

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92

COMMENTS OF CHARTER COMMUNICATIONS, INC.

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TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
I. Network Interconnection Issues Must Be Addressed In Any Comprehensive Reform Of Intercarrier Compensation Rules	2
A. The Commission Should Reaffirm Single Point of Interconnection Obligations, and Concurrently, Abandon Consideration of Network “Edge” Proposals.	2
1. Use of A Single POI Remains the Most Efficient (and Equitable) Principle Governing the Interconnection of Networks between Incumbents and Competitors	3
2. The Commission Should Abandon the Consideration of Network “Edge” Principles in its Reform Efforts.....	6
B. Section 251 Requires All Incumbent LECs to Provide Transit Services Pursuant to TELRIC Rates.....	8
1. No Credible Evidence Exists That the Market for Transit Services Are Competitive	9
2. Because Transit Services Are Not Competitive and Still Largely Under Control of Incumbent LECs the Commission Must Affirm that Transit Is An Obligation Under Section 251, and Thus Subject to TELRIC Pricing	11
3. Compensation Obligations Should be Tied to the Party Originating Traffic in Transit Situations.....	13
C. The Provision of Call Identifying Information is Imperative to Guard Against Further Opportunities for Arbitrage of Existing and Future Compensation Regimes	14
II. Conclusion	15

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COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter”), through counsel, hereby submits initial comments on Section XVI (“Interconnection and Related Issues”) of the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (“NPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned dockets.¹

INTRODUCTION

In conjunction with its efforts to reform the intercarrier compensation system as contemplated in Section XV of the NPRM, the Commission must also move forward on several network interconnection issues that are integral to fair and efficient traffic exchange and

¹ *In re Connect America Fund*, Notice of Proposed Rulemaking & Further Notice of Proposed Rulemaking, FCC 11-13, 2011 WL 466555 (FCC rel. Feb. 9, 2011) (“*NPRM*”).

compensation principles. In particular, the Commission should ensure that principles of network interconnection and efficiency are included in any new compensation regime by reaffirming that competitive service providers are entitled to choose to interconnect via a single point of interconnection (“POI”) per LATA. At the same time, the Commission should abandon any consideration or use of network “edge” principles in any new compensation regime. In addition, the Commission should conclusively establish that the market for transit services is not competitive on a nationwide basis, that tandem transit providers continue to maintain bottleneck access control over such arrangements in most markets, and therefore that all ILECs have a statutory obligation to provide tandem transit services at TELRIC-based rates. Finally, the Commission should move forward with its proposed phantom traffic regulations and require all service providers to convey appropriate call signaling and identifying information on all calls.

I. NETWORK INTERCONNECTION ISSUES MUST BE ADDRESSED IN ANY COMPREHENSIVE REFORM OF INTERCARRIER COMPENSATION RULES

As the Commission recognizes in its NPRM, principles governing the compensation for the transport and termination of traffic cannot be considered separate and apart from issues of network interconnection and traffic exchange. Instead, these inter-related concepts must be addressed together in order to ensure that any reform efforts will have a comprehensive effect that results in meaningful changes to the existing intercarrier compensation regime. For these reasons the Commission should address the issues set forth herein.

A. The Commission Should Reaffirm Single Point of Interconnection Obligations, and Concurrently, Abandon Consideration of Network “Edge” Proposals

In connection with the compensation questions raised in Section VX of the NPRM, the Commission properly raises a number of interconnection-related issues and questions in Section

XVI. In particular, the Commission asks whether information in the record concerning POIs and network “edges” is still relevant or useful, or if the underlying issues have changed.² The Commission also asks whether the location of a POI should be defined in a “competitively neutral” location for all networks.³

1. *Use of A Single POI Remains the Most Efficient (and Equitable) Principle Governing the Interconnection of Networks between Incumbents and Competitors*

The issues (and record) first raised in prior proceedings related to the location of POIs and the potential use of a network “edge” as a default POI location remain relevant today. Answers to these questions lie at the heart of efficient network interconnection arrangements and the Commission’s efforts to reduce arbitrage opportunities arising from inefficient or inequitable arrangements.

