Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109

COMMENTS OF METROPCS COMMUNICATIONS, INC.

Carl W. Northrop
Michael Lazarus
Andrew Morentz
David Darwin
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Its Attorneys

Mark A. Stachiw
Executive Vice President, General Counsel & Secretary
2250 Lakeside Boulevard
Richardson, TX 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 for Local Exchange Carriers	)	WC Docket No. 07-135
High-Cost Universal Service Support	)	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),[1] by its attorneys, hereby respectfully submits its comments on Section XV of the *Notice of Proposed Rulemaking* ("*NPRM*") released by the Federal Communications Commission's (the "FCC" or "Commission") in the above-captioned proceedings.[2] In Section XV of the *NPRM*, the Commission seeks comment on certain

[1] For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

[2] *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-up,* WC Docket No. 10-90, GN Docket No. 09-51, WC

issues relating to traffic pumping. MetroPCS supports the Commission's action to take comment on potential solutions to the traffic pumping problem. The following is respectfully shown:

I. INTRODUCTION AND SUMMARY

MetroPCS applauds the Commission for issuing this *NPRM* and proposing action to curb regulatory arbitrage abuses by traffic stimulators and traffic pumpers. Traffic pumping is a growing problem that plagues the industry and generates wasteful, unproductive increases in the intercarrier compensation costs incurred by carriers, which in turn unnecessarily raises the cost of service to all customers. The public interest will be served if the Commission acts promptly to curb such dis-economic arbitrage, both in the context of access charges and reciprocal compensation. Traffic pumping is a growing problem with traffic stimulators moving from traditional wireline interexchange services to wireless services. Moreover, traffic pumping is a particularly acute problem for a competitive carrier, such as MetroPCS, who offers affordable service on a paid-in-advance, tax-inclusive, flat-rate basis. The success of the MetroPCS business model clearly demonstrates that customers want unlimited local and interexchange service for a flat fee. Traffic pumping endangers the very viability of this popular business model because flat-rate carriers cannot pass excessive termination charges on to their customers as easily as usage-based carriers – who are positioned to meter and bill and the fact for services provided. Indeed, traffic pumpers prey on flat-rate carriers and their customers because many customers do not understand that usage of these "free" services increases the overall cost of service for all customers.

Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (rel. Feb. 9, 2011) ("*NPRM*"). The *NPRM* requests comments on Section XV separately from the other sections of the release. MetroPCS intends to comment fully upon the entire *NPRM* at the appropriate later date, and nothing in this filing should be read to conflict with MetroPCS' desire for full, meaningful intercarrier compensation reform.

The intercarrier compensation regime must be overhauled to address this disruptive market reality. MetroPCS supports overall intercarrier compensation reform and will be filing comments in response to the other sections of the *NPRM* by April 18, 2011 detailing that support. However, in the event that meaningful intercarrier compensation reform cannot be accomplished in the near-term, as MetroPCS recommends, the Commission should deal with the well-documented arbitrage abuses immediately. As noted in its August 5, 2010 *ex parte* presentation on the subject of intercarrier compensation reform, MetroPCS supports proceeding directly to overall intercarrier compensation reform, but believes that certain discrete aspects may be dealt with separately "if: (i) the issue is material and could be handled without impacting other compensation issues; and (ii) doing so will not undermine the prospects for comprehensive reform."[3] Both of these criteria would be met by Commission action curbing traffic pumping, particularly since the Commission appears poised to deal with other intercarrier compensation and universal service reform in the near term.[4] Because of the inequities in the current system, there has been – and will continue to be – an increase in disputes, complaints and litigation unless and until the Commission eliminates the arbitrage opportunities that enable traffic

---

[3] MetroPCS Communications, Inc., *Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic*, *Establishing Just and Reasonable Rates for Local Exchange Carriers*; *Universal Service Contribution Methodology*, *Federal-State Joint Board on Universal Service*, in CC Docket No. 01-92, WC Docket No. 99-68, WC Docket No. 07-135, WC Docket No. 06-122, CC Docket No. 96-45, NOTICE OF *EX PARTE* (filed Aug. 5, 2010).

