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

JOINT REPLY
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
WESTERN TELECOMMUNICATIONS ALLIANCE;
EASTERN RURAL TELECOM ASSOCIATION; and
THE RURAL BROADBAND ALLIANCE

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I. INTRODUCTION AND SUMMARY

The Associations listed above (herein, the "Rural Associations")[1] hereby file their Joint Reply to comments submitted on April 1, 2011 in the above-captioned proceeding.[2]

[1] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association (NTCA) is a national trade association

There is overwhelming support in the record for quick action by the Federal Communications Commission (the "Commission") to curb arbitrage opportunities in the intercarrier compensation ("ICC") system as set forth in Section XV of the Commission's NPRM. Specifically, the Commission should:

- Confirm the application of existing ICC rules to interconnected Voice over Internet Protocol ("VoIP") traffic;
- Amend the call signaling rules to require all voice service providers, regardless of technology or jurisdiction, to send all billing information necessary to assure proper billing of all calls, including information to allow identification of *both* the financially responsible provider and establishment of the appropriate rate for traffic terminating on the Public Switched Telephone Network ("PSTN"); and
- Implement reasonable measures to address access rate development and allowed levels of earnings in access stimulation situations.

The record also supports action by the Commission to resolve instances where interconnecting providers unjustly refuse to pay applicable charges for traffic terminating on

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representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. The Rural Broadband Alliance is a coalition of more than two hundred rural incumbent local exchange carriers formed to advance sensible, evidence-based policies for the deployment and adoption of broadband services for all of the nation's citizens including consumers and businesses residing in rural, insular and high cost-to-serve areas of the nation.

[2] *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*NPRM*).

rural local exchange carrier ("RLEC") networks, as suggested by the Rural Associations and others.

II. THE RECORD SUPPORTS CONFIRMATION THAT THE SAME INTERCARRIER COMPENSATION RATES AND RULES APPLY TO VOIP AS ALL OTHER VOICE TRAFFIC.

Virtually all parties agree there is an immediate need for the Commission to resolve disputes over the proper ICC treatment of interconnected VoIP traffic[3] and to inject some much needed stability into the ICC system before it can proceed with more comprehensive ICC reform. There is also broad consensus among commenters that the Commission may do so simply by confirming existing ICC rates and all other ICC rules apply to interconnected VoIP services in the same manner as other services.[4] It is fully apparent now (and has been for some time) that no differences exist between interconnected VoIP services and other voice services for purposes of the demands they generate in using the PSTN or in determining ICC obligations.[5] Regardless of the technology used to originate a call, once interconnected VoIP calls access the PSTN they use

[3] *E.g.*, AT&T at 28 ("act immediately to stop arbitrage schemes associated with IP/PSTN VoIP traffic"); ITTA at 1 ("urgent need for the FCC to expeditiously address issues relating to compensation for VoIP"); XO at 4-5 ("past time for the Commission to resolve the issue"). In contrast, Level 3 recommended the Commission defer resolution of the issue because it "is exceedingly complex, and is not amenable to a rapid declaratory ruling." Level 3 at 11. Based on the Commission's extensive proceedings on this issue over the last decade, a ruling at this time could hardly be considered "rapid."

[4] *E.g.*, AT&T at 29, CenturyLink at 14, Cox at 3-4, TWC at 3, Core at 10, Windstream at 3-4, Frontier at 4, ITTA at 7, Michigan PSC at 2, Ohio PUC at 7, Surewest at 3-4, Texas Statewide Telephone Cooperative at 3-4, Toledo Telephone at 2-3, Alaska Telephone Association at 2; Fairpoint at 6.

[5] *See, e.g.*, NECA, OPASTCO, WTA Reply Comments at 3, WC Docket No. 08-152 (filed Sept. 2, 2008).

the same call routing mechanisms, call paths and connections as all other calls on the PSTN and should therefore be subject to the same ICC rules.[6]

Commenters also generally agree the Commission can resolve ICC disputes without necessarily attempting to determine the regulatory classification of interconnected VoIP services.[7] As the Rural Associations discussed in their initial comments, the Commission has repeatedly applied many carrier-type regulations, such as E-911, CALEA, and Telecommunications Reporting Worksheet (Form 499-A and 499-Q) obligations, to interconnected VoIP service providers without determining the classification issue, and can do so again here.[8]