Under current law, Section 251 establishes a default interconnection regime that permits competitors to choose the point at which interconnection will take place,⁴ any technically feasible technology to be used for such interconnection,⁵ and the method of interconnection (whether direct or indirect).⁶ Together, these principles permit competitors to request the most efficient network interconnection arrangements available, including the opportunity to interconnect at a single POI per LATA.⁷

² NPRM at ¶ 682.

³ *Id.*

⁴ *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, 271 F.3d 491, 518 (3rd Cir. 2001) (“the CLEC cannot be required to interconnect at points where it has not requested to do so.”).

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15606 at ¶ 206 (1996) (“*First Report and Order*”).

⁶ *Id.* at 15991, ¶ 997.

⁷ *In re Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region Long Distance Services in Texas*, Report and Order, 15 FCC Rcd 18354, 18390 (2000).

Establishing a POI between two carrier networks bears directly on each carrier's costs associated with the origination and transport of traffic to such POI. When a single POI is established as the point at which two carriers will exchange all traffic, certain efficiencies can be achieved through the aggregation of traffic onto high capacity transport and interconnection facilities. Those efficiencies help reduce network costs, and in turn, free capital and other resources for the competitive providers to implement competing voice, broadband or other advanced services.

Conversely, where multiple POIs are used to exchange traffic between two carriers, the network facility and transport costs of each carrier increases incrementally. In this way, the use of multiple POIs can reduce network efficiencies and increase the costs of interconnection and traffic exchange. Thus, a competitor's ability to choose to interconnect at a single POI, or at multiple POIs, has a very real impact on network efficiencies and expenditures that provider must incur to exchange traffic with the PSTN.

For these reasons, the Commission should reaffirm and continue to enforce the statutory obligation to permit competitors to interconnect at any technically feasible point, including a single POI per LATA. Continuing this important rule ensures that competitors are not forced to deploy inefficient network arrangements to multiple POIs, but can instead deploy the most cost-efficient interconnection arrangements. Such an approach guarantees that competitors will not have to bear the duplicative and unnecessary costs of mirroring legacy ILEC network architectures. The single POI rule properly aligns payment responsibility with the control of the design, provisioning and cost incurrence of interconnecting two networks because it rewards efficient network arrangements, and reduces the cost of competitive entry and interconnection in

any particular market. Accordingly, any new compensation regime should maintain these principles in order to incent competitive entry and efficient network architectures.

Reaffirmation of the single POI principle also counsels against the adoption of a so-called “competitively neutral” location for all networks.⁸ The Commission’s prior rulings on this issue recognize that incumbents have a strong incentive to manipulate network interconnection arrangements in order to increase competitors’ costs of entry and network deployment.⁹ While the competitive voice market has matured since passage of the 1996 Act, these principles still remain valid and relevant today. Adoption of a network location that is deemed to be “competitively neutral” would seemingly abandon the understanding that competitors are not on the same footing as incumbents, but in fact, that incumbent’s can use the interconnection process as a means of slowing competitive entry and increasing competitors’ costs of interconnection and traffic exchange. For these reasons, network interconnection rights cannot be based upon competitive “neutrality” principles when incumbents retain control over the vast majority of wireline voice subscribers.

The Commission also notes that in certain situations, carriers are placed in a position of assuming financial responsibility for network design or architecture decisions that they do not control. That problem has arisen in certain situations for Charter when interconnecting with CenturyLink, now the country’s third largest ILEC. In Wisconsin for example, CenturyLink arbitrated the issue with Charter to force it to interconnect at multiple POIs within a single LATA – when it had multiple affiliates operating within the same LATA – in clear contravention of this Commission’s policies. This outcome was the result of CenturyLink’s use of multiple

⁸ See NPRM at ¶ 682 (soliciting comment on the extent to which the location of a POI should be defined in a “competitively neutral” location for all networks).

