

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

COMMENTS OF METROPCS COMMUNICATIONS, INC.

Carl W. Northrop
Michael Lazarus
Andrew Morentz
Paul, Hastings, Janofsky & Walker LLP
875 15th Street, NW
Washington, DC 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705

Mark A. Stachiw
Executive Vice President, General Counsel
& Secretary
2250 Lakeside Boulevard
Richardson, TX 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Its Attorneys

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments on the *Notice of Proposed Rulemaking* (“*NPRM*”) released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceedings.² In the *NPRM*, the Commission seeks further comment on various long-pending

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-up*, WC Docket No. 10-90, GN Docket No. 09-51, WC

issues relating to intercarrier compensation and universal service reform. MetroPCS respectfully submits that there is a critical need for comprehensive reform and that the Commission needs to act promptly to resolve these issues. In the meantime, MetroPCS urges the Commission to implement in the near term a unified intercarrier compensation regime that reflects current marketplace realities. The following is respectfully shown:

I. INTRODUCTION AND SUMMARY

MetroPCS strongly agrees that the time has come for the Commission to adopt comprehensive intercarrier compensation and universal service reform that will “reduce waste and inefficiency in the intercarrier compensation system”³ and place all competing service providers on a level playing field.⁴ Reform is long overdue, and the Commission must finally resolve long-pending issues related to intercarrier compensation, eliminate arbitrage and reform the universal service program. As the Commission has aptly observed, “universal service rules and [the] ICC system, designed for 20th century networks and market dynamics, have not been comprehensively reassessed in more than a decade, even though the communications landscape has changed dramatically.”⁵ This is especially true as voice and data networks are converging at breakneck speed.

Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (rel. Feb. 9, 2011) (“*NPRM*”). The *NPRM* requests comments on Section XV separately from the other sections of the release. MetroPCS submitted comments on Section XV of the *NPRM* on April 1, 2011 in the above-captioned dockets, and nothing in these comments should be read to conflict with MetroPCS’ desire for an immediate halt to traffic pumping and other dis-economic, one-way arbitrage schemes.

³ *Id.* at ¶ 34.

⁴ The inequity most often cited by MetroPCS is that, as a wireless carrier, it is not entitled to receive the same terminating access payments as the wireline carriers with which it competes head to head.

⁵ *NPRM* at ¶ 8.

There can be no serious question that the current intercarrier compensation regime and universal service program, which were last substantively changed nearly 15 years ago, were designed to operate under market conditions and technologies vastly different from those that exist today and will be in place in the future.⁶ Convergence, consolidation and new technologies have transformed the communications landscape and rendered obsolete many of the jurisdictional and technological compensation distinctions that drove and underlie the current regime. As the Commission notes, “[m]obile services are vastly more prominent than even a few years ago – more than 27 percent of adults live in households with only wireless phones,” “[b]roadband Internet access revenues have grown from \$13.1 billion in 2003 to \$36.7 billion in 2009, while traditional wireline telephone (switched access) minutes plummeted from 567 billion in 2000 to 316 billion in 2008,” and “[f]rom 2008 to 2009, interconnected [VoIP] subscriptions increased by 22 percent, while switched access lines decreased by 10 percent.”⁷ The telecommunications industry that exists today bears little resemblance to the marketplace at the time the current intercarrier compensation system was adopted:

- In 1996, there were seven Regional Bell Operating Companies operating under the Modified Final Judgment (“MFJ”) offering local telecommunications services; now there are just three, each offering a dizzying array of services, including voice, long-distance, wireless, television and broadband services;
- In 1996, there were three distinct categories of service – local, toll and long distance; now these lines have blurred with ever increasing amounts of traffic being offered on flat-rate plans with no distinctions between a call completing across the street or across the nation;
- In 1996, there were multiple national stand-alone interexchange companies, including AT&T, MCI, and Worldcom – now these companies, or the remnants of them, have been absorbed into other telecommunications conglomerates which offer local, long distance, broadband wireless and, increasingly, media services;

⁶ Fifteen years ago switched voice was far and away the predominate technology. Internet Protocol (“IP”) is becoming and will soon be the predominate technology.

⁷ *NPRM* at ¶ 8.

- In 1996, there was no truly nationwide wireless carrier – now there are four wireless carriers with a combined market share in excess of 90% with near-national networks and other mid-tier and regional carriers offering nationwide service through intercarrier roaming arrangements;⁸
- In 1996, there were almost no local access providers, other than MFS, and no competitive local exchange carriers (“CLECs”); now there are numerous CLECs and cable providers providing local service;
- In 1996, the Internet and broadband access and the World Wide Web were in their infancy and such household names as Google, Twitter and Facebook were years off;
- In 1996, cable provided only one service – cable television; now a substantial and increasing amount of the United States population receives broadband Internet and voice telecommunications from cable providers; and
- In 1996, the RBOCs had over 90% market share; now the remaining RBOCs have a diminishing share of the total telecommunications traffic pie.⁹

Simply put, a lot has changed since 1996. With these facts in mind, now is the time for the Commission to reflect these marketplace realities in a truly unified intercarrier compensation regime that does not differentiate between increasingly converged and substitutable traffic.¹⁰ In doing so, the Commission must ensure that all carriers – incumbent local exchange carriers (“ILECs”), CLECs, satellite service providers, cable providers, and wireless carriers – are included, and are playing by fair rules for both intrastate and interstate services. Enlightened reform also will serve to reduce the number of recurring disputes, complaints, and other problems related to intercarrier compensation.

⁸ AT&T has recently announced the acquisition of T-Mobile which, if approved, will reduce the number of national wireless carriers to three.

⁹ As measured by number of switched access lines.

¹⁰ The Commission previously considered unified intercarrier compensation reform in 2008-2009, but ultimately that effort fell short. MetroPCS encourages the Commission to not let the current effort similarly fail.

In the *NPRM*, the Commission identifies four fundamental problems with the current system: (1) the system is based on outdated concepts and per minute rate structures; (2) rates vary, often unreasonably, based upon the type of provider, the technology used, and where the call originated; (3) the current system establishes incentives to retain old technologies to engage in regulatory arbitrage; and (4) the current system is not sustainable because new technologies are causing local exchange carrier compensable minutes to decline.¹¹ MetroPCS agrees that the current system reflects all of these problems and more. As traffic moves from circuit switched voice to an all IP architecture, the old ways of using switched voice minutes to determine compensation are unsustainable. Further, with the advent of IP networks, voice and data are indistinguishable, and distance and type of traffic are historical footnotes only used for determining outdated forms of compensation. Since all-IP networks are considerably more efficient and can lead to additional reductions in the cost to provide service, any regime (like the current one) which dissuades implementation of such a system must be overhauled in favor of a regime that (1) encourages deployment of the most efficient technology, (2) rewards deployment of new technologies, and (3) eliminates unreasonable opportunities for arbitrage.

