

**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 a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION  
AND CHARTER COMMUNICATIONS, INC.**

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**REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION  
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Cablevision Systems Corporation (“Cablevision”) and Charter Communications, Inc. (“Charter”), by their counsel, hereby submit reply comments on Section XV of the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned dockets.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

There is widespread agreement that the Commission should promptly establish forward-looking rules regarding the intercarrier compensation treatment of VoIP traffic to foreclose the arbitrage, fraud, and competitive distortions that would inevitably arise if the Commission were

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<sup>1</sup> *In re Connect America Fund*, Notice of Proposed Rulemaking & Further Notice of Proposed Rulemaking, FCC 11-13, 2011 WL 466775 (FCC rel. Feb. 9, 2011) (“*NPRM*”).

to establish a different rate for VoIP traffic.<sup>2</sup> Many commenters also agree that the Commission's ultimate objective should be a unified intercarrier compensation regime in which the costs of exchanging traffic do not depend on arbitrary jurisdictional or technological differences. Where there is disagreement, however, is on the path the Commission should take to reach that end goal. While most commenters support a technologically and competitively neutral approach that treats intercarrier compensation rates for VoIP and circuit-switched traffic identically, some providers – hoping to lower their costs or improve their competitive positions – are urging the Commission to sever VoIP from circuit-switched traffic and to reduce (or eliminate altogether) immediately any payment obligations for the exchange of VoIP traffic.

The Commission should resist these calls to introduce into the market a pricing disparity that would be arbitrary, unworkable, and unnecessary. Supporters of a separate VoIP rate present no compelling legal or policy reasons for VoIP calls to be treated any differently for compensation purposes than circuit-switched calls, offer no workable solution to the administrative difficulties such separate rates would create, and cannot even agree among themselves about how to define the calls to which any such separate rate should be applied. Comments urging a separate rate for VoIP traffic do not represent a serious policy proposal, but

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<sup>2</sup> As noted in Cablevision and Charter's initial comments, the existing regime plainly requires identical treatment of VoIP and circuit-switched traffic for compensation purposes. *See* Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 2 n.2. However, as the Commission recognizes, some providers claim otherwise. *See NPRM* ¶ 613. Consistent with the scope of the *NPRM*, Cablevision and Charter's comments address prospective changes to the intercarrier compensation rules and are not intended to suggest anything regarding the current rules. We note that the *NPRM* does not seek to resolve disputes concerning application of existing law. *See id.* ¶ 614.

are no more than an effort by some providers to create an arbitrary regulatory distinction from which they can benefit economically.<sup>3</sup>

**I. THERE IS WIDESPREAD AGREEMENT REGARDING THE NEED FOR PROMPT FCC ACTION TO CLARIFY THE STATUS OF VOIP TRAFFIC PROSPECTIVELY.**

Regardless of the substantive positions taken by various commenters, there is near-universal agreement that the Commission should clarify the intercarrier compensation status of VoIP going forward, and should do so as soon as possible.<sup>4</sup> While Cablevision and Charter both believe that telecommunications traffic that originates or terminates as a VoIP call is subject to the same intercarrier compensation regime as any other call, the absence of definitive guidance from the Commission on this point has led to many carriers openly flouting their payment obligations, unlawfully exercising self-help, and undermining the authority of this Commission.<sup>5</sup> These disputes are getting increasingly more rancorous, as carriers have begun taking more aggressive positions, disputing not only the applicability of interstate access charges, but also

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<sup>3</sup> A separate rate for VoIP traffic would also be inconsistent with the Commission’s longstanding commitment to technological and competitive neutrality – principles the Commission reaffirmed less than two weeks ago. *See In re Implementation Of Section 224 Of The Act A National Broadband Plan For Our Future*, Report and Order and Order on Reconsideration, 2011 WL 1341351, at \*53, ¶ 173, WC Docket No. 07-245, FCC 11-50 (FCC Apr. 7, 2011) (“[T]he telecom rate we adopt today helps to ensure that our policies regarding pole attachment rates promote competitive and technological neutrality, and hence more effective competition, resulting in more efficient investment, innovation, and service provision.”); *In re Reexamination Of Roaming Obligations Of Commercial Mobile Radio Service Providers And Other Providers Of Mobile Data Services*, Second Report and Order, 2011 WL 1341353, \*14, ¶ 41, WT Docket No. 05-265, FCC 11-52 (FCC Apr. 7, 2011) (applying data roaming rules to all commercial mobile data services, regardless of the devices used by such services, because that approach “will help to achieve technological neutrality”).