⁹ See, e.g., *First Report and Order* at ¶ 202 (“Congress intended to obligate the incumbent to accommodate the new entrant’s network architecture ...”) and ¶ 489 (requiring new entrants to bear the cost of building network that mirrors the ILEC network would constitute a “significant barrier to market entry for competitive carriers.”).

affiliates operating under the rural exemption, each of whom acted as independent companies and insisted on separate interconnection agreements. Although the Commission recently conditioned approval of CenturyLink's merger with Qwest on its willingness to abandon the rural exemption under Section 251(f),¹⁰ the Commission should reaffirm the single POI principle here, in this proceeding, to ensure that all incumbent local exchange carriers ("ILECs") do not attempt to avoid compliance with the current rule under any new compensation regime.

2. *The Commission Should Abandon the Consideration of Network "Edge" Principles in its Reform Efforts*

In conjunction with the POI issues discussed above, the Commission also asks whether there is any merit to further consideration of the use of network "edge" principles in its reform efforts.¹¹ In particular, the Commission asks whether new rules should include the requirement that the calling party's service provider transmit, route and otherwise perform all the network functions necessary to deliver traffic to the network "edge" of the called party's service provider.¹² In prior reform proposals, the network "edge" was defined as the tandem switch for incumbent LECs using hierarchical network architectures and at the local switch for competitive providers, CMRS providers, and rural LECs.¹³

The record in prior proceedings demonstrates that network "edge" principles would be inequitable, and unlikely to discourage forward-looking efficient network interconnection arrangements. In prior proceedings, numerous parties demonstrated that network "edge" interconnection principles failed to account for the complexity of existing network interconnection arrangements, and that such principles ignore existing network configurations

¹⁰ See *In the Matter of Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 10-110, FCC 11-47, Appendix C, at Condition IV.K (rel. Mar. 18, 2011).

¹¹ NPRM at 681.

¹² *Id.*

¹³ *Id.*

designed to achieve network efficiencies.¹⁴ Various parties in that proceeding demonstrated that the “edge” proposal had significant problems, including that the proposal: lacked clarity and sufficient details,¹⁵ failed to account for certain types of traffic, including transit traffic,¹⁶ and would represent a radical change from the established network interconnection rules that have developed over ten plus years of jurisprudence.¹⁷

More significantly, adoption of network “edge” principles would undermine (if not eliminate) competitors’ existing statutory rights to use a single POI per LATA. Adoption of “edge” rules would likely permit ILECs to designate a network edge at multiple tandems in a LATA and impose additional charges upon CLECs that choose not to establish at a POI at each tandem.¹⁸ That result cannot be reconciled with the Commission’s long-standing interpretation of Section 251(c)(2) as permitting competitors to choose to use a single POI per LATA, at their discretion, where technically feasible. For that reason, the network “edge” principles conflict with the express language of the statute, and would not withstand scrutiny upon judicial review.

The record in these prior proceedings also establishes that the network “edge” principles unreasonably favored rural ILECs (or “RLECs”) because they would relieve the RLECs of the obligation to transport their originating traffic to a terminating carrier when the parties exchanged local or extended area service (EAS) traffic through an intermediary carrier. Of course, the Commission has affirmed that under “calling party network pays” principles, two

¹⁴ See Reply Comments of Comcast Corporation at 8, *In re Developing a Unified Inter-carrier Compensation Regime, et al.*, (WC Docket 01-92) (filed Dec. 22, 2008) (explaining that the proposed rules assumed the continued use of hierarchical, circuit-switched networks and failed to recognize or even mention the implementation of softswitches that are more frequently used for the routing of packet-based voice services).

¹⁵ Comments of Texas Statewide Telephone at 30 (WC Docket 01-92).

¹⁶ Comments of Public Utilities Commission of Ohio Comments at 13-14 (WC Docket 01-92).

¹⁷ Reply Comments of Broadview Networks, Inc., Cavalier Telephone, NuVox and XO Communications, LLC at 21 (WC Docket 01-92).

