

**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 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

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COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. (“TWC”) hereby submits these comments in response to the issues raised in Section XV of the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in the above-captioned proceedings.¹

INTRODUCTION AND SUMMARY

TWC applauds the Commission’s efforts to overhaul its universal service and intercarrier compensation rules. TWC’s provision of voice, broadband, and video services gives it a broad perspective on these issues, and a significant stake in the outcome. TWC is the nation’s second-largest cable operator and serves approximately 14.7 million customers in 28 different states—

¹ *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 *et al.* (rel. Feb. 9, 2011) (“NPRM”).

including more than 4 million customers who subscribe to one of TWC's interconnected voice-over Internet Protocol ("VoIP") services. As TWC will explain in more detail in its forthcoming comments on the NPRM's broad reform proposals, there is an urgent need for Commission action to impose rationality and discipline on these interrelated regimes. Today's inefficient and unnecessarily complex system of access charges distorts competition and gives rise to arbitrage schemes and endless litigation, and the high-cost USF mechanism similarly provides excessive subsidization and impedes efficient competition.

Section XV of the NPRM seeks comment on a number of interim reforms intended to reduce arbitrage opportunities that currently exist in the intercarrier compensation ("ICC") system, and to lay the groundwork for comprehensive reform of the ICC and universal service fund ("USF") regimes. TWC strongly supports the Commission's long-term goals to harmonize and unify the disparate ICC regimes and promote the transition to all-Internet Protocol ("IP") networks. Accordingly, TWC offers these comments in support of those near-term reform proposals in the NPRM that would advance those plans.

TWC believes that the fundamental goal of ICC reform must be to harmonize and simplify the current system in a manner that is competitively and technologically neutral. The record demonstrates that as long as the rates that carriers pay or collect are calculated using artificial regulatory and jurisdictional distinctions among various categories of traffic, providers will continue to have incentives to game the system. As a result, TWC continues to endorse the Commission's acknowledgment, in discussing the emergence of VoIP services, that "[s]imilar types of traffic should be subject to similar rules."²

² *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 ¶ 33 (2005) ("*2005 Further Notice*"); NPRM ¶ 501 n.718.

Although the NPRM appears to recognize the fundamental need to treat all telecommunications traffic comparably,³ the NPRM also raises the troubling prospect of creating yet another artificial distinction among traffic categories by subjecting so-called “VoIP traffic” to special rules.⁴ But when a local exchange carrier (“LEC”) terminates traditional, circuit-switched telecommunications traffic from an interexchange carrier or another LEC, that terminating carrier should be treated the same for intercarrier compensation purposes regardless of whether the traffic originates in a circuit-switched or IP format, and regardless of whether the traffic is subsequently delivered to a VoIP provider for termination to the ultimate end user.

In fact, characterizing such telecommunications traffic as “VoIP traffic” is inherently misleading, as it conflates the nature of the originating (IP) format with the nature of the (typically circuit-switched) traffic as delivered to the terminating LEC. In any event, the Commission should focus on harmonizing the treatment of various forms of telecommunications traffic rather than creating new distinctions that would only spur further arbitrage schemes and inefficiency.

Pending more comprehensive reform to unify intercarrier compensation rates, TWC supports the Commission’s proposals to prohibit carriers from modifying or stripping identifying information from the traffic originated on their networks.⁵ Similarly, TWC also supports the adoption of new rules that will eliminate or reduce incentives for carriers to engage in access-stimulation schemes.⁶ Unlike proposals that would perpetuate distinctions among categories of telecommunications traffic and potentially lead to additional arbitrage opportunities, these rules

³ See, e.g., NPRM ¶¶ 494-95 (explaining problems arising from the current intercarrier compensation system); *id.* ¶¶ 502, 534-35.

⁴ *Id.* ¶¶ 608-19.

⁵ *Id.* ¶¶ 620-34.

⁶ *Id.* ¶¶ 658-77.

would help *prevent* arbitrage and should be implemented promptly, even as longer-term reforms are being finalized.

