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

SECTION XV REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

Dated: April 18, 2011

The Nebraska Rural Independent Companies

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SUMMARY OF COMMENTS

For the reasons stated in these reply comments, the Nebraska Companies, respectfully submit that action to affirm the application of existing intercarrier compensation rules to Voice over Internet Protocol ("VoIP") is absolutely required in order to ensure that the public interest is served. Absent such action, the Nebraska Companies submit that the Commission will be inviting arbitrage and throwing intercarrier compensation ("ICC") reform into a state of chaos. Thus, the Commission should strongly affirm that VoIP calls that terminate on the Public Switched Telephone Network ("PSTN") are, and have always been, subject to the same compensation rates as other voice traffic terminating on the PSTN. Absent strong affirmation of this conclusion, rural carriers may be discouraged from investing in broadband-capable networks.

At the same time, the Nebraska Companies submit that the Commission's prescription of a national default/proxy rate of $0.0007 per minute of use or bill-and-keep ($0.00) applicable to VoIP would be inconsistent with the pricing provisions of the Communications Act of 1934, as amended. The default rate advocated by Verizon and CTIA should be applicable only to those Local Exchange Carriers which previous elected the rate for traffic bound to an Internet Service Provider. Mandating the default rate of $0.0007 for the Nebraska Companies would be improper as it is not a just and reasonable rate and would cause an undue economic burden on each of the Nebraska Companies. Moreover, due to the time involved and expense as well as the market size of the larger carriers, ICC rates should not be established through negotiated commercial agreements. Finally, the Nebraska Companies reaffirm their position that the Commission must prescribe and enforce call signaling rules that allow carriers to bill for traffic terminating onto their networks.

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SECTION XV REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES

I. Introduction.

The Nebraska Rural Independent Companies ("Nebraska Companies")[1] hereby submit these Section XV Reply Comments in the above-captioned proceeding.[2] As demonstrated

[1] The Companies submitting these Section XV Reply Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

[2] *See*, *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

herein, ample record basis exists for a strong affirmation that existing intercarrier compensation ("ICC") rates and requirements should be applicable to Voice over Internet Protocol ("VoIP") traffic that terminates over the Public Switched Telephone Network ("PSTN"). A strong affirmation of this conclusion will provide a rational basis for carriers to continue to invest in broadband and advance the Commission's policy objectives of increased broadband deployment. Efforts to establish a VoIP-specific rate or bill-and-keep should, for the reasons explained herein, be rejected outright as should proposals that per-minute ICC rates be negotiated. At the same time, the Nebraska Companies respectfully suggest that their proposed call signaling rules and enforcement of them should also be adopted, a conclusion also amply supported in the record. As such, the Nebraska Companies respectfully request that such call signaling rules be adopted with dispatch.

II. Establishing Disparate Rates For VoIP-PSTN Voice Traffic And Circuit-Switched Voice Traffic Will Invite Arbitrage And Throw Intercarrier Compensation Reform Into A State Of Chaos.

In their initial Section XV Comments, the Nebraska Companies cautioned that a new opportunity for regulatory arbitrage would be created if the Commission applied differentiated rates for VoIP-PSTN traffic in the context of ICC.[3] The Nebraska Companies are not alone in this concern. The Nebraska Companies agree with parties asserting that "treating a minute of VoIP traffic differently from any other minute of traffic traversing the PSTN will take control of

Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) ("*Notice*"). For convenience, the Nebraska Companies note that reference to the comments as noted herein are to the comments filed on or before April 1, 2010 regarding the issues noted in Section XV of the *Notice*.

[3] *See*, Comments of the Nebraska Companies at p. 2.

ICC reform entirely out of the Commission's hands…"[4] Setting a VoIP-specific rate that is lower than the rate applicable to other voice traffic would create incentives for carriers to characterize all originating voice traffic as VoIP or simply to declare that such traffic was originated as VoIP, "rendering moot any further efforts by the Commission to implement an organized and comprehensive set of ICC reforms."[5]

Moreover, failure by the Commission to treat VoIP traffic on an equivalent basis with circuit-switched traffic will simply invite arbitrage and further litigation (along with the expenditure of resources associated with it), throwing the Commission's ability to engage in meaningful ICC reform efforts into a state of chaos. The Nebraska Companies have already established how unworkable an artificially-low, disparate rate would be for rural carriers. As they have indicated, in 2009, the Nebraska Companies collectively recorded $20,007,742 in interstate and intrastate access revenues. Implementing an ICC rate of $0.0007 per minute would have reduced intrastate and interstate access revenue in 2009 by 99% to $224,094.[6] Such a result is at odds with what the Commission indicated would be its public policy basis for moving forward with ICC reform.