<sup>4</sup> *See, e.g.*, Comments of AT&T at 28-29; Comments of Verizon & Verizon Wireless at 5; Comments of Comptel at 2; Comments of Independent Telephone & Telecommunications Alliance at 7; Comments of XO Communications LLC at 5.

<sup>5</sup> *See, e.g.*, Comments of Bright House Networks at 7-8 (noting Verizon’s self-help in refusing to pay intercarrier compensation on calls that begin or end with a VoIP subscriber, but noting that “problem is industry-wide”); Comments of CenturyLink at 3-5 (noting unlawful self-help by carriers disputing charges under current regime).

*intrastate* access charges and reciprocal compensation obligations under existing interconnection agreements. These disputes, and the proliferating litigation that surrounds them, are expensive, chill investment decisions, and divert resources that carriers could better put to other uses, such as expanding service offerings and/or upgrading and expanding their networks. Clearly, the time for the FCC to act is now, before further carrier resources are wasted in litigating this issue.

## **II. THE COMMISSION SHOULD RESIST CALLS TO INTRODUCE PRICE DISPARITIES BETWEEN VOIP AND CIRCUIT-SWITCHED TRAFFIC.**

Most commenters also support the FCC's proposal to move to an intercarrier compensation regime in which prices reflect the nature of the service being provided by the originating or terminating carrier, instead of arbitrary regulatory distinctions such as the technology being used.<sup>6</sup> The disagreement in this proceeding is about the short-term path the Commission should take to reach this goal: either by reforming intercarrier compensation rates for all traffic together (as part of a glide path), or by splitting VoIP traffic off from other types of traffic and lowering its rates immediately (whether to reciprocal compensation rates, bill-and-keep, or some arbitrary rates), with rates for other forms of traffic to follow at some indefinite point in the future.

Recognizing that it makes little sense to introduce new arbitrary regulatory distinctions as a means to move toward a unified rate structure, the majority of commenters support a technologically-neutral approach during any transition – one that treats VoIP and circuit-switched traffic identically for intercarrier compensation purposes. Support for this approach is broad-based, coming from traditional CLECs,<sup>7</sup> facilities-based VoIP providers,<sup>8</sup> rural ILECs,<sup>9</sup>

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<sup>6</sup> See, e.g., Comments of CTIA at 11; Comments of Verizon & Verizon Wireless at 10; Comments of Cox Communications, Inc. at 4; Comments of Coalition for Rational Universal Service and Intercarrier Reform at 1, 4.

<sup>7</sup> See, e.g., Comments of Comptel at 2-7.

state commissions,<sup>10</sup> and consumer advocates.<sup>11</sup> Support for creating VoIP-specific rates, on the other hand, comes almost entirely from providers who stand to gain an immediate economic benefit from such a rate reduction, such as IXCs<sup>12</sup> (including IXCs whose affiliated LECs compete against VoIP providers directly, and thus have an interest in depriving their chief competitors of vital revenue),<sup>13</sup> wireless carriers,<sup>14</sup> and non-facilities-based VoIP providers that seek to have lower costs than their facilities-based rivals.<sup>15</sup>

On the merits, the proponents of creating an immediate disparity between VoIP and circuit-switched rates offer no persuasive legal or policy rationales for doing so. Such a system would be counterproductive as a policy measure, and would confront carriers, and the Commission, with countless administrative difficulties and intercarrier disputes during any period for which rates for the exchange of VoIP traffic differed from those for circuit-switched calls.

**A. Separate Regimes Would Be Unworkable, and Would Invite Arbitrage, Fraud, and Competitive Distortions.**

Cablevision and Charter's Initial Comments lay out the reasons why a disparity between VoIP and circuit-switched intercarrier compensation rates would be bad policy, even if the

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<sup>8</sup> See, e.g., Comments of Bright House Networks Information Services LLC at 4; Comments of Cox Communications, Inc. at 4-8; Comments of Time Warner Cable, Inc. at 4-11; Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 2-13.

<sup>9</sup> See, e.g., Comments of Independent Telephone & Telecommunications Alliance at 7-19; Comments of Rural LEC Section XV Group at 3-19; Comments of CenturyLink at 3-17.