The few commenters who continue to argue in favor of preferential ICC treatment for interconnected VoIP traffic advance well-worn, but discredited theories in support. Some maintain, for example, that interconnected VoIP services qualify as "information" or "enhanced" services because a change in protocol occurs between a VoIP call's origination in IP format and its termination on the PSTN.[9] The Rural Associations and many other commenters explained, however, that interconnected VoIP services are neither "information" nor "enhanced" services but instead are indistinguishable from ordinary voice telephony services from both the

[6] NECA, NTCA, *et al.* Comments (Rural Associations) at 9 ("Interconnected VoIP calls placed to customers on the PSTN arrive on the PSTN in the same manner and use the same facilities as traditional voice calls"); Windstream at 4 ("no meaningful difference between IP-originated traffic and other traffic terminating on the PSTN"); ITTA at 10 ("VoIP traffic is functionally equivalent to TDM-based voice traffic").

[7] AT&T at 26; CenturyLink at 5; GVNW at 8; YMax at 4-5.

[8] Rural Associations at 12-13; Washington UTC at 8; Windstream at 9-10; ITTA at 11-12; Missouri Small Telephone Company Group at 8.

[9] Verizon at 3, 6-7; Vonage at 7; Google at 4.

customer's perspective, as well as the network's.[10] Nearly all modern telecommunications services require some form of "protocol conversion" to transport voice calls across and between networks, yet they are not considered "information services" simply because a conversion occurs. Moreover, even if such services *were* "information" or "enhanced" in nature, this does not excuse them from paying the applicable ICC rates based upon the way in which the call is routed across and uses the PSTN. Indeed, as noted in the preceding paragraph, the Commission has applied a whole host of common carrier-like obligations to VoIP services without reaching the classification question, and it can and should do so again here by confirming that the purported regulatory status of the provider has never had anything to do with what that provider in turn owes when it chooses to use the PSTN to route the traffic it generates.

The record is also abundantly clear that wholesale transmission providers whose customers may happen to provide interconnected VoIP services cannot claim the benefits of the "Enhanced Service Provider (ESP) exemption" for themselves. If a carrier routes traffic across the PSTN, the question of who that carrier's customer might be is irrelevant to the question of what that carrier owes for the use of others' networks. As the Rural Associations and others explain, the ESP exemption is very narrow and was intended to apply *only* to calls placed by customers of an ESP to access the ESP's information services.[11] Similarly, the ESP exemption was never intended to apply to calls delivered to a LEC for termination to that carrier's customers on the PSTN.[12]

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[10] CenturyLink at 16 ("functionally the same"); Windstream at 4 ("no meaningful difference"); Frontier at 8 ("indistinguishable"); ITTA at 10 (functionally equivalent").

[11] Rural Associations at 13. *See also* AT&T at 27-28; CenturyLink at 15-16; Windstream at 12-13; ITTA at 13-16.

[12] AT&T at 27-28.

Other parties point to earlier Commission decisions determining that "nomadic" VoIP services should be subject to the Commission's exclusive jurisdiction in support of treating *all* interconnected VoIP traffic as interstate.[13] As the Commission has recognized, however, these decisions do not establish a basis for preemption of *fixed* VoIP services.[14]

Verizon suggests rather than applying existing access tariffs to interconnected VoIP traffic, carriers should negotiate commercial agreements to establish rates.[15] While Verizon asserts such agreements have been "tremendously successful"[16] in resolving ICC disputes, it also urges the Commission to set a default VoIP ICC rate of $0.0007 per minute for carriers that are unable to reach an agreement, as "that is already the default rate for a substantial portion of the traffic that carriers exchange today."[17] Reliance on commercial agreements presumes, however, that parties are willing to negotiate in good faith. In fact, RLECs are generally unable to get larger carriers to even come to the negotiating table, let alone negotiate in "good faith" and agree to fair terms.[18]

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[13] Verizon at 20-31; VON Coalition at 2.

[14] *Universal Service Contribution Methodology*, WC Docket No. 06-122, *Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling, 25 FCC Rcd 15651 (2010) ¶ 14 (*Universal Service VoIP Declaratory Ruling).*

[15] Verizon at 11.

[16] *Id.* at 13.

[17] *Id*. at 6.

