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 VERIZON AND VERIZON WIRELESS

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REPLY COMMENTS OF VERIZON[1] AND VERIZON WIRELESS

I. INTRODUCTION AND SUMMARY.

The Commission's commitment to address VoIP compensation, traffic pumping, and phantom traffic immediately is the right first step toward essential comprehensive intercarrier compensation and universal service reform. Commenters in this proceeding agree the Commission must tackle these pressing issues now to keep the situation from getting worse pending comprehensive reform. We urge the Commission to resolve these long-pending matters and issue an order within weeks.

[1] In addition to Verizon Wireless, the Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc. These reply comments address only Section XV of the *NPRM*. Concurrent with these reply comments, Verizon is filing initial comments regarding the other sections of the *NPRM*, as set forth in the Commission's bifurcated comment cycle.

1. There is broad consensus that the Commission must act immediately on VoIP compensation, by setting a default rate of $0.0007 per minute for all VoIP traffic that connects with the PSTN. Doing so is critical to prevent the current problem from getting worse and from enlarging the problem that the Commission must solve. It also will preserve rational market-based incentives to deploy innovative new technologies and services unencumbered by the cost of the legacy subsidies inherent in the existing regime, and will benefit consumers.

Some parties nevertheless argue that the Commission instead should extend the broken intercarrier compensation system to VoIP, complete with its arcane multi-layered rate structure and costly subsidies. That would be precisely the wrong thing to do. That would serve only to deter deployment of innovative new services, limit competition by making those new services artificially costly, and ultimately harm consumers.

As the Commission and various independent commentators have correctly noted, history provides proof-positive of the benefits that would result from setting a low default rate for VoIP that is free of the existing subsidy scheme (and, correspondingly, of the harms that would result from extending the current system to VoIP). Fifteen years ago, wireless, like VoIP today, accounted for a comparatively small amount of traffic and was still emerging as a relatively new technology with great promise. In the wake of the 1996 Act, the Commission had to decide whether to saddle wireless with the costs of the inefficient intercarrier compensation system, or to choose a different path. The Commission chose the latter and largely shielded wireless carriers from the legacy access charge regime by classifying all calls within a Major Trading Area (MTA) as "local" calls subject to reciprocal compensation. And exactly one decade ago (on April 18, 2001), the Commission, in the context of addressing the rate for Internet-bound traffic, adopted a "mirroring rule," the effect of which is that a $0.0007 terminating rate applies to most intraMTA wireless calls. Because the majority of wireless calls historically have been "intraMTA," this meant that wireless has been able to develop largely free of the subsidies inherent in carrier access rates.

At the time of both of these decisions, some carriers—like some commenters in this proceeding—made dire predictions about the consequences of keeping intercarrier compensation rates low for wireless. But carriers adjusted, and those predictions did not come true. Instead, the result of these two decisions is that wireless networks and services have grown efficiently—and exponentially—even as prices have steadily declined. Without the cost burden of per minute access rates, wireless carriers were able to introduce attractive bucket-of-minute plans, and matters took off from there, forever changing the many ways in which we communicate and stay connected in urban and rural areas alike. The consumer benefits have been enormous.

Like wireless 10-15 years ago, the amount of VoIP traffic terminated by LECs is still relatively small, and VoIP services are still developing. But there is no doubt that VoIP is the technology of the future, and this traffic will grow over time if allowed to do so efficiently in response to rational market-based incentives, rather than being saddled with the cost burdens of the legacy system.

If the goal of comprehensive intercarrier compensation reform is a low uniform default rate that applies nationwide—and it should be—then it only makes sense to start at that point for VoIP and avoid moving this rate up only to phase it down again to a market-based level. Moreover, carriers can operationalize a $0.0007 default rate for VoIP traffic with minimal disruption, and a uniform low rate for VoIP traffic will serve as a natural glide path to a single national default rate for all PSTN traffic. This approach provides all parties with an incentive to engage in intercarrier compensation and universal service reform more broadly and to update business plans as needed.

2. There is broad consensus that the Commission must act quickly to address the still growing problems with traffic pumping. With respect to intraMTA wireless traffic pumping in particular, there is significant agreement among commenters that the Commission must step up to address the ballooning problems with CLEC-terminated intraMTA traffic. While the previous Commission actions address traffic exchanged with ILECs, a separate Commission order created a void for traffic exchanged with CLECs that has resulted in increasing efforts to extract inflated, uneconomic payments. If left unaddressed, the scope of intraMTA wireless arbitrage could rival or exceed the billions of dollars in uneconomic arbitrage that resulted from the dial-up ISP schemes over the last decade. And, critically, failure to address the CMRS-CLEC rate gap threatens to undo a decade of Commission policy favoring low, uniform rates for wireless-originated intraMTA calls terminated by LECs. That policy has contributed to the huge success of the domestic wireless industry and to enormous consumer benefits. To close this gap, the Commission should set a default rate of $0.0007 for this traffic.

With respect to traffic pumping more broadly, though commenters may prefer different solutions—and there is no perfect solution—it is most important for the Commission to act now to curb these schemes. To that end, the Commission's proposed rules would reduce the incentive for providers to engage in the most egregious traffic pumping schemes and should be adopted with a few small changes to cast a broader net. The urgent need to address traffic pumping is underscored by a new study estimating that wireless long distance traffic pumping alone increased in 2010 from 175 million minutes in January to more than 240 million minutes in December.

3. Finally, in addressing phantom traffic concerns of some carriers the Commission should reject attempts to push off billing and collection functions—and associated risks and expenses—on upstream carriers. Proposals by some parties, for example, to require that intermediate carriers underwrite intercarrier compensation payments to terminating carriers are unfair and misguided. Carefully crafted new signaling rules are workable, but many parties raise legitimate concerns about the feasibility of certain requirements that the Commission should address in its final rules. It also does not make sense to require the whole industry to make expensive systems and other traffic labeling changes when the Commission expects to soon harmonize the rates for all PSTN traffic. In that event, phantom traffic concerns will fall away.

4. As explained in our opening filing, the Commission must also eliminate the remainder of CETC funding along with other immediate issues. In order to fund near-term broadband priorities through the proposed Connect America Fund and to start all parties off in the same position, the Commission should begin phasing out this support as soon as possible. The Commission already has begun to transition down support for some CETCs and should do likewise for the remainder.[2]

II. THE COMMISSION MUST ACT NOW ON VOIP COMPENSATION AND SHOULD SET A PROSPECTIVE RATE OF $0.0007 PER MINUTE FOR THIS TRAFFIC.

A. Like Wireless, for the Benefit of All Consumers the Commission Should Allow VoIP to Grow Efficiently and Unfettered by the Legacy Access Charge Regime.

