FCC APRIL 6, 2011 WORKSHOP
SUMMARY OF REMARKS OF DAVID SCHORNACK
DIRECTOR OF SALES & BUSINESS DEVELOPMENT
ARVIG ENTERPRISES, INC. (PARENT OF TEKSTAR COMMUNICATIONS)

- Addressing concerns about access stimulation requires one action by the Commission: adoption of rules ensuring just and reasonable rates as access traffic volumes increase substantially.

- Because of previous Commission decisions to address access stimulation and because rural CLECs and IXCs each have incentives to settle disputes, a market has developed to address compensation for the termination of high traffic volumes by rural CLECs. As a result, the vast majority of Tekstar's access traffic is covered by agreements with IXCs, and these provide the best foundation upon which the Commission should base any decision.

- Even though a market has developed, the Commission's proposed solution to access stimulation – requiring rural CLECs to benchmark rates to those of the Bell Operating Company or the largest LEC in a state -- is appropriate because it generally reflects rates contained in these market agreements and is consistent with the current framework for overseeing CLEC access rates. It also is enforceable. Tekstar has sufficient experience in its dealings with IXCs to know that they are constantly monitoring traffic flows and will promptly recognize if traffic greatly increases or otherwise is outside the norm.

- If the Commission's rules are to provide benefits for IXCs and rural CLECs and eliminate cause for disputes, the Commission should make clear that if a rural CLEC that has entered into revenue sharing agreements has modified its tariff as required by the new rule, the termination of toll traffic on the CLEC's network for an IXC is exchange access service provided to that IXC, and the CLEC should receive payment as set forth in the new rule.

FreeConferenceCall.com Overview of Comments

- FreeConferenceCall.com is a provider of toll conference calling to businesses, nonprofits and individuals—approximately 20 million consumers each month
- FreeConferenceCall.com competes with AT&T, Verizon and other large carriers for toll conference call customers.
- FreeConferenceCall.com provides toll conferencing without an organizer fee
- FreeConferenceCall.com locates its conference bridges in urban and rural regions
- FreeConferenceCall.com's customers use the service in the same manner as other conference call providers, and many have migrated from the large carriers

- Access Stimulation must be distinguished from Traffic Pumping

- Alarmist claims of harm from toll conferencing without organizer fees are unfounded
- The claim that IXCs and wireless carriers receive no revenue for any additional calls associated with the offer of conference calling without an organizer fee is not supported—many calls to conference bridges generate revenue for the IXC or wireless carrier
- Purported studies of harm from access stimulation are too flawed to be used as basis for Commission policymaking

- Revenue sharing should not be prohibited and should not be used as the sole trigger for changes in tariffs
- Revenue sharing should not be prohibited *per se*, nor should it disentitle the LEC from collecting access charges
- Imposing rates that are lower than BOC rates would be unreasonable in a competitive marketplace
- If a revenue sharing trigger is used, any reduction in rates should be predicated on high traffic volumes

- The High Volume Access Tariff (HVAT) is a pragmatic pricing solution for a pricing problem: higher price with lower call volumes and a lower price with higher volumes

- The Commission should not deny the benefits of "deemed lawful" status pursuant to § 204(A)(3) to LECs that comply with the Commission's access stimulation rules

Executive Summary

FCC Workshop: Access Stimulation & Traffic Pumping

April 6, 2010

ZipDX

David Frankel, CEO

Today's Inter-Carrier Compensation System was created when we were just embarking on what would turn into a massive and on-going transition of telecommunications in the United States. ICC has outlived its usefulness and there is general agreement that it needs to be restructured or even eliminated.

In the meantime, it has driven behaviors that are contrary to the original intent, and that undermine the technical efficiency and economic sustainability of the telecommunications system. ZipDX is supportive and appreciative of the Commission's recognition of, and its endeavors to finally rectify, this situation.

As we work on a long-term resolution, immediate action is required to turn back the proliferation of clever arbitrage schemes and to stem the associated tide of litigation. We have now a convoluted and broken system that faces a hopeless battle keeping up with rapidly changing technologies.