[18] Rural Associations at 30; OPASTCO & WTA Comments, WC Docket No.05-337, at 23-24 (filed Nov. 26, 2008) ("rural RoR ILECs having virtually no bargaining power or negotiating position with the carrier that serves as the transiting provider"); Rural Iowa Independent Telephone Association Comments, WC Docket No. 05-337, at 3 (filed Nov. 26, 2008) ("Companies with 1000 access lines have no bargaining power to negotiate with large interexchange carriers, RBOCs, mid-size carriers"); Rural ETCs in Arkansas Comments, WC Docket No. 05-337, at 4 (filed Nov. 26, 2008) ("Small ROR companies do not have the resources to negotiate interconnection agreements with large carriers").

Most wireless carriers,[19] along with many VoIP service providers and advocates,[20] support mandatory imposition of a bill-and-keep regime for interconnected VoIP traffic. Mandatory bill-and-keep for VoIP traffic would obviously be beneficial to VoIP service providers, but there is no lawful basis for such treatment. Bill-and-keep may be appropriate on a voluntary basis for networks that exchange roughly the same amount of local traffic, but when traffic is not in-balance mandatory bill-and-keep simply causes the network receiving larger amounts of traffic to subsidize networks sending larger amounts of traffic, to the disadvantage of other ICC payers and end users.[21]

The record shows that any system that does not treat VoIP traffic the same as all other voice traffic (whether by prescribing bill-and-keep, $0.0007 or some other VoIP-specific per-minute rate) violates Commission policies on nondiscrimination and favoring technological neutrality.[22] The same rates and regulations must be applied uniformly to all traffic, technologies, and service providers offering voice services. To do otherwise would catalyze many providers to assert most of their traffic is VoIP to qualify for the more favorable rates, thereby substantially increasing the amount of rate arbitrage that is presently occurring. This is precisely the opposite effect of what the Commission seeks to achieve with its near-term ICC reforms.[23] In fact, if the Commission were to find that VoIP traffic should be subject to an artificially and uniquely low or zero rate, it would effectively concede all control over

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[19] CTIA at 11; T-Mobile at 10; Metro PCS at 14-15; Sprint at 5-6.

[20] *E.g.*, Vonage at 5-6; VON Coalition at 4; YMax at 4-5.

[21] Rural Associations at 15; Small Company Committee of the Louisiana Telecommunications Association at 9; Alaska Telephone Association at 2-3; PacWest at 13.

[22] *NPRM* ¶¶ 93, 114, 160, 620.

[23] *Id.* ¶ 603. ("We therefore seek comment on rules intended to curb arbitrage opportunities and thereby reduce inefficiencies and wasteful use of resources enabled by the current intercarrier compensation system.")

comprehensive reform, as those who send the traffic would have every incentive to label every minute of their traffic going forward as "VoIP" and thus eligible for low-cost or free termination – and then dare RLECs and others to sue to prove otherwise. The Commission should not hand over the keys to reform to self-serving industry players, but should instead impose a rational system in the near-term as it considers how to achieve its longer-term objectives of a unified ICC framework.

Finally, a few parties contend the Commission should apply ICC obligations to interconnected VoIP traffic only on a prospective basis.[24] The vast majority of commenters make plain, however, that *existing* rules govern ICC obligations for interconnected VoIP traffic, including requirements that interconnected VoIP providers pay access charges for interexchange calls that terminate on the PSTN.[25] As CenturyLink stated, "[t]he Commission cannot retroactively change what rules it already requires."[26] While the Commission can certainly change its rules going forward (assuming there is a valid basis for doing so), "it would be wrong to reward parties that have been improperly disputing – or withholding payment on – LEC access

[24] Verizon at 15-19; *see also* Vonage at 3, VON Coalition at 4.

[25] *E.g.*, AT&T at 8, 28; Windstream at 2; CenturyLink at 3 ("Confirmation"); Fairpoint at 5-6; ITTA at 7 ("affirmation"); Indiana PUC at 6; Michigan PSC at 2; Washington UTC at 7; KCC at 16; TDS at 3; Surewest at 3-4; Hawaiian Telecom at 3; Missouri Small Telephone Company Group at 2 (emphasis added).