DISCUSSION

I. THE COMMISSION SHOULD PURSUE ITS GOAL OF HARMONIZING DISPARATE INTERCARRIER COMPENSATION RATES, NOT ADOPT SPECIAL RULES FOR SO-CALLED “VOIP TRAFFIC”

Over the past decade, the Commission has considered proposals to modernize the existing intercarrier compensation system on multiple occasions, but such efforts have yet to succeed.⁷ As the NPRM acknowledges, these past reform proposals reflected the manifest need to replace the “current antiquated rules” governing intercarrier compensation and thus focused on “moving toward a more unified system” of intercarrier compensation rates.⁸

TWC wholeheartedly agrees that reform is urgently necessary. There is no legitimate basis for requiring carriers to pay inflated rates that bear no relationship to costs, nor for subjecting carriers to widely divergent rates across jurisdictions when “the function of originating or terminating a call does not change.”⁹ Indeed, as the NPRM recognizes, “[t]he wildly varying and disparate rates within the intercarrier compensation system create arbitrage opportunities and introduce layers of regulatory complexity and associated costs.”¹⁰ TWC thus

⁷ See, e.g., *High-Cost Universal Service Support et al.*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008); *2005 Further Notice*, 20 FCC Rcd 4685; *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

⁸ NPRM ¶ 501 & n.718 (noting that “the Commission has sought comment on a variety of proposals” to reform intercarrier compensation).

⁹ *Id.* ¶ 495.

¹⁰ *Id.* ¶ 496; see also *id.* ¶¶ 502, 507-08.

has supported the Commission’s efforts to simplify and unify the current regime.¹¹ In particular, TWC has urged the Commission to transition to a regime of uniform ICC rates for all traffic and all carriers based on the fundamental principle of “similar rates for similar functions,” with any deviations “based on legitimate economic or technical differences, not artificial regulatory distinctions.”¹²

A. Telecommunications Traffic Terminated by LECs Should Be Subject to the Same Intercarrier Compensation Rules Regardless of the Technology Used by the Originating Carrier.

Despite the Commission’s recognition that the existing “patchwork of rates and regulations is inefficient, wasteful and slowing the evolution to IP networks,”¹³ the NPRM’s proposals for near-term access charge reform include the possibility of creating yet another distinction—by considering special rules for so-called “VoIP traffic”—that could hamper progress toward harmonizing the treatment of various types of telecommunications traffic.¹⁴

Notably, the NPRM does not define “VoIP traffic.” Rather, the NPRM proposes to limit the scope of its rules to “interconnected VoIP traffic” and describes interconnected VoIP services as those services that, “among other things, allow customers to make real-time voice calls to, and receive calls from, the public switched telephone network (PSTN).”¹⁵ The NPRM also notes “evidence of asymmetrical revenue flows” caused when some VoIP providers (or their

¹¹ See, e.g., Comments of Time Warner Cable Inc., *High-Cost Universal Service Support*, WC Docket No. 05-337 *et al.* (filed Nov. 26, 2008); Comments of Time Warner Cable, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (filed Oct. 25, 2006) (“TWC ICC Comments”).

¹² TWC ICC Comments at 14 (quoting *2005 Further Notice* ¶ 33).

¹³ NPRM ¶ 502; *id.* ¶¶ 505-06.

¹⁴ See *id.* ¶¶ 608-19.

¹⁵ *Id.* ¶ 612. The NPRM also cites the regulatory definition of interconnected VoIP service. See *id.* ¶ 612 n.923 (quoting 47 C.F.R. § 9.3).

competitive LEC partners) *collect* access charges for terminating calls but refuse to pay such fees themselves.¹⁶ Based on these statements, parties are left to infer that the Commission considers “VoIP traffic,” for purposes of its near-term intercarrier compensation proposals, to encompass any traffic that originates on an interconnected VoIP provider’s network.

But the term as used is misleading. In asking whether the Commission “could determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges ... as other voice telephone service traffic” without first “classifying interconnected VoIP” service itself,¹⁷ the NPRM conflates the provision of *exchange access* services by a telecommunications carrier with the treatment of the wholly distinct *retail VoIP* services. In fact, as the NPRM recognizes, the Commission already has determined that “interconnected VoIP traffic is ‘telecommunications’ traffic, regardless of whether interconnected VoIP service were to be classified as a telecommunications service or information service.”¹⁸ In particular, the Commission found that “interconnected VoIP providers are ‘providers of interstate telecommunications’” under Section 254(d) of the Communications Act of 1934, as amended,¹⁹ due to the pure transmission component of interconnected VoIP service, which the Commission characterized as “PSTN transmission.”²⁰

The traffic terminated to a LEC by an interexchange carrier (“IXC”) thus is telecommunications traffic, plain and simple, regardless of whether it originates in time-division

¹⁶ NPRM ¶ 610 & n.920.