Specifically, in the *Notice*, the Commission stated its intent "to avoid sudden changes or 'flash cuts' in our policies, acknowledging the benefits of measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption."[7] However, for rural carriers, disparate rates for VoIP-PSTN voice traffic and the ensuing arbitrage will have the

[4] *See*, Comments of the NECA, NTCA, OPASTCO, WTA, Eastern Rural Telecom Association, The Rural Alliance and The Rural Broadband Alliance ("NECA et. al.") at p. 14.

[5] *Id.*

[6] *See*, Comments of the Nebraska Companies at p. 7.

[7] *Notice* at para. 12.

functional impact of a policy that endorses the very "flash cut" that the Commission indicated it would not foster.

Several of the parties filing comments in this proceeding have also asserted that a VoIP-specific rate would only serve to create or perpetuate further arbitrage opportunities.[8] Again, the Nebraska Companies agree. The Nebraska Companies respectfully submit that it would be imprudent public policy for the Commission to intentionally or unintentionally create an artificial regulatory distinction that will serve as an invitation for carriers to engage in further arbitrage activities as the Commission tackles longer-term ICC reform issues. However, the various approaches outlined and proposed by the Commission in the *Notice* will do just that. Assuming that the Commission could properly overcome the legal and jurisdictional hurdles that would be necessary to implement these policies, adoption of a VoIP-specific rate, a mandate that ICC rates for VoIP traffic equal interstate access charge or reciprocal compensation rates, or the adoption of an arbitrary non-cost-based rate (*i.e.*, \$0.0007) will provide a pervasive financial incentive for carriers to engage in arbitrage by declaring that all voice traffic is VoIP-originated.[9] Moreover, since "there is no objective or reliable mechanism to discern which calls are VoIP and which are circuit-switched,"[10] terminating carriers would have no way to audit or verify whether the terminating traffic is indeed VoIP traffic.

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[8] *See*, Comments of NECA, et. al. at p. 14; Comments of the NRIC at p. 2; Comments of Cablevision Systems Corporation and Charter Communications at pp. 3-5; Comments of Paetec at p. 33; Comments of Cox Communications at pp. 5-6; Comments of Frontier at p. 6; Comments of the Rural LEC Group at p. 9; Comments of the Indiana Regulatory Commission at p. 9; Comments of the Kansas Corporation Commission at p. 15; Comments of Windstream at p. 7.

[9] *See*, Comments of Paetec at p. 33; Comments of Cox Communications at p. 6; Comments of Frontier at p. 6; Comments of the Rural LEC Group at p. 9; Comments of Windstream at p. 7.

[10] Comments of Cablevision Systems Corporation and Charter Communications at p. 4.

Accordingly, the Nebraska Companies urge the Commission not to adopt ICC policies that will require carriers to "devote substantial resources to policing and combating fraud"[11] and "divert resources that could better be put towards other purposes, such as network modernization."[12] Instead, the Commission must ensure that its goal of ubiquitous broadband deployment[13] is not undermined by Commission-enacted ICC policies that create immediate and materially adverse impacts on the revenue streams of rural carriers as well as other providers.

Contrary to the assertion that ICC is impeding the deployment of broadband, the revenues that are being generated through the proper application of existing exchange access requirements have allowed for continued investment in the networks operated by rural companies. These investments have facilitated deployment of advanced network capabilities such as broadband access as well as improvements to the provision of traditional voice services. And, to be sure, ICC revenues for rural carriers remain a critical revenue source for funding of further broadband network deployment and investment in the sparsely-populated, expansive rural service areas. Until the Connect America Fund is established and proven to be a sustainable cost recovery mechanism for carriers operating in rural areas, it is prudent and rational for the Commission to refrain from significant modifications to the ICC policies. With the significant support from other industry stakeholders, the Nebraska Companies again urge the Commission to subject all VoIP-PSTN traffic to the same intercarrier compensation charges (*i.e.*, intrastate access, interstate access, and reciprocal compensation) applicable to other voice telecommunications

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[11] *Id.* at 5. Although the Nebraska Companies would note that at a rate of $0.0007, rural carriers would not have financial resources to "police" billing fraud.