¹⁸ Reply Comments of NCTA at 18 (WC Docket 01-92). See also Reply Comments of Broadview, *et al.* at 21 (WC Docket 01-92) (edge principles would “effectively require competitive carriers to interconnect directly or indirectly at every location associated with the telephone numbers of the incumbent LEC’s customers.”)

interconnected carriers are obligated to deliver their traffic to the point of interconnection, at which point the terminating provider is then responsible for delivering the traffic to the called party.¹⁹ That type of distinction, and exemption from certain basic obligations,²⁰ would simply perpetuate an arbitrary distinction and undermine the Commission's attempts to move to a unified compensation mechanism that eliminates opportunities for arbitrage. Special rules that exempt rural carriers from certain transport obligations simply, and inappropriately, shift network costs back upon competitive providers that attempt to compete with the RLECs. Given the Commission's focus on the deployment of competitive broadband and voice services in rural areas, it would be unwise to adopt a rule that effectively increases the costs of entry for competitors.

B. Section 251 Requires All Incumbent LECs to Provide Transit Services Pursuant to TELRIC Rates

Another interconnection issue integral to any comprehensive reform effort is the status of transiting services. Transiting is a key network and traffic exchange functionality that occurs in nearly every market that is served by more than one provider. In such markets, transiting occurs when two carriers exchange local traffic indirectly by routing the traffic through an intermediary

¹⁹ See, e.g., *In re Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (citing 47 U.S.C. § 252(d)(2)(A), and *First Report and Order*, 11 FCC Rcd. 15499, 16024-25 at ¶¶ 1056-59). While most ILECs comply with these principles, one notable exception is Qwest (now an affiliate of CenturyLink). Qwest's interconnection agreements require the competing provider to assume the costs of transporting traffic beyond the point of interconnection. Qwest shifts these costs upon competitors by assessing what it calls "Direct Trunked Transport" fees (on a monthly recurring basis) on competitors' traffic that is delivered to a single POI within the LATA and exchanged with Qwest in more than one local calling area within that LATA. This approach stands in contravention to the statute, and the Commission's established rules.

²⁰ The network edge proposal relieves RLECs of the obligation to deliver their own originating traffic to another carrier's network. In addition, RLECs would be relieved of certain obligations to compensate third party transit providers transiting traffic when a competitive entity chose to exchange traffic via indirect interconnection. Exempting certain carriers from these basic obligations would simply perpetuate arbitrary distinctions between providers.

carrier's network.²¹ In many markets the transiting provider is the incumbent LEC serving that particular market.

The Commission suggests that a “competitive market” for transit services exists today, and asks whether there is a need to regulate transit services.²² However, the Commission’s preliminary conclusions in this regard are not supported by record evidence. Other than unsupported assertions by two interested parties, there is scant evidence that the market for transit services is “competitive.” Indeed, the lack of competitive transit services in smaller markets indicates that transit cannot be deemed a competitive service at this time. Because transit services continue to be provided primarily by incumbent LECs, especially in smaller and mid-sized markets, the Commission must affirm that transit is a Section 251 obligation subject to TELRIC pricing.

1. *No Credible Evidence Exists That the Market for Transit Services Are Competitive*

Although some commenting parties assert that “significant tandem competition has developed over the past several years”²³ the record in this proceeding does not support the Commission’s apparent conclusion that a “competitive” market for transit services exists at this time. Indeed, the only evidence cited by the Commission to support the idea that transit service is “competitive” are the comments of two companies: Neutral Tandem and AT&T.

While Neutral Tandem apparently offers competitive tandem transit services in many large markets, there is no credible market-derived data or statistics to support the assertion that transit services are now “competitive” nationwide, i.e., in all or even most markets where voice traffic is exchanged. Indeed, Neutral Tandem’s most recent (2010) annual report states that the

²¹ NPRM at ¶ 683.