We recommend a modification to the NPRM's proposed definition of "Access Revenue Sharing." It should clearly state that access revenue sharing occurs when a carrier agrees to provide a service to another party under such terms that, as the party uses more of the service, the aggregate financial obligation from the party to the carrier can decrease (including to the point that the carrier can be obligated to PAY an amount, increasing with volume, to the other party). Such an agreement indicates that the carrier's access charges are allowing it to recover more than its "cost plus a reasonable rate of return." Thus, it makes sense to cap that carrier's per-minute access charges at a level (the RBOC rate) that does not include a "differential" intended as an actual-cost offset.

We also recommend clarifications that prohibit "most-cost routing." Under this despicable practice, which has grown in popularity under the current ICC rules, some carriers have inflated access charges by inserting superfluous elements or circuitous routes into the call path. Those charges are then forced onto other carriers. Charges should be capped at the level associated with the most efficient available call path.

Phantom Traffic relates to a similar set of practices whereby a carrier mis-labels traffic it hands off to another carrier, such that the first carrier's access charge *obligations* are improperly *minimized*, and/or their access charges *assessments* are *maximized*. We support the rules proposed in the NPRM to curtail this. We also suggest that carriers be required to populate the CPN and Charge Number fields or their equivalents to deliver usable information about the origin of ALL calls, including in cases where that information is not provided by the call originator. We suggest coding practices that would allow calls to be marked as being of indeterminate geographic origin, and recommend the use of standardized "factoring" methodologies to allocate such calls to different jurisdictions.

As we embark on longer-term reform, ZipDX recommends the FCC facilitate real-time, interactive, objective-driven dialog among stakeholders (either in-person or "virtual"). These sessions would drive expeditiously to solutions that are both reflective of public policy and legal requirements, and also are technically and operationally compatible with existing and emerging technologies. These solutions must reflect not only historical and present-day usage scenarios, but also adopt the "lightest possible touch" to allow market forces to work and innovation to flourish.

Jonathan Banks
Senior VP, Law and Policy
USTelecom
<u>Summary of Comments at Intercarrier Compensation Reform Workshop</u>

USTelecom has long been an advocate of Commission action to address the arbitrage issues of Phantom Traffic and Traffic Pumping. Indeed, the most comprehensive proposal before the Commission for addressing Phantom Traffic is the USTelecom proposal submitted in early 2008. Additionally, USTelecom is a signatory to a comprehensive approach to Traffic Pumping submitted to the Commission last year.

At the Commission's workshop, Mr. Banks will emphasize the importance of having the Commission adopt rules addressing these arbitrage schemes at the earliest possible date. Both of these issues have been before the Commission and fully briefed for many years, and Commission could readily act on these issues prior to resolving broader inter-carrier compensation reform. Indeed, action on these arbitrage matters could provide useful information that would assist the Commission in achieving broader reform.

USTelecom is largely supportive of the Commission's proposal in the NPRM to address Phantom Traffic and Traffic Pumping. Nonetheless, USTelecom believes that these rules could be strengthened through the inclusion of certain additional aspects of the proposals submitted in our previous filings to the Commission. Mr. Banks will note some of these additional provisions and explain their importance.

CENTURYLINK
Intercarrier Compensation Reform Workshop
April 6, 2011

ACCESS STIMULATION

- Traffic pumping is an unlawful scheme to arbitrage switched access rates that were designed for rural, low-volume areas.
  - Traffic pumping arbitrage results in carriers paying tens of millions to provide windfalls to high-volume free conference call and chat services and their LEC partners.
- The NPRM proposes a hybrid approach: a trigger based on conduct, then change in rates.
  - A CLEC traffic pumper must reduce rates to those of a BOC or the state's largest ILEC.
  - At these volumes, the BOC rate is compensatory without resulting in the long distance carrier subsidizing the free calling services.
- CenturyLink applauds the FCC for the NPRM's proposal, but it should go farther.
  - CenturyLink proposed rules that include definitions of traffic pumping and business partner, and three options for eliminating the abuse.
    - Those include: (1) making it a violation of Section 201 to apply access tariffs to artificially pumped traffic; (2) ruling that interstate tariffs do not apply to artificially pumped traffic; and (3) adopting a rule prohibiting the sharing of switched access revenues.
  - The FCC also should confirm that tariffs filed or maintained to start or continue an unlawful traffic pumping scheme violate the Act and do not enjoy Section 204(a)(3) protection.
    - A tariff that was knowingly unlawful when filed cannot be deemed lawful.
  - The FCC also should declare that traffic pumping constitutes an unlawful practice under the Act, and not attempt to limit any such declaration to future actions by carriers.
    - The FCC cannot reasonably limit an order to prospective effect only.

PHANTOM TRAFFIC

- The NPRM rightly recognizes phantom traffic is improper arbitrage, as carriers disguise the nature or source of traffic in order to avoid or reduce access payments.
  - The bulk of phantom traffic is not inadvertent loss of identifying information. It is deliberate cheating by a carrier intentionally evading compliance with the FCC's intercarrier compensation rules.
  - It undermines the foundation of universal service and distorts competition.
- CenturyLink has long supported USTelecom's 6-part interim proposal.
- The NPRM's proposed rules similarly would prohibit altering, stripping, or omitting calling number information, and where technologically feasible would require accurate signaling information from origination regardless of technology.
  - The FCC's proposed rules are reasonable, but incomplete.
  - The NPRM falls short by failing to extend to ILECs the ability to invoke Section 251/252 negotiation and arbitration processes. All carriers should have this right.
  - The FCC also should follow USTelecom in applying a technological feasibility standard to intermediate carriers.
- As an ILEC that serves many high cost areas, CenturyLink has identified carriers terminating indirect traffic without ICAs in place, and refusing to negotiate them. The FCC should put a stop to this.
- Also, the FCC should make clear that the assignment of a telephone number that does not correspond to the actual physical location of the originating caller will not alter the actual jurisdiction of the call, including for rating purposes.
  - Where technologically feasible, geographical end-points and not telephone numbers would be the proper determinants of whether a call is local or non local, intrastate or interstate.

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
SUMMARY COMMENTS ON PHANTOM TRAFFIC AND ACCESS STIMULATION

PHANTOM TRAFFIC

- Phantom Traffic complicates or completely obfuscates the answers to 3 fundamental questions:
  1. Which provider is responsible for the call?
  2. What payment is due for the call?
  3. What happens if someone doesn't comply with the rules?

- The NPRM proposals, which appear to track in many respects to a US Telecom Proposal from 2008, are a good *start* but they only answer a part of Question #2.
  - Passing CPN/CN without stripping or alteration is necessary.
  - Requiring the transfer of information across platforms and indirect networks is necessary.
  - Prohibiting the population of CN field with information other than the number to be billed for the call is necessary.

- But to answer all 3 questions completely, more information must *get in and stay in* the signaling data and/or be required in billing records.
  - Must transmit CIC or OCN and JIP/LRN, in addition to CPN/CN. (Answers Questions #1 and 2)
  - Must prohibit the substitution of CPN or CN at gateways or platforms. (Answers Question #2)
  - Clarify that in the absence of better information, telephone numbers can be used to determine the jurisdiction of calls. (Answers Questions #2 and 3)
  - In addition to penalties for violating rules, must allow terminating LEC to charge highest rate or "penalty" rate to ensure enforceability. (Answers Questions #2 and 3)

ACCESS STIMULATION

- NTCA has supported, with a few exceptions, the proposal filed in October 2010 by US Telecom and a number of other carriers and organizations to address the incentives for traffic pumping. That proposal would require that a LEC modify its interstate access rates if its traffic volumes exceed a per-loop minutes-of-use (MOU) threshold in any given month. The modifications suggested by NTCA are:
  - A loop should be defined by DS0 (voice-grade) channels, rather than a physical connection.
  - The monthly per-loop MOU threshold should be set at 1,500 (rather than 406), and the trigger should be assessed over a calendar quarter, rather than over a single month.
  - There should be no blanket, overly broad prohibitions on revenue sharing arrangements because the term is not easily defined. A per-MOU threshold tied to a rate reduction should address any and all incentives and ability to engage in traffic pumping for whatever reason.

- The NPRM proposal to define the trigger by reference to "revenue sharing" is problematic.
  - Perpetuates ambiguity, rather than being clear-cut like a MOU trigger.
  - Could sweep up all sorts of legitimate arrangements.
  - Does not go to the heart of the problem – the economics that enable revenue to be shared.

SELF-HELP

- In addition to addressing the short-term issues, the FCC should address self-help at the same time.
  - IXCs are withholding or reducing payments based upon unilateral interpretations of law.
  - More significantly, there are pervasive, nationwide complaints about calls failing to complete to rural areas.

Summary of Presentation by Kathleen Grillo, Senior Vice President, Regulatory Affairs, Verizon Communications Inc.

FCC Workshop on Intercarrier Compensation/Universal Service Fund Reform
April 6, 2011

The industry needs the FCC to address VoIP intercarrier compensation now

- The lack of an FCC decision on VoIP compensation has resulted in a chaotic environment marked by disputes, lawsuits, administrative complaints, and financial uncertainty that detracts from other important priorities, like broadband deployment and adoption.
- The Commission needs to provide the industry and consumers with the regulatory certainty that is essential to promoting investment in advanced services.

Intercarrier compensation rates for VoIP should be set through negotiated, commercial agreements between interconnecting carriers.

- Relying on negotiated, commercial agreements is the best long-term solution to ensuring the efficiency of the communications markets in the face of rapid technological change.
- Negotiated agreements have proven successful in a variety of circumstances—most notably in the Internet itself.

The Commission should adopt a single low default rate of $0.0007 per minute prospectively for all VoIP traffic that connects with the PSTN.

- If providers are unable to reach a commercial agreement, the Commission should establish a default rate of $0.0007 per minute under its exclusive jurisdiction over VoIP services.
- A default rate of $0.0007 per minute is reasonable, because that is already the default rate for a substantial portion of the traffic that carriers exchange today.
- Setting a default rate of $0.0007 for VoIP traffic will also facilitate the Commission's key policy goals—a transition away from the implicit subsidies involved in the current intercarrier compensation regime and a faster transition to more efficient, all-IP network architecture.

The Commission can and should act pursuant to its exclusive jurisdiction over VoIP

- All VoIP and IP-enabled services, regardless of provider or technology, are interstate services subject to the Commission's exclusive jurisdiction. The Commission should reaffirm this important fact; this critical step will bring certainty to the marketplace and allow providers to deploy these services efficiently.

windstream™

The FCC immediately should confirm that interconnected VoIP providers are required to pay approved rates for terminating traffic on the Public Switched Telephone Network ("PSTN"). Further delays will reward certain VoIP providers' unlawful self-help, impede broadband deployment, and undermine comprehensive intercarrier compensation reform.

- In 2004, when initiating review of the regulatory treatment to be applied to IP-enabled services (including VoIP traffic), the FCC stated:

  > 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 the 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.[1]

  At the time, numerous parties, including Verizon and SBC (now AT&T), confirmed that the "existing rules" are "sensible and clear" in requiring that all providers of voice services that cross the PSTN to pay access charges. The vast majority of carriers have followed this practice.

- Since then, however, a handful of increasingly emboldened VoIP providers, likely in an attempt to cut their own costs, have disputed their obligations to pay access charges for traffic that uses the networks that are built and maintained, at significant cost, by others.

- This unlawful "self-help" produces cascading, toxic effects:
  - undercutting the legitimacy of the FCC's tariff process;
  - threatening universal service and the ability of carriers of last resort to maintain affordable end-user voice rates by removing essential funds from the system;
  - hindering broadband deployment by the companies most able and willing to serve high-cost areas; and—if it continues—
  - altogether undermining efforts for comprehensive, rational reform.

- There is no rational basis for treating VoIP and other PSTN traffic differently: VoIP and other PSTN traffic use the same network components, terminating carrier incurs the same costs, and from a customer's perspective, services appear virtually identical and are marketed as substitutes.

- In light of these similarities, the FCC has determined that VoIP services must comply with various Title II obligations. In 2010, in extending the universal service contributions requirements to nomadic interconnected VoIP providers, the FCC stated that it does not believe the deployment of IP-based services and the promotion of broadband deployment "are best advanced by giving one class of providers an unjustified regulatory advantage over its competitors."[2]

- If the FCC does not act now, pernicious self-help likely will destabilize the current system before rational reform can take place, and undermine the ability of carriers of last resort, such as Windstream, to serve consumers in high-cost areas.

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[1] 19 FCC Rcd 4863, 4904-05, ¶ 61.

[2] 25 FCC Rcd 15651, 15660, ¶ 22.

Summary of Presentation by Julie Laine, Time Warner Cable, to FCC Workshop on Intercarrier Compensation/Universal Service Fund Reform April 6, 2011

- TWC strongly believes that the fundamental goal of intercarrier compensation reform must be to harmonize and simplify the current system in a manner that is competitively and technologically neutral. Equal treatment of all types of telecommunications traffic across all jurisdictions is the only way to achieve this goal in the long term.

- The Commission therefore should avoid creating yet another new class of traffic—so-called "VoIP traffic"—in the existing intercarrier compensation regime, as it would only spur further inefficiency and arbitrage schemes and hamper the Commission's efforts to implement comprehensive reform.

- The NPRM does not define "VoIP traffic" and, in fact, the term as used is misleading in this context. It conflates the provision of *exchange access* services provided by a local exchange carrier with the treatment of the wholly distinct *interconnected VoIP* services provided by a retail VoIP provider.

- Regardless of whether a call originates in circuit-switched or IP format, an interexchange carrier's delivery of that call to a terminating LEC is subject to access charges (for toll calls) or reciprocal compensation (for local calls).

- Thus, TWC believes that any interim rules should confirm the applicability of these charges, rather than creating artificial new traffic categories that undermine the goal of harmonizing intercarrier compensation rates.

- Confirming that IP-originated interexchange traffic is subject to access charges also will promote the transition to IP, as it will eliminate obstacles to ILECs' conversion to IP technology. As long as ILECs perceive a regulatory advantage in insisting on the use of TDM technology, they will resist IP interconnection and the use of IP technology throughout their networks.

- The ESP Exemption does not permit IXCs to avoid paying access charges to LECs. The Commission introduced the ESP exemption in 1983 to allow enhanced service providers to pay flat-rate charges for business lines, rather than per-minute access charges. But that exemption applies only to the *provider* of the enhanced service. It has no bearing on the treatment of telecommunications service traffic terminated by LECs. Regardless of whether traffic originates (or ultimately terminates) in IP, an *IXC's* delivery of such traffic to a LEC is subject to access charges notwithstanding an *ESP's* independent entitlement to purchase a local business line in lieu of paying access charges.

SUMMARY

Vonage Holdings Corp. ("Vonage") urges the Commission to adopt a bill-and-keep regime for interconnected voice over Internet Protocol ("VoIP"). Adopting bill-and-keep for interconnected VoIP now is consistent with the Commission's goal of transitioning all intercarrier compensation to bill-and-keep and is economically efficient, forward-looking solution that will send appropriate price signals to consumers and the industry. In addition, because interconnected VoIP has been and will remain a key driver for broadband, a bill-and-keep regime for interconnected VoIP will promote the transition to broadband and all-IP networks. Interconnected VoIP should remain separate from any intercarrier compensation transition the Commission proposes. Injecting interconnected VoIP into that process, rather than placing it at the end point of the transition, is a step backwards to go forward.

The Commission has the authority to establish bill-and-keep for interconnected VoIP under Section 251(b)(5) and its own prior determinations that interconnected VoIP providers provide interstate telecommunications, regardless of the ultimate classification of interconnected VoIP. The scope of Section 251(b)(5) is not limited geographically, *i.e.*, to interstate, intrastate or local traffic, or to a particular service. It therefore provides ample authority for the Commission to include interconnected VoIP as compensable traffic and establish bill-and-keep as the appropriate compensation mechanism for this service.

Finally during the period that the intercarrier compensation for telecommunications service transitions to bill-and-keep, the Commission can address the potential for providers to falsely claim that telecommunications service is VoIP to avoid intercarrier compensation requirements by: (1) requiring VoIP providers to indicate in the signaling or billing information for a call that the call is VoIP and (2) prohibiting providers from falsely identifying traffic as VoIP under the Commission's proposed rules to address phantom traffic.

WORKSHOP ON INTERCARRIER COMPENSATION REFORM

Session 1: Intercarrier Compensation Arbitrage Issues and ICC Obligations for VoIP

Intercarrier Compensation for VoIP Panel

Lisa R. Youngers
Vice President, Federal Affairs
XO Communications

I. Federal Communications Commission's comprehensive compensation system for VoIP (including all IP-enabled originating and terminating services that are connected to the PSTN) should take effect immediately and apply prospectively only

   A. Commission's lack of decision has led to uncertainty and differing treatment of VoIP traffic by individual carriers

   B. Retroactive application of any particular compensation obligation would be inequitable based on this history

   C. Commission should state expressly that adoption of its rules regarding compensation for VoIP traffic is a "change of law"

II. Classification of VoIP services as information service or telecommunications service is not necessary in order to establish comprehensive applicable compensation system because all VoIP services include telecommunications component

III. Commission should exercise its authority to exclusively regulate compensation for VoIP traffic and preempt state compensation requirements

   A. Commission's traditional end-to-end analysis is unsuited to specify any particular VoIP call as intrastate or interstate

      1. Commission has already found interconnected VoIP and other IP-enabled services are inherently nomadic (*Vonage Order*)
      2. There is no nexus between telephone numbers assigned and actual geographic locations of VoIP customers when they place or receive communications to or from the PSTN
      3. Virtually all VoIP services offer consumers any distance calling, making no distinction between local and long distance calls, let alone intrastate and interstate
      4. Many IP-enabled services also combine other features and functionalities making it possible for end users to access websites during the same "communications session," further complicating any jurisdictional distinction for traffic

   B. Commission may preempt state regulation when state regulation would conflict with federal regulatory policies, as it would here where development of future VoIP services would be hindered by imposing jurisdictional distinctions

IV. Compensation system for VoIP traffic may be regulated under sections 251(b)(5) and 201

   A. Section 251(g) access regime should not apply to VoIP traffic

      1. Under Section 251(g), access charges apply only to telecommunications traffic that was subject to such charges at the time the 1996 Act was passed
      2. VoIP traffic was not exchanged between providers when the 1996 Act was passed
      3. Therefore, VoIP traffic is not subject to access regime that pre-dated the 1996 Act

   B. Even if VoIP did fall within 251(g), Commission may supersede 251(g) with new rules, which should not hinder VoIP services with legacy subsidies in access rates

V. Appropriate intercarrier compensation rate VoIP traffic exchanged on a TDM basis is reciprocal compensation rate

   A. Terminating carriers must have right to assess reciprocal compensation rate to TDM VoIP traffic even without agreement so that VoIP providers cannot refuse to negotiate agreement to avoid paying any rate for termination of VoIP traffic

   B. VoIP providers (or intermediate carriers) must clearly designate the traffic upfront as IP-originated to ensure efficient billing and to avoid endless after-the-fact billing disputes
      1. Traffic may be designated either by agreement or by an industry standard mechanism, such as populating JIP field on call records or using factors to indicate what percentage of traffic is IP-originated
      2. Carriers may not later dispute the assessment of access charges if traffic was not designated upfront as IP-originated

   C. Terminating carriers should have right to audit and verify originating carrier's designation of VoIP traffic

   D. Compensation arrangement should be reciprocal, such that an originating carrier cannot charge terminating access charges for calls *to* its VoIP customers while also designating calls (or factoring calls) as VoIP *from* those some VoIP customers in order to avoid paying the access rate. The originating carrier must treat its customers and services consistently for compensation purposes, whether the carrier is originating or terminating traffic.

VI. Commission should quickly adopt policies for IP interconnection and establish compensation regime applicable to all traffic exchanged in IP format, regardless of technology used to serve particular end users

   A. IP networks provide more efficient and lower cost transport and exchange of traffic
   B. Adoption of strong IP interconnection policies within the intercarrier compensation regime will create proper incentives to spur additional broadband deployment
   C. Traffic exchanged on IP-basis should not be subject to legacy TDM-based compensation

John Rose, President
Organization for the Promotion and Advancement of
Small Telecommunications Companies (OPASTCO)

Summary of views on the development of a recovery mechanism as part of comprehensive intercarrier compensation reform

FCC Workshop on Intercarrier Compensation Reform, April 6, 2011

- In order for intercarrier compensation reform to be beneficial to rural consumers, it is *essential* that there is a sufficient recovery mechanism that allows rural, rate of return-regulated local exchange carriers (RLECs) to recover the lost revenues during the transition.

- Absent a sufficient RLEC revenue recovery mechanism, intercarrier compensation reform will jeopardize rural consumers' access to "reasonably comparable" services and rates, as called for by the Telecommunications Act of 1996, and defeat the Commission's broadband objectives in rural service areas.

- RLECs rely on access charges for nearly 30 percent of their revenue per access line, on average. When combined with universal service support, those two sources account for 70 percent of their regulated revenues.

- Access charges, coupled with universal service support, have made it possible for RLECs to serve as carriers of last resort for voice-grade service and to offer at least basic levels of broadband to a large percentage of their customers at rates that encourage adoption.

- Nevertheless, much more needs to be done to make broadband availability ubiquitous in these areas and to provide speeds that can accommodate the many bandwidth-intensive applications that customers want to use. RLECs are committed to making this happen.

- However, RLECs' efforts will be thwarted without an adequate revenue recovery mechanism as access charges are lowered. Moreover, the lack of a sufficient recovery mechanism will necessitate rate increases in many rural areas for both basic and advanced services and stymie further growth in broadband adoption by rural consumers.

frontier
Communications

Frontier Communications

Intercarrier Compensation Access Recovery Mechanism Position Points

FCC Panel, April 6, 2011

- **<u>Frontier-Specific Positions</u>**
  - Revenues derived from access charges make up an important portion of Frontier's overall revenue stream.
  - Frontier's cash flow, which is positively impacted by intercarrier compensation revenues, provides the capital required to invest in its significant broadband expansion projects.
  - Frontier supports comprehensive intercarrier compensation reform because it agrees that the current system is fraught with inefficiencies and opportunities for waste, fraud and abuse.
  - Frontier does not expect to be directly "made whole" from the reform process but it does need to find ways to provide a reasonable glide path to soften the overall impact.
- **<u>Access Replacement Mechanism</u>**
  - In order to limit the amount companies can reasonably be expected to recover directly from their customer a transitional access recovery mechanism may be required
  - The most important element of the entire intercarrier compensation reform is the transition period over which it is done.
  - A longer transition period:
    - Allows companies to adjust their business models over time to account for the money it no longer receives from intercarrier compensation;

    - Puts less immediate burden on the end-user for recovery; increases are phased in over an equally long period of time;
    - Limits the size needed of any access recovery funding
- A flash cut or too quick of a transition in rates, be it from intrastate to interstate, or interstate down to a more nominal rate, necessarily requires a larger recovery mechanism.
    - Flash cuts put pressure on companies to raise end-user rates, either through a SLC increase, benchmark increase, or combination of both
    - It will require a specific fund to offset the losses temporarily.
        - A fund for this purpose would likely increase the size of the overall Fund and drive up the contribution percentage per user.
- Any transitional access replacement fund should replace a percentage of revenues, after any end-user increases
    - Any growth in the fund should be limited
    - Funding should phase out over a period of time
- The FCC cannot cut without recovery and expect broadband deployment to continue as it is today.

Federal Communications Commission, ICC Workshop, 4/6/10: Panel 3, Developing a Recovery Mechanism

Robert W. Quinn, Senior Vice-President – Federal Regulatory, AT&T

Recovery mechanism should be designed in context of and to promote overall vision for reform

- Migration of federal universal service objectives from POTS to broadband
- Two critical and intertwined components of this migration:
    - o Regulators will not replicate access charges on the Internet to subsidize "basic" Internet access service (nor should they)
    - o "Reasonably comparable" prices for broadband services in high cost areas will be higher than today's rates for "basic local exchange service" in those areas (which, as the Commission has found, are often lower than rates in urban areas)

Two principles for recovery mechanism:

1. Fiscally responsible
    a. Recovery mechanism should not create a windfall
    b. Commission should use a benchmark along with SLC increases/flexibility to ensure that those end users in high cost areas who have historically enjoyed very low rates bear a fair share of the burden
    c. Recovery mechanism should be sized to reflect reductions in lines and minutes, where appropriate, to ensure that service providers not recover more than they would have in the absence of intercarrier compensation reform
2. Transitional
    a. Purpose of recovery mechanism should be to help bridge transition from POTS to broadband
    b. Commission should consider increasing end user rate benchmark over time to more closely reflect end users' expected share of costs for broadband
    c. Upon completion of transition, recovery mechanism should be eliminated (along with legacy POTS obligations)

SPRINT NEXTEL CORPORATION
"Developing a Recovery Mechanism Panel"
Federal Communications Commission
April 6, 2011

The goal of intercarrier compensation and USF reform should be to create the conditions necessary to encourage competition, while preserving the ability of consumers to remain connected even in high cost areas. To accomplish this goal, carriers should, to the greatest extent possible, recover costs from their customers, not their competitors or other carriers. To the extent subsidies are required in high cost areas, they should be explicit.

FCC policy should also recognize that the government's role is not to ensure that a particular technology or business plan remains viable. As technology and consumer expectations change, businesses must adjust accordingly. The government cannot guarantee that a particular business plan or technology will continue indefinitely.

LECs have been aware for many years that major reforms could reduce their existing ICC and USF revenues. In general, the evidence suggests that LECs have already taken steps to minimize their exposure to reduced subsidies, including:

- Investing in more efficient, lower cost, more productive networks (more fiber in transport, packet technology)
- Developing new revenue streams and opportunities such as broadband services, video entertainment, and bundled service offerings
- Pressing state commissions for reform of local service rates

Any revenue replacement mechanism should be extremely limited in size and duration. There is no statute that guarantees LECs the same level of revenue, regardless of how they are performing in the market. In determining need for revenue replacement, Commission must take into consideration the following:

- LECs generate significant revenues and growth opportunities from non-regulated services offered using their regulated, subsidized networks and facilities.
- LECs (particularly the large ILECs) retain massive profits from excessively priced and largely unregulated special access services.

On-going subsidies and revenue replacement mechanisms come at a cost – they will prolong market distortions, reduce the possibility of competition, and reduce or defer the benefits of lower ICC rates to consumers. Carriers that do not benefit from existing subsidies, or even worse, which are forced to subsidize their competitors, are placed at a continuing competitive disadvantage and ultimately competition cannot survive under those conditions.

The 1996 Act mandates recovery of the cost of terminating traffic originated by another carrier through either bill-and-keep or incremental cost. It's been 15 years and it is well past the time for those basic premises to be accomplished.

SUMMARY OF NASUCA's INITIAL CONCERNS[1]: RECOVERY OF LOST ACCESS CHARGE/ICC REVENUE FOR FCC WORKSHOP April 6, 2011

Presented by David C. Bergmann, Assistant Ohio Consumers' Counsel, Chair NASUCA Telecommunications Committee

- NASUCA questions the premise of substantial reductions in intercarrier compensation ("ICC") rates, particularly to the level discussed in the Notice of Proposed Rulemaking ("NPRM"). Those rates should not be reduced below economic cost.[2]
- NASUCA also questions the presumption of a requirement for recovery of lost revenues, especially given past decreases resulting from declines in minutes over declining number of access lines.[3] Thus NASUCA strongly supports the apparent rejection in the NPRM of revenue neutrality.
- I n assessing carriers' need for revenue recovery, must include all sources of revenue: regulated and non-regulated, interstate and intrastate. And an overall rate-of-return consideration must be included.
- NASUCA also questions aspects of this discussion that depend on FCC assertion of authority over all ICC.
- If there is to be recovery from the universal service fund ("USF"), then it must be conditioned on the USF principles of § 254(c); i.e., without the support, rates for supported services would not be affordable and not reasonably comparable to urban rates.
- Oppose recovery through increases to the subscriber line charge ("SLC" or "EUCL"); this totally ignores the original purpose of the SLC as recovery for the interstate portion of common line,[4] and harms low-volume and non-users of the interstate network.
- Question the asserted connection between higher access charges and lower broadband deployment.[5] Also question the connection between lost access revenue recovery and incentives to accelerate the migration to all-IP networks.[6]

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[1] The opinions expressed here are preliminary and subject to change prior to the filing of NASUCA's comments on April 18, 2011.

[2] Challenge the presumption that ICC rates above incremental cost provide "subsidies." Must differentiate between "support" and "subsidies."

[3] Oppose recovery of any "intra-company" lost revenues.

[4] Also oppose deregulating SLCs where local rates have been deregulated.

[5] NPRM, ¶ 506.

[6] NPRM, ¶ 559.