The Commission's approach to VoIP traffic should be guided by history. Indeed, VoIP stands, today, in the same position as wireless traffic in 1996 and 2001, as an emerging

[2] For a more detailed discussion of CETC funding *see* Verizon's April 1, 2010 comments in this proceeding and Verizon's initial comments on larger intercarrier compensation and universal service reforms filed contemporaneously with these reply comments.

technology with enormous, still untapped potential. The combination of the Commission's *Local Competition Order*[3] and the 2001 *ISP Remand Order*[4] resulted in a low, uniform rate of $0.0007 (or typically something in that range or lower where there is a commercial agreement) that applies to most wireless traffic terminated by LECs. The Commission should set the same default rate of $0.0007 for all VoIP traffic that connects with the PSTN.

In 1996, wireless, like VoIP, was still emerging as a relatively new technology with great promise. In implementing the 1996 Act, the Commission had to decide whether to saddle wireless carriers with all of the costs of an intercarrier compensation system that, even then, was inefficient and archaic. But the Commission chose a different path. In the *Local Competition Order*, the Commission decided that all calls between wireless carriers and local exchange carriers that originate and terminate in the same MTA—broad areas that cover large swaths of one or more states[5]—would be subject to the new, lower reciprocal compensation rates and not the higher tariffed access charge rates that applied to wireline calls that cross traditional exchange and state boundaries. *See Local Competition Order* ¶ 1036; 47 C.F.R. § 51.701(b)(2). Because the majority of wireless traffic involves intraMTA calls, this initial decision significantly insulated wireless carriers from the large, implicit subsidies in the legacy tariffed access charge regime.

In 2001, the Commission further reduced the rates wireless carriers would have to pay for intraMTA calls when it adopted the mirroring rule in the *ISP Remand Order*. As the

[3] *Implementation of the Local Competition Provisions in the Telecommunications Act*; *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

[5] http://wireless.fcc.gov/auctions/data/maps/mta.pdf.

Commission noted, local exchange carriers were (and largely still are) "net recipients of reciprocal compensation from wireless carriers," because "[m]ore calls are made from wireless phones to wireline phones than vice-versa." *ISP Remand Order* ¶ 89 n.176. As a result of the mirroring rule, incumbent LECs that took advantage of the Commission's rate caps on dial-up ISP traffic—as many of them did immediately, or relatively soon after the release of the *ISP Remand Order*—were required to offer to apply those same rate caps to intraMTA traffic exchanged with wireless carriers. The wireless carriers uniformly accepted that offer, and the majority of intraMTA traffic has been exchanged for years at rates at or below the $0.0007 per minute rate cap.

After the Commission made these decisions, rural incumbent LECs predicted that the reduced payments from wireless carriers would have devastating effects on rural ILECs. For example, the Local Exchange Carrier Coalition—a group of more than 100 rural ILECs—claimed that the intraMTA rule would "cause unreasonable discrimination against incumbent LECs,"[6] and "create[] an improper and artificial regulatory advantage for CMRS providers."[7] A similar coalition of more than 100 rural ILECs—this time the Independent Alliance on Inter-Carrier Compensation—made similar claims after the Commission adopted the mirroring rule. They again claimed that the intraMTA rule led to "regulatory arbitrage" with wireless carriers "terminat[ing] very long distance traffic . . . according to local interconnection terms, instead of

[6] Local Exchange Carrier Coalition Petition for Reconsideration and Clarification, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, at 16-17 (Sept. 30, 1996).

[7] Local Exchange Carrier Coalition Reply to Oppositions, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, at 10-11 (Nov. 14, 1996).

interexchange access service" tariffs.[8] These rural ILECs claimed that the mirroring rule "would only further exacerbate the . . . disparate treatment, and the resulting arbitrage opportunity, without addressing the cost recovery impact on the affected LECs."[9]

The Commission did not heed these predictions of doom, maintaining both the intraMTA and mirroring rules. And in the end, these rural ILECs and other carriers adjusted. The result has been exponential and efficient growth in the provision of wireless services with massive consumer benefits and without the harms rural ILECs predicted. Wireless subscriptions now exceed 300 million, roughly triple the number of subscriptions at the time of the *ISP Remand Order*; wireless penetration has also nearly tripled in that time, and now stands at 96 percent.[10] Indeed, by the first half of 2010, more than 51 percent of people ages 25-29—and more than 26 percent of all households—used *only* wireless phones, each a roughly *eight-fold* increase from the first half of 2003.[11] Wireless customers make 2.2 trillion minutes of calls and send more than 2.1 trillion text messages annually.[12] To make all of this possible, wireless carriers increased their payrolls over the last decade to $13 billion from $2 billion.[13]

Just as it was critical for the Commission to adopt the right intercarrier compensation rules to allow wireless services to flourish, it is essential for the Commission to do the same for

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[8] Independent Alliance on Inter-Carrier Compensation Petition for Reconsideration and/or Clarification, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, at 8 (June 14, 2001).

[9] *Id.*

[10] http://www.ctia.org/media/industry_info/index.cfm/AID/10323 ("Wireless Quick Facts").

[11] *Compare* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201012.pdf (Tables 1 and 2) *with* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200705.pdf (Tables 1 and 2).

[12] Wireless Quick Facts, *supra*.

[13] *Id.*

VoIP services. The amount of VoIP traffic exchanged with the PSTN is still relatively small. But, like wireless traffic, it will—if allowed—continue to grow steadily over time. Consumers will benefit from more widespread availability of the innovative features in current VoIP offerings, and in ways that cannot be imagined today. But, as with wireless service, that growth is dependent on the Commission adopting rules that insulate this new and innovative service from the anachronistic intercarrier compensation regimes that currently apply to wireline traffic.

Commenters in this proceeding raise the same objections that rural LECs raised 10-15 years ago with rates for wireless traffic. The Independent Telephone and Telecommunications Alliance argues that its members "rely on intercarrier compensation as a critical component of the revenues necessary to build and maintain their broadband-capable networks that serve a large portion of rural America." Independent Telephone & Telecommunications Alliance (ITTA) Comments at 2; *see also* CenturyLink Comments at 6-12. But these and all carriers adjusted to the new wireless rate structure more than a decade ago, which allowed wireless networks and services to grow efficiently resulting in enormous public interest benefits and a sea change in the communications landscape. VoIP holds the same promise—if the Commission again makes the right decision.

B. There Is Broad Consensus That the Commission Should Act Immediately To Establish Intercarrier Compensation Rules for VoIP Traffic.

The Commission should take *immediate* action—within weeks, not months or years—to eliminate regulatory uncertainty by adopting rules that establish an intercarrier compensation regime for VoIP traffic. Consumer demand for VoIP services—across all platforms—is booming, and ILECs and wireless providers are also rapidly deploying innovative new VoIP services. Yet the Commission has never determined "the appropriate intercarrier compensation framework" for VoIP traffic that originates or terminates on the PSTN, resulting in many disputes before state and federal courts and state commissions—and conflicting decisions about whether (and, if so, which) legacy intercarrier compensation regime applies to VoIP.[14] The regulatory uncertainty in this area is deterring investment in VoIP and the associated growth in broadband usage and deployment,[15] and these problems will only get worse as consumers increasingly abandon legacy voice services in favor of IP-enabled services. *NPRM* ¶ 610.