²² *Id.*

²³ See Letter from Russell M. Blau, Counsel for Neutral Tandem, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135, Attach. A at 3 (filed Sep. 23, 2010).

company is unable to assess its own market share because it lacks accurate data. Specifically, Neutral Tandem states that: “[w]e are *unable to provide accurate market share information*, since no regulatory body or industry association requires carriers to identify amounts of voice traffic to other carrier types.”²⁴ Thus, any evidence offered to support the assertion that transit services are “competitive” must be discounted as mere conjecture or speculation.

Further, the limited available evidence surrounding Neutral Tandem’s service offerings indicates that it provides transit services in many metropolitan areas across the country. However, the available evidence also suggests that Neutral Tandem’s service is not ubiquitous across the country and is not available in many Tier 2 and Tier 3 markets. Indeed, Charter’s experience is that it must often use the incumbent LEC’s transit services to reach other third-party terminating carriers. Thus, Charter and other competitive providers in these smaller markets generally are not able to choose between competing transit service providers, and are often required to use the only transit service provider in that market: those provided by the ILEC. Even in those major markets where one or more competitive tandem providers exists, the suburban and rural service areas surrounding those major markets may not be served by the competitive transit provider. The ILEC transit service would then be the only available transit service in those service areas that are not covered by a competitive tandem provider. Having gaps in service areas covered by competitive providers in some markets only complicates a competitive carrier’s ability to provide a seamless service to its end user customer. For these reasons, the Commission cannot conclude that transit services are competitive in nature.²⁵

²⁴ See Neutral Tandem, Inc. 2010 Form 10-K Annual Report (for period ending 12/31/10), on file with the S.E.C., available at: <http://www.neutraltandem.com/investorRelations/index.htm> (emphasis added).

²⁵ Further, to the extent that the Commission chooses to deem some portion of the transit market competitive, it should do so on a market-by-market basis, and only after credible record evidence establishes that such markets are competitive.

2. *Because Transit Services Are Not Competitive and Still Largely Under Control of Incumbent LECs the Commission Must Affirm that Transit Is An Obligation Under Section 251, and Thus Subject to TELRIC Pricing*

Because transit is not yet competitive there is a compelling need for the Commission to affirm that the service must be provided pursuant to Section 251 of the Act. The Commission's authority to do so derives from the statute itself, as numerous courts and state commissions have found. Indeed, as many as fourteen state commissions have found that transit is an obligation under section 251.²⁶ More significantly, as recently as 2008 a federal district court in Nebraska

²⁶ See *In re Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. 99-00948, 2000 Ala. PUC LEXIS 1924, at *122-123 (Jul. 11, 2000); *In re Telcove Investment, LLC's Petition For Arbitration Pursuant To Section 252(b) of the Communications Act of 1934, as Amended By the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection With Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas*, Docket No. 04-167-U; Order No. 10, 2005 Ark. PUC LEXIS 338, at *58-59 (Sep. 15, 2005); *Application by Pacific Bell Telephone Company d/b/a SBC California (U 1001 C) for Arbitration of an Interconnection Agreement with MCIMetro Access Transmission Services LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Decision 06-08-029, 2006 Cal. PUC LEXIS 371, at *13-14 (Aug. 24, 2006); *Petition of Cox Connecticut Telcom, LLC for Investigation of the Southern New England Telephone Company's Transit Service Cost Study and Rates*, Decision, Docket No. 02-01-23, 2003 Conn. PUC LEXIS 11, at *26-35 (Jan. 15, 2003); *In re TDS Telecom dba TDS Telecom/Quincy Telephone*, Order, Docket Nos. 050119-TP, 050125-TP, 2006 Fla. PUC LEXIS 543, at *79-83 (Sep. 18, 2006); *Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements With MCIMetro Access Transmission Services LLC, Intermedia Communications LLC, and MCI WorldCom Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Cause No. 42893-INT-01, 2006 Ind. PUC LEXIS 39, at *131 (Jan. 11, 2006); *In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Indiana Bell Telephone Company d/b/a SBC Indiana*, Cause No. 42663 INT-01, 2004 Ind. PUC LEXIS 465, at *28-30 (Dec. 22, 2004); *In re Arbitration between Telcove Investment, LLC and Southwestern Bell Telephone Company d/b/a SBC Kansas Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection*, Order 11, Commission Order on Arbitrator's Award, Docket No. 05-ABIT-507-ARB, 2005 Kan. PUC LEXIS 920, at *24-26 ¶ 48-51 (Jul. 21, 2005); *In re Joint Petition For Arbitration of NewSouth Communications Corp., et al of an Interconnection Agreement With Bellsouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*, Case No. 2004-00044, Order, 2005 Ky. PUC LEXIS 810, at *21-22 (Sep. 26, 2005); *In re Application of Cox Nebraska Telcom, LLC, Omaha, seeking arbitration and approval of an interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996, with Qwest Corporation*, Application No. C-3796, 2008 Neb. PUC LEXIS 30, at *3 (Jan. 29, 2008); *In re Application of AT&T Communications of Michigan, Inc., and TCG Detroit for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Michigan Pursuant to 47 USC 252(b)*, Case No. U-12465, 2000 Mich. PSC LEXIS 493 (Nov. 20, 2000), *aff'd*, *Michigan Bell Tel. Co. v. Chapelle*, 222 F. Supp. 2d 905, 918 (E.D. Mich. 2002); *Application of Chariton Valley Communications Corporation, Inc. for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri pursuant to Section 252(e) of the Telecommunications Act of 1996*, Case No. TK-2005-0300, 2005 Mo. PSC LEXIS 715, at *5-6 (May 19, 2005); *In re Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*, Recommended Arbitration Order, Docket No. P-772, SUB 8; Docket Nos. P-913, Sub 5, P-989, Sub 3, P-824, Sub 6, P-1202, Sub 4, 2005 N.C. PUC LEXIS 888, at *130 (Jul. 26,