[4] *See* CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN at 10 ("The plan recommends reforming existing support mechanisms to foster deployment of broadband in high-cost areas: specifically, the Universal Service Fund and intercarrier compensation. The plan outlines a 10-year, three-stage course of action to transform these programs to connect those who do not have access to adequate broadband infrastructure.") ("NBP"); *NPRM*, Statement of Chairman Genachowski (noting that, in regard to the proposed intercarrier compensation reform and universal service rule changes, the Commission "plan[s] to move expeditiously").

pumping. The Commission's efforts to date to halt traffic pumping have not been effective, nor have the efforts of state commissions. A more comprehensive approach is necessary.

As has been articulated by MetroPCS throughout the debate on comprehensive reform, MetroPCS supports a bill-and-keep intercarrier compensation regime for all traffic, including interconnected VoIP traffic. Importantly, this would remove the incentive for traffic pumpers to "game the system" by deliberately seeking out arbitrage opportunities presented by terminating carriers with the highest termination rates who are willing to share revenues and customers who originate large volumes of one-way traffic and thereby generate significant terminating revenue. A bill-and-keep regime also would eliminate antiquated regulatory distinctions between technologies and services. Because a number of services, including many wireless, wireline and VoIP services, now include a flat-rate long distance feature as part of the local service plan, there is little need for the Commission to continue to make substantial regulatory distinctions among these technologies in the intercarrier compensation regime. In the final analysis, each of these technologies offers the same end-user service and offers the customer the same opportunity to connect to many long-distance numbers on a low-cost, flat-rate basis. Furthermore, given the current state of the market, there is no basis for treating VoIP traffic differently from circuit switched traffic. A bill-and-keep regime also would level the playing field between wireline and wireless carriers, which would serve the public interest by eliminating the unfair competitive disadvantage suffered by wireless carriers, which currently do not receive terminating access payments. This change would enable wireless carriers to compete more fully with wireline carriers, which is an important component of the Commission's National Broadband Plan.[5] MetroPCS currently is an effective substitute for wireline services with a high percentage of its

[5] NBP at 35.

customers using their MetroPCS service as their primary telecommunications service. Another significant percentage of MetroPCS customers use MetroPCS' wireless service as their <u>sole</u> telecommunications service. The success that wireless has enjoyed as a meaningful substitute for wireline services would be enhanced and the public interest would be served if wireless providers were able to compete on an equal footing.

However, if the Commission does not adopt a bill-and-keep system at this time, it should, at the very least, adopt certain safeguards, including a uniform termination rate of no higher than $0.0007 per minute of use ("MOU"), a 3:1 traffic presumption, and a traffic cap as a transitional step towards a bill-and-keep regime. This rate represents an accurate measure of the actual cost to terminate traffic, and is the prevailing rate in the marketplace. MetroPCS would support the adoption of such a rate, particularly if it is part of a plan to transition the industry to a bill-and-keep regime. The adoption of a 3:1 traffic presumption and an overall traffic cap would further deter traffic pumping schemes, as traffic pumpers would receive less revenue when the traffic is substantially unbalanced and would receive no revenue beyond a certain disproportionate amount of traffic.

The Commission must also rectify the market confusion created by the *North County* decision. Under this framework, wireless carriers will be forced to defend against inflated rates before 50 state commissions – a situation that Congress sought to avoid by indicating that wireless carriers should be subject to a single federal regulatory regime. As discussed below, traffic pumpers already have initiated proceedings before a number of state PUCs and in several federal courts. Continuing to follow the *North County* framework will subject the wireless industry to further uncertainty and confusion, forcing carriers to invest time and resources into defending against traffic pumpers, rather than infrastructure, expansion and innovation. Instead, the Commission should adopt a substantive cap and federal regulatory regime to govern competitive LEC-CMRS compensation arrangements at the federal level under Section 20.11. Further, the Commission should clarify that carriers may only assess charges under Section 20.11 under a signed agreement, and termination charges should not be applied retroactively as long as the CMRS carrier has negotiated in good faith. The Commission should act immediately to bring LEC-CMRS compensation rates under a single federal regime, and thereby increase certainty in the CMRS marketplace, which will in turn spur investment and innovation.