Moreover, for years MetroPCS has pointed out that wireless telephony is becoming an ever-increasing substitute for wireline services. Yet, wireless carriers are not treated equally in the intercarrier compensation system because they are required to make access payments to others but are unable to receive them. This gives an unfair advantage to wireline services (including CLECs) that wireless carriers do not have and which retards the adoption of wireless as a substitute for wireline services. The reformed system must eliminate these irrational distinctions based upon the character of the carrier, the technology used, and the type of traffic,

¹¹ *NPRM* at ¶ 495.

or else the Commission will be faced with always having to deal with the inevitable uneconomic arbitrage that will result.

Finally, new technologies, such as text messaging, e-mail, and social networks have replaced large portions of traffic and are completely outside the current system. The Commission must establish a system which not only treats all traffic, carriers and technologies equally and incents carriers to deploy new advanced technologies such as IP, but also is sustainable for the long term as new technologies and traffic emerge. In sum, MetroPCS agrees with the Commission's assessment that the current system is broken and radical changes are necessary in order to position the United States for the 21st century. MetroPCS also agrees that comprehensive reform cannot be accomplished on a "flash cut" basis, but rather must be implemented using a glide path – but that glide path must be relatively short as the time for reform has long since passed.

MetroPCS generally supports the intercarrier compensation reforms proposed in the *NPRM*. In particular, MetroPCS strongly agrees that the Commission should adopt rules that ultimately treat all traffic – local, intrastate, or interstate; wireline and wireless; voice and data; originating and terminating access and reciprocal compensation – the same. MetroPCS also supports creating a definite path toward unifying all intercarrier rates and moving the compensation system to a bill-and-keep regime. The appropriate approach is to adopt interim measures designed to eliminate the larger inequities in the current system and to provide a short, reasonable glide path to bill-and-keep. The appropriate interim measure is to immediately move intrastate access to interstate rates – with the interstate rates frozen as of the date of the release of the *NPRM* – and to impose a two-year glide path to \$0.0007 minute of use ("MOU"). Based upon current market data, the Commission can properly conclude that \$0.0007 MOU closely

approximates the current incremental cost of terminating circuit switched voice traffic. But, the interim \$0.0007 solution must be truly that – interim – since it still would treat voice and data traffic differently. The Commission must transition from \$0.0007/MOU to bill-and-keep as soon as possible, which MetroPCS submits is a further two-year period. A short glide path of this nature is reasonable – if not essential – because by the end of the two years, if not sooner, IP networks will be carrying the lion’s share of all traffic over the public switched telephone network (“PSTN”).¹²

Equally important, intercarrier compensation must be regulated under a single federal system, so that all carriers have certainty in the compensation market. Without certainty, the capital needed to transform the industry and support broadband deployment will be lacking. Accordingly, MetroPCS strongly supports the Commission’s proposal to “bring all traffic within the reciprocal compensation framework of section 251(b)(5) at the initiation of the transition, and set a glide path to gradually reduce all intercarrier compensation rates to eliminate per-minute charges.”¹³ This will prevent troublesome regulatory arbitrage opportunities that create waste in the telecommunications marketplace and raise the cost of service to end-user customers, and will position the intercarrier compensation system for the future.

¹² It may very well be that the Commission will need to redefine the public switched telephone network as part of this process. As traffic moves from switched voice to IP voice, it is not clear under the current definition whether the traffic would actually be carried by the PSTN as currently defined. Since the definition of PSTN is pervasive in the Communications Act, the Commission may need to revisit its definition of PSTN. Given the changed circumstances that pertain to the manner in which telephone traffic is handled, the Commission has the authority to rethink this definition. MetroPCS believes that all-IP networks will need to be included within the definition of the PSTN in order for important pro-competitive provisions of the Act, such as carrier’s interconnection rights, to remain meaningful. The definition of PSTN also will have a more profound effect on wireless to the extent that broadband data is not considered to be a CMRS service since it is not interconnected with the PSTN or the functional equivalent of CMRS.

¹³ *NPRM* at ¶ 550.

In the course of reforming the intercarrier compensation system, the Commission must accomplish several goals. First, the Commission must ensure that the rules during the transition period apply equally to all forms of voice traffic, switched or IP based, including access and reciprocal compensation traffic. Second, the Commission must clarify that carriers who now are exchanging traffic on a *de facto* bill-and-keep basis pursuant to indirect interconnection arrangements are subject to the ban on rate increases.¹⁴ Third, the Commission should include rules governing originating access traffic, transit traffic, wireless access charges,¹⁵ and IP/PSTN traffic¹⁶ in its proposed reforms, in order to make certain that its regime for intercarrier compensation reform truly is unified. Fourth, in order to level the playing field between wireless and wireline services, the Commission should seek as short a transition period as reasonably practicable in order to provide carriers with timely relief from the arbitrage and market distortions that exist in the current intercarrier compensation regime. Fifth, the Commission should take steps to assure that any glide path toward lower rates is as specifically-defined as possible. Sixth, the Commission must use a means that is supportable by the authority granted to the Commission under the Communications Act of 1934, as amended (the “Act”).

Lastly, MetroPCS also supports the Commission’s overhaul of the universal service contribution mechanism. The universal service contribution mechanism has long been inefficient and unfair, and MetroPCS welcomes a change that would give all carriers – wireless

¹⁴ For example, CLECs who are now subject to *de facto* bill-and-keep arrangements with wireless carriers should not be allowed to game the system by imposing a higher interim termination rate for wireless calls during the transition glide path period.

¹⁵ MetroPCS supports Commission rules governing wireless access charges, but only to the extent that such traffic is not subject to an ongoing bill-and-keep arrangement, *de facto* or otherwise.

