

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

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

**COMMENTS OF
CBEYOND, INC., INTEGRA TELECOM, INC., AND TW TELECOM INC.**

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Cbeyond, Inc. (“Cbeyond”), Integra Telecom, Inc. (“Integra”), and tw telecom inc. (“tw telecom”) (collectively, the “Joint Commenters”), through their undersigned counsel, hereby submit these comments on the *USF/ICC Transformation NPRM*¹ in the above-captioned proceedings.

¹ See *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (“*USF/ICC Transformation NPRM*” or “*NPRM*”).

I. INTRODUCTION AND SUMMARY.

The Joint Commenters commend the Commission for its commitment to “eliminate waste and inefficiency and modernize USF and ICC to bring the benefits of broadband to all Americans.”² In order to achieve this goal and resolve the fundamental problems that have been plaguing the current ICC system, the Joint Commenters recommend that the Commission take the following actions. *First*, the FCC should gradually reduce, through a series of lock-step annual reductions, intrastate terminating access rates to interstate levels and ultimately unify all terminating rates under Section 251(b)(5)³ and Section 201(b) of the Act⁴ to a single TELRIC-based level. As discussed in Part II, the Commission should adopt this proposal because it would (1) eliminate the inefficient incentives created by the existing intercarrier compensation regime; (2) obviate the need for explicit universal service support to replace reduced ICC revenues; (3) allow carriers sufficient time to make adjustments to their businesses as a result of reduced ICC revenues; and (4) enable carriers to make investment decisions with more certainty.

Moreover, reliance on preemption of intrastate access rates under Section 251(b)(5) to achieve reform would avoid the difficulties posed by relying on the states to reform intrastate access rates. These include (1) a disorderly, unpredictable, and costly reform process; and (2) an increased likelihood of variation among states’ intrastate access rates. Furthermore, the Commission has the authority under the terms of Section 251(b)(5) and under Section 201(b) to establish a uniform rate methodology for the termination of all telecommunications traffic. The FCC also has the authority to adopt TELRIC as the pricing methodology for all terminating rates

² FCC Commissioners, “Making Universal Service and Intercarrier Compensation Reform Happen,” <http://reboot.fcc.gov/blog?entryId=1335527> (last visited Apr. 12, 2