Although commenters in this proceeding have varying views on the substantive issues before the Commission, there is broad consensus that immediate action is essential, in order to provide necessary certainty to the industry and unleash the full potential of investment in VoIP services and broadband networks. AT&T describes the growing problem of asymmetric arbitrage schemes—in which carriers bill access charges when they terminate VoIP traffic but refuse to pay access charges for VoIP calls they originate—and emphasizes that "there is an urgent need for the Commission to implement an interim solution to these problems immediately, instead of awaiting completion of comprehensive intercarrier compensation reforms." AT&T Comments at 26. A group of more than 45 rural LECs notes that "the current situation is not sustainable,"[16] and ITTA similarly argues that the Commission should address VoIP compensation issues "as soon as possible." ITTA Comments at 7. XO explains how the

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[14] *See Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., ¶ 608 (Feb. 9, 2011) ("*NPRM*").

[15] *See* AT&T Comments at 28-29; *see also Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act*, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶ 13 (2007) (noting that "VoIP is often accessed over broadband facilities," and that "there is a nexus between the availability of VoIP services and the goals of section 706 of the Act"); *Connecting America: The National Broadband Plan*, http://download.broadband.gov/plan/national-broadband-plan.pdf, at 142 (2010) ("National Broadband Plan" or "NBP") (noting that "regulatory uncertainty about whether or what intercarrier compensation payments are required for VoIP traffic, as well as the lack of uniform rates, may be hindering investment and the introduction of new IP-based services and products").

[16] Blooston Rural Carriers ("Blooston") Comments at 7.

"[c]ontinued uncertainty" on this issue has resulted in increased litigation and arbitrage opportunities, and has stifled innovation. XO Comments at 7-12. *See also* Time Warner Cable (TWC) Comments at 4 ("TWC wholeheartedly agrees that reform is urgently necessary"); Comments of NECA, *et al*. ("NECA Commenters") at 3 (noting that "[t]here is strong support for *immediate* action on the proposals identified in Section XV of the *NPRM*"); Washington Utilities & Transportation Commission (Washington UTC) Comments at 2 (the Commission should address the VoIP intercarrier compensation issue "in the near term").

C. A Default Rate of $0.0007 Per Minute Is a Reasonable Compromise Based on Comments in the Record and Negotiated Agreements.

1. Commenters advance a number of different proposals for the intercarrier compensation regime that will apply to VoIP traffic. Google and the Voice on the Net Coalition argue that the Commission should adopt a bill-and-keep regime for VoIP traffic. *See* Google Comments at 8-9; Voice on the Net Coalition (VON Coalition) Comments at 2-3. The Alaska Telephone Association argues that so-called "local" VoIP traffic should be subject to a bill-and-keep regime unless "local traffic is found to be out of balance by more than a specified percentage (e.g. 5 percent)." Alaska Telephone Association Comments at 2-3. The Coalition for Rational Universal Service and Intercarrier Compensation Reform supports a "graduated" terminating rate for all traffic, under which the marginal per-minute rate would decrease as the volume of calls increases. Coalition for Rational Universal Service and Intercarrier Compensation Reform Comments at 2-3. Comcast argues that the Commission should establish a default transition rate for VoIP traffic that is equal to the reciprocal compensation rate paid by the terminating carrier. Comcast Comments at 4-5. CTIA favors a bill-and-keep regime or, alternatively, a default rate no higher than $0.0007 per minute. CTIA Comments at 11-13. XO argues that the Commission should apply reciprocal compensation rates to VoIP traffic that has been properly identified by the originating carrier. XO Comments at 31-34. And, as discussed further below, a number of commenters argue that VoIP traffic should be governed by the widely varying interstate and intrastate tariffed access charge rates that currently apply to TDM traffic. *See, e.g.*, Pennsylvania Public Utility Commission (Pennsylvania PUC) Comments at 3-13; CenturyLink Comments at 3-16; Consolidated Comments at 4-21.

2. Verizon proposes a default rate of $0.0007 per minute for VoIP traffic exchanged with the PSTN. The proposal strikes a reasonable middle ground, and, as discussed above is consistent with the hugely successful, and low, terminating rate for the majority of wireless traffic.

First, the $0.0007 per minute rate will only be a *default* rate. Verizon's proposal will encourage providers to reach mutually beneficial, commercial agreements for the exchange of VoIP traffic. That is consistent with the Act's "clear preference" for "negotiated agreements." *MCI Telecomms. Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 500 (3d Cir. 2001); *see also Triennial Review Order* ¶ 701 (finding that "[p]ermitting voluntary negotiations for binding interconnection agreements is the very essence of" the Act).[17] A market-based approach based primarily on commercial agreements is the best long-term solution to ensuring the efficiency of telecommunications markets in the face of substantial technological change, as this approach is technologically neutral and would not require constant updating of outdated regulatory regimes.

Second, the specific default rate of $0.0007 per minute is clearly reasonable, as that is already the default rate for a substantial portion of the traffic that carriers exchange today (such

[17] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*").

as wireless and ISP-bound traffic), as a result of the Commission's mirroring rule. *See ISP Remand Order* ¶ 89. Consistent with the Commission's prior findings, both Verizon and Verizon Wireless have entered into a number of publicly filed interconnection agreements that established terminating rates at or below $0.0007 per minute. Verizon Comments at 15-16; *ISP Remand Order* ¶ 85 (establishing $0.0007 minute for ISP-bound traffic based on then-recently negotiated interconnection agreements). Indeed, Verizon recently entered into a commercial agreement with Bandwidth.com for the exchange of VoIP traffic at a rate of $0.0007 per minute.[18] As both the Commission and the courts have recognized, the fact that "carriers have agreed to rates" for intercarrier compensation through voluntary, arms-length negotiations, is substantial evidence that those rates are just and reasonable. *ISP Remand Order* ¶ 85; *see also Triennial Review Order* ¶ 664 (finding that "arms-length agreements" demonstrate that the rate is "just and reasonable"); *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527, 530 (2008) (reaffirming that the *Mobile-Sierra* doctrine requires an agency to "presume that the rate set out in a freely negotiated . . . contract meets the 'just and reasonable' requirement imposed by law").

Third, it is well established that "free" services (such as free access services under a bill-and-keep framework) create inefficiencies, as users' incentives are not aligned with the actual costs their activities impose on others. The rampant traffic pumping (*see* below) that the Commission has confronted in recent orders—spurred on by "free" conferencing, chat line, and pornographic services actually paid for by all users of long-distance services, rather than just the callers to these services—is but one example of this phenomenon. A default rate of $0.0007 per

[18] *See* http://bandwidth.com/about/read/verizonAgreement.html.

minute will protect against such economic inefficiencies by ensuring that carriers pay for their use of another network if they cannot reach agreement on an alternative arrangement.