¹⁶ Issues surrounding interconnected VoIP traffic are covered in greater detail in MetroPCS’ April 1, 2011 comments filed in response to Section XV of the *NPRM*.

carriers and wireline – certainty about universal service and would ensure that only those carriers who truly need help in fact receive it. This is particularly important for customers of MetroPCS, who largely purchase flat-rate plans that include taxes and regulatory fees, and for whom certainty regarding their monthly wireless bills is paramount.

II. THE COMMISSION HAS THE CLEAR LEGAL AUTHORITY TO ADOPT COMPREHENSIVE INTERCARRIER COMPENSATION REFORM

The Commission is comfortably within the confines of its congressionally-delegated authority in adopting comprehensive intercarrier compensation reform. MetroPCS agrees that the Commission has authority under 251(b)(5) to adopt rate mechanisms for all wireline traffic, including intrastate and interstate access traffic and reciprocal compensation traffic. Further, MetroPCS also agrees that the Commission “plainly [has] authority under sections 201 and 332 to regulate charges with respect to interstate traffic involving a wireless provider, as well as charges imposed by wireless providers regarding intrastate traffic.”¹⁷ Furthermore, there is substantial support for the proposition that “section 332 of the Act also gives the Commission authority to regulate the intercarrier compensation rates paid by wireless carriers for intrastate traffic – including charges that otherwise would be subject to intrastate access charges.”¹⁸

These conclusions are supported not only by the plain language of the Act, but also by Commission and judicial precedent. As discussed in the *NPRM*, the Eighth Circuit “construed the Act to authorize the Commission to issue ‘rules of special concern to the CMRS providers,’ including reciprocal compensation rules that encompass intrastate charges imposed by wireline providers on wireless providers.”¹⁹ Furthermore, in the *T-Mobile Declaratory Ruling*, the

¹⁷ *NPRM* at ¶ 511.

¹⁸ *Id.*

¹⁹ *Id.* (citing *See Iowa Util. Bd. v. FCC*, 120 F.3d 753, n.21 (1997), vacated and remanded in part on other grounds, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)).

Commission “relied upon its authority under sections 201 and 332 of the Act to adopt a rule prohibiting LECs from imposing compensation obligations for non-access traffic pursuant to tariff.”²⁰ Based on this precedent, the Commission should feel confident that its proposals to enact needed, comprehensive intercarrier compensation reform are comfortably within the confines of its federal jurisdiction.

Importantly, this jurisdiction also extends to the intrastate reciprocal compensation framework. The Commission has the necessary authority to “apply section 251(b)(5) to all telecommunications traffic exchanged with LECs, including intrastate and interstate access traffic,” and thereby “bring all telecommunications traffic (intrastate, interstate, reciprocal compensation, and wireless) within the reciprocal compensation framework of section 251(b)(5), and determine a methodology for such traffic.”²¹ Indeed, “[h]ad Congress intended to exclude certain types of telecommunications traffic from the reciprocal compensation framework, it could have easily done so by using more restrictive terms to define the traffic subject to section 251(b)(5).”²² This view finds support in Commission precedent. The Commission previously properly found that “[b]ecause Congress used the term ‘telecommunications,’ the broadest of the statute’s defined terms, . . . section 251(b)(5) is not limited only to the transport and termination of certain types of telecommunications traffic, such as local traffic.”²³ MetroPCS also supports

²⁰ *NPRM* at ¶ 511 (citing *T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, ¶ 14 (2005) *petitions for review pending*, *Ronan Tel. Co. et al. v. FCC*, No. 05-71995 (9th Cir. filed Apr. 8, 2005).

²¹ *Id.* at ¶ 512.

²² *Id.* at ¶ 513.

²³ *Id.* (citing *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime*;

the Commission’s conclusion that “section 251(g) should be read to encompass not just interstate access, but also intrastate access.”²⁴

The Commission also seeks comment as to whether it should adopt rules with respect to 251(f)(2) – pertaining to rural carriers – if it adopts a unified intercarrier compensation regime under 251(b)(5). The answer is yes; the Commission absolutely must adopt rules under 251(f)(2) if its uses 251(b)(5) as the jurisdictional basis for reform. Otherwise, rural carriers, who have enjoyed some success in influencing state commissions, will likely convince certain states to exempt them from the new unified intercarrier compensation regime. Since universal service reform is largely aimed at rural carriers, allowing such carriers to be excepted from the changes to the compensation regime, while still enjoy the benefits of universal service reform, would not work. Accordingly, the Commission should establish strict time limits for any exemption and set forth specific factors to be considered, rebuttable presumptions that favor uniformity and set default rules and rates to guide the state regulatory agencies. In making this recommendation, MetroPCS notes that multiple state commissions who commented earlier on the traffic pumping issues raised in Section XV of the *NPRM* encouraged the federal Commission to provide guidance to the states.²⁵ If uniform rules are not established for exemptions under 251(f)(2), the

Inter-carrier Compensation for ISP-Bound Traffic; IP-Enabled Services, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶ 37 (2008), *aff’d Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010); *cert denied*, 131 S. Ct. 597, 626 (2010).

²⁴ *NPRM* at ¶ 514. However, the Commission should not go down the path of resting its intercarrier compensation reforms on 251(g). MetroPCS is concerned that 251(g) might be read as providing only a mechanism to preserve the current access regime (the one in place in 1996) and not introducing a wholly new intercarrier compensation regime which includes reciprocal as well as access traffic. The better approach would be to rest the authority squarely on 251(b)(5) and 332 which have been upheld in the past and provide a solid foundation for jurisdiction.

²⁵ See Comments of California Public Utilities Commission at 9 (filed April 1, 2011); see also Comments of Iowa Utilities Board at 17-18 (filed April 1, 2011).

Commission will find that the net it is casting will have too many large holes and the desired goals of consistency and comprehensive reform will slip away.