¹⁷ *Id.* ¶ 618.

¹⁸ *Id.* ¶ 615 (emphasis added) (citing *Universal Service Contribution Methodology et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 ¶¶ 39-41 (2006) (“*Interim USF Report and Order*”)).

¹⁹ 47 U.S.C. § 254(d).

²⁰ See *Interim USF Report and Order*, 21 FCC Rcd 7518 ¶¶ 39-41.

multiplexing (“TDM”) or IP format. And the Wireline Competition Bureau has emphasized that the classification of retail VoIP service has “no bearing” on the nature of the traffic exchanged by a LEC that exchanges traffic with the PSTN on its behalf.²¹ Regardless of whether interconnected VoIP is an information service or a telecommunications service, there is no question that an interexchange carrier that obtains exchange access from a terminating LEC is subject to the intercarrier compensation regime. Accordingly, TWC believes that any interim step toward fundamental reform of the intercarrier compensation system should confirm that reciprocal compensation (for local calls) and access charges (for toll calls) apply fully to traffic delivered to terminating LECs, regardless of the format in which it originates.

In so doing, the Commission should clarify that the ESP exemption does not permit interexchange carriers to avoid paying access charges to LECs, even assuming, *arguendo*, that VoIP is an information service. The Commission originally introduced the ESP exemption in 1983, in order to allow fledgling enhanced service providers (“ESPs”) to continue to connect to the local telephone network (and thus receive dial-up calls from their customers) by purchasing

²¹ See *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*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 15 (WCB 2007) (clarifying that a LEC is a telecommunications carrier because it provides a telecommunications service and that the rights flowing from that designation are not affected by the *separate* “classification of a third-party provider’s VoIP service as an information service or a telecommunications service,” regardless of the fact that the telecommunications service is used in the provision of the ultimate retail VoIP service). See also *Interim USF Report and Order* ¶¶ 40-41 (finding that an interconnected VoIP provider “provides interstate telecommunications” as that term is used in Section 254(d), 47 U.S.C. § 254(d), because such a provider “‘provides’ more than just a finished service,” it also “‘furnishes’ or ‘supplies’ components of a service,” and that telecommunications “[t]ransmission is an input into the finished service” of interconnected VoIP).

local business service rather than by paying higher, per-minute access charges.²² But as its name indicates, the ESP exemption applies to the *provider* of the service that is enhanced; it does not grant relief with respect to *traffic* delivered to that provider via a wholly distinct, non-enhanced service. IXC and LECs thus have always been obligated to pay the appropriate intercarrier compensation charges on calls delivered to LECs that serve ESPs. Indeed, the policy impetus for the ESP exemption has never applied to telecommunications carriers, nor is there any basis today for extending that relief to carriers simply because they deliver traffic that originated in IP (or may ultimately terminate to an end user in IP).

The question of whether the ESP exemption could or should apply to VoIP traffic²³ only underscores the fundamental point of confusion discussed above regarding the impact that the regulatory classification of an *input* has on the ultimate classification of the *finished service*. And as explained above, the regulatory classification of the end-user service (in this case, VoIP) is *irrelevant* to a separate entity's obligation to pay access charges or reciprocal compensation based on the telecommunications service component of that service.²⁴ Accordingly, the service at the heart of this debate is not interconnected VoIP service but a standard interstate or intrastate access service (or a local telecommunications service, as the case may be). Users of such access services thus are obligated to pay—and providers of such services are entitled to collect—intercarrier compensation charges pursuant to the Commission's rules and comparable state authority.²⁵

²² NPRM ¶ 618 n.936 (recounting the regulatory history of the ESP exemption).

²³ *Id.* ¶ 618.

²⁴ *See* 6-7 n.21, *supra*.

²⁵ 47 C.F.R. § 69.5(b).

B. New Artificial Distinctions Among Types of Traffic Would Hinder the Commission’s Long-Term Reform Goals.

TWC believes that the long-term answer to the problems plaguing the current intercarrier compensation regime is to harmonize and lower existing rates. Accordingly, the first step in reforming this “broken” system should not be the creation of additional artificial regulatory distinctions that call for special treatment of certain forms of traffic.²⁶ Indeed, the creation of a new class of telecommunications traffic (and a new intercarrier rate regime) for calls originating in IP format plainly is *not* the way “to move away from today’s intercarrier compensation system.”²⁷ Such an approach would only make the existing system even more irrational and unworkable.