In contrast, a bill-and-keep regime could create new arbitrage opportunities and inefficiencies, thereby undermining the purposes of comprehensive intercarrier compensation reform.[19] Any regime that requires networks to exchange traffic on a bill-and-keep basis without regard to whether they provide each other with an equivalent exchange of value—and, therefore, to let one network pay nothing for any additional benefits it receives—will lead to economically inefficient behavior. In the context of intercarrier compensation, a bill-and-keep regime would give some networks the right to insist on a free ride on other networks, even though those agreements are found in a commercial setting only when both networks perceive that they receive an equivalent exchange of value. Far from eliminating intercarrier compensation disputes, adoption of a default bill-and-keep rule could simply shift those disputes to other areas, including the terms on which carriers interconnect and the alternative methods by which carriers will be permitted to recover their costs.

Fourth, as explained herein, a default rate of $0.0007 per minute will ensure that innovative new VoIP services are not saddled with the inefficiencies and distortions that plague the current intercarrier compensation regime.

D. The Commission Should Reject Proposals To Pull VoIP Traffic into the Legacy Intercarrier Compensation Regime.

1. A number of commenters argue that the Commission should address intercarrier compensation for VoIP simply by pulling some, or all, VoIP traffic into the existing, broken intercarrier compensation regime, including by applying tariffed access charge rates to that

[19] *See* Comments of Verizon, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, at 21-24 (May 23, 2005).

traffic. *See, e.g.*, Alaska Telephone Association Comments at 2 (VoIP should "be subject to the same intercarrier compensation charges as other voice telephone traffic"); Blooston Comments at 8 ("VoIP traffic is subject under existing law to the same intercarrier compensation charges applicable to the long distance toll traffic and local traffic against which it competes"); CenturyLink Comments at 13-16 (arguing that the Commission should confirm "that IP-on-the-PSTN traffic is subject to the same intercarrier compensation charges—intrastate access, interstate access, and reciprocal compensation—as other voice telephone service traffic both today, and during any intercarrier compensation reform transition")(internal quotations omitted); California Public Utilities Commission (California PUC) Comments at 2-3 (arguing that the current intercarrier compensation regime should apply to *both* interconnected and nomadic VoIP).[20]

2. The Commission should reject these proposals to saddle innovative new services with legacy regulations that have not kept pace with technological change. Most importantly, application of the legacy intercarrier compensation regime to VoIP would hinder investment in, and efficient deployment of, advanced services and broadband networks. For reasons discussed above with respect to the emergence and success of wireless services, it is plainly inappropriate to apply "a regulatory paradigm that was previously developed for different types of services, which were provided over a vastly different type of network" to an innovative new communications service.[21] Congress, too, has made clear that it is "the policy of the United

[20] *See also* FairPoint Comments at 6-7; Earthlink Comments at 2-5; Hawaii Telecom Comments at 4-6; Windstream Comments at 7-12; Washington UTC Comments at 2-9; TDS Comments at 4-7; Pennsylvania PUC Comments at 3-13; Public Utilities Commission of Ohio (Ohio PUC) Comments at 7; Consolidated Comments at 9-11

[21] *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, ¶ 19 (2004); *see also Access Charge Reform,* First Report and Order, 12 FCC

States" to promote "the continued development of the Internet and other interactive computer services," and 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." 47 U.S.C. § 230(b)(1)-(2); *see also id.* § 706. The current intercarrier compensation system, by contrast, actually pays some carriers more to operate inefficiently and, overall, discourages carriers from updating their business plans in order to preserve existing intercarrier compensation and universal service subsidies. Likewise, these continuing subsidies deter innovation by other carriers that have to pay those subsidies, either directly or indirectly. In turn, this limits more efficient competitive alternatives.

Indeed, as the VON Coalition explains, imposing the "obsolete access charge regime" on VoIP services would be "anti-consumer, anti-innovation, and anti-investment for IP-enabled voice services."[22] If the current intercarrier compensation regime—which includes disparate rates that vary based on artificial jurisdictional boundaries and regulatory classifications—is applied to VoIP, providers that offer integrated service packages could be forced to disaggregate and price separately those services, or to prevent customers in high-access-charge areas from using those services. VON Coalition Comments at 4-5. CTIA similarly notes (at 12-13) that "[a]pplication of existing, above-cost rates will simply reduce carriers' incentives to transition to more efficient IP-based technology, undercutting the principal goal articulated by the [*NPRM*]."

(Continued . . .)
Rcd 15982, ¶ 343 (1997) (emphasizing that "the existing access charge system includes non-cost based rates and inefficient rate structures," and that "[t]here is no reason to extend such a system to an additional class of customers, especially considering the potentially detrimental effects on the growth of the still-evolving information services industry").

[22] VON Coalition Comments at 4-7; *see also* Google Comments at 6-7 (arguing the imposition of "legacy voice traffic compensation rules" on VoIP traffic "conflicts with our clear national directive to keep Internet services free of heavy-handed government regulation").

CTIA Comments at 12-13. *See also* Google Comments at 6 (emphasizing that the Commission should "decline[] to burden Internet services with traditional telephony-style rules").

Many of the commenters that favor extending the existing intercarrier compensation rules to VoIP traffic claim a continued need for the implicit subsidies that are built in to the current regime. For example, ITTA argues that its members "rely on intercarrier compensation as a critical component of the revenues necessary to build and maintain their broadband-capable networks that serve a large portion of rural America." ITTA Comments at 2; s*ee also* CenturyLink Comments at 6-12. These suggestions ignore the hugely successful result of the Commission's decision to take the opposite approach more than a decade ago and not to merely layer wireless on top of an already broken intercarrier compensation system. As shown above, rural ILECs made similar claims when the intraMTA and mirroring rules reduced payments from wireless carriers, yet these predictions largely did not come true as LECs instead adjusted to changing marketplace conditions over the past decade.

Nonetheless, Verizon is well aware of those concerns, and has offered detailed proposals for an explicit, technologically neutral universal service support program that would help ensure that all Americans have access to modern communications services.[23] However, the *worst* possible way to address universal service issues would be to *expand* the current, badly broken intercarrier compensation regime and its implicit uneconomic subsidies to innovative new services such as VoIP.[24] Indeed, a new intercarrier compensation regime for VoIP that does not include built-in implicit subsidies would not only promote the development of advanced services

[23] *See, e.g.,* Comments of Verizon, *Connect America Fund*; *A National Broadband Plan for Our Future*; *High-Cost Universal Service Support*, WC Docket Nos. 10-90 & 05-337; GN Docket No. 09-51 (July 12, 2010) ("Verizon July 12 USF Comments").

[24] *See also* CTIA Comments at 13 (arguing that any issues regarding revenue streams for rural LECs should be addressed through "competitively neutral, explicit [universal service] support mechanisms that do not distort the market or impede the migration to IP networks").

and broadband (which is precisely what happened with wireless), but would also create a gradual and self-effectuating transition away from the current system as more and more consumers switch to VoIP services. This approach would also provide an incentive for all carriers to engage seriously on additional intercarrier compensation and universal service reforms in the *NPRM*.