In sum, the Commission possesses the authority to adopt comprehensive intercarrier compensation reform under several jurisdictional approaches all of which are supportable under current jurisdictional basis of the Act – and should use all the avenues at its disposal to implement the needed reforms without delay.²⁶

III. THE COMMISSION SHOULD UNDERTAKE CERTAIN IMMEDIATE REFORMS TO ELIMINATE OPPORTUNITIES FOR WASTEFUL ARBITRAGE

MetroPCS strongly endorses the Commission’s efforts to eliminate opportunities for “wasteful arbitrage” by taking immediate actions to reduce uneconomic traffic pumping and traffic stimulation in the access and local reciprocal compensation markets.²⁷ MetroPCS agrees with the Commission’s conclusion that “[b]y reducing inefficient use of resources and expenditures on disputes and litigation...these proposals will allow companies to begin directing increased capital resources toward investment and innovation that ultimately benefits consumers.”²⁸ MetroPCS’ April 1, 2011 comments in this proceeding set forth in detail the importance of halting one-way traffic arbitrage business models that prey upon unsuspecting customers, and the concrete steps MetroPCS recommends to accomplish meaningful reform.²⁹ MetroPCS will not repeat that discussion here, other than to say that such actions are critical to

²⁶ MetroPCS notes that legislation has been introduced in Congress to reform universal service. MetroPCS does not believe that the Commission should wait to see how such legislation plays out. Reform is needed now, and it appears that the industry is at a point ready to embrace change. If the Commission waits for the Congressional activity to play out, the time to accomplish meaningful reform may be missed.

²⁷ See *NPRM* at ¶ 36.

²⁸ *Id.* at ¶ 39.

²⁹ See Comments of MetroPCS Communications, Inc. at 2, 7 (filed April 1, 2011).

accomplish meaningful intercarrier compensation reform and should be implemented as soon as possible.³⁰

The Commission also seeks comment on the most appropriate manner in which to “determine the obligations for interconnected VoIP traffic under the ICC framework.”³¹ As noted in its earlier comments filed in this proceeding, MetroPCS supports a bill-and-keep intercarrier compensation regime for all traffic, including interconnected VoIP traffic.³² Because a number of services, including many wireless, wireline and VoIP services, now include a flat-rate long distance feature as part of the local service plan, there is little need for the Commission to continue to make substantial regulatory distinctions among these technologies in the intercarrier compensation regime. Instead, the Commission should include all of these telecommunications technologies in a single, comprehensive, integrated intercarrier compensation regime, with all traffic being exchanged, ultimately, on a bill-and-keep basis, and on an interim basis at a rate no greater than \$0.0007 per MOU.

Exchanging all traffic on a bill-and-keep basis is the only realistic way to ensure that the Commission’s unified intercarrier compensation regime will be able to withstand the test of time and be flexible enough to change with changes in technology. As an initial matter, metered intercarrier payment regimes rely on traffic being measured by minutes of use or some proxy for it. Since VoIP traffic comes in a stream of packets which, unlike circuit switched traffic, does

³⁰ One recurring issue that arises in the intercarrier compensation reform debate is whether the serious on-going traffic pumping problems should be addressed in an earlier separate order, or should instead be addressed in the context of comprehensive reform. Previously, MetroPCS favored a comprehensive approach, but, candidly, did so in the hope that the stars were in alignment for comprehensive reform long before now. At this point, MetroPCS urges the Commission to take steps to address traffic pumping this year, even if that requires separate action.

³¹ *NPRM* at ¶ 38.

³² *See* Comments of MetroPCS Communications, Inc. at 14-15 (filed April 1, 2011).

not fully occupy a circuit, this traffic can be difficult to measure while in IP form. Thus, a compensation regime based on per-minute charges simply is incompatible with an IP-based telecommunications architecture.³³ Indeed, any regime which differentiates between types of traffic (*e.g.*, voice vs. data) on an IP network may be fatally inconsistent, as both voice and data packets impose the same costs on the terminating carrier. It would make no sense to allow a terminating carrier to charge for voice packets but receive no payment for data packets. And, because voice traffic is projected to represent a rapidly declining portion of total traffic, it would be a mistake for the Commission to graft the current payment system onto the IP traffic, since this would only transfer the problems inherent in voice compensation to compensation for data traffic. Rather than leveling the playing field, that approach would perpetuate a broken regime. Instead, the existing bill-and-keep compensation system for data should be retained and adopted for voice traffic.

IV. THE COMMISSION SHOULD ADOPT COMPREHENSIVE REFORMS TO THE INTERCARRIER COMPENSATION SYSTEM AT THE EARLIEST POSSIBLE DATE

As the Commission knows well, there have been a few prior occasions when it appeared that a sufficient industry consensus was forming to enable comprehensive intercarrier compensation reform to be adopted with broad support. Unfortunately, in each instance the day was not seized and momentum was lost.

MetroPCS applauds the Commission for trying once again to reform a system that nearly everyone agrees is seriously flawed. Time is of the essence. Given the convergence of the many telecommunications technologies, and the competition among these technologies, it no longer is

³³ Further, such a regime almost requires IP traffic be converted to switched voice traffic solely to determine compensation and then be reconverted to IP. This kind of inefficiency is wasteful and must be eliminated.

justifiable for the Commission to draw severe distinctions among and between competing technologies and services with respect to intercarrier compensation rates. MetroPCS agrees that “[b]ecause the ICC system has not been reformed to reflect fundamental shifts in technology and competition in the last two decades, the current system results in considerable instability for carriers.”³⁴ The Commission cannot afford to miss another opportunity to overhaul the intercarrier compensation system in a manner that creates certainty for all carriers and eliminates opportunities for bad actors to “game the system” and profit from wasteful arbitrage opportunities.

While there is no question that the telecommunications landscape has changed significantly since 1996, a true paradigm shift is underway. Unfortunately, the current intercarrier compensation system is woefully inadequate to deal with the rapidly-changing marketplace realities, and in fact may act to stifle network innovation. The Commission correctly recognizes that IP-based networks are the future of telecommunications and that the “current ICC system is impeding the transition to all-IP networks and distorting carriers’ incentives to invest in new, efficient IP equipment.”³⁵ Indeed, the Commission wisely has taken comment in a separate proceeding on the rise of IP-based network infrastructure, in an effort to determine “the appropriate policy framework to facilitate and respond to the market-led transition in technology and services, from the circuit switched PSTN system to an IP-based communications world.”³⁶ The *National Broadband Plan* also recognizes the importance of creating a comprehensive intercarrier compensation system that will allow a smooth transition to

³⁴ *NPRM* at ¶ 41.

³⁵ *Id.* at ¶ 40.

³⁶ *Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice # 25, 24 FCC Rcd 14272 (2009).

an IP-based communications network.³⁷ Given this important rapidly evolving transition, the Commission has recognized, as it must, that “[p]er-minute charges are inconsistent with peering and transport arrangements for IP networks, where traffic is not measured in minutes.”³⁸ Accordingly, if this transition to an IP-based communications infrastructure is to be successful, the intercarrier compensation system must be reformed to align itself with the new technological realities.