[12] *Id.*

[13] *Notice* at para. 3.

service traffic, both during any ICC reform transition period and ultimately in any long-term intercarrier compensation regime.

III. VoIP Calls That Terminate On The PSTN Are, And Have Always Been, Subject To The Same Compensation Rates As Other Voice Traffic Terminating On The PSTN.

In their comments, the Nebraska Companies also urged the Commission to apply the policy first articulated seven years ago in the *IP-Enabled Services NPRM*[14] to VoIP-PSTN traffic -- that regardless of the manner or technology in which a voice call is originated, any traffic that terminates on the PSTN must be subjected to the same ICC charges. What the Commission stated then is equally rational now and should be used as a measure for any consideration of the issues presently before it.

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[15]

With respect to VoIP traffic in particular, the Nebraska Companies know of no sustainable basis to suggest that VoIP-PSTN voice traffic, which is functionally indistinguishable and commonly viewed as a substitute[16] to traditional voice service, results in terminating carriers incurring different costs than those associated with circuit-switched-originated call. Rather, the opposite is true – the same PSTN functions (*e.g.,* tandem switching, tandem transport, end office switching) used for a circuit-switched call are used once a VoIP-initiated call is delivered to the PSTN for termination. There is no policy basis for treating VOIP-PSTN traffic differently, and

[14] *See, In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) ("*IP-Enabled Services NPRM*").

[15] *Id*. at paras. 33 and 61.

[16] *Notice* at para. 612.

as mentioned above, there is no physical or objective basis for discerning which calls are VoIP and which are circuit-switched.

Based upon the already-extensive record in this proceeding, the Commission has ample basis from a diversity of parties—including the national telecommunications associations, multiple state utility commissions, several small and midsize companies, and even AT&T—to conclude that the Nebraska Companies' position is correct—the Commission should determine that VoIP-PSTN voice traffic is subject to the same ICC payment obligations as traditional voice traffic.[17] In fact, some of the nation's largest VoIP service providers—providers that would ultimately benefit to a significant degree from the differential treatment of IP-originated voice traffic—recommend that the Commission affirm that the existing ICC regime (*i.e.*, reciprocal compensation and access charges) applies to all traffic delivered to the PSTN, regardless of the format in which it originates.[18]

Absent these conclusions, failure to treat all voice traffic terminating on the PSTN will result in a "regulatory-created"[19] and "inequitable competitive"[20] advantage by favoring one

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[17] *See*, Comments of AT&T at pp. 5, 26-28; Comment of NECA, et. al., at p. 5; Comments of Cablevision Systems Corporation and Charter Communications at p. 7; Comments of Frontier at p. 5; Comments of CenturyLink at p. 4; Comments of the Independent Telephone & Telecommunications Association ("ITTA") at p. 7; Comments of Cox Communications at p. 8; Comments of Windstream at p. 7; Comments of the Blooston Rural Carriers at pp. 4-5; Comments of Time Warner Cable at p. 7; Comments of the Small Company Committee of the Louisiana Telecommunications Association at p. 5; Comments of TDS Telecommunications at p. 3; Comments of PacWest at p. 5; Comment of NARUC at pp. 4-6; Comments of the California Public Utilities Commission at p. 3; Comments of the Kansas Corporation Commission at p. 15; Comments of the Michigan Public Service Commission at p. 2; Comments of the Public Service Commission of the State of Missouri at p. 5; Comments of the Public Utilities Commission of Ohio at p. 7; Comments of the Pennsylvania Public Utility Commission at p. 4; Comments of the Washington Utilities and Transportation Commission at pp. 4-5.

[18] *See*, Comments of Time Warner Cable at p. 7; Comments of Cablevision Systems Corporation and Charter Communications at p. 7; Comments of Cox Communications at p. 8.

[19] Comments of the ITTA at p. 7

technology over another, again in direct contravention to the technology-neutral policies in the *Notice*.[21] Thus, the Commission should reaffirm what it already recognized as the industry convention for determining the jurisdiction of traffic and the attendant ICC regime applicable to that traffic.