Moreover, VoIP services simply do not adhere to the artificial distinctions that underlie the current intercarrier compensation regime.[25] Both interconnected and nomadic VoIP services generally offer an integrated suite of services, including any-distance calling, "multidirectional voice functionality" and "online account and voicemail management" that allows customers to access their accounts from an Internet webpage to configure service features, play voicemails through a computer, or receive or forward them in e-mails with the message attached as a sound file. *Id.* ¶ 7. As the Commission explained, these services and functionalities, in all their combinations, "form an integrated communications service designed to overcome geography, not track it." *Id.* ¶ 25.[26] It is also well established that providers of advanced services need not incur the "substantial costs" of developing or implementing a *new* functionality "for the sole purpose of enabling state regulation." *Vonage Order* ¶ 29.[27] Forcing VoIP providers artificially to break apart their any-distance, integrated offerings solely to fit into legacy jurisdictional categories

[25] *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶ 27 (2004) ("*Vonage Order*").

[26] *See also Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 578 (8th Cir. 2007) (affirming Commission's finding that VoIP services may "perform different types of communications simultaneously," none of which the provider "has a means to separately track and record").

[27] *See also Minnesota Pub. Utils. Comm'n*, 483 F.3d at 578 (agreeing with the Commission that service providers are not required to "develop a mechanism for distinguishing between interstate and intrastate communications merely to provide state commissions with an intrastate communication they can then regulate").

when they have “no *service-driven reason*” to do so is plainly unreasonable. *Vonage Order* ¶ 29 (emphasis added).

3. Nor is there any merit to claims that applying access charges to VoIP traffic is necessary for institutional investors to invest in rural or mid-size carriers.[28] That was not the result, for example, when the Commission put wireless on a different path 10-15 years ago. Instead, carriers adjusted to the wireless structure, and consumers are indisputably better off today because it.

In fact, all LECs are currently collecting very little intercarrier compensation for VoIP traffic, both because VoIP remains a small percentage of all voice traffic and because many companies delivering IP-originated traffic to those LECs are disputing the LECs’ claimed entitlement to access charges for that traffic. Efforts by these LECs to convince state commissions to assert regulatory authority over VoIP traffic also consume resources. Clear rules would quickly reduce, if not eliminate, these litigation-related and regulatory disputes about the exchange of VoIP traffic, freeing up resources for broadband deployment and other network upgrades to IP technology.

For these reasons, adopting a default rate of $0.0007 per minute for VoIP traffic would benefit these LECs, no different from providers generally. A clear rule establishing a default rate for VoIP traffic exchanged with the PSTN would likely *increase*—not decrease—the revenue rural and mid-sized carriers receive when they terminate that traffic, as many of those carriers are currently collecting *nothing* for doing so. As one investment analyst has recognized, if rural and

[28] *See* “Intercarrier Comp in 'Free Fall,' AT&T Exec Says,” Communications Daily, Apr. 7, 2011 (quoting MF Global Vice President Paul Gallant as asserting that charging VoIP traffic the same rates as TDM traffic “is the only option that would provide stability and certainty for rural carriers,” and that any other ruling would “introduce even more uncertainty in the way Wall Street views” mid-size rural carriers).

mid-size LECs "can achieve adequate new cost recovery," then intercarrier compensation reform "could still be helpful by reducing regulatory uncertainties and *ameliorating the downside* caused by already-eroding ICC revenues (principally access charges)."[29] To the extent that rural and mid-sized carriers sell long-distance service to their own customers, a default rate of $0.0007 per minute for VoIP traffic would also give those providers an incentive to switch to VoIP services, in order to reduce the intercarrier compensation they must *pay* for that traffic.

In all events, the Commission has repeatedly recognized the importance of restoring efficient, market-based incentives to invest in VoIP, broadband, and other advanced communications services. As the Commission explained, the existing intercarrier compensation framework "was designed for a world of voice minutes and separate long-distance and local telephone companies," and "has had the effect of rewarding carriers for maintaining outdated infrastructure rather than migrating to IP-based networks." *NPRM* ¶ 6. The current rules "actually *disincentivize* something necessary for our global competitiveness: the transition from analog circuit-switched networks to IP networks." *Id*. (emphasis added). In other words, the current intercarrier compensation system actually pays some carriers to operate inefficiently, and, overall, discourages carriers from updating their business plans in order to preserve existing intercarrier compensation and universal service subsidies. Any attempt to *expand* that existing regime to innovative new services such as VoIP would only undermine the Commission's longstanding goal of promoting the deployment of advanced services.[30]

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[29] Rebecca Arbogast et al., Stifel Nicolaus, *FCC Looks To Shift USF-ICC Reform Drive into Overdrive; August Order Eyed*, at 1 (Mar. 15, 2011) (emphasis added).

[30] The explicit, technologically neutral universal service support program that the Commission should develop in connection with this proceeding will ensure that consumers who live in rural areas have access to modern communications services, but will not include the distortions and arbitrage opportunities that plague the current system. *See* CTIA Comments at 13 (arguing that any issues regarding revenue streams for rural LECs should be addressed

4. The commenting state commissions seek to assert state authority over VoIP traffic and, therefore, argue that the existing intrastate access charge regimes, in particular, should be extended to VoIP traffic. For example, the Pennsylvania PUC asserts that the "dual federal and state jurisdiction in matters pertaining to intercarrier compensation is a fundamental premise that should remain unaltered when dealing with interconnected VoIP or other types of IP-based traffic." Pennsylvania PUC Comments at 3-4. NARUC similarly argues that the Commission must "adequately preserv[e] state commission jurisdiction to deal with intrastate intercarrier compensation disputes," and should not "constrain State retail rate design by preempting intrastate access charge regimes." National Association of Regulatory Utility Commissioners (NARUC) Comments at 6.

Those arguments are exactly backwards. The fact that certain types of traffic are subject to more than 50 different sets of widely varying rates is the principal *cause* of the breakdown of the current intercarrier compensation regime, and any *solution* to those problems must include a uniform default rate for all traffic, regardless of provider or technology. Indeed, the case for state regulation is weakest in the context of VoIP, which the Commission has already found to be inseverable and, therefore, interstate for jurisdictional purposes. *See* Verizon Comments at 19-31. Imposing even one state's regulation—much less 50 or more different sets of regulation—on any-distance, multi-function VoIP services would squarely conflict with federal policies favoring the introduction of innovative services and the deployment of broadband.

(Continued . . .)
through "competitively neutral, explicit [universal service] support mechanisms that do not distort the market or impede the migration to IP networks"); *see also* Verizon July 12 USF Comments.

