

**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

**REPLY COMMENTS OF THE  
COALITION FOR RATIONAL UNIVERSAL SERVICE AND INTERCARRIER REFORM  
ON SECTION XV**

In the Comments received by the Commission so far, a number of common themes are noted. We wish to Reply to a few of the points that have been raised.

**What is arbitrage?**

The word “arbitrage” practically exudes controversy. Since the 1970s if not earlier, this term has been used as a pejorative in Commission proceedings. The earliest openings of competition, not to mention sharing and resale, were often met with derisive cries of “arbitrage”. It was considered problematic for the simple reason that common carrier rate structures were not meant, at that time, to reflect costs or market conditions at all. They were entirely an artifice, a synthetic design under the Uniform System of Accounts, openly intended to cross-subsidize certain groups of users via monopoly rents collected from others. When this type of monopoly is openly accepted, then arbitrage is problematic, as it is the literal evasion of these non-cost-based rates and their implicit contributions.

But today's telecommunications industry is *supposed* to be competitive. Interexchange services were demonopolized by 1984. Local exchange services were allowed to be offered on a competitive basis in 1996. Universal Service support is supposed to be explicit and transparent. If markets were, in fact, properly competitive, then arbitrage would be difficult, and would serve its proper function of market discipline, as it does in other sectors. We thus concur with Core Communications, and suggest that accusations of arbitrage should not be seen as a problem caused by the arbitrageur, but are instead indicative of a pricing mechanism that needs to be fixed, or as a sign of a market failure. This problem applies to three issues in Section XV.

### **The status of VoIP needs to be settled**

With regard to the issue of the proper treatment of VoIP, a recurring theme is noted. Companies are simply attempting to take the position that gives them the most commercial advantage at this time. Consistency with past positions is not required. It is no surprise that smaller ILECs favor applying access charges to VoIP calls. But AT&T Inc. (the former Southwestern Bell Telephone Company) and Verizon are now both owners of large IXC operations, while their LEC operations receive relatively low access charges under the decade-old CALLS plan. Hence their interest is in lowering access charges, especially *to* their VoIP competitors. Verizon has been engaging in "self-help" against carriers, such as Bright House Networks Information Systems<sup>1</sup>, whose networks support *fixed* (non-nomadic) VoIP operations that have *not* claimed exemption from access charges. It has unilaterally decided that the mere presence of IP as a multiplexing layer in the transmission path constitutes what Google so eloquently calls "magic pixie dust", allowing it to evade paying tariffed rates. This results from the lack of clarity about the Commission's non-rule policy on VoIP. This lack of clarity in today's non-rules leads to these endless conflicts.

Over the long term, there is simply no viable alternative to a fully-unified intercarrier compensation plan, such as the one we have proposed, and which various other commenters have supported. In the interim, *enhanced services* should remain exempt from access charges. Most enhanced voice services today make use of VoIP. However, "VoIP" and "enhanced", while largely overlapping categories, are not identical. If a carrier wishes to claim that a line or service is exempt from access charges for calls that it originates, then it is reasonable to exempt it from *receiving* access charges on calls that it terminates. But it should be the LEC owner or user of the line in question that requests the exemption; it should not be unilaterally claimed by access carriers. Perhaps the Commission should investigate the use of a data base for this purpose.

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<sup>1</sup> Bright House Complaint to the Florida Public Service Commission, Feb. 22, 2011.

We also note that some Comments suggested that the Commission encourage rapid transition to VoIP, and do this by favorable treatment. Such discrimination *against* non-VoIP technologies would be a distortion of the marketplace. VoIP should succeed or fail on its merits, not an Industrial Policy to favor its vendors. We note that YMAX Communications, which took this position, is now the owner of VocalTec, a manufacturer of VoIP carrier products. Its products would of course be favored if the Commission were to adopt the YMAX position.

### **Access stimulation should not be subject to self-help**

With regard to access stimulation, we note that a number of Comments agree with us that some form of automatic volume-based rate adjustments should be applied. The group of Commenters that includes NECA and OPATSCO, for instance, suggests volume triggers based on the number of minutes per access line. Free Conference suggests that a high volume traffic tariff be applied based on the volume of traffic a carrier receives.

We must however register our disagreement with proposals that trigger a lower access rate based upon traffic growth per se. While a rural ILEC's traffic growth is often triggered by a new service such as conference bridge, growth can occur for other reasons, including a new subdivision or business moving into its area. A CLEC may choose to enter a new market, or to increase its presence in a market, thus triggering a rapid growth in its traffic. An increase in market share should not be confused with access stimulation of any sort. The Commission's "new market cap" on ISP-bound dial-up calls was forborne several years ago. It should not impose a second new market cap, this time on access revenues, which would simply penalize all growth and thus dramatically harm competition.

We also strenuously disagree with the AT&T position that calls to conferencing services should be exempt from ordinary intercarrier compensation mechanisms and left instead to "market" pricing. While the "terminating monopoly" of exchange access services is well noted, LECs face a "terminating monopsony" when selling access services to an IXC. AT&T's own behavior does not back up its words. It has engaged in self-help of its own, refusing to pay lawfully tariffed access charges to CLECs without a separate contract. In a recent instance, it refused to pay a Coalition member CLEC's intrastate access tariff rates, and only offered to compensate for its intrastate traffic at the lower interstate rate *if* it discontinued supporting a conference bridge. Since the conference service was only a small part of the CLEC's total business, it did so, though it would have preferred to continue to keep the modest revenues that it had been producing. This makes a mockery of the concept of "market"; it is more of "we'll make you an offer you can't refuse". The enforcement of unambiguous, lawfully-tariffed unified intercarrier compensation rates should put an end to this.

Indeed the recurring theme that we noted in VoIP occurs here too. When IXCs were primarily selling service by the minute, they had every incentive to advertise and promote “the next best thing to being there”. But many consumers preferred flat monthly rates for service, *even if* their total usage costs would be lower under per-minute rates. Consumers are risk-averse, and predictability of the bill itself adds value. Carriers have responded by selling flat-rate monthly toll plans. Now, having sold their consumers on the merits of “all you can eat”, they are trying to repress demand. Conference calling is an application that had generated large numbers of toll minutes, on both measured and flat-rate plans, and has no doubt helped sell these flat-rate plans. If the IXCs succeed in putting these companies out of business, it is likely that usage will migrate to non-PSTN Internet services. Whether this improves or harms the IXCs’ bottom line remains to be seen. But it is not the Commission’s duty to allow them to experiment with the market this way. If they wish to sell “unlimited” plans to consumers, they should not devalue these plans by removing popular destinations from the network.

Respectfully submitted for the Coalition for Rational Universal Service and Intercarrier Reform

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