> In a standard interexchange call, the CPN [calling party number] will be passed as part of the SS7 signaling message, and the carriers involved in the call should be able to determine the jurisdiction based on a comparison of the calling and called party telephone numbers.[89]. . . .
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> [89] 47 C.F.R. § 64.1601. As noted in the *Intercarrier Compensation FNPRM,* the emergence of wireless and IP-based calling options makes it less likely that a comparison of telephone numbers will provide meaningful information on the geographic end points of call. Nevertheless, for now carriers continue to rely on telephone numbers as a proxy for geographic locations. *See Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4696-97, paras. 20-22.[22]

Likewise, where both the originating and terminating numbers are not available, the Commission should again affirm that it "has long endorsed the use of [percentage of interstate usage factors] to determine the jurisdictional nature of traffic for access charge purposes."[23]

IV. The Commission Should Not Implement ICC Policies That Discourage Rural Carriers From Investing In Broadband-Capable Networks.

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[20] Comments of the Kansas Corporation Commission at p. 14

[21] *See, Notice* at paras. 24, 31, 82, 97, 114, 160, 284, 400, 445 and 620.

[22] *Calling Card Order* at para. 32 & n.89 (emphasis added) citing *In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking*, CC Docket No. 01-92, 20 F.C.C.R. 4685 (2005) (the "*Intercarrier Compensation FNPRM*"); *see also Intercarrier Compensation FNPRM* at para. 22 & n.59. ("Telecommunications carriers typically compare the telephone numbers of the calling and called party to determine the geographic end points of a call, which may be relevant for jurisdiction and compensation purposes.") (citing *Starpower Communications, LLC v. Verizon South Inc*., EB-00-MD-19, *Memorandum Opinion and Order,* 18 F.C.C.R. 23625, 23633, para. 17 (2003)).

[23] *Calling Card Order* at para. 32 & n.90.

Due to the potential impacts the Commission's proposed reform efforts will have on various industry stakeholders, it is not surprising that the record in this proceeding reflects different perspectives. In terms of the proposed ICC reforms, the Nebraska Companies have identified two primary groups—those parties that have undertaken extensive investment in second and last-mile broadband-capable network infrastructure and those parties that do not own or invest in second and last-mile infrastructure.[24] The Nebraska Companies note that, for the most part, it is the carriers that have heavily invested in voice and broadband networks that are urging the Commission to adopt an ICC regime that would affirm the application of existing ICC regimes in order to generate the revenue necessary to continue providing the services they offer. Predictably, the carriers that have not made investments in second and last-mile infrastructure are the entities advocating either a bill-and-keep methodology or an ICC rate set at $0.0007.[25] With a bill-and-keep regime or a regime in which an artificially low rate is arbitrarily set, the "non-investors" group would be allowed the use of the second and last-mile infrastructure investments made by other carriers without a requirement to compensate the carrier at a rate that would allow reasonable recovery of costs.

In the *IP-Enabled Services NPRM*, the Commission was clear that the "cost of the PSTN should be borne equitably among those who use it in similar ways."[26] It would be irrational to suggest that this common-sense statement of policy should fall prey to the "non-investing" groups' efforts to suggest that they should be granted "favored" status vis-à-vis other carriers that

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[24] For purposes of these Reply Comments, the Nebraska Companies define second and last mile infrastructure as central/end office switching, transmission (transport) equipment and facilities, and loop distribution required for call completion.

[25] *See*, Comments of Vonage at p. 3; VON at p. 2.

[26] *IP-Enabled Services NPRM* at paras. 33 and 61.

use the terminating elements of the PSTN in the very same manner and pay the rates that are established by the Commission's Part 69 rules. Therefore, the Commission should be equally suspect of Vonage's assertion that there are "no specific facilities whose cost can be identified."[27] Indeed, if VoIP traffic is being delivered to the PSTN, the specific facilities and the costs associated with the call can be (and have been) identified through the application of the Commission's existing rules and regulations regarding the identification of the network functions used for terminating interexchange calls.[28] Vonage's assertion amounts to nothing more than an effort (albeit improper as it is) to justify a "free ride" for VoIP providers that utilize the PSTN. The Commission has already rejected that notion in the *IP-Enabled Services NPRM* as quoted above and that principle quoted from the *IP-Enabled Services NPRM* should again be affirmed here.