A. Commission Proposals for Comprehensive Intercarrier Compensation Reform

In order to accomplish the Commission’s important reform goals, the *NPRM* proposes two general jurisdictional pathways to accomplishing comprehensive intercarrier compensation reform. Under the Commission’s first proposed option, “the transition would be implemented through reliance on the existing roles played by the states and the Commission with respect to regulation of rates.”³⁹ Such an approach would result in the Commission itself “reduc[ing] interstate access charges[] and adopt[ing] a methodology that states would implement to reduce reciprocal compensation rates.”⁴⁰ However, “the categories of traffic under the reciprocal compensation framework would remain unchanged” and individual states “would otherwise continue to be responsible for reforming intrastate access charges.”⁴¹

Under the Commission’s second proposed approach it would “use the tools provided by sections 251 and 252 in the 1996 Act to unify all intercarrier rates, including those for intrastate

³⁷ CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE at 59 (2010).

³⁸ *NPRM* at ¶ 40.

³⁹ *Id.* at ¶ 534.

⁴⁰ *Id.*

⁴¹ *Id.*

calls, under the framework of reciprocal compensation.”⁴² In doing so, the Commission would “establish[] a methodology for intercarrier rates, which states then work with the Commission to implement.”⁴³ MetroPCS strongly endorses this second approach over the first approach because a federally-guided intercarrier compensation regime will increase certainty for telecommunications providers, can be implemented in a shorter period of time, will have greater certainty of uniformity, and allows carriers to direct additional resources towards building additional broadband infrastructure and pursuing innovative new products and services.⁴⁴

1. Maintaining the Existing Federal/State Rules Will Perpetuate Inconsistency and Uncertainty in the Telecommunications Marketplace

As referenced above, the Commission’s first proposed approach to comprehensive intercarrier compensation reform “relies on the Commission and states to act within their existing roles in regulating intercarrier compensation, such that states would remain responsible for reforming intrastate access charges.”⁴⁵ Because MetroPCS strongly supports the Commission’s efforts to reform the intercarrier compensation system and eliminate wasteful arbitrage opportunities, it would prefer reform under either of the two proposed approaches rather than inaction. However, MetroPCS does have reservations about an approach that leaves an important part of the overall reforms in the hands of each individual state. Paradoxically, such a reform strategy may in fact increase uncertainty in the intercarrier compensation system in the near term and increase opportunities for regulatory arbitrage. Whatever approach is used, the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ MetroPCS believes that the success of the wireless industry is attributable in no small part to the federal regime reflected in Section 332 of the Act, which freed carriers from the patchwork of inconsistent state rules and regulations that stifled the development of nationwide services.

⁴⁵ *NPRM* at ¶ 42.

Commission must provide meaningful guidance to states during the course of intercarrier compensation reform, require states to abide by strict timelines, provide a federal backstop if states fail or refuse to act as provided by the Commission, and encourage states to implement reforms as promptly as possible.

As the Commission notes, a number of states already have undertaken laudable reforms with respect to curbing intercarrier compensation abuses.⁴⁶ MetroPCS congratulates these states on recognizing the important problems presented by one-way traffic business models, and for recognizing that the “free” services offered by traffic pumpers contribute to billions of dollars of waste in the telecommunications industry.⁴⁷ Nebraska and Iowa in particular have undertaken commendable efforts to confront these problems on a state level.⁴⁸ Nebraska, for its part, has “reduced intrastate rates and established a state universal service fund initially designed to help carriers replace required intrastate rate reductions,” while Iowa has acted to reduce intrastate access rates for LECs in the context of a tariff proceeding.⁴⁹ Unfortunately, the instances of independent, proactive, progressive state action are far too isolated. Despite the long-standing recognition that the current compensation system is severely flawed, a majority of states have not yet showed the initiative of Nebraska and Iowa. Accordingly, MetroPCS believes that having

⁴⁶ *Id.* at ¶ 543.

⁴⁷ Indeed, the Commission has cited “estimates that the total cost of access stimulation to the industry has been over \$2.3 billion over the past five years.” *NPRM* at ¶ 637 (citing TEOCO, ACCESS STIMULATION BLEEDS CSPS OF BILLIONS, at 5, attached to Letter from Glenn Reynolds, Vice President – Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07- 135 (filed Oct. 18, 2010). Verizon also has estimated the industry impact of access stimulation to be “between \$330 and \$440 million per year and as noted above, states that it will be billed between \$66 and \$88 million by access stimulators for approximately two billion wireline and wireless long distance minutes in 2010.” *NPRM* at ¶ 637 (citing Letter from Donna Epps, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135 at 1 (filed Oct. 12, 2010)).

⁴⁸ *NPRM* at ¶ 543.

⁴⁹ *Id.*

the Commission man the laboring oar on intercarrier compensation reform will result in a smoother and more rapid transition process, which in turn will benefit the telecommunications industry and its customers.

In addition, if the Commission truly seeks timely, comprehensive and consistent reforms, it cannot afford to rely on 50 different states to take action. State by state action is particularly inappropriate to govern wireless carriers, which were purposefully subjected by Congress to a federal regime, a fact that the *NPRM* recognizes.⁵⁰ It is important that wireless providers not be subjected continually to a patchwork of state regulations and be forced to continuously monitor proceedings before 50 separate state utilities commissions. The wireless companies' fear of being dragged into 50 separate state commissions is not merely theoretical. As MetroPCS noted in its April 1 comments in this proceeding, CMRS providers already are involved in compensation proceedings before at least six state PUCs,⁵¹ and federal courts have heard related

⁵⁰ *Id.* at ¶ 538.