Furthermore, applying new access charge and reciprocal compensation rules to so-called “VoIP traffic” would not reduce or eliminate disputes regarding compensation for calls originating on VoIP providers’ networks. To the contrary, as long as there is a potential opportunity to reduce or avoid the obligation to pay access charges by exploiting artificial distinctions in traffic or an ambiguity in the Commission’s rules, some carriers will do so. The NPRM’s proposed “VoIP traffic” classification would only further enable such behavior, thereby jeopardizing the Commission’s efforts to “develop[] a predictable framework for reform” and “imped[ing] the industry’s ability to make an orderly transition to a reformed intercarrier compensation system.”²⁸

For precisely these reasons, TWC will explain in its forthcoming comments regarding the Commission’s long-term ICC reforms that it supports proposals to arrive at a unified default

²⁶ NPRM ¶ 508.

²⁷ *Id.* ¶ 613.

²⁸ *Id.* ¶ 614.

compensation rate for all carriers and to transition to IP-based interconnection.²⁹ Such proposals, however, do not address the more immediate question of how traffic originating on or terminating to IP-based networks should be treated *today*. As explained above, the Commission should clarify that such traffic is subject to the same rules as any other telecommunications traffic. Thus, where an interexchange carrier delivers telecommunications traffic to a terminating LEC, access charges would apply irrespective of whether the traffic originated in IP format; and where a LEC exchanges local telecommunications traffic with another LEC and no bill-and-keep agreement is in place, the terminating LEC would be required to pay reciprocal compensation without regard to whether IP technology is used in delivering calls from or to end users.

Such clarification not only is required by the text of the Commission's rules, but also will further the Commission's overarching goals of harmonizing the disparate ICC system and promoting the transition to IP networks. TWC agrees with the Commission that the uncertainty in the current system surrounding treatment of traffic originating in IP format "creates the perverse incentive to maintain and invest in legacy, circuit-switched-based, [TDM] networks to collect intercarrier compensation revenue."³⁰ Incumbent LECs thus are not likely to transition to networks that utilize IP technology to *originate* calls unless and until they may do so without fear of losing the revenue they receive for *terminating* such calls. Relatedly, the National Broadband Plan explained that "to retain ICC revenues, carriers may require an interconnecting carrier to convert [VoIP] calls to [TDM format] in order to collect intercarrier compensation revenue."³¹

²⁹ *Id.* ¶ 619.

³⁰ *Id.* ¶ 506.

³¹ Omnibus Broadband Initiative, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 142 (2010); NPRM ¶ 608 n.914.

But a voice service provider's particular choice of technology should not impact its entitlement to recover its costs for terminating another provider's traffic. By confirming that access charges apply regardless of the format in which telecommunications traffic originates or terminates, the Commission would remove any real or implied regulatory preference that exists for TDM traffic and thus eliminate one current incentive incumbent LECs have to cling to outdated and inefficient circuit-switched infrastructure.³²

The Commission also should consider requiring LECs to accept traffic in IP format as part of any near-term reforms to the ICC regime. LECs today have the ability to accept and terminate IP traffic on their networks. But they typically refuse to accept such traffic, instead requiring the carrier delivering it to convert the traffic to TDM format before the LEC will terminate the call.³³ One way the Commission could further encourage legacy providers to transition to more efficient all-IP infrastructure—and in particular to facilitate IP interconnection in the near term—would be to clarify that all voice service providers, regardless of the technology they employ, are required to accept traffic that is delivered to them in IP format.

II. IMMEDIATE COMMISSION ACTION TO CURB ARBITRAGE SCHEMES IS APPROPRIATE PENDING COMPREHENSIVE REFORM OF THE INTERCARRIER COMPENSATION REGIME

While TWC supports comprehensive action to establish a more sustainable and efficient long-term intercarrier compensation regime, it also agrees that near-term action is needed to combat phantom traffic and access stimulation. Appropriate long-term reforms will eventually eliminate the need for such band-aids, but while more fundamental changes are being developed

³² NPRM ¶¶ 505-06.