Certain parties also suggest that a bill-and-keep methodology will "hasten construction of broadband networks"[29] and "promote the transition to broadband and all-IP networks."[30] However, the very opposite is more likely the result.

The Nebraska Companies respectfully submit that it is more likely that implementation of either a bill-and-keep methodology or a near-zero rate will have the reverse effect by significantly reducing broadband infrastructure investment and the evolution to IP-networks. Without adequate cost recovery and/or revenue replacement, rural carriers will not have the resources to maintain and upgrade networks. Thus, in order to have the network facilities

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[27] Comments of Vonage at p. 4.

[28] *See generally*, 47 C.F.R. § 69.1 *et seq.*

[29] Comments of VON at p. 2.

[30] Comments of Vonage at p. ii.

necessary to achieve ubiquitous broadband deployment, the Nebraska Companies urge the Commission to adopt policies that encourage carriers to make continued investments in their networks.

V. The Commission's Prescription Of A National Default/Proxy Rate Of $0.0007 Or Bill-and-Keep ($0.00) Would Be Inconsistent With The Pricing Provisions Of The Act.

Verizon argues that if providers are unable to reach an agreement through negotiation, the Commission should establish a default rate of $0.0007 for VoIP traffic that is exchanged with the PSTN.[31] CTIA similarly argues that if the Commission does not immediately implement a default bill-and-keep regime for VoIP calls that "touch" the PSTN, the Commission should impose a rate no higher than $0.0007 per minute for such calls. Sprint recommends that if the Commission rules that the exchange of VoIP traffic with the PSTN is not an information service, the Commission should declare that such traffic only be subject to Section 251(b)(5) reciprocal compensation and declare that a bill-and-keep mechanism applies.[32] As part of its rationale, Sprint argues that intercarrier compensation is not sustainable in an all-IP world.[33] Google urges the Commission to immediately establish a default bill-and-keep compensation mechanism and

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[31] *See,* Comments of Verizon and Verizon Wireless at p. 6.

[32] *See,* Comments of Sprint Nextel Corporation at pp 5-6.

[33] *Id*. at p. 7. Even if Sprint's contention of no ICC within an IP environment is correct (which is yet to be determined), Sprint's contention provides no sustainable basis for a bill and keep environment today because the industry is not operating within an all-IP world. Rather, the issue at hand is the proper payment of ICC, the revenue from which can then be used to further a carrier's ability to deploy broadband capabilities within its network. Thus, when the issue is properly viewed, the only logical conclusion is that access charges and reciprocal compensation charges based upon the current law and the current rules apply in order to advance the Commission's goal of broadband availability.

asserts that the FCC has ample authority to establish a default bill-and-keep compensation mechanism.[34]

Unlike some of these parties, the Commission must not leap over the issue as to whether there is any authorization in either Section 251(g) or Section 252(d) for the Commission to establish a proxy rate or as discussed below, to mandate a default rate. Even if the Commission were to specify that all VoIP-PSTN traffic falls within the Section 251(b)(5) reciprocal compensation framework, Section 252(d)(2) provides state commissions with the authority to determine whether the terms and conditions for reciprocal compensation are just and reasonable and are based on the reasonable approximation of the additional costs of terminating such calls. Both of these pricing provisions in the Act are devoid of default rates. In effect, therefore, parties advocating a default rate of either $0.0007 or a $0.00 rate under the guise of bill-and-keep are arguing for the use of proxy pricing rules. These parties are certainly well aware that proxy pricing rules contained in 47 C.F.R. §51.513 were vacated in *Iowa Utilities Bd. v. F.C.C.,* 219 F.3d 744, 757 (8th Cir 2000). As such, establishing yet another proxy rate for VoIP traffic exchanged with the PSTN will set the course for years of litigation, allowing VoIP providers yet another opportunity to improperly contend that they can avoid paying legally-billed intercarrier compensation rates for all voice traffic that uses the PSTN.

Further, pursuant to 47 C.F.R § 51.713(b), only a state commission may impose bill-and-keep arrangements, and only if the state commission determines that the amount of telecommunications traffic from one network to the other is roughly balanced, and is expected to remain balanced. Since the telecommunications traffic under consideration is predominately access traffic, there is no basis for a state commission to conclude that the traffic is roughly

[34] *See,* Comments of Google at p. 8.

balanced.[35] As exchange access providers (a status that is common within the rural incumbent local exchange carrier industry), the Nebraska Companies do not receive any access services in return for the access services they provide. Rather, the access services that the Nebraska Companies provide are used by interexchange carriers. Thus, there logically can be no "balance" between the access services of one of the Nebraska Companies with similar services provided by some other carrier. Therefore, there would be no basis for a state commission to adopt bill-and-keep for the exchange of VoIP exchange access traffic.