E. The Commission's New Rules Will Give All Parties Much Needed Certainty.

As the Commission acknowledges, it has never determined "the appropriate intercarrier compensation framework" for VoIP traffic that originates or terminates on the PSTN. *NPRM* ¶ 608. The most critical step for the Commission to take—which should be done *immediately*, in order to provide regulatory certainty to the industry and to promote the deployment of advanced services and broadband—is to adopt new rules establishing an intercarrier compensation framework for VoIP traffic. Under basic principles of administrative law, these new rules would apply only prospectively. *See* 5 U.S.C. § 551(4) (generally limiting agency "rules" to prescriptions of "future effect").[31]

The Commission took the same approach in 2001, when it adopted new rules under section 201 governing intercarrier payments for certain dial-up ISP traffic. Rather than wading into pending disputes by issuing a declaratory ruling, the Commission established clear rules to govern future transactions. *ISP Remand Order* ¶ 82.[32] With those rules in place, intercarrier disputes about payments due for dial-up ISP traffic—which were rampant in the absence of clear rules—rapidly dwindled in number. Indeed, often the most difficult aspect of any attempt to settle an intercarrier compensation dispute is to reach agreement on the rates that will be paid in the future, not the amount of prior billings that will be paid as part of a settlement. If the

[31] *See also Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 216-25 (1988) (Scalia, J., concurring); *Bergerco Canada v. U.S. Treasury Dep't*, 129 F.3d 189, 192-93 (D.C. Cir. 1997.

[32] Although the *ISP Remand Order* was remanded by the D.C. Circuit, *see WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), the court did not question the Commission's decision to apply its new rules only prospectively, and those rules for ISP-bound traffic were ultimately affirmed, *see Core Commc'ns., Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 597, 626 (2010).

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Commission adopts clear, workable rules for VoIP traffic those rules will provide some guidance for settling existing disputes.

Moreover, attempting to address *past* disputes regarding intercarrier compensation for VoIP traffic through a declaratory ruling will only complicate the Commission's broader intercarrier compensation reform efforts. As Level 3 explains, "[i]ntercarrier compensation reform will be difficult enough to accomplish without trying to address all outstanding disputes," and thus the Commission should "not attempt, whether directly or by implication, to address past liabilities." Level 3 Comments at 11. Instead, the better course—and the one the Commission has followed in the past—is to adopt new regulations that will govern prospectively, which will provide the industry with much needed certainty and providers with a tool to facilitate the resolution of existing disputes.

F. Complaints About the Difficulty of Implementing a $0.0007 Per Minute Rate for VoIP Are Exaggerated.

As a first step in its broader intercarrier compensation reform, the Commission should *immediately* adopt a default rate of $0.0007 per minute for VoIP traffic. Certain commenters, however, argue that adopting a VoIP-specific rate will worsen arbitrage problems. For example, Windsteam argues that a VoIP specific default rate would "only worsen the existing arbitrage" because it would be difficult for carriers to determine whether traffic is VoIP or TDM. Windstream Comments at 6-7. NECA similarly argues that "singling out VoIP traffic" will "prolong existing uneconomic arbitrage problems and encourage new forms of economic gamesmanship" because there is "no way for terminating carriers to distinguish 'IP-originated' traffic from other types of traffic." NECA Commenters at 13-15; *see also* Earthlink Comments at 3.

Those concerns are misplaced. Companies that provide VoIP services or that enable VoIP providers to route their customers' traffic to and from the PSTN know that this traffic originates or terminates in IP format. There is no issue with, for example, cable companies that only originate traffic in IP. And other companies can work cooperatively to develop methods to determine which traffic is subject to the terms of a commercial agreement addressing VoIP traffic or, in the absence of such an agreement, to the new default rate. Notably, standard and reliable traffic factoring methods already used today for intercarrier compensation billing purposes can be employed. If there are additional concerns, the Commission could address VoIP traffic identification through certifications—and if necessary through audits. The Commission, for example, required carrier certifications to identify certain prepaid calling card traffic for intercarrier compensation and universal service contribution purposes in 2006.[33]

It may be true that some carriers will attempt to reduce their intercarrier compensation payments by seeking to apply the VoIP rate to traffic that is actually originated and terminated in TDM format. But certain providers are *already* engaging in those schemes, and have been doing so for years;[34] there is no reason to believe that a default rate of $0.0007 per minute for VoIP traffic will make this problem appreciably worse. Indeed, the Commission has made clear that any rules regarding intercarrier compensation for VoIP traffic will merely be a *first step* in broader intercarrier compensation reform. *See NPRM* ¶ 603. Adopting a default rate of $0.0007 per minute for VoIP traffic will eliminate many of the most egregious arbitrage schemes, and any remaining problems will be largely resolved when the Commission completes its broader

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[33] *See Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006).

[34] *See* Comments of Verizon, *Global NAPs Petition for Declaratory Ruling*, WC Docket No. 10-60, at 7 (Apr. 2, 2010) (explaining how one provider "disguis[ed] the sources of its traffic in order to avoid paying access charges").

intercarrier compensation reform by adopting a uniform default rate for *all* traffic, regardless of provider or technology.

Moreover, immediately establishing a default rate of $0.0007 per minute for VoIP traffic will decrease, not increase, arbitrage opportunities. As AT&T explains, a number of providers are engaging in asymmetric arbitrage schemes, in which they demand payment of access charges when they deliver traffic to VoIP customers (whether their own or a third party's), while refusing to pay access charges when they send IP-originated calls for termination to a LEC's TDM customers. AT&T Comments at 28-30). Adoption of a default rate of $0.0007 for all VoIP traffic exchanged with the PSTN will put an end to those schemes.

III. THE PROPOSED NEW TRAFFIC PUMPING RULES WILL HELP CURB HARMFUL ARBITRAGE.

1. The Commission should move forward with new traffic pumping rules immediately. There is broad agreement among many commenters that the Commission's proposed traffic pumping rules would help reduce these harmful schemes and prevent matters from getting worse in the time it will take to fully implement comprehensive intercarrier compensation reform. *See, e.g.*, Iowa Utilities Board Comments at 17 (the proposal "provides a viable solution to that problem consistent with the Commission's established benchmarking process."); XO Comments at 42; CenturyLink Comments at 27; Neutral Tandem Comments at 2; AT&T Comments at 7. The only parties to oppose the Commission's efforts to address the harmful traffic pumping schemes that ultimately cost consumers hundreds of millions of dollars a year—billions over time—are the traffic pumpers. *See, e.g.,* Free Conferencing Corporation Comments at 11-26; North County Communications Comments at 2.

The urgent need for Commission action to help combat traffic pumping is underscored by a recent updated study showing that traffic pumping minutes are still increasing. Looking just at wireless long distance traffic, Connectiv Solutions estimates that the minutes of use generated by traffic pumping schemes rose in 2010 from 175 million minutes in January to more than 240 million minutes in December.[35] The study's authors estimate that traffic pumping will cost the domestic wireless industry alone approximately $170 million in 2011 based on those trends. Connectiv Solutions Study at 5. Notably, because of traffic pumping less than 1 percent of wireless customers generate 9 percent of all wireless long distance costs. *Id.* at 4.

The continuing, and significant, increase in traffic pumping minutes was the opposite of what the study's authors expected. In public comments Connectiv Solutions President Brian Silvestri said that he had anticipated that "the minutes would go down. With more publicity and awareness, we thought we would see more states cracking down on it. But that's not happening. A lot of people are waiting for regulatory decisions."[36] Because the majority of traffic pumping minutes of use are interstate, Commission action in this proceeding is key among those necessary regulatory decisions.

2. With respect to intraMTA—or "local" wireless traffic pumping—there is also broad agreement that the Commission must get out in front of these arbitrage schemes and opportunities and close the CMRS-CLEC rate gap before these problems spiral out of control. Many commenters urge the Commission not to let intraMTA wireless arbitrage emerge as the next billion-dollar iteration of the dial-up ISP arbitrage schemes from prior years. *See, e.g.*,

[35] *See* Connectiv Solutions, "The Impact of Traffic Pumping-Overview of 2010," http://www.connectiv-solutions.com/traffic-pumping.html ("Connectiv Solutions Study"). *See also* Leap Comments at 5 (observing that 16 percent of its total intercarrier compensation charges can be traced to traffic pumping).

[36] *See* Connected Planet, "Traffic study: Traffic pumping minutes rose 48% in 2010," http://connectedplanetonline.com/independent/news/Traffic-study-Traffic-pumping-minutes-rose-48-in-2010-0331/ (March 31, 2011).

AT&T Comments at 20-21; Sprint Comments at 21-22; MetroPCS Comments at 8-14; Leap Comments at 5, 7.

Critically, failure to address the CMRS-CLEC rate gap threatens to undo a decade of Commission policy favoring low, uniform rates for wireless-originated intraMTA traffic terminated by LECs (*see* above). That policy has contributed to the huge success of the domestic wireless industry—and it could indeed unravel in the absence of any limits or Commission guidance on CLEC terminating rates for intraMTA traffic. Wireless traffic terminated by many CLECs is indeed increasing because of intraMTA traffic pumping schemes that exploit the rate gap.

The Commission clearly has the authority to resolve the CMRS-CLEC intraMTA rate gap immediately.[37] Further, it is clear that the Commission must *exercise* that authority without delay. Verizon and other carriers have seen a large increase in intraMTA arbitrage in the wake of the Commission's *North County Order*.[38] And like the dial-ISP arbitrage schemes, the intraMTA problem will only get worse, diverting substantial resources away from broadband deployment and network upgrades, until the Commission takes decisive action. History is also instructive on this point: By the time the Commission acted the problem with the dial-up ISP arbitrage schemes had ballooned—involving, literally, billions of dollars in uneconomic arbitrage payments that the Commission correctly found harmed competition and infrastructure

[37] CLEC intraMTA rates are typically set in state tariffs. The Commission, however, recognized 10 years ago its authority over CMRS-LEC reciprocal compensation rates pursuant to sections 251(b)(5) and 332 of the Communications Act. *See Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, ¶¶ 65, 85, 92 (2001).

[38] *North County Commc'ns Corp. v. MetroPCS California, LLC*, Order on Review, 24 FCC Rcd 14036 (2009) ("*North County Order*").

investment. *2008 ISP Remand Order* ¶¶ 3, 24.[39] The longer the Commission waits the bigger these CMRS-CLEC intraMTA problems will become and the harder it will be to act.

Parties, fortunately, also generally agree on an appropriate solution. Though there are a few differences on the margins, commenters propose that the Commission should set a uniform, low default rate for CLEC-terminated intraMTA traffic. Verizon proposes a rate of $0.0007, which is consistent with market-based, negotiated interconnection rates for intraMTA traffic in the record and the mirroring rule for other section 251(b)(5) traffic in the *ISP Remand Order*. The default rate should apply in the absence of a negotiated agreement. Other parties propose similar low default rates. *See, e.g.,* AT&T Comments at 21 (proposing either $0.0007 or bill-and-keep); Sprint Comments at 22 (proposing reciprocal compensation rates, not access rates); MetroPCS Comments at 5-6, 10-14 (proposing a cap); Leap Comments at 7-8 (proposing to extend new traffic pumping rates to local traffic).

In addition, in order to squarely address intraMTA traffic pumping, the "trigger" for new traffic pumping rules (*see* below) to apply should be satisfied when there is an intraMTA traffic imbalance between carriers that exceeds a three-to-one terminating to originating ratio similar to the Commission's dial-up ISP rate regime. *ISP Remand Order* ¶ 79 (adopting a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic). In that situation there should be a rebuttable presumption that a revenue sharing arrangement is in play. Such a trigger has broad support in the record. *See, e.g.*, MetroPCS Comments at 5, 10; Leap Comments at 6; Sprint Comments at 8, 12-17; CTIA Comments at 8. The mandatory rate benchmark for this traffic should then be

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[39] *See Intercarrier Compensation for ISP-Bound Traffic, et al.,* Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶¶ 3, 24 (2008) (subsequent appellant history and internal citations and quotations omitted) ("*2008 ISP Remand Order*").

$0.0007, consistent with the CMRS-CLEC terminating rate that the Commission should set for intraMTA traffic (*see* above), not the RBOC rate.

3. With respect to traffic pumping more broadly, there is no silver bullet that will eliminate all of these schemes, but the approach laid out in the *NPRM* would address many of the most egregious schemes pending comprehensive intercarrier compensation reform. The Commission's proposal is a three-step process. *NPRM* ¶¶ 658-66; *see also NPRM* at Appendix C. The presence of an "access revenue sharing" arrangement (a defined term in the new rules) would trigger an obligation on the part of a CLEC to re-file its access service tariff with the Commission, and in many instances reduce its access rates. A CLEC that re-files its access tariff because of a revenue sharing arrangement would be prohibited from charging a termination rate that is higher than the corresponding RBOC's interstate rate. The CLEC would further be prohibited from taking advantage of "deemed lawful" protections for its interstate tariffs. 47 U.S.C. § 204(a).

This is a sensible approach that will catch many traffic pumping schemes and help reduce the traffic pumping problem. The Commission should adopt new rules immediately. Many current schemes indeed involve an access revenue sharing agreement with a traffic pumping partner—often a conference bridging or chat line service (including pornographic chat lines). *See* Verizon Comments at 44-45. And LECs associated with these schemes indeed very often charge access rates that far exceed the corresponding RBOC's rates. *Id.* at 41.

Several parties advocate for different solutions to traffic pumping, some within the same framework proposed by the Commission in the *NPRM*, and others for solutions outside of that framework. *See, e.g.*, Sprint Comments at 8, 12-17; CenturyLink Comments at 36; AT&T Comments at 12-13; NECA Commenters at 34. Although there may not be consensus on the best way for the Commission to eliminate traffic pumping, the Commission should still act immediately. Following years of inaction traffic pumping is still growing, costing consumers billions of dollars, and making the Commission's comprehensive intercarrier compensation reform task in this proceeding more difficult.

The proposed new rules in the *NPRM* will not catch all traffic pumping schemes. And traffic pumping will continue to morph as traffic pumpers and their partners attempt to evade Commission rules—whatever those rules may be. But the Commission cannot afford to wait any longer. Therefore, it is most important that the Commission act now to help curb the well-documented traffic pumping abuses that divert resources away from broadband deployment and roll-out of advanced services with tangible public interest benefits.

4. Nonetheless, a few small changes to the final traffic pumping rules could cast a broader net and stop more of these harmful schemes. Several parties observe that it may be difficult to discover a revenue sharing agreement between a LEC and a traffic pumping partner, and in a growing number of cases there is no documented agreement at all—only effective revenue sharing because of cross-ownership interests or some other "off the books" arrangement. *See, e.g.*, TWC Comments at 15; CTIA Comments at 8; T-Mobile Comments at 6-7; AT&T Comments at 19. In those cases, establishing the "trigger" for the new traffic pumping rules may be difficult. Indeed, some traffic pumpers actually support the proposed new rules and/or the revenue sharing trigger. *See, e.g.*, OmniTel and Tekstar Comments at 4.

The Commission should address concerns with the revenue sharing trigger in its final rules. In particular, the Commission should establish a presumption that a revenue sharing arrangement exists if a predominant share of a LEC's billed intercarrier compensation minutes are routed to or from conferences bridges, information services such as chat lines, or other known traffic stimulation mechanisms regardless of whether the LEC and the other providers are affiliated. With respect to reciprocal compensation traffic pumping (primarily an issue with intraMTA wireless traffic; *see* above), the Commission should also establish a presumption that a revenue sharing arrangement exists if there is a traffic imbalance between carriers that exceeds a 3:1 terminating to originating ratio similar to the Commission's dial-up ISP rate regime. *ISP Remand Order* ¶ 79. The new mandatory benchmark for intraMTA traffic should also be $0.0007, consistent with the CMRS-CLEC terminating rate that the Commission should set for this traffic (*see* above), not the RBOC rate.

Moreover, any new traffic pumping rules are likely to be under-inclusive, and, in any event, may not catch the new schemes designed to evade the rules that are sure to follow. Therefore, the Commission should make clear that the new rules do not establish a presumption that traffic pumping or other intercarrier compensation arbitrage schemes that may fall outside of the four corners of those rules are considered legitimate and consistent with section 201(b) of the Act. 47 U.S.C. § 201(b).

IV. NEW SIGNALING RULES RESPONDING TO PHANTOM TRAFFIC CONCERNS CAN BE WORKABLE BUT SHOULD NOT MERELY PUSH BILLING AND COLLECTION FUNCTIONS OFF ON UPSTREAM CARRIERS.

1. Many parties raise concerns regarding phantom traffic and urge the Commission to adopt traffic signaling rules to address those concerns. *See, e.g.*, CenturyLink Comments at 18; Windstream Comments at 13; United States Telecom Association (USTelecom) Comments at 3-5. Verizon agrees that careful, targeted signaling rules could help reduce the amount of traffic for which some carriers find it difficult to properly bill.

2. At the same time, problems identified by multiple parties regarding the feasibility of certain proposed traffic labeling requirements are significant. The proposed new rules focus on passing traffic identification information—in particular, calling party number (CPN), called number (CN), and/or automatic number identification (ANI) information—to the next carrier in the call flow without altering this information. *NPRM* at Appendix B. There are, however, situations in which originating carriers or intermediate providers simply do not have this information or cannot pass the information in a reliable, cost-effective manner. *See, e.g.*, PAETEC Comments at 8 (discussing Skype-originated calls); Earthlink Comments at 22 (discussing PBX trunks); Comcast Comments at 10; Sprint Comments at 26; AT&T Comments at 22; Alliance for Telecommunications Industry Solutions (ATIS) Comments at 4.

Any Commission order should make clear that new signaling rules do not impose an obligation on providers to pass information that they do not have, deploy new equipment, or upgrade equipment in order to transmit traffic identification information. Moreover, the exception to the requirement to transmit the calling party's telephone number must be broad enough to include reliance on industry standards, which signaling and transmission equipment, software, and other programming were designed to support. As drafted, the new rule for originating carriers only allows for a "technically feasible" exception to the requirement to transmit the calling party's telephone number and should be changed to include the industry standard exception. AT&T Comments at 24-25; T-Mobile Comments at 13. Likewise, the proposed signaling rule for intermediate carriers should also contain the technically feasible exception in addition to the industry standards exception. AT&T Comments at 24-25; CTIA Comments at 9.

In addition, several parties raise concerns about reference to an intermediate carrier's obligation to signal "the financially responsible party." *See, e.g.*, AT&T Comments at 25; Comcast Comments at 10. It is not possible to signal this information, nor is it good policy to require upstream carriers to investigate or make a real-time legal judgment about a party that may be responsible for payment to a downstream carrier. The Commission should remove any reference to the "financially responsible party" in its final signaling rules.

3. Finally, proposals for new signaling requirements that go beyond the rules proposed in the *NPRM* must be rejected. For example, NECA and others suggest that providers should be required to transmit the Carrier Identification Code (CIC) or Operating Company Number (OCN) in signaling. *See* NECA Commenters at 22. Under industry standards, the CIC or OCN of the financially responsible carrier is not signaled in the signaling stream. Instead, the tandem provider determines the financially responsible carrier by the trunk group on which the call arrives at the tandem, and identifies that carrier by CIC or OCN on billing records. The Commission should not adopt any signaling rules that would require carriers to change these long-standing and well-established industry practices.

NECA and others also suggest that upstream carriers should guarantee payment to downstream carriers for all "unidentified" traffic—and pay the highest available terminating rate for this traffic. NECA Commenters at 26-27. Such a draconian remedy is not justified and is unfair.

The industry already has developed cost-effective tools, such as factoring, to bill for "unidentified" traffic. As discussed above, it is also sometimes the case that carriers simply do not have traffic identification information. Moreover, the administrative difficulties and expenses required to implement this solution for a new category of "unidentified" traffic would be substantial. Originating and intermediate carriers would need to develop and maintain records showing that traffic was labeled when it left their networks, in order to dispute bills for "unidentified traffic" charges. Intermediate carriers would also have to develop ways of tracking traffic through their switches, so that they could create and maintain records showing whether a particular call was labeled when received from the upstream carrier. The industry would also need to develop industry-wide billing standards governing these phantom traffic charges, both when billed by terminating carriers and when "passed through" to upstream carriers, and modify their billing systems accordingly so that carriers could continue to exchange bills. And all of this expense would ultimately be wasted when the Commission—as it should—adopts a single low, uniform terminating rate for all traffic. In that event, there will be no phantom traffic because carriers already know which providers to bill for the traffic they terminate from records available at the tandem and the rate for all traffic will be the same. *See* Verizon Comments at 49.

IV. CONCLUSION.

For these reasons and those discussed in Verizon's initial comments, the Commission should act immediately to set a national default rate of $0.0007 per minute for all VoIP traffic connecting with the PSTN that applies, regardless of jurisdiction, in the absence of a commercial agreement. The Commission should also adopt sensible, cost-effective new rules or rule changes to address harmful traffic pumping schemes and phantom traffic concerns.

Respectfully submitted,

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