⁵¹ *See, e.g., Application of North County Communications Corporation of California (U5631C for Approval of Default Rate for Termination of Intrastate, IntraMTA Traffic Originated by CMRS Carriers*, Calif. PUC A.10-01-003 (filed Jan. 6, 2010) (North County Communications asked the CPUC to establish a default compensation rate of \$0.0110 for terminating wireless traffic in the absence of a negotiated agreement and to establish a “just and reasonable” rate for the termination of wireless traffic generally); *Pac-West Telecomm, Inc. (U5266C) vs. Sprint Spectrum L.P., et al*, Calif. PUC Case 09-12-014, 10-01-019, 10-01-020, 20-01-021 (filed Dec. 9, 2009) (Pac-West sought intrastate termination fees from CMRS providers, who in turn alleged traffic pumping); *Aventure Communication Technology, L.L.C.*, Iowa Util. Board TF-2010-0087 (2010) (After filings by Sprint, T-Mobile, and AT&T, the Iowa Utilities Board suspended the proposed tariff of Aventure to determine its legality, also noting that it may be in violation of its previous traffic pumping decisions); *Sprint Comms. Co. L.P. v. Bluegrass Telephone Co.*, Kentucky PSC 2010-00012 (2010) (Sprint filed a complaint against Bluegrass Telephone Company alleging unlawful access charges and traffic pumping); *Qwest Comms. Co. v. Tekstar Comms., Inc.*, Minn. PUC C-09-265 (involving traffic pumping allegations related to litigation between Sprint and Tekstar, and with T-Mobile, AT&T, and Verizon intervening); *Petition of XChange Telecom Corp. for a Declaratory Ruling Establishing the Just and Reasonable Rates for Termination of Traffic Between Wireless Carriers and CLECs*, NY PSC 09-C-0370 (XChange filed a complaint against Sprint for nonpayment of termination fees); *Complaint filed by South Dakota Network, LLC against Sprint Communications Company L.P. Regarding*

disputes arising in at least three other states.⁵² The Commission must work to halt this trend.

Avoiding a patchwork of inconsistent state regulations in precisely what Congress intended when it preempted state regulation of wireless rates and declared that wireless carriers should be subject to a single federal regime. Requiring CMRS providers to have their day-to-day businesses impacted by rate proceedings in a multitude of states goes against the congressional intention of having a federal CMRS policy.

2. If States Retain Responsibility for Intercarrier Compensation Reform, the Commission Must Provide Them With Robust Guidance

The *NPRM* seeks comment on the need to provide guidance to state commissions,⁵³ and MetroPCS urges the Commission to recognize the importance of federal direction to any intercarrier compensation reform program that grants states discretion in their actions. To the extent that the Commission relies on states to reform intercarrier compensation, the Commission must offer robust guidance based on a well-articulated Commission methodology. The Commission must instruct states in detail to use an incremental cost-based methodology to set rates. The Commission must instruct states to use an interim rate no higher than \$0.0007 per MOU unless the state commission utilizes a strict cost-based TELRIC methodology to adopt a higher interim rate. And, any interim rate must be placed upon an annual stepped-down plan to

Failure to Pay Intrastate Centralized Equal Access Charges and to Immediately Pay Undisputed Portions of SDN's Invoices, S. Dakota PUC TC09-098 (SDN filed a complaint against Sprint for nonpayment of intrastate access charges, and Sprint counterclaimed, in part, that SDN should have known SDN participating telecommunications carriers were committing traffic pumping and that SDN had unlawfully billed Sprint for delivered calls).

⁵² While, to MetroPCS' knowledge, no cases are currently pending before the PUCs in these states, federal courts in Arizona, Oregon, and Utah have been presented with allegations of traffic pumping. See *CTIA – The Wireless Association Ex Parte*, in WC Docket No. 07-135 and CC Docket No. 01-92 (filed Nov. 24, 2010).

⁵³ *NPRM* at ¶ 546.

get to bill-and-keep within four years. Allowing state commissions to set rates that are not cost-based would be contrary to the public interest.

Further, the Commission must provide a mechanism to set state rates if the state regulatory commission fails or refuses to adopt the necessary rate changes. Just as Section 252 establishes a default mechanism if the state commission fails to arbitrate an interconnection arrangement within the timeframes set forth in that section, the Commission here needs to establish that it will set the rates if the state regulatory commission fails or refuses to do so within the timeframes established by the Commission. By setting up such a backstop arrangement, state commissions will be deterred from dragging their feet since rates will be set despite their inaction.

The Commission also seeks comment on whether a four-year grace period for state action is appropriate.⁵⁴ As earlier noted, MetroPCS recommends a two-year period for the transition to bill-and-keep under a predominantly federal regime. Unfortunately, this desirable timetable cannot likely be met if state action is involved. (This provides an additional justification for federal action.) If states are to set rates, given the rapid pace of development and innovation in the telecommunications industry, the four-year period suggested in the *NPRM* is much too long to wait. If the Commission waits four years for the states to act before initiating the glide path to bill-and-keep, then the entire reform effort will be frustrated. The Commission should establish tight timeframes for state regulatory action – such as 6 months – which would allow the Commission to act if the states do not. Then, the previously-recommended two-year glide path should pertain. This timetable will reduce the opportunities for regulatory arbitrage and

⁵⁴ *Id.* at ¶ 548.

recognizes that every moment wasted comes at the expense of resources that could be put to far greater use.⁵⁵

In discussing a timetable for states to complete intercarrier compensation reforms under the Commission's first proposal, the *NPRM* also asks "whether the transition for wireless termination charges, if reduced separately, should be subject to distinct transition timing."⁵⁶ To the extent that this would shorten the transition period for wireless carriers to operate under a bill-and-keep regime, MetroPCS strongly endorses this position. Any action to speed the transition for wireless carriers to bill-and-keep would serve the public interest and be welcomed by MetroPCS. Ideally, the Commission should immediately adopt a bill-and-keep regime for all traffic which originates or terminates from a mobile subscriber.⁵⁷ Since the Commission has plenary authority over mobile traffic, the Commission clearly is empowered to immediately adopt reforms of this nature for wireless. This not only would level the playing field for wireless carriers – which currently cannot collect access charges – but also would give the Commission an opportunity to gauge in advance how reform works in the wireless arena – before finally implementing the solution for wireline traffic. Since a significant portion of overall traffic continues to be wireline traffic, moving just wireless traffic immediately to bill-and-keep would

⁵⁵ As earlier noted, MetroPCS urges the Commission to adopt a comprehensive intercarrier compensation reform as promptly as possible. However, as MetroPCS previously has stated in this proceeding, "in the event that meaningful intercarrier compensation reform cannot be accomplished in the near-term . . . the Commission should deal with the well-documented arbitrage abuses immediately." MetroPCS Traffic Pumping Comments at 3.

⁵⁶ *NPRM* at ¶ 541.