Since the prescription of a national default/proxy rate of $0.0007 or a default bill-and-keep rate ($0.00) is inconsistent with the pricing provisions of the Act, the Nebraska Companies respectfully request that the Commission reject efforts to impose these regimes on the industry. In doing so, the Commission should immediately affirm that all VoIP-PSTN traffic to the same intercarrier compensation charges (*i.e.*, intrastate access, interstate access, and reciprocal compensation) as is currently applied to other voice telecommunications service traffic, both during any ICC reform transition period and ultimately in a long-term intercarrier compensation regime.

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[35] *See*, Iowa Utilities Board, Docket No. FCU-2010-0001, *Sprint Communications Company L.P. vs. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Issued Feb. 4, 2011, pp.43-44 ("*Iowa Telecom*"). The IUB ordered bill-and-keep as it related only to the exchange of local traffic between wholesale carriers and ILECs, not to the exchange of long distance traffic. *See also*, In the Matter of IP-Enabled Services, WC Docket No. 04-36, Comments of AT&T, Nov. 26, 2008, p. 29, "access charges properly apply today to interexchange traffic that is delivered to the PSTN, regardless of its classification." p. 30, "interexchange VoIP calls terminated on the PSTN are access calls and should be treated as such during the transition to a unified termination rate."

VI. The Default Rate Advocated By Verizon And CTIA Is Applicable Only To Those LECs Which Previous Elected The Rate For ISP-bound Traffic.

Verizon asserts that $0.0007 per minute is a reasonable rate and claims that this is already the default rate for a substantial portion of traffic that carriers exchange today (such as intraMTA wireless and ISP-bound traffic) as a result of the Commission's "Mirroring Rule."[36] However, the only basis for which the Commission could require an incumbent local exchange carrier ("ILEC") to adopt the $0.0007 per-minute rate for VoIP-PSTN traffic is if the ILEC previously elected that rate for ISP-bound traffic.

Under the "Mirroring Rule," the Commission determined that the $0.0007 rate cap for ISP-bound traffic should apply only if an ILEC offered to exchange all traffic subject to 251(b)(5) at the same rates.[37] However, for those ILECs that chose *not* to offer to exchange Section 251(b)(5) traffic subject to the same rate caps the Commission adopted for ISP-bound traffic, the Commission ordered those ILECs to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates as reflected in their contracts.[38] The Commission concluded that this is the correct policy result because no reason existed to support

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[36] Comments of Verizon and Verizon Wireless at p.15.

[37] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order*, Released April 27, 2001, at para. 89. In making this finding, the Commission stated that pursuant to the analysis used in adopting its finding, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or information service provider.

[38] *See, id.* Of course, the concept of "ISP-bound" traffic is not at issue here since the traffic that is being addressed is traffic allegedly originated as VoIP and delivered to the PSTN for termination via the use of the terminating network of a local exchange carrier ("LEC") such as that provided by each of the Nebraska Companies.

imposition of different rates for ISP-bound and voice traffic.[39] Clearly, under the Mirroring Rule, the $0.0007 rate is an elective rate, chosen at the discretion of the ILEC. Yet, it is not mandated by law or rule and there is no basis to mandate it for VoIP-PSTN traffic. The Commission therefore must not mandate $0.0007 per minute for those carriers which have not previously elected such rate as a result of the Commission's Mirroring Rule.

VII. The Default Rate of $0.0007 Advocated by Verizon And CTIA Is Not A Just And Reasonable Rate For Any Of The Nebraska Companies And Mandating The Use Of The Rate Would Cause An Undue Economic Burden On Each Of The Nebraska Companies.

The $0.0007 rate originated as a negotiated rate for reciprocal compensation between Southwestern Bell Communications and Level 3.[40] Verizon argues that since it has negotiated agreements with other carriers at or below $0.0007 per minute for terminating local traffic and ISP-bound traffic, this provides substantial evidence that this rate is just and reasonable.[41] However, while that may be correct for Verizon since it has negotiated this rate for some ISP-bound and local traffic, that fact cannot be used as a basis to require *all* small and rural carriers, or any other LEC for that matter, to adopt the same rate either for switched access or reciprocal compensation.