³³ *See id.* ¶¶ 506 & n.729, 608 n.914 (citing comments noting incumbent carriers' refusal to accept IP traffic).

and implemented, the Commission should take action to curtail arbitrage and the evasion of its existing rules.

A. The Commission Should Adopt Flexible, Enforceable Rules To Eliminate Phantom Traffic.

As long as existing rules remain in place, transiting and terminating carriers must have the ability to properly identify and bill the originating carrier. Accordingly, TWC supports the adoption of rules that: (1) require *all* carriers to transmit calling party number (“CPN”) information, regardless of the signaling technology employed, (2) prohibit stripping or alteration of call signaling information, but also (3) retain sufficient flexibility to enable providers to adopt new, more efficient IP signaling technologies as they develop.³⁴ TWC also agrees that the Commission’s phantom traffic rules should apply to *all* types of traffic, regardless of jurisdictional classification, and that ample legal authority and precedent exist for such rules.³⁵

At the same time, TWC believes that the Commission should assign specific call-signaling obligations to carriers commensurate with their individual roles in the origination and transmission of a call. For example, TWC believes that the originating carrier should bear responsibility for transmitting all required identification information for a call placed from its network. Transiting carriers, on the other hand, should be required only to pass such information (in the form that it is received) to the next provider in the call path. Put another way, the Commission should not punish the transiting carrier for the sins of the originating carrier, and vice versa.

³⁴ *Id.* ¶¶ 626-27.

³⁵ *Id.* ¶ 629 & n.971 (citing the Commission’s *Caller ID Order, Rules and Policies Regarding Calling Number Identification Service -- Caller ID*, Memorandum Opinion and Order on Reconsideration, Second Report and Order and third Notice of Proposed Rulemaking, 10 FCC Rcd 11700 (1995), in which the Commission preempted state regulations related to end-user blocking of call signaling information that it found would impede “the development of valuable interstate services related to caller ID”).

TWC thus does not support the suggestion that an intermediate service provider should be obligated to maintain and transmit billing information for calls routed through its network but originating from another carrier.³⁶ To the contrary, the responsibility of identifying the originating carrier to other providers in the call path should rest *solely* with the originating carrier. To find otherwise would unnecessarily involve innocent third parties in disputes between originating and terminating carriers. Similarly, a rule that creates an independent obligation for transiting carriers to identify the originating provider would leave open the possibility that a transiting carrier could be held liable for the conduct of a third party. TWC therefore urges the Commission to refrain from imposing duplicative and burdensome requirements on carriers (originating, transiting, or terminating) as a means of ensuring that *other* carriers live up to their intercarrier compensation and signaling obligations. At a minimum, the Commission should separately identify the duties of originating and transiting providers in its rules and make clear that neither may be held liable for the rule violations of another.

Relatedly, the Commission should develop specific procedures governing a carrier's treatment of calls it receives with incomplete or inaccurate CPN information. For example, the Commission should, as an initial matter, prohibit transiting and terminating carriers from dropping calls that lack complete or accurate call signaling information.³⁷ In addition, the Commission should adopt default rules that identify the particular circumstances when a "phantom" call should be routed locally, and when it should be treated as long-distance traffic. Finally, to ensure their effectiveness, TWC urges the Commission to identify mechanisms that

³⁶ See NPRM ¶ 623 n.957 (stating 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").

³⁷ *Cf. id.* ¶ 628 (stating that the "proposals we make in this Notice are not in any way intended to interfere with the ability of calls to reach their intended recipient").

will be available to enforce its new rules, including the Commission’s complaint procedures and, where appropriate, enforcement and forfeiture proceedings.³⁸

B. The Commission Also Should Take Steps to Reduce or Eliminate Access-Stimulation Schemes.

Just as today’s muddled ICC regime has fostered phantom traffic, it has given rise to an epidemic of access-stimulation schemes. Access stimulation or “traffic pumping,” occurs when service providers offer free conference call services, chat lines, or other services as a means of driving substantial traffic to a telephone number that terminates in a LEC’s exchange area.³⁹

Typically, the terminating LEC—which is permitted to charge an access rate that is set at a high level based on high projected (or historical) costs and assumptions of low call volumes⁴⁰—enters into an arrangement with a chat line (or other service) provider, in which the two parties agree to share the revenues the LEC receives from access charges paid by long-distance providers for the termination of calls placed by its subscribers.⁴¹ Although the calling party is not charged a direct fee for placing the call and, in fact, long-distance carriers cannot immediately recover the cost of the call directly from their customers, the costs of access-stimulation schemes ultimately are borne by all consumers when long-distance providers adjust their rates upward to account for inflated access charges.

