated through a local wireline network over one using any other competing technologies -- even supposedly "legacy" technologies -- when the same call completion objective is achieved and the cost of terminating such calls across the local network is the same as that for other technologies. Such favoritism would perpetuate the pernicious arbitrage that the Commission is attempting to eliminate in this proceeding. Thus, the Commission should clarify that VOIP providers have an immediate obligation to pay the same existing and future ICC rates to wireline carriers for terminating calls as other providers of traffic pay for terminating calls on those local networks.

I. Introduction

SureWest Communications is a holding company whose subsidiaries provide incumbent local exchange, competitive local exchange, interexchange, interconnected VOIP, multichannel IP video, and broadband data services. The SureWest Telephone subsidiary ("SureWest") is an incumbent local exchange carrier ("ILEC") operating solely in California, currently serving less than 100,000 access lines, and is regulated as a rate-of-return company by the FCC.

Since 1914, SureWest has taken pride in providing high-quality, dependable and affordable services to its customers. As an ILEC, it is the carrier of last resort ("COLR") in its local telephone service area, yet it is faced with multiple competitors for the provision of telephone services (e.g. wireless, cable VOIP, non-facilities/over-the-top VOIP, and other wireline providers) that are not the COLR. Part of taking COLR responsibilities seriously is a

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[1] The Commission's rules define Interconnected VOIP service as one that "(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. For the purposes of ICC, the term should include both "fixed" and "roaming" Interconnected VOIP service. However, VOIP traffic that does not interconnect with the public switched telephone network ("PSTN") should not be subject to ICC obligations.

commitment to provide service to all customers in a service area and maintaining a high quality network. But maintaining a high quality network ready to provide services to all customers in a service area requires resources, and carriers that use a LEC network to terminate traffic must contribute their proper share of the cost of maintaining that network. For all COLRs, but especially smaller LECs, terminating traffic to the local PSTN without recovering the costs of that termination cannot be allowed to continue without significant degradation of that part of the PSTN, and delay and disruption of the transition to the advanced broadband network that the Commission envisions as eventually replacing it.

II. Providers of Interconnected VOIP Should Pay the Same ICC Charges to Local Companies as Providers Using Other, Competing Technologies.

SureWest commends the Commission for raising the issue of ICC for VOIP traffic in the current proceeding. As described in paragraph 610 of the *NPRM,* this is an issue that has caused industry-wide consternation and uncertainty for years, largely because of the Commission's refusal to definitively address the matter. The issue can no longer be ignored.

It is time that the Commission clarify that Interconnected VOIP providers have an immediate obligation to pay the same existing and future ICC rates to local carriers terminating their traffic as providers using other technologies who terminate traffic there. Given that Interconnected VOIP traffic is a primary source of arbitrage in the current ICC system, and perhaps the largest such source, such a ruling is absolutely necessary if the Commission is to fulfill its stated goal (*NPRM* at para. 603) of curbing that arbitrage. Failure to make such a ruling will not only lead to further inflation of the amount of arbitrage in the ICC system, it will also significantly harm the ability of carriers to build their broadband wireline networks.

In a previous Further Notice of Proposed Rulemaking in one of the above-captioned proceedings, the Commission stated that:

> … any new intercarrier compensation approach must be competitively and technologically neutral. Given the rapid changes in telecommunications technology, it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers. In addition, we favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms. We are interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic. To the extent a proposed regime would preserve distinctions between types of carrier or types of traffic, such distinctions should be based on legitimate economic or technical differences, not artificial regulatory distinctions.[2]

That policy statement is as valid today as it was when the Commission first stated it.

The VOIP segment has matured, and despite a number of years of experience in handling this traffic, there is no rational basis for treating Interconnected VOIP traffic differently than other traffic being terminated on local networks, either currently, during any ICC "transition" period, or thereafter. SureWest is not aware of any evidence in the record of the Commission proceedings on VOIP and ICC that the cost of terminating VOIP traffic to a LEC or other COLR is any less than the cost of terminating TDM traffic. Indeed, when VOIP providers hand off their traffic to LECs, the message is typically already converted to a TDM format, and is no longer in

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[2] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) at para. 33. *See also, In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* 19 FCC Rcd 7457 (2004) at note 47, where in holding that AT&T's "IP in the Middle" technology did not excuse it from paying access charges, the Commission quoted its previous statement that "as a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways." *IP-Enabled Services, Notice of Proposed Rulemaking,* 19 FCC Rcd 4863 (2004) at para. 61.