[26] CenturyLink at 17. *See also* ITTA at 18-19 (*citing Qwest Services Corp. v. FCC*, 509 F.3d 531, 539 (D.C. Cir. 2007), *aff'g in part and rev'g in part*, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) (FCC found AT&T liable for universal service contributions on a retroactive basis after determining prepaid calling card services "offered nothing more than the functional equivalent of voice calling.").

charges."[27] The proper course is for the Commission to confirm the application of existing ICC rules apply to VoIP traffic in the same manner as other voice traffic terminating on the PSTN.[28]

III. COMMENTS DEMONSTRATE CLEAR CONSENSUS FOR RAPID ADOPTION OF THE COMMISSION'S PROPOSED SIGNALING RULES, WITH ADDITIONAL REQUIREMENTS TO ALLOW IDENTIFICATION OF THE FINANCIALLY RESPONSIBLE PROVIDER, THE APPROPRIATE ICC RATE, AND BUILT-IN COMPLIANCE INCENTIVES.

Virtually all commenters agree the Commission should immediately adopt revised call signaling rules. Most also agree, however, the rule changes proposed in the NPRM will not fully resolve phantom traffic issues because Calling Party Number ("CPN") and Charge Number ("CN") data, by itself, will not allow terminating carriers to identify *who to bill* for each call, and will likely not be sufficient to clear up disputes over *what ICC rate to apply.* Additional actions are needed to deal effectively with "phantom traffic" problems.

Commenters correctly identify the need to require inclusion and transmission of carrier identification codes, such as the carrier identification code ("CIC") or operating company number ("OCN"), in the billing records and the jurisdiction information parameter ("JIP") in signaling information to allow identification of financially responsible providers.[29] As PAETEC, MPower, U.S. TelePacific, and RCN point out, "ensuring the passing of the CPN or the CN will not enable the terminating LEC to identify the service provider responsible for payment of the terminating access charges, nor will it necessarily properly identify the call as a

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[27] CenturyLink at 17.

[28] Should the Commission, however, somehow determine existing law should be applied only on a prospective basis, it should clarify that no refunds are due for previously-paid charges assessed in accordance with carrier access tariffs or other ICC arrangements. The Commission should also make clear carriers that have provided termination services in the past to interconnected VoIP providers without payment are entitled to compensation for prior services rendered.

[29] PAETEC, MPower, TelePacific and RCN at 6-7; Sprint at 26; GVNW at 5; Rural LEC Section XV Group at 11; Nebraska Rural Independent Companies at 21; Blooston Rural Carriers at 10.

toll call."[30] GVNW further explains that in cases where the CIC is not appropriate (e.g., when an interexchange carrier (IXC) is not involved), "the OCN is used to indicate to the terminating party that the call was carried by a local exchange carrier or a wireless carrier."[31] Thus, requiring inclusion of CIC or OCN codes, as already required by ATIS industry billing standards,[32] is necessary for carriers to identify which provider to bill for calls.

A number of commenters also recommend requiring transmission of JIP data.[33] As Hypercube points out, with JIP information "identification of the provider to be billed is virtually certain, because the JIP is provider-specific, and it also includes at least some originating jurisdiction information."[34] Comments also indicate JIP information would help terminating carriers establish the proper rate to bill for each call, because it identifies the first PSTN switch used by a call.[35] The JIP is especially useful for mobile wireless calls and for calls that originate with Internet protocol (IP)-based providers. However, the Commission's rules should make clear the *correct* JIP is to be transmitted. As comments report "wireless carriers frequently include either JIPs that are not accurate or they do not include them at all on their terminating traffic."[36]

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[30] PAETEC, MPower, TelePacific and RCN at 6.

[31] GVNW at 6.

[32] *See* Rural LEC Section XV Group at 11.

[33] Hypercube at 12-13; Frontier at 13; TDS at 9; PAETEC, MPower, TelePacific and RCN at 4.

[34] Hypercube at 17 ("this additional information may be particularly useful as the transition to all-IP networks proceeds and less traffic falls within the traditional circuit-switched mode.")

[35] Frontier at 13 ("Requiring inclusion of the JIP, which is the NPA-NXX that identifies the originating caller's geographic location and the originating caller's service provider, would help to end the practice of disguising a call's true origins to avoid paying the proper rates for access to another company's infrastructure.").

[36] *Id.*

Some point out the JIP is not a "mandatory" field in SS7 signaling standards.[37] Since the Commission's current rule requires transmission of non-mandatory "CN" data, the fact industry standards groups have been unable to agree to make JIP a mandatory field should not bar the Commission from requiring its population in signaling streams. As another commenter noted, "the JIP code is now an element of both SS7 signaling Initial Address Messages (IAMs) and Session Initiation Protocol ("SIP") "INVITE" messages."[38] The Rural Associations therefore recommend the Commission include a requirement to transmit the correct JIP in its revised call signaling rules as this will help clear up a large number of billing disputes.