<sup>10</sup> See, e.g., Comments of National Association of Regulatory Utility Commissioners at 6.

<sup>11</sup> See, e.g., Comments of National Association of State Utility Consumer Advocates at 5.

<sup>12</sup> See Comments of Sprint Nextel Corp. at 3-7.

<sup>13</sup> See, e.g., Comments of Verizon and Verizon Wireless at 5-34.

<sup>14</sup> See Comments of T-Mobile USA, at 9-12; Comments of Sprint Nextel Corp. at 3-7; Comments of CTIA at 11-13.

<sup>15</sup> See, e.g., Comments of Vonage Holdings Corp.; Comments of Voice on the Net Coalition.

disparity is only an interim approach during whatever period the Commission uses to reform other intercarrier compensation rates. Although VoIP providers and circuit-switched carriers may use different technologies to initiate or terminate calls, they both use the facilities of *other* carriers in identical ways. As many commenters in this proceeding acknowledge, pricing network access services differently based on the technology of the call would be an invitation for carriers to engage in arbitrage, fraud, and to endlessly dispute the identification of one another's traffic.

Numerous commenters also agree that there is no good mechanism to reliably identify VoIP traffic, since both circuit-switched and VoIP calls frequently undergo protocol conversion and are indistinguishable from one another once they reach an interconnecting carrier.<sup>16</sup> Proponents of an immediate elimination or reduction of intercarrier compensation for VoIP traffic offer no real solution to this problem, and are forced to propose such cumbersome measures as “audit rights”<sup>17</sup> or requiring changes to the signaling regime (even though the proponent of such an approach admits that it is “still investigating” how such signaling changes would even work)<sup>18</sup> – impracticable and poorly-administrable measures that are clearly out of place for what is supposed to be an *interim* solution. The idea of creating a “transition period” during which VoIP and circuit-switched traffic would be subject to different intercarrier compensation regime thus plainly runs counter to the Commission's goals in this proceeding.

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<sup>16</sup> See, e.g., Comments of Cbeyond, Inc., Integra Telecom, Inc. and TW Telecom, Inc. at 6; Comments of Coalition for Rational Universal Service and Intercarrier Reform at 5; Comments of Frontier Communications at 5; Comments of Level 3 Communications, Inc. at 11-12; Comments of Paetec Holding Corp., Mpower Communications, Corp., U.S. TelPacific Corp., *et al.* at 33.

<sup>17</sup> See Comments of XO Communications LLC at 33-34.

<sup>18</sup> See Comments of Vonage Holdings Corp., at 13-14 (proposing to require changes to existing signaling system).

## **B. The Arguments for Applying a Separate Rate to VoIP Traffic are Unpersuasive.**

Proponents of a rate disparity have advanced a number of unconvincing legal and policy rationales to justify their attempt at obtaining an economic benefit from the immediate elimination or reduction of their intercarrier compensation obligations. As shown below, none of the arguments they advance is persuasive.

### 1. “VoIP Calls Cost Less to Originate or Terminate So Should Receive Less Compensation.”

One frequently-repeated argument among supporters of a rate disparity is that interconnected VoIP carriers should receive less compensation because, it is argued, they face lower marginal costs to terminate or originate calls than circuit-switched carriers.<sup>19</sup> That argument is flawed. To begin with, even if VoIP carriers do have lower costs in some respects, it makes no sense, as a policy matter, to penalize carriers for adopting more efficient technology by subjecting them to a lower compensation rate – because creating such a differential rate for VoIP traffic would only *discourage* network modernization.<sup>20</sup> Absent such a rate differential, the lower costs of IP networks should encourage carriers to adopt IP architecture. But if achieving lower costs would be offset by a loss of revenue due to a differential rate for VoIP (beyond any glide path reductions), this incentive disappears.<sup>21</sup> Such an approach thus undermines the Commission’s goals of encouraging all carriers to modernize their networks.

The “cost” argument also ignores the fact that, despite the efficiency of their networks, VoIP providers incur significant (and wasteful) costs in converting their traffic into TDM format in order to deliver it to their circuit-switched competitors. These competitors routinely refuse to

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<sup>19</sup> See, e.g., Comments of T-Mobile USA at 10-11.

<sup>20</sup> See Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 6 & n.7.

<sup>21</sup> *Id.*

exchange traffic in IP, and VoIP providers must either obtain their own facilities or buy services from the ILECs – usually at numerous redundant interconnection points – in order simply to exchange traffic. Focusing solely on VoIP providers’ lower “costs” to switch and route calls, therefore,<sup>22</sup> neglects the real costs that VoIP providers actually must incur to exchange calls with other carriers.

2. “The ‘Market’ Rate for VoIP Traffic is \$0.0007.”

Verizon offers a variation on the “cost” argument, contending that the “market” rate for the exchange of VoIP traffic is \$0.0007, which it urges the Commission to adopt as a default rate for the exchange of VoIP traffic based on that “market” data.<sup>23</sup> Verizon’s support for this contention – that it has been able to reach *one* negotiated agreement to exchange VoIP traffic at that rate – proves the exact opposite. As several commenters have pointed out, Verizon has ceased honoring its intercarrier compensation obligations for VoIP traffic nationwide and has been trying to “negotiate” the exchange of traffic at the \$0.0007 rate with VoIP providers across the country. The fact that the market has been almost universally *unwilling* to provide Verizon with agreements at its preferred rate (with the exception of one small provider that serves PBX customers) is the reason it is asking the Commission to impose such a rate, and should readily dispel any contention that \$0.0007 represents a rate for the exchange of IP-originated or IP-terminated traffic set by the “market.”

3. “Exempting VoIP from Access Charges Will Encourage Carriers to Modernize.”

Curiously, a handful of commenters argue that lowering or eliminating intercarrier compensation for VoIP traffic would encourage carriers who do not yet use VoIP to upgrade

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<sup>22</sup> See Comments of T-Mobile USA at 10-11.

<sup>23</sup> See Comments of Verizon and Verizon Wireless at 15-19.

their networks.<sup>24</sup> Yet few commenters actually explain *how* a rate disparity would have this effect. For instance, CTIA cites the *NPRM*'s claim that the current access charge regime operates as a disincentive to carriers' upgrading their networks,<sup>25</sup> yet ignores that the *NPRM* was making the *opposite* point – that the disincentive to invest in IP networks comes not from the possibility that VoIP calls might be subject to access charges, but rather from the possibility that carriers might lose existing access charge revenues by transitioning to VoIP.<sup>26</sup> As explained in Cablevision and Charter's opening comments, carriers that are net *recipients* of intercarrier compensation under the current regime, which include most circuit-switched LECs, would be discouraged from upgrading their networks to IP if doing so meant a loss of revenues from intercarrier compensation.<sup>27</sup> Any savings such carriers might obtain from an exemption from paying terminating access charges would be more than offset by their loss of originating and terminating access charge revenues.

Other commenters argue that allowing VoIP services to be free of intercarrier compensation obligations would increase demand for such services, thereby encouraging facilities upgrades to meet this demand.<sup>28</sup> These comments completely ignore the fact that the providers allegedly gaining revenues from this "increased demand" – *i.e.*, non-facilities-based VoIP providers – are by definition not going to use this revenue to upgrade any facilities. Under this approach, the providers who actually own the facilities – *i.e.*, the local exchange carriers – will only be penalized financially if they modernize their networks.

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<sup>24</sup> See, e.g., Comments of CTIA at 12-13 & n.19.

<sup>25</sup> See *id.*

<sup>26</sup> See *NPRM* ¶¶ 506, 608 & n.914.

<sup>27</sup> See Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 5-7.

<sup>28</sup> See Comments of Vonage Holdings Corp.; Comments of Voice on the Net Coalition.

4. “Section 230 Requires Broadband Services to be Unfettered.”

Google suggests that VoIP services should be exempt from the intercarrier compensation regime because of Congress’ general statement in 47 U.S.C. § 230(b)(2) that Congress’s “policy” is to “preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”<sup>29</sup> Intercarrier compensation, however, is not a fee on Internet services, it is a generally applicable obligation for *any* service that uses the resources of the PSTN and/or the network of another provider. VoIP providers use the resources of the PSTN, and the networks of other providers, the same way that traditional carriers do, to terminate and originate calls. There is no reason they should be given a competitive advantage (or disadvantage) merely because they use broadband transmission facilities, or because some of them use the Internet. As the Ninth Circuit cautioned about another provision in Section 230, one must be careful “not to exceed the scope of the immunity provided by Congress and thus give online businesses an unfair advantage over their real-world counterparts, which must comply with laws of general applicability.”<sup>30</sup> The same rationale applies here.

This rationale also answers the claims, made by some commenters, that the payment of intercarrier compensation would harm the competitive position of interconnected VoIP providers that have *not* been paying intercarrier compensation and might be forced to pass higher costs along to their consumers if required to do so.<sup>31</sup> Carriers that have failed to comply with their obligations under the current payment regime, however, or who have taken aggressive legal

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<sup>29</sup> See Comments of Google, Inc. at 6-7 (citation omitted).

<sup>30</sup> *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 n.15 (9th Cir. 2008) (en banc).

<sup>31</sup> See, e.g., Voice on the Net Coalition Comments at 4-5.

positions knowing full well the risk that claims to be “exempt” from access charges might well be rejected, should not be rewarded for their arbitrage or entitled to have their business models protected by the Commission. While such services might be able to obtain higher profit margins by evading intercarrier compensation obligations their competitors are forced to pay, that is a competitive distortion, pure and simple. Interconnected VoIP providers that have not been paying access charges use the resources of the PSTN, and the networks of other carriers, the same way their competitors (both circuit-switched and VoIP) do, and should have to play by the same rules.

5. “The FCC Is Legally Precluded From Subjecting VoIP to Access Charges.”

Very few commenters try to make a serious case that the Commission is legally precluded from subjecting VoIP traffic to access charges. As Cablevision and Charter explained in their initial comments, the Commission has ample authority to subject VoIP and circuit-switched traffic to identical rates, including imposition of access charges.<sup>32</sup> Sprint nevertheless claims that the Commission cannot legally subject VoIP traffic to access charges because, Sprint contends, VoIP falls outside the grandfathering clause in 47 U.S.C. § 251(g), which preserves the access charge regime for traffic within its reach.<sup>33</sup>

Under Section 251(g), LECs “shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply” prior to enactment of the

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<sup>32</sup> See Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 8-10. Cablevision and Charter also explained that the ESP exemption (which the Commission could of course change or eliminate) has no application whatsoever to calls exchanged between VoIP providers and IXC. See *id.* at 7-9.

<sup>33</sup> See Comments of Sprint Nextel Corp. at 5-6.

Telecommunications Act of 1996 (“1996 Act”) “until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission.” 47 U.S.C. § 251(g).

Accordingly, under the plain language of this statute, as long as a LEC is providing “exchange access, information access, [or] exchange services,” it must do so “in accordance” with the pre-1996 Act regulatory scheme, including the access charge regime – unless and until superseded by Commission regulations.<sup>34</sup> As Cablevision and Charter explained in their initial comments, network access provided to IXCs for VoIP service fits comfortably within the definition of “exchange access,” and is thus subject to the access regime absent superseding FCC regulation.<sup>35</sup>

In arguing to the contrary, Sprint relies unreflectively on two district court cases.<sup>36</sup> These cases – which conflict with numerous other decisions<sup>37</sup> – held simplistically that because VoIP

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<sup>34</sup> 47 U.S.C. § 251(g); *see In re High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6483 ¶ 16 (2008).

<sup>35</sup> *See* Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 8-9 & n.14.

<sup>36</sup> *See Paetec Commc’ns, Inc. v. CommPartners, LLC*, CIV-A No. 08-0397, 2010 WL 1767193, at \*3 (D.D.C. Feb. 18, 2010); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm’n*, 461 F. Supp. 2d 1055, 1080 (E.D. Mo. 2006), *aff’d*, 530 F.3d 676 (8th Cir. 2008).

<sup>37</sup> *See, e.g., In re: Sprint Communications Company, L.P. v. Iowa Telecommunications Services, Inc.*, Order, Docket No. FCU-2010-0001 (Iowa Util. Bd. Feb. 4, 2011); *In re Petition of Southwestern Bell Telephone Company d/b/a AT&T Kansas for Compulsory Arbitration of Unresolved Issues with Global Crossing Local Services, Inc. and Global Crossing Telemangement, Inc. for an Interconnection Agreement Pursuant to Sections 251 and 252 of the Federal Telecommunications Act of 1996*, Order Adopting Arbitrator’s Determination of Unresolved Interconnection Agreement Issues Between AT&T and Global Crossing, 2010 Kan. PUC LEXIS 731 (Kansas Corp. Comm’n Aug. 13, 2010); *Hollis Telephone, Inc. Kearsage Telephone Co., Merrimack County Tel. Co., and Wilton Telephone Co.*, Order Addressing Petition for Authority to Block the Termination of Traffic from Global NAPs Inc., 2009 N.H. PUC LEXIS 113, 277 P.U.R.4th 318 (N.H.P.U.C. Nov. 10, 2009); *Southwestern Bell Telephone Company d/b/a AT&T Missouri for Compulsory Arbitration of Unresolved Issues for an Interconnection Agreement with Global Crossing Local Services, Inc. and Global Crossing Telemangement, Inc.*, Decision, 2010 Mo. PUC LEXIS 1186 (Mo. P.U.C. Dec. 15, 2010); *In re Request for Expedited Declaratory Ruling as to the Applicability of the Intrastate Access Tariffs of Blue Ridge Telephone Company et al. to the Traffic Delivered to Them by Global NAPs, Inc.*, Order Adopting in Part and Modifying in Part the Hearing Officer’s Initial Decision, 2009 Ga.

did not exist prior to 1996, there cannot have been any pre-1996-Act compensation scheme for VoIP to have been preserved by Section 251(g). These cases are simply wrong. Although the Commission did not have specific rules governing VoIP traffic in 1996, it did not need to – its *existing* intercarrier compensation rules already governed the assessment of access charges, and, *via* the ESP exemption, addressed the circumstances in which traffic exchanged with information service providers is exempt from such charges.<sup>38</sup> As Cablevision and Charter explained in their initial comments, the ESP exemption was written to ensure that local calls to information service providers did not somehow convert such providers into IXCs when the information service providers sent information across exchange boundaries; the exemption did not and does not exempt IXCs carrying interexchange calls to or from information service providers from paying access charges.<sup>39</sup> Thus, regardless of whether VoIP providers are information service providers, the ESP exemption does not displace the access charge regime.<sup>40</sup> Because the service provided to IXCs by LECs serving VoIP customers constitutes “exchange access,” the pre-existing access charge regime requires the payment of access charges.<sup>41</sup>

Sprint’s argument that Section 251(g) cannot preserve the imposition of access charges on services using a technology that did not exist before enactment of the 1996 Act is absurd. No

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PUC LEXIS 161 (Ga. P.U.C. July 29, 2009); *Palmerton Telephone Company v. Global NAPs South, Inc. et al.*, Opinion and Order, 2010 Pa. PUC LEXIS 245 (Pa. P.U.C. March 16, 2010).

<sup>38</sup> See 47 C.F.R. § 69.5; *In re Access Charge Reform*, First Report and Order, 12 FCC Rcd 15,982, 16,131-32, ¶¶ 341-342 (1997) (“*Access Charge Reform Order*”).

<sup>39</sup> See Comments of Cablevision Systems Corp. and Charter Communications, Inc. at 11-12.

<sup>40</sup> See *id.* And, of course, were the Commission to hold that VoIP providers do not merely use “telecommunications services” provided by other carriers, but themselves *provide* “telecommunications services,” Sprint’s argument would fail at the outset. As discussed, however, the Commission can resolve this issue without deciding the regulatory classification of VoIP services, which could have consequences beyond intercarrier compensation and need not be resolved in this proceeding.

<sup>41</sup> See *id.* at 8-9.

one could seriously contend, for example, that LECs upgrading their circuit-switches to soft switches subsequent to the 1996 Act somehow lost their right to assess access charges. Indeed, the Commission has made clear that the use of VoIP technology in and of itself does not exempt a service from access charges, concluding that AT&T's IP-in-the-middle service "is subject to interstate access charges."<sup>42</sup> As the Commission implicitly acknowledged in that decision, the use of VoIP technology is irrelevant to application of Section 251(g).

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<sup>42</sup> See *In re Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7466, ¶ 15 (2004).

## CONCLUSION

The Commission should declare immediately that interconnected VoIP traffic is subject to the same intercarrier compensation regime as circuit-switched traffic going forward, and should resist calls to introduce a new pricing disparity by treating VoIP calls any differently from other voice calls under the intercarrier compensation regime.

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