As the record reflects, even if the $0.0007 rate may be a reasonable rate for reciprocal compensation for the largest LECs, such as Verizon, it is not a reasonable rate for small ILECs such as the Nebraska Companies. In the Nebraska Companies' Section XV Comments, the

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[39] *See, id.* at para. 90.

[40] *See, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68, *Order on Remand and Report and Order,* Released April 27, 2001, n. 158.

[41] *See,* Comments of Verizon and Verizon Wireless at p. 16.

Nebraska Companies calculated the financial impact to their access revenues if the Commission were to adopt the \$0.0007 rate for VoIP-PSTN traffic exchanged with the Nebraska Companies. The Nebraska Companies would collectively lose 99% of their access revenue, approximately \$20,000,000 per year. One of the Nebraska Companies calculates that its carrier access billing costs would be four times the revenues it would receive at a rate of \$0.0007 for switched access, based on 2010 volumes. Such a significant reduction in revenue arising from the application of a \$0.0007 rate dispenses with any contention that such rate is “just and reasonable.” Moreover, the use of such rate raises significant public policy issues that would need to be addressed.

In addition to the revenue decrease of this magnitude being economically burdensome, the reduction would most likely result in discontinuation or severe reductions of capital investments by the Nebraska Companies in order to maintain positive cash flow. Likewise, instead of investing in broadband infrastructure, the Nebraska Companies would be forced to cut back on day-to-day operations and maintenance of existing facilities. Further, the virtual elimination of access revenues resulting from adoption of a rate of \$0.0007 will create greater uncertainty for the Nebraska Companies, and as a result, will not be in the interests of their customers. On these public policy bases alone, the rejection of the \$0.0007 rate is fully justified.

VIII. Intercarrier Compensation Rates Should Not Be Established Through Negotiated Commercial Agreements

The Nebraska Companies urge the Commission not to require establishment of rates for VoIP-PSTN traffic exchange through negotiated commercial agreements. The process to negotiate commercial agreements can be protracted, expensive and is inherently subject to the unequal bargaining positions represented by national carriers such as Verizon, and small, rural ILECs. Arising from this unequal bargaining power, the utilization of confidential, non-public commercial agreements for any form of traffic exchange raises significant concerns regarding abuses of market power. The terms of such agreements will be dictated by the party with market power, finalized in take-it or leave-it terms. If companies with market power and superior bargaining positions are able to dictate the terms of on which traffic will be exchanged with smaller LECs, the most likely result will be an immediate and drastic reduction in intercarrier compensation for such LECs, resulting is a decline in capital investments needed to deploy the broadband networks of the future.

Accordingly, the Nebraska Companies respectfully request that the Commission avoid adopting any proposal that would allow intercarrier compensation rates to be established through negotiated commercial agreements. Rather, the Nebraska Companies urge the Commission to subject all VoIP-PSTN traffic to the same intercarrier compensation charges (*i.e.*, intrastate access, interstate access, and reciprocal compensation) that other voice telecommunications service traffic is presently subject to, both during any ICC reform transition period and ultimately in the long-term unified intercarrier compensation regime.

IX. The Commission Must Prescribe And Enforce Call Signaling Rules That Allow Carriers To Bill For Traffic Terminating Onto Their Networks.

The Nebraska Companies and other commenting parties have amply demonstrated the importance of proper signaling rules and are in support of the Commission taking action to clarify the call signaling rules.[42] This clarification will help companies properly identify and account for traffic terminating on or over the PSTN. In their comments, the Nebraska Companies and others pointed out the need for additional billing record and signaling

[42] *See*, Comments of Time Warner Cable, Inc. at pp. 12-13, Comments of Cox Communications at p. 12, Comments of Windstream, at pp. 13-14, Comments of Blooston Rural Carriers at pp 8-10, Comments of the ITTA, at pp 20-22, Comments of the Iowa Utilities Board at p.18, Comments of Cablevision Systems Corporation and Charter Communications at p. 15.