The Rural Associations suggested in comments that, in cases where JIP information has not been transmitted with a call, or where parties have been unable to agree on appropriate billing factors, the Commission should confirm that providers can use the "telephone numbers rule" as a default mechanism for establishing call jurisdiction.[39] Other parties support this approach.[40] The Blooston Rural Carriers agree, for example, the Commission should "confirm that, in the absence of more accurate information or a governing agreement, terminating carriers may rely on the originating and terminating numbers of a call to determine jurisdiction for billing purposes."[41]

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[37] LSSGR: Switching System generic Requirements for Interexchange Carrier Interconnection Using the Integrated Services Digital network User Part, GR-394-CORE, Telcordia Technologies, Issue 8, Nov. 2007, § 3.5.4.5 (An originating switch or access tandem may include the JIP in the Initial Address Message as a LEC option.).

[38] Hypercube at 17.

[39] Rural Associations at 28.

[40] CenturyLink at 23; Blooston Rural Carriers at 10; TCA at 6.

[41] Blooston Rural Carriers at 10.

Wireless carriers generally oppose use of CPN or JIP to establish call jurisdiction.[42] This is not surprising, as many commenters indicate a substantial number of billing disputes with these providers.[43] Wireless carriers argue in favor of using agreed-upon traffic factors for billing purposes, but "voluntary negotiations have not been fruitful in large part because large wireless providers are unwilling to pay rates that reflect the cost of providing service in sparsely-populated rural service areas or, if they are willing to accept that rural costs differ significantly from urban areas, they insist on originating/terminating traffic factors that effectively eliminate their financial liability for using rural networks."[44] Rural carriers consistently report difficulties in negotiating fair agreements with wireless carriers because negotiating power is so drastically skewed against them, and also complain it is nearly impossible to audit traffic factors.[45] To clear up continual disputes over this issue, the Commission should confirm that RLECs may use telephone numbers to establish call jurisdiction as a default mechanism when signaling information or a mutual agreement is not available.

Finally, comments also correctly identify the need for incentives to assure compliance with the amended call signaling rules. Putting terminating carriers in the position of having to chase down "bad actors" (to the extent they can be identified at all) will hardly deter such conduct, and thus many rightly note that the FCC's call signaling rules can only be effective if non-compliance is linked to a clearly-defined and self-effectuating sanction, such as higher

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[42] *E.g.*, CTIA at 9; Sprint at 25-26.

[43] E.g., Rural LEC Section XV Group 19-20 ("Broken out by type of service provider, it is clear that most of the uncompensated terminating minutes originate from wireless providers.").

[44] *Id.*

[45] Letter from Joe Douglas, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 01-92, Attachment 8, 11-12, 18 (filed Mar. 27, 2008); NECA Petition for Interim Order, CC Docket No. 01-92 (filed Jan. 22, 2008).

terminating rates.[46] Several commenters, including the Rural Associations, recommended the Commission adopt its 2008 proposal to allow terminating carriers to charge the service provider delivering the traffic their highest rate for calls that arrive without sufficient information for billing. GVNW's comments include proposed language for adding a subsection (3) to section 64.1601(a) of the rules as follows:

> *In the event that traffic does not contain the information required by our rules, or the provider delivering the traffic does not otherwise provide the required call information, we allow the terminating service provider to charge its highest terminating rate to the service provider delivering the traffic. In the case of an intermediate provider, that provider can charge the rate it was charged to the provider that delivered the improperly labeled traffic to it.*

The Rural Associations also suggested the Commission include some mechanism to insure carriers pay valid ICC bills on a timely basis. As the Rural LEC Section XV Group points out, "if the Commission elects not to hold the intermediate provider financially responsible for all of its wholesale customers' traffic, at a minimum, the FCC should provide a mechanism that will allow RLECs to 'disconnect' the originating party . . . ."[47] The Rural Associations agree the Commission should require intermediate service providers to implement a mechanism that will allow RLECs to require the intermediate service provider to block traffic from parties that refuse

[46] Toledo Telephone at 5; RNK Communications at 9-10; Blooston Rural Carriers at 8-10; *see also* Brighthouse at 8-9. XO suggests that the Commission's proposal could be strengthened by permitting terminating LECs to charge the highest available intercarrier compensation rate when more than ten percent of the traffic delivered to it lacks the required call signaling information. XO at 3. The Michigan PSC states that changes in FCC rules, or industry standards, may only be effective if non-compliance is linked to a sanction, such as higher terminating rates or the inability to use telephone numbering resources for a carrier's customers. Michigan PSC at 4-5.