II. THE COMMISSION MUST TAKE IMMEDIATE ACTION TO REPAIR THE RECIPROCAL COMPENSATION SYSTEM TO REDUCE WASTE AND INCREASED COSTS CAUSED BY REGULATORY ARBITRAGE

Traffic pumping creates serious problems in the interexchange access and local terminating markets. The Commission must adopt rules to eliminate this arbitrage in both markets. Traffic pumping operations promote "free" conference calling, chat-lines or other continuous, one-way traffic services on both a local and long distance basis. The traffic pumping model seeks to garner a free ride for both the calling party and the party terminating the call by forcing originating carriers who offer unlimited local and long distance plans to subsidize unreasonably high local or access termination rates, which are not tied to the cost of providing service. Ultimately, however, the costs associated with traffic pumping will be borne by customers, and any action that unreasonably increases the costs of telecommunications services to end-users is contrary to the public interest. Indeed, MetroPCS agrees with the Commission's assessment that "[a]lthough the conference calling or adult chat line may appear as 'free' to a consumer of these services, the significant costs of these arbitrage arrangements are in fact borne by the entire system as long distance carriers that are required to pay these access charges must recover these funds from their customers."[6] Since these services are "free" to the caller, they have no price signals for the user to evaluate the utility of such services, which comes with a caller-pays system. Further, many of these services prey on customers who do not understand that the way in which these services currently are paid for will ultimately increase their service costs. Accordingly, MetroPCS supports the Commission's efforts to eliminate waste created by "access stimulation, a form of arbitrage that, by some estimates, is impacting hundreds of millions of dollars in intercarrier compensation."[7] This is particularly problematic when termination charges are set considerably over cost and the excess is shared with affiliated entities or through revenue-sharing agreements, as this creates perverse, un-economic incentives that promote waste and increase costs for all customers.[8] While revenue-sharing arrangements are not universally problematic, they are troublesome in the context of access charge stimulation where the rates charged are above the cost to provide the service. Ideally, the intercarrier compensation system should operate to drive termination charges down toward the terminating carrier's marginal cost of providing service. Obviously, the system is broken when a carrier is charging so much that it can afford to split revenue with another in order to induce them to drive traffic to the carrier. In some instances, it appears that the termination charges are so high that there is enough for the terminating carrier to give its customer enough of a cut to enable its

[6] *NPRM* at ¶ 636.

[7] *Id*. at ¶ 635.

[8] MetroPCS understands that there may be circumstances where a carrier's cost to provide service may be higher than other carriers – such as rural carriers. The issue is that when the rates are set above costs it allows these carriers to share these "profits" with third parties. If the rates are set at cost, no traffic pumping would occur. MetroPCS continues to support the competition that CLECs provide in the telecommunications marketplace. CLECs still should be able to recover their costs via termination charges, and should be permitted to share in cost savings, but it is important that the Commission prevent these carriers from establishing one-way business models that allow them to engage in wasteful arbitrage.

customer to in turn share a portion of the revenue with customers who seek out callers who originate large volumes of lengthy calls. At this point, the direct customer of the terminating carrier who orders the numbers is a mere middle man who adds little or no value to the call process, but is siphoning off a portion of the revenue stream. This is uneconomic and inefficient.[9]

Unfortunately, the perverse impact of traffic pumping has affected both the interexchange and local telecommunications markets.[10] Access charge stimulation increases costs for providers such as MetroPCS indirectly (though dramatically), as it increases the costs carriers such as MetroPCS must to pay their long distance providers. And, as the Commission has so aptly stated, "[a]ccess stimulation imposes undue costs on consumers, inefficiently diverting the flow of capital away from more productive uses such as broadband deployment, and harms competition."[11] With these important factors in mind, MetroPCS believes that access charge reform should be a part of any meaningful intercarrier compensation reform.

Access stimulation, however, is not confined to the long-distance market. The local terminating compensation market also has proven to be a troubling source of regulatory arbitrage. CLECs enjoy a termination monopoly with respect to calls directed to their customers, and, for the most part, the terminating compensation rates that they charge for local service are

[9] MetroPCS understands that there may be situations where having a particular customer may reduce a carrier's costs. In that instance, it may make sense for the carrier to share a portion of the cost savings enjoyed by the carrier with its customers. This is a very different situation from a carrier that charges high termination rates that are substantially above its costs and passes through a portion of its revenues to its customers.

[10] MetroPCS was one of the first carriers to point out to the Commission that traffic pumping was not just a problem in the interexchange access market, but also in the local termination market. *See Comments of MetroPCS Communications, Inc., Establishing Just and Reasonable Rates for Local Exchange Carriers*, in WC Docket No. 07-135 (filed Dec. 17, 2007) ("*MetroPCS 2007 Comments*").