construed the statute as imposing an obligation upon Qwest (the ILEC) to provide transit services to competitors at TELRIC rates.²⁷

The federal court explained that although the Act does not define the terms “interconnection” or “transit,” the “unambiguous” language of Section 251 demonstrates that an ILEC must provide transit under Section 251(c)(2). Noting that Section 251(a) requires all carriers to interconnect directly or indirectly, the court reasoned that by permitting carriers to fulfill their interconnection obligations through indirect interconnection, Congress intended that indirect interconnections would be an available means of interconnection. Further, the court noted that transit service plays a critical role in the availability of indirect interconnections:

As recognized by the FCC, carriers “often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other.” Because transit service is essential to indirect interconnections, the text of Section 251(a) strongly indicates that ***an ILEC is required to provide transit under the Act.*** When Section 251(a) is read in conjunction with Section 251(c), it is clear that Congress imposed this obligation in Section 251(c) of the Act.²⁸

Thus, the court concluded, that an ILEC must provide transit service when a CLEC interconnects with the ILEC for the purpose of indirectly interconnecting with a third-party carrier. Otherwise, the indirect interconnection obligation under Section 251(a) would be meaningless. To conclude otherwise would require this Commission to construe the indirect interconnection obligations of 251(a) as superfluous and hollow. That result is not consistent with the federal law,²⁹ or accepted canons of statutory construction.³⁰

2005); *In re AT&T Communications of, Ohio, Inc.’s and TCG Ohio’s Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Case No. 00-1188-TP-ARB, 2001 Ohio PUC LEXIS 366 (Jun. 21, 2001); *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Arbitration Award, Docket No. 28821, slip op. at 23 (Feb. 23, 2005).

²⁷ See *Qwest v. Cox Nebraska Telecom, LLC*, 2008 U.S. Dist. LEXIS 102032 (D. Neb. 2008).

²⁸ *Id.* at *8-*9 (emphasis added) (internal citations omitted).

²⁹ See *WWC License, LLC v. Nebraska PSC*, 459 F.3d 880, 892-93 (8th Cir. 2006).