⁵⁷ The Commission may want to use mobile as opposed to wireless as it did for net neutrality as wireless last mile networks may be more appropriately treated like wireline networks than mobile networks. Further, separating the traffic into mobile would also eliminate new opportunities for arbitrage where a carrier might put traffic over a wireless microwave link in order to get the lower cost treatment. See *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Declaratory Ruling, 19 FCC Rcd 7457 (2004)

provide a worthwhile reference without having a major disruptive effect on the intercarrier compensation regime.

3. The Commission Should Implement Intercarrier Compensation Reforms Based on the 1996 Act Framework

The Commission also requests comment on a second option for intercarrier compensation reform based on the framework set forth in the Telecommunications Act of 1996 (the “1996 Act”). Under this approach, the Commission “would bring all traffic within the reciprocal compensation framework of section 251(b)(5) at the initiation of the transition, and set a glide path to gradually reduce all intercarrier compensation rates to eliminate per-minute charges.”⁵⁸ MetroPCS prefers this approach, as the Commission’s more substantial involvement in the setting the details of the reformed intercarrier compensation system will increase certainty for the industry. As earlier noted, MetroPCS advocates that, under this framework, all categories of intercarrier compensation rates be reduced over a two-year period to a bill-and-keep regime.

Under this federal approach, the Commission would be more directly involved in setting the rates to be implemented by state commissions and could directly set a uniform glide-path to a bill-and-keep regime. In order to ensure that any transition period will not result in rate increases, the Commission must (1) establish that existing *de facto* bill-and-keep arrangements establish a current rate that cannot be increased during the transition to the interim unified intercarrier rate; (2) establish rules to guard against unwarranted rate increases when existing arrangements, in evergreen status or otherwise, expire; (3) establish that the “current” rates to be used as a starting point under the order will be the lower of those that were in effect as of the date of release of the *NPRM* and the rates in effect as of the effective date of any order in this proceeding in order to avoid gamesmanship while the proceeding is pending; (4) find that the

⁵⁸ *NPRM* at ¶ 550.

interim rate change is mandatory and will flow through existing interconnection agreements as a matter of law through the change in law provision thus adjusting downward immediately any higher contractual rate; and (5) will be a default rate, but allow carriers to negotiate alternative arrangements by mutual agreement.

Because this latest Commission effort to reform the intercarrier compensation system has been open and notorious, it is important for the Commission to guard against bad actors seeking to profit during the pendency of this proceeding. The Commission must be concerned that some carriers may seek to take advantage of this *NPRM* by taking steps to increase their rates – either by opting out of evergreen agreements prior to the release of a Report and Order, trying to assess charges unilaterally by sending invoices, or by filing revised tariffs prior to the release of the order.

To guard against such manipulation, the Commission should specify that any starting-point rates will be the lower of the rate in effect as of the date of the *NPRM* or the rate in effect upon the effective date of the Order in this proceeding, rather than the date of any resulting Report and Order. This would apply to tariffed rates, rates imposed by agreement, and to any other rates at which traffic is exchanged. Since intrastate tariffs may be increased in many instances merely by the carrier filing a tariff amendment, the Commission must instruct the states to not accept any intrastate tariff amendments to increase rates which were filed after the date of the *NPRM*. Further, because interstate tariffs also can be changed relatively easily, the Commission should prohibit any carriers from increasing their interstate tariff rates. Since many smaller carriers opt-in to the NECA interstate tariff, the Commission also should freeze increases in NECA's tariff rates as well to the rate in place on the date of the *NPRM*. This freeze would prevent carriers from gaming the system by attempting to cram down higher rates immediately

before the unified intercarrier compensation regime takes effect.⁵⁹ Preventing this type of arbitrage or gamesmanship clearly would be in the public interest. In essence, the Commission would be establishing a rate freeze as of the date of the *NPRM*. However, allowing carriers to reduce their rates in the interim would be in the public interest, and the Commission therefore should not disallow rate decreases during the pendency of the *NPRM*.

The Commission previously has found it to be “well established that the Commission may initiate a freeze without prior notice and hearing”⁶⁰ when it serves the public interest. And, on occasion, the Commission has determined that a new rule should take effect as of the earlier date that an *NPRM* was issued rather than on the date that the new rule was adopted. For example, when the Commission revised Part 22 of its rules to allow non-wireline applicants to file for frequencies previously reserved for wirelines, it took care to have certain aspects of the new rule date back to the *NPRM* date so that applicants would not benefit from waiver applications they filed after the *NPRM* was issued in anticipation of a possible rule change.⁶¹ Specifically, in that instance, although the *Report and Order* in the *Part 22 Rewrite* proceeding was released on December 19, 1983, the Commission made a policy decision that certain waiver procedures contained within that rule would be applied retroactively back to July 29, 1982, which was the day on which the *NPRM* in that proceeding was adopted.⁶² The Commission justified its retroactive action on the need to safeguard the public interest by ensuring that all of

⁵⁹ The higher rates would have two pernicious effects. First, a carrier would immediately begin receiving the higher compensation. Second, any mid-point for a transition to lower rates would be higher because the starting rate would be higher.

⁶⁰ *Amendment of the Commission’s Rules Regarding the 37.0 -38.6 GHz and 38.6 -40.0 GHz Bands*, Memorandum Opinion and Order, 12 FCC Rcd. 2910, 2915 (1996).

⁶¹ *Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, 95 FCC 2d 769 (1983).

⁶² *Id* at ¶ 199.

the available wireline frequencies were not co-opted by non-wireline applicants who sought to take advantage of the lag time between the proposed rule change to take down the so-called “fence” separating wireline and non-wireline frequency allocations and the Commission’s final action.⁶³ Here, the Commission would serve the public interest by requiring current rates to be measured as of February 9, 2011, which would effectively prevent carriers from engaging in regulatory arbitrage at the expense of higher rates to the public.

By the same measure, the Commission should expressly indicate in its rules that, where CMRS carriers are exchanging reciprocal compensation traffic with LECs pursuant to a *de facto* bill-and-keep arrangement as of the date of the *NPRM*, such an arrangement will remain in place in the new regime without change. This will prevent LECs from seeking to unwind such a *de facto* arrangement in order to increase its terminating rates to a higher interim rate during this proceeding. Further, the Commission should adopt a presumption that traffic increases during the pendency of this proceeding that exceed by 110% a year the prior traffic exchanged between the parties, and any imbalance of traffic greater than 3:1, would be subject immediately to a bill-and-keep regime. Such a mechanism will prevent carriers from increasing traffic pumping schemes during the pendency of this proceeding in an effort to establish a higher traffic amount to which the lower rate would apply.