[11] *NPRM* at ¶ 637.

largely unregulated at the state level. This provides an incentive for traffic pumping carriers to adopt high terminating compensation rates that are unrelated to their cost of providing service. These monopoly rents enable them to pursue one-way business plans designed to generate a large volume of inbound traffic and to be able to share the excess revenues with parties who create the additional traffic. For example, free chat-lines – which patch together multiple callers who happen to call a particular number at the same time (often strangers who are connected on an anonymous basis) – receive high levels of incoming calls, but do not generate outgoing calls, thus creating a significant traffic imbalance. When such an imbalance serves to generate a share of the local terminating charge to the originating carrier and/or the chat-line service provider, there is a powerful economic incentive for them to take advantage of the arbitrage opportunity. Similar circumstances exist within the conference calling services market, the audio dating services industry, the provision of continuous radio broadcast feeds over telephone, and other similar one-way traffic business models.

As discussed in greater detail below, the severity of the issue and the need for immediate action are highlighted by the disputes currently pending in a number of jurisdictions.[12] MetroPCS is embroiled in a number of these disputes, including, as the Commission notes in the *NPRM*, with North County Communications Corp. in California. Moreover, in New York, Sprint Nextel faces a dispute with local exchange carrier XChange, the result of which may have industry-wide ramifications. In Michigan, Climax Telephone Company has sought generic Public Utilities Commission approval for its inflated rate. And, these cases are only harbingers of more widespread disputes to come.[13] Clearly this matter, affecting national and mid-tier

[12] *See infra* at 11, n.19.

[13] As is discussed within, the ongoing MetroPCS challenge in the D.C. Circuit to the FCC decision to relinquish control to the California PUC has kept the floodgates from opening.

carriers in multiple states, warrants urgent action to prevent further abuse and confusion in the marketplace.

To remove the incentive for regulatory arbitrage and traffic pumping, the Commission should determine that, to the extent traffic is compensable under the Commission's local terminating compensation rules, local exchange carriers generating grossly imbalanced inbound traffic should be subject to a bill-and-keep regime, or at the very least be subject to a default rate cap – with increases in traffic imbalance capped as of the date of this *NPRM*. As MetroPCS previously has suggested,[14] and as the Commission has recognized in the *NPRM*,[15] this default rate cap should be based on the one implemented by the Commission in the *ISP Remand Proceeding*.[16] The Commission should create a presumption that local traffic that is out of balance by a ratio of 3:1 or more is compensable at bill-and-keep, or, at most, $0.0007 per MOU. The adoption of such a rule would incent carriers to take part in meaningful bilateral negotiations, while discouraging carriers from engaging in the traffic pumping that currently is causing distortions in the local access market. The Commission recognized the importance of such a cap in its *ISP Remand Proceeding*, and the same arbitrage opportunities that the Commission sought to stop in that proceeding are pervading the local termination market: one-way traffic pumping business plans that were created to exploit holes in the system and allow for arbitrage opportunities. The Commission should act now in the same manner as it did in that proceeding.

---

[14] *See MetroPCS 2007 Comments*.

[15] *See NPRM* at ¶ 672.

[16] *See Implementation of the Local Competition Provisions in the Telecommunications Act, Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (the "*ISP Remand Proceeding*").

The Commission also seeks comment specifically on the impact of its *North County* decision,[17] a proceeding in which MetroPCS remains directly involved. The *North County* decision opens the door for state PUCs to adopt a panoply of rates for CMRS/CLEC traffic, without providing any guidance or mechanism for states to do so. This order, currently pending on appeal before the U.S. Court of Appeals for the D.C. Circuit, creates a perilous environment of confusion for wireless providers throughout the country. Under the *North County* framework, wireless providers could be subjected to a patchwork of state regulations, be forced to continuously monitor innumerable LEC and CLEC filings at the state level and be compelled to defend themselves against unreasonable rates before 50 separate state utilities commissions. This outcome is precisely what Congress sought to avoid when it preempted state regulation of wireless rates and declared that wireless carriers should be subject to a single federal regime. Indeed, having CMRS providers engage in rate proceedings in numerous states goes against the congressional intention of having a federal CMRS policy.