[47] Rural LEC Section XV Group at 15 ("similar to what is allowed for interexchange carriers under existing tariffs"); Toledo Telephone at 6.

to accept financial responsibility for the traffic they pass to the RLECs after some reasonable period of notice, as stipulated in their tariffs.[48]

In summary, the record strongly supports imposition of additional requirements in the Commission's proposed call signaling rules to address fully the phantom traffic issues described in the NPRM. In addition to CPN, the Commission should require the transmission of the CIC or OCN (as appropriate) in the call record and the JIP in call signaling. It should also confirm the Commission's telephone numbers rule can be used by RLECs as a default for establishing call jurisdiction, when signaling information or a mutual agreement on factors is not available. In addition, in order to incent compliance, the Commission should adopt its own proposal to allow terminating carriers to charge their highest terminating rate to the provider delivering the traffic for calls that lack sufficient information to bill. Finally, the Commission should confirm that RLECs can follow their tariff procedures for discontinuance of service to carriers who consistently refuse to pay ICC bills, including establishing procedures for terminating carriers to discontinue service to indirectly-connected originating providers.

IV. THE COMMISSION SHOULD PROMULGATE RULES REASONABLY TAILORED TO ADDRESS PROBLEMS WITH ACCESS STIMULATION.

In initial comments, the Rural Associations supported rule amendments to require carriers to establish access rates that reasonably reflect actual demand volumes, and the Rural Associations specifically recommended the Commission implement a reasonably developed minutes-of-use (MOU) threshold trigger in place of a trigger based on the existence of a revenue sharing agreement.[49] The Rural Associations pointed out that traffic increases that result from

[48] Rural Associations at 37; Missouri PSC at 9; *see also* Small Company Committee of the Louisiana Telecommunications Association at 13-14.

[49] Rural Associations at 32.

legitimate and much-needed economic activity in rural areas should not discouraged, and also explained that use of a revenue sharing agreement trigger would be vague and problematic, since legitimate arrangements between carriers and customers might fall within the proposed definition and yet not involve the type of access stimulation arrangements at issue in this proceeding.[50]

Comments from other parties echo these concerns. Comcast, for example, agrees that "triggers tied to specified increases in minutes of use over a particular period might be a more effective deterrent to traffic pumping."[51] Cablevision and Charter similarly urge the Commission to clarify that "not all revenue-sharing arrangements are improper."[52] As these companies explain, "CLECs [competitive local exchange carriers] may share revenues with affiliates for legitimate reasons, and the Commission should be cautious to . . . [not] penalize such arrangements."[53]

RNK, Inc., a CLEC and IXC, also argues against revenue sharing triggers, stating, *inter alia*, "marketing incentives are commonplace in many industries as legitimate ways of increasing revenues and encouraging new customers to obtain service . . . ."[54] The Rural Associations disagree strongly, however, with RNK's characterization of rural access rates as "bloated."[55] Access rates for RLECs are based on demand and cost projections that are updated each year.

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[50] *Id.*

[51] Comcast at 13.

[52] Cablevision and Charter at 13.

[53] *Id.* at 14.

[54] RNK Communications at 11.

[55] *Id.*

The Rural Associations' recommendation to impose MOU thresholds recognizes that demand is a corollary to rates that are correctly calibrated to recover costs.[56]

A volume-based trigger is at once a more precise and also a more far-reaching tool for deterring access stimulation practices.[57] A reasonable MOU/line/month trigger, calculated based on a quarterly average of traffic, will be more than sufficient – and far more effective – than a vague "revenue sharing" trigger in deterring providers from engaging in access stimulation, and will be a more accurate indicator of when such activity is actually occurring.