The Commission also should find that the interim and final rates will be imposed as a matter of law or flow through the change in law provisions of existing interconnection agreements. At the current time, a significant amount of traffic is handled for compensation purposes through existing interconnection agreements which may reflect rates for the exchange of traffic, and the origination or termination of access traffic, at rates above the interim rate the

⁶³ *Id.* at ¶ 200.

Commission is to set. The Commission should not let these existing agreements, many of which were put in place with no expectation of reform, to impede the reform of the intercarrier compensation system. Accordingly, the Commission should find that any interconnection agreement which was negotiated prior to the date of the release of the *NPRM* should not allow a carrier to charge rates which are in excess of the rates adopted (including bill-and-keep) by the Commission. This would allow the reforms to take place immediately without having to wait for existing interconnection agreements to expire.

Finally, the Commission in the past has indicated a preference for negotiated voluntary reciprocal compensation agreements under Section 251. MetroPCS also prefers negotiated interconnection agreements over those imposed by tariff or otherwise. Nonetheless, the Commission must ensure that carriers are not able to use the Commission's preference for negotiated agreements to foil the Commission's efforts at reform. Thus, the Commission must make it clear that, absent mutual agreement to the contrary, the Commission's rates are the highest permissible rates under a voluntary negotiated agreement, and that the Commission-mandated rate will replace any higher rate reflected in an agreement for the interexchange of all traffic. If the Commission does not promulgate such a rule, incumbent carriers would be able to refuse to negotiate or delay entry into interconnection agreements absent requesting carriers agreeing to rates which are far in excess of the Commission's default rates. Since one objective of intercarrier compensation reform is to cause all traffic – regardless of the carrier and type of traffic involved – to be exchanged on a uniform basis, only a rule that prevents game-playing by carriers will ensure that this occurs.

V. ISSUES RELATED TO INTERCARRIER COMPENSATION REFORM

The *NPRM* also seeks comment on other subsidiary issues that are related to intercarrier compensation reform including, among others, the need for rules regarding the exchange of transit traffic and the continued existence of the MTA Rule. MetroPCS submits that both of these items are an important part of overall reform, and should be dealt with in any order that establishes intercarrier compensation reforms.

A. The Commission Should Include Rules Governing the Exchange of Transit Traffic

The Commission should include in its unified intercarrier compensation order default rules regarding the exchange of transit traffic and set standards governing the rates for such service. MetroPCS proposes that the Commission adopt a rate for such traffic that is no greater than the actual long-term incremental cost for the provision of such traffic. Since one of the goals of the unified intercarrier compensation regime is to conform prices for elements that provide the same services, transit charges should be at the same rate as the underlying network functionality provided on a unbundled network elements (“UNE”) basis. This cost should be similar to the TELRIC cost charged for similar functionality for the provisioning of the various UNEs that comprise such service. MetroPCS submits that since the long-run incremental cost to terminate traffic (which is the same switching as provided for transit traffic) is \$0.0007/MOU, a rate no higher should be used for transit traffic as well. It is important that the Commission bring this type of traffic under its comprehensive intercarrier compensation regime and unify transit services in accordance with its overall unified intercarrier compensation plan.

B. The Commission Must Retain the MTA Rule Until Wireless Carriers Are Permitted to Collect Access Charges, or Until the Transition to Bill-and-Keep is Complete

The *NPRM* also seeks comment to refresh the record on the MTA Rule.⁶⁴ This rule states that any traffic exchanged between a wireless carrier and a wireline carrier would be subject to local terminating compensation and not access charges so long as at the beginning of the call, the called and calling party are located in the same MTA. This MTA Rule has served the industry well, and should remain in place either until wireless carriers are permitted to receive access payments on par with wireline carriers or, alternatively, until all traffic is exchanged on a bill-and-keep basis. Leaving the MTA Rule in place is extremely important because the MTA Rule has incited wireless carriers to develop systems without regard to LATA boundaries, which has fostered wide-area service to customers and has allowed wireless to become the significant competitor to wireline that it is today.

As has been often noted by MetroPCS, wireless carriers, particularly those who act as a significant landline displacement (such as MetroPCS), are disadvantaged by not receiving access revenue. The MTA Rule has mitigated this disadvantage to some extent by relieving wireless carriers of the obligation of paying generally higher access charges for intra-MTA calls and by permitting wireless carriers to collect reciprocal compensation for terminating such intra-MTA calls. Without the MTA Rule, wireless carriers would be at a much more severe disadvantage to their wireline competitors because they would not be able to receive access charges and might not be eligible to receive reciprocal compensation for traffic that today would be compensable. Unless and until wireless carriers are permitted to receive access payments, the Commission must ensure that the MTA Rule remains in place until the transition to bill-and-keep is complete.

⁶⁴ *NPRM* at ¶ 684.

VI. CONCLUSION

For the foregoing reasons, MetroPCS urges the Commission without delay to create a definite path toward unifying all intercarrier compensation rates as promptly as possible. Intercarrier compensation rates should be lowered on an interim basis to no more than \$0.0007 per MOU, which reasonably reflects the costs of terminating traffic, and then be placed on a prompt – no more than two-year – glide path to a bill-and-keep regime. The Commission should ensure that carriers are prevented from raising their rates during the pendency of this proceeding. Any FCC or state imposed interim rate should not supplant any extant bill-and-keep arrangements, *de facto* or otherwise. This will prevent carriers from gaming the system and seeking new arbitrage opportunities while the Commission is working to address existing problems. The telecommunications industry has evolved substantially since the current intercarrier compensation system was put in place back in 1996, and MetroPCS contends that it is high time for the Commission to reform the system to reflect current marketplace realities.

Respectfully submitted,

MetroPCS Communications, Inc.



By:

Carl W. Northrop

Michael Lazarus

Andrew Morentz

PAUL, HASTINGS, JANOFSKY & WALKER

LLP

875 15th Street, NW

Washington, DC 20005

Telephone: (202) 551-1700

Facsimile: (202) 551-1705

Mark A. Stachiw

Executive Vice President, General Counsel and

Secretary

MetroPCS Communications, Inc.

2250 Lakeside Blvd.

Richardson, Texas 75082

Telephone: (214) 570-5800

Facsimile: (866) 685-9618

Its Attorneys

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