Analyzing the harmful effects of the *North County* decision on wireless carriers is no mere intellectual exercise. As noted above, wireless carriers are already being subjected to proceedings before various state PUC's throughout the country. As CTIA thoroughly detailed in its November 24, 2010, *ex parte* letter to the Commission,[18] CMRS providers are already involved in such proceedings in front of at least six state PUCs,[19] and federal courts have heard

---

[17] *North County Communications Corp. v. MetroPCS California, LLC*, *Memorandum Opinion and Order*, 24 FCC Rcd 3807 (Enf. Bur. 2009), *pet. for recon. granted in part and denied in part*, 24 FCC Rcd 14036 (2009), *pet. for rev. pending sub nom.*, *MetroPCS California, LLC v. FCC*, No. 10-1003 (D.C. Cir. filed Jan. 11, 2010).

[18] CTIA—The Wireless Association, *Establishing Just and Reasonable Rates for Local Exchange Carriers, Intercarrier Compensation*, in WC Docket No. 07-135 and CC Docket No. 01-92, *Ex Parte* Letter (filed Nov. 24, 2010) ("*CTIA Letter*").

[19] *See id.*; *see, e.g.*, *Application of North County Communications Corporation of California (U5631C for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic*

related disputes arising in at least three other states.[20] And this trend will continue and intensify if the D.C. Circuit upholds the Commission's decision in *North County*. This is precisely the outcome that Congress sought to avoid. Additionally, state PUCs do not have sufficient recent experience regulating CMRS carriers and systems to adequately assess the impact on the nationwide wireless business of particular local wireless termination rates of LECs and CLECs. In order to prevent wireless carriers from being dragged into all 50 states and subject to a patchwork of termination rates, the Commission should adopt the substantive cap and regulatory regime referenced above to govern competitive LEC-CMRS compensation arrangements at the federal level under Section 20.11 of the Commission's rules.[21]

Originated by CMRS Carriers, Calif. PUC A.10-01-003 (filed Jan. 6, 2010) (North County Communications asked the CPUC to establish a default compensation rate of $0.0110 for terminating wireless traffic in the absence of a negotiated agreement and to establish a "just and reasonable" rate for the termination of wireless traffic generally); *Pac-West Telecomm, Inc. (U5266C) vs. Sprint Spectrum L.P., et al*, Calif. PUC Case 09-12-014, 10-01-019, 10-01-020, 20-01-021 (filed Dec. 9, 2009) (Pac-West sought intrastate termination fees from CMRS providers, who in turn alleged traffic pumping); *Aventure Communication Technology, L.L.C.*, Iowa Util. Board TF-2010-0087 (2010) (After filings by Sprint, T-Mobile, and AT&T, the Iowa Utilities Board suspended the proposed tariff of Aventure to determine its legality, also noting that it may be in violation of its previous traffic pumping decisions); *Sprint Comms. Co. L.P. v. Bluegrass Telephone Co.*, Kentucky PSC 2010-00012 (2010) (Sprint filed a complaint against Bluegrass Telephone Company alleging unlawful access charges and traffic pumping); *Qwest Comms. Co. v. Tekstar Comms., Inc.*, Minn. PUC C-09-265 (involving traffic pumping allegations related to litigation between Sprint and Tekstar, and with T-Mobile, AT&T, and Verizon intervening); *Petition of XChange Telecom Corp. for a Declaratory Ruling Establishing the Just and Reasonable Rates for Termination of Traffic Between Wireless Carriers and CLECs*, NY PSC 09-C-0370 (XChange filed a complaint against Sprint for nonpayment of termination fees); *Complaint filed by South Dakota Network, LLC against Sprint Communications Company L.P. Regarding Failure to Pay Intrastate Centralized Equal Access Charges and to Immediately Pay Undisputed Portions of SDN's Invoices***,** S. Dakota PUC TC09-098 (SDN filed a complaint against Sprint for nonpayment of intrastate access charges, and Sprint counterclaimed, in part, that SDN should have known SDN participating telecommunications carriers were committing traffic pumping and that SDN had unlawfully billed Sprint for delivered calls).

[20] While, to MetroPCS' knowledge, no cases are currently pending before the PUCs in these states, federal courts in Arizona, Oregon, and Utah have been presented with allegations of traffic pumping. *See CTIA Letter*.

[21] 47 C.F.R. § 20.11.

Importantly, the Commission previously has noted that it has the power under sections 201 and 332 to preempt state regulation and that it will exercise that authority if necessary to ensure that excessive rates do not prevent market entry by CMRS carriers or hinder interconnection.[22] That is just the situation presented to the Commission today by excessive termination rates from one-way traffic business models. This situation will get worse as paid services are increasingly being discounted by wireless carriers, and the proportion of revenue siphoned off by the traffic pumpers increases.

Furthermore, MetroPCS urges the Commission to make clear that carriers may only assess charges under Section 20.11 after a negotiated agreement has been signed by the two carriers, and termination charges should not be applied retroactively as long as the CMRS carrier has negotiated in good faith. Notably, there is no rule that entitles a CLEC to receive interim compensation from a CMRS carrier while interconnection negotiations are underway. This is because the compensation rules properly recognize that there is bargaining equality between a CMRS carrier and a CLEC. Neither a CLEC nor a CMRS carrier has inherently greater bargaining leverage in bilateral interconnection negotiations undertaken pursuant to sections 251(a)(1) or 332 of the Act. For instance, neither a CMRS provider nor a CLEC is empowered to invoke the Section 252 state arbitration procedures – however, either can pursue a Section 208 complaint at the Commission. When there is bargaining parity, and there has been no failure of a party to negotiate in good faith, it is appropriate for the Commission to encourage parties to pursue voluntary agreements and to recognize that indirect interconnection arrangements will remain at a default bill-and-keep rate pending a signed agreement.

---

[22] *Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 at ¶ 231 (1994); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* FIRST REPORT AND ORDER, 11 FCC Rcd. 5020, ¶¶ 1023-1025 (1996).

Notably, the situation is different when an ILEC is involved and the Commission's rules expressly recognize this difference. Section 20.11(e) of the Commission's rules specifically provides an interim transport and termination pricing mechanism as described in section 51.715 of the Commission's rules for interconnection negotiations involving an ILEC.[23] In the absence of an interim compensation rule for CLECs, the presumption must be that there is no dating-back and that compensation should only be allowed on a prospective basis, if at all, only after an agreement is signed between the parties. The Commission must clarify this critical point.

All other traffic should be treated as bill-and-keep, particularly where carriers are currently operating under such a *de facto* agreement. This is necessary to promote meaningful, good-faith negotiations toward reasonable agreements between carriers, and to avoid drawn-out litigation that diverts resources and distracts carriers from what should be their primary mission – expanding the nation's telecommunications networks and providing American consumers with competitively-priced services.

III. VOIP TRAFFIC SHOULD BE TREATED NO DIFFERENTLY THAN OTHER COMMUNICATIONS TRAFFIC FOR PURPOSES OF INTERCARRIER COMPENSATION OBLIGATIONS

MetroPCS believes that all communications traffic should be compensable under a common framework. VoIP, wireless and wireline traffic now all compete with one another for the same customers. The Commission correctly recognizes that "the market is evolving toward broadband, all-IP networks."[24] In order to promote a level playing field among technologies and services in this evolving market and to curb opportunities for regulatory arbitrage, the Commission should ensure that all competing communications-related traffic is subject to a common, reasonable market-based intercarrier compensation regime. The Commission should

[23] 47 C.F.R. § 20.11(e).

[24] *NPRM* at ¶ 609.

require that VoIP traffic – like other communications traffic with which it competes – be terminated at bill-and-keep, or, at most, $0.0007 per MOU, for the same reasons discussed above.

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt a bill-and-keep intercarrier compensation regime for all traffic, or, at the very least, a termination rate of no more than $0.0007 per MOU for traffic in excess of a 3:1 ratio as a transitional step toward a bill-and-keep regime, in order to rectify market distortions caused by traffic stimulation in the access charge market and in the local terminating compensation market. Further, the Commission should establish an overall traffic cap based on current traffic to deter new traffic pumping schemes. Though the Commission must address overall intercarrier compensation reform as soon as possible, MetroPCS urges the Commission, in the short-term, to take action to stop the arbitrage practice of traffic pumping, which has plagued carriers across the nation and only continues to grow as a problem.

Respectfully submitted,

MetroPCS Communications, Inc.

By:
Carl W. Northrop
Michael Lazarus
Andrew Morentz
David Darwin
PAUL, HASTINGS, JANOFSKY & WALKER LLP
875 15th Street, NW
Washington, DC 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Mark A. Stachiw
Executive Vice President, General Counsel and Secretary
MetroPCS Communications, Inc.
2250 Lakeside Blvd.
Richardson, Texas 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Its Attorneys

April 1, 2011

LEGAL_US_E # 92299555.7