IP format. To a LEC, therefore, an Interconnected VOIP call has no significant differences from one that was transported in a traditional circuit-switched format. Some providers claim that they are unable to create and maintain the requisite jurisdictional and other information related to their VOIP calls. Those claims should fail for two reasons: first, that information could be collected with the right programming; and second, the ability to create and maintain those records is a qualification for VOIP carriers that goes to the heart of the Commission's oversight responsibilities, and cannot be ignored. Thus, an Interconnected VOIP carrier should not profit from any recordkeeping disability it possesses.

Furthermore, there is no need to continue to allow Interconnected VOIP providers to avoid making ICC payments based on uncertainty over the regulatory status of Interconnected VOIP as an information service or telecommunications service. The application of ICC obligations on Interconnected VOIP traffic should be deemed to be permissible regardless of classification. The Commission has already required Interconnected VOIP providers to take on many of the obligations of telecommunications providers, including obligations to contribute to the Universal Service Fund (*See* 47 C.F.R. § 54.706), as well as to contribute to the Telecommunications Relay Services (47 C.F.R. § 64.604), numbering administration (47 C.F.R. § 52.17(c)), and local number portability funds (47 C.F.R. § 52.32(e)).[3] In light of the interdependent and intertwined nature of USF and ICC,[4] payment of ICC by providers of Interconnected VOIP traffic is merited, particularly when the traffic is clearly intended to reach

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3 Interconnected VOIP providers must also comply with other FCC rules applied to carriers regarding Communications Assistance for Law Enforcement Act (47 C.F.R. §§ 1.20000 - 1.20008); Customer Proprietary Network Information (47 C.F.R. §§ 64.2001 - 64.2009); Telecommunications Relay Services (47 C.F.R. §§ 64.601 - 64.608); disability access (47 C.F.R. §§ 6.1 - 6.23 and 7.1 - 7.23); local number portability (47 C.F.R. §§ 52.20 - 52.33); communications outage reporting (47 C.F.R. §§ 4.1 - 4.13); and provision of E-911 service (47 C.F.R. § 9.5(b)).

4 *See NPRM* at paras. 14 and 45.

its destination over the ILEC or other COLR network as telecommunications.

If the Commission chooses not to require Interconnected VOIP providers to pay ICC for termination of VOIP traffic on the local wireline part of the PSTN during the enormous industry transition that is looming ahead, the result will be very predictable: an increasing number of providers will seek to structure or to classify their traffic as VOIP and will unilaterally elect to stop paying ICC for that traffic, resulting in disruption to the financial underpinnings of the ICC transition and perhaps the integrity of the PSTN itself.[5] It would be particularly arbitrary for the Commission to make such a policy choice for this form of Interconnected VOIP traffic, in light of the fact that reducing regulatory arbitrage has been a major goal of the Commission's ICC reform, in this proceeding as well as others.

III. Conclusion

The record in this and related proceedings demonstrates that the Commission should explicitly rule that providers of VOIP traffic must pay the same ICC charges to LECs as other providers do, when using competing technologies, when they terminate traffic on the networks of these providers. Thus, the Commission should clarify that Interconnected VOIP providers

[5] As the Commission well knows, that transition from traditional voice services to VOIP is already occurring. *See, e.g., Local Telephone Competition: Status as of June 30, 2010*, Industry Analysis and Technology Division, Wireline Competition Bureau, March 2011, at page 2, noting that Interconnected VOIP subscriptions had increased by 21% and retail switched access lines had decreased by 8% during the preceding year. However, the Commission must not allow arbitrage associated with termination of VOIP traffic to artificially exacerbate that trend.

have an immediate obligation to pay the same existing and future ICC rates as other providers of traffic in these circumstances.

Respectfully submitted,

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