Finally, because this obligation arises under Section 251(c), it is subject to the same TELRIC pricing standards that are required of all other interconnection arrangements required under that statute. Indeed, there is good reason to believe that transit rates in all cases could be set at a price that is lower than the local switching rate charged by the ILEC in that geographic area. Because the volume of minutes traversing a tandem switch is likely much higher than that of a local end office switch, it is reasonable to expect that the cost of providing that switching functionality is lower than the cost of local end office switching. For this reason, the Commission should require transit rates to be subject to the same pricing discipline as other critical elements of interconnection under Section 251(c).

3. *Compensation Obligations Should be Tied to the Party Originating Traffic in Transit Situations*

Finally, to the extent the Commission establishes rules in this area, it should also affirm that calling party pays principles apply to traffic that is exchanged through a transit provider. As such, the originating party should be responsible for compensating the transit provider, and the terminating carrier (at TELRIC-based rates) for the transit and termination functions provided to the originating party.³¹ These principles, if established, will eliminate ongoing disputes and protracted negotiations between terminating carriers and the transit service providers concerning who is responsible for compensation. In both instances, the service provider originating such traffic should compensate the two other providers for the functionality provided – i.e., the transit provider for the transit service and the terminating provider under existing intercarrier compensation rules.

³⁰ *Bilski v. Kappos*, 130 S. Ct. 3218, 3251, 2010 U.S. LEXIS 5521 (2010) (“Put another way, we ordinarily assume, quite sensibly, that Congress would not in one statute include two provisions that are at odds with each other.”) *citing* 2A N. Singer & J. Singer, *Statutes and Statutory Construction* § 46:5, p. 189 (7th ed. 2007).

³¹ *See* 47 U.S.C. § 252(d)(2)(A); *see also First Report and Order* at ¶¶ 1056-59.

To ensure that the terminating provider is properly compensated, the transit provider should pass along all available call identifying information, and provide any other necessary information or support to allow the terminating party to properly bill the originating party for traffic delivered through the transit provider. Absent the application of clear and equitable rules in this regard, terminating providers will continue to be frustrated by their efforts to be compensated by originating providers.

C. The Provision of Call Identifying Information is Imperative to Guard Against Further Opportunities for Arbitrage of Existing and Future Compensation Regimes

As noted in its comments of April 1, 2011, Charter supports the Commission's proposal for addressing problems raised by so-called phantom traffic.³² The proposed rules represent an important step towards addressing a pervasive and costly problem addressed by many carriers.

For these reasons, Charter agrees that the calling party's telephone number (and other identifying information included within SS7 signaling) must be provided by the originating service provider, and that the Commission should prohibit service providers from stripping or altering call signaling or call identifying information. In order to ensure that these requirements actually work, the Commission appropriately proposes to impose the obligation on all providers involved in the origination, transmission or termination of calls along the call path.

Charter also supports the Commission's proposal to impose these obligations on a technology-neutral basis (including in IP-based networks), without mandating the specific technology or methodology IP-based providers must comply. It is sufficient for the Commission to establish the essential elements of the rule, applied broadly to all service providers, without dictating or favoring one technological solution over another. However, to ensure broad

³² Comments of Cablevision Systems Corporation and Charter Communications, WC Docket 10-90 at 10 (filed Apr. 1, 2011).

compliance with these rules, the Commission should include in its rules the general obligation that carriers take any action necessary to provide call signaling and identifying information, even if that requires an upgrade of their network routing or switching equipment. Otherwise, certain carriers, including transiting carriers, may attempt to avoid these obligations through the use of older technology that may not have the capability to provide such information.

II. CONCLUSION

The Commission should ensure that principles of network interconnection and efficiency are included in any new compensation regime by reaffirming the application of single POI per LATA principles in any new regime. Conversely, the Commission should abandon any consideration or use of network “edge” principles as improper. In addition, the Commission should conclusively establish that transit services are not yet competitive on a nationwide basis, and that all ILECs have a statutory obligation to provide tandem transit services at TELRIC-based rates under the Act. Finally, the Commission should move forward with its proposed phantom traffic regulations and require all service providers to convey appropriate call signaling and identifying information on all calls.

Respectfully Submitted,

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On behalf of

Charter Communications, Inc.

April 18, 2011