requirements beyond what the Commission proposed in the *Notice*.[43] If the Nebraska Companies' recommendations were implemented, carriers would be required to provide information such as the Carrier Identification Code (CIC), Operating Company Number (OCN), and Jurisdiction Identification Parameter (JIP)/Location Routing Number (LRN) to the terminating carrier.[44] The terminating carrier needs this information to properly bill for the use of their network and reduce the phantom traffic problem plaguing the PSTN.[45]

In their comments, the Nebraska Companies as well as others expressed the need for strict enforcement of the new phantom traffic rules. For example, Comcast stated, "[f]or the new rules to be effective, the Commission must ensure that the consequences of violating those rules are severe enough to deter providers from stripping call-identifying information."[46] The Nebraska Companies agree that effective rule changes require the need to include the consequences of non-compliance for carriers that choose to violate such rules. Absent the coupling of these two concepts within the rules – the obligations and consequences of not meeting those obligations – terminating carriers will be left seeking enforcement against violators and expending the resources of such actions without any assurance as to who is to be held financially accountable for such violations.

Vonage Holding Corp. (Vonage) recognized that VoIP traffic may not be properly identified in the signaling or billing records,

> …the Commission can address the potential for providers to falsely claim that telecommunications service is VoIP to avoid intercarrier compensation requirements by: (1) requiring VoIP provider to indicate in the call signaling or

[43] *See*, Comments of the Nebraska Companies at p. 27.

[44] *Id*.

[45] *Id*.

[46] *See*, Comments of Comcast at p. 10.

> billing information for a call that the call is VoIP and (2) prohibiting providers from falsely identifying traffic as VoIP under the Commission's proposed rules to address phantom traffic.[47]

The Nebraska Companies agree that VoIP providers should properly identify VoIP calls within the signaling and billing records. However, the Nebraska Companies request that the Commission clarify that VoIP traffic terminating on the PSTN should be treated the same as traditional access traffic. The Commission's ICC treatment of VoIP traffic should go hand-in-hand with the signaling requirements of such traffic.

The Nebraska Companies point out that the Missouri Small Telephone Company Group ("MoSTCG") commented on the need for the Commission to "…address the recent increase in access avoidance schemes and call termination problems in rural areas. Such schemes result in failure of calls to terminate in rural exchanges or may produce calls of such poor quality as to encourage the callers to abandon their call."[48] The Nebraska Companies support MoSTCG's conclusion and agree that the phantom traffic has evolved into a more widespread problem nationwide of calls not completing to the terminating rural end user. These practices have not only resulted in reduced call reliability and quality of service for customers placing calls to a rural area, but these call completion issues have also been detrimental to both business calling rural customers and businesses with offices located in rural areas, let alone raising potential safety concerns. Accordingly, the Nebraska Companies respectfully request the Commission to take immediate action with regard to this important issue affecting telephone consumers in rural Nebraska and across the nation.

Based on the record, it is apparent that the Nebraska Companies' efforts to have the Commission prescribe and enforce call signaling rules that allow carriers to bill for traffic

[47] *See,* Comments of Vonage at p. ii

[48] *See,* Comments of the MoSTCG at p. 1.

terminating onto their networks have broad support throughout the industry. The Commission should adopt the Nebraska Companies' proposed Phantom Traffic rules as well as include the CIC, OCN, and JIP/LRN being signaled/included in the billing records received by the terminating provider, coupled with who would be financially responsible for such traffic if such call information is not provided. As stated in the initial comments, the Nebraska Companies respectfully request that the Commission should also review the JIP rules and consider revising to include the Metropolitan Trading Area (MTA) and the state of the originating cell site for wireless originating calls as well as adopting the "telephone numbers rule" for calls missing such mandated information signaling and/or billing information.[49] Strict enforcement of the new Commission rules should also be put in place to ensure carriers can be properly compensated for traffic on their network and customers have the benefit of a reliable voice services.

X. Conclusion.

For all of the reasons provided in the Nebraska Companies' initial and reply comments, the Nebraska Companies respectfully submit that the Commission should act with dispatch to affirm that application of existing ICC rules and requirements to VoIP traffic, and to establish specific rules to address call identification information in an effort to minimize if not eliminate Phantom Traffic. The Nebraska Companies have provided the basis for achieving these results and respectfully request that the Commission take action consistent with the Nebraska Companies' positions and proposal.

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[49] *See*, Comments of the Nebraska Companies at p. 27.

Respectfully submitted,

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