TWC agrees with the NPRM’s assessment that access-stimulation schemes, such as the type of arrangement described above, “impose[] undue costs on consumers, inefficiently diverting the flow of capital away from more productive uses such as broadband deployment,

³⁸ *Id.* ¶ 632.

³⁹ *See id.* ¶ 636.

⁴⁰ *See id.* ¶¶ 643-48.

⁴¹ *Id.* ¶ 636.

and harms competition.”⁴² Commission action is therefore appropriate to eliminate or at least reduce the incentives present in existing intercarrier compensation rules that drive such behavior.

As a starting point, the Commission should put an end to “sharing” arrangements between carriers and service providers that merely serve as vehicles to inflate access revenues. Such agreements violate principles of cost-based recovery underlying the current intercarrier compensation system,⁴³ which are intended to limit a carrier’s recovery to appropriate levels.⁴⁴

But TWC is concerned that rules focused solely “on the existence of access revenue sharing arrangements” would be inadequate by themselves to prevent traffic pumping.⁴⁵ It is likely that LECs and their business partners could restructure their relationships to fall outside of the Commission’s proposed limits on revenue sharing.⁴⁶ Indeed, any legal or interpretive uncertainty as to the applicability of the Commission’s access-stimulation rules undoubtedly will prompt profit-seeking LECs and their partners to identify loopholes in the rules. Accordingly, the Commission also should explore the adoption of additional triggers that would be less susceptible to circumvention to ensure that the rules it adopts are effective at deterring access stimulation.

For example, TWC supports the adoption of a trigger pegged to a dramatic increase in traffic or minutes of use over a specific period of time.⁴⁷ CTIA’s proposal—that a LEC would become subject to bill-and-keep in the event its terminating to originating traffic exceeded a

⁴² *Id.* ¶ 637.

⁴³ *See id.* ¶ 659 n.1025.

⁴⁴ *See id.* ¶ 643.

⁴⁵ *Id.* ¶ 659.

⁴⁶ *Id.* ¶ 660.

⁴⁷ *Id.* ¶¶ 668.

three to one ratio—presents one such approach.⁴⁸ TWC therefore supports the concept of CTIA’s proposal, but with some modest modifications. In particular, with the exception of a LEC engaged in access revenue sharing, TWC urges the Commission to avoid *automatic* triggers for its proposed access-stimulation rules. Indeed, TWC believes that a provider should have an opportunity—within a set timeframe—to explain any anomalies in its traffic volumes and exonerate itself. Accordingly, to the extent the Commission decides to adopt CTIA’s (or another similar) proposal, its rules should state that a dramatic increase in traffic or minutes of use that meets or exceeds a specific threshold, or a particularly out-of-balance traffic ratio, raises a *rebuttable presumption* that the Commission’s access-stimulation rules apply. The rules would then provide for a limited opportunity for the LEC to demonstrate to the Commission’s satisfaction that it is not engaged in a traffic pumping scheme, after which time the Commission’s rules would go into effect.

CONCLUSION

Interim reform of the antiquated intercarrier compensation regime should create a framework that will facilitate the long-term transition to a simplified and unified system while reducing or eliminating existing opportunities for arbitrage. In contrast, creating an artificial new category of traffic for calls originating on an interconnected VoIP provider’s network—so-called “VoIP traffic”—would run counter to the Commission’s long-term vision for ICC. Accordingly, such proposals should not be adopted. The Commission instead should clarify that an IXC obtaining exchange access services for a call originating on an interconnected VoIP provider’s network is subject to the same intercarrier compensation rules applicable to any other telecommunications traffic, regardless of the format in which it originates. Pending more

⁴⁸ *Id.* ¶ 672.

fundamental reform to modernize and unify access charge rates, the Commission also should adopt rules to eliminate or reduce incentives for carriers to engage in behavior—such as stripping or modifying CPN information to avoid paying access charges/reciprocal compensation or entering into access-stimulation schemes to inflate terminating interexchange calls and the associated access revenue—that improperly games the current system.

Respectfully submitted,

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