Finally, the Rural Associations recommend the Commission refrain from attempting to "forbear from enforcement" of the "deemed lawful" provisions of section 204(a)(3) of the Communications Act of 1934, as amended, when requiring carriers to refile tariffs. Although "deemed lawful" treatment may not be an unqualified right, as the NPRM suggests,[58] a proposal to deny deemed lawful status automatically to filed tariffs, even where carriers file full cost support, will likely raise significant legal issues and should be avoided as this approach appears

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[56] The Commission should also resist rhetoric aimed at social sensitivities rather than proper pricing policies. *See, e.g.*, AT&T n.8 (referencing use of some conferencing services for pornographic chat lines).

[57] Rural Associations at 33. An "access revenue sharing agreement" trigger would also present enforcement difficulties in cases where carriers and traffic aggregators participate in informal arrangements without written documentation. No such difficulties occur with a volume-based trigger. If, however, the Commission is determined to use the presence of an agreement as a trigger, it should modify its proposed rule to take account of the specific intent of the parties to that agreement with respect to the stimulation of access traffic. By focusing on the express intent as manifested in a written arrangement between the LEC and the customer with whom the LEC may be sharing revenue – and then combining that focus with an appropriately set MOU trigger – the Commission would be better equipped to assess whether the core purpose (and effect) of the contract was to stimulate calls specifically for the purpose of generating and then sharing access revenues. The Commission should also be careful to ensure by express provision in any such rule that legitimate arrangements, such as the relationship of a cooperative and its members, are not inadvertently swept up in any revenue-sharing trigger.

[58] *NPRM* ¶ 666.

unnecessary and raises significant questions as to whether the Commission has authority to limit the application of section 204(a)(3) in this manner.[59]

V. CONCLUSION.

Virtually all parties agree on the need for the Commission to act immediately on the issues presented in Section XV of the NPRM. First, the Commission must confirm existing ICC rates and rules apply to interconnected VoIP traffic. Interconnected VoIP is not an "information" or "enhanced" service that merits preferential treatment, and giving it preferential treatment will only serve to exacerbate the arbitrage the Commission seeks to curb. Moreover, even if it were an "information" or "enhanced" service, traffic generated from interconnected VoIP services places the same burdens and makes the same use of the PSTN as any other traffic, and is therefore subject to the same ICC obligations, regardless of classification of the underlying service that generated the traffic.

Second, the Commission should adopt its proposed amended call signaling rules, but also include requirements to transmit the CIC or OCN (as applicable) and the JIP to assist terminating carriers in identifying the financially responsible party to bill for the call. To incent compliance with amended call signaling rules, the Commission should adopt a rule based upon its 2008 proposal to allow terminating carriers to charge their highest terminating rate to the provider delivering the for calls that lack sufficient billing information, and confirm RLECs can follow their tariff procedures for discontinuance of service to carriers who consistently refuse to pay ICC bills. In addition, the Commission should confirm RLECs can use the "telephone numbers

[59] In *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (D.C. Cir. 2002), the D.C. Circuit suggested it might be permissible to deny deemed lawful status where it appears carriers have furtively employed improper accounting techniques in a tariff filing. *Id.* at 413. Requiring carriers to file tariffs based on full cost support should, however, address the possibility of "furtive" action at the outset. *See, generally*, ITTA at 29.

rule" to determine the jurisdiction of a call for billing purposes when call origination information or a mutual agreement on factors is not available. Finally, to address access stimulation, the Commission should implement a volume-based trigger based on a quarterly average of traffic. This approach is superior to a trigger based on the existence of revenue sharing agreements, which would be vague and problematic. The Commission should also refrain from adopting the proposal denying "deemed lawful" status to filed tariffs.

Respectfully submitted,

April 18, 2011

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

By:

Richard A. Askoff
Linda A. Rushnak
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
By: /s/ Jill Canfield
Jill Canfield
Director , Legal and Industry
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES
By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and Business Development
2020 K Street, NW, 7th Floor
Washington, DC 20006
(202) 659-5990

WESTERN TELECOMMUNICATIONS ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Attorney for Western Telecommunications Alliance
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830

EASTERN RURAL TELECOM ASSOCIATION
By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
5910 Clyde Rhyne Drive
Sanford, NC 27330
(919) 708-7404

THE RURAL BROADBAND ALLIANCE
By: /s/ Sylvia Lesse
Sylvia Lesse
Its Attorney
Kraskin & Lesse
2154 Wisconsin Avenue N.W.
Washington, D.C. 20007
(202) 333-5273

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Reply Comments was served this 18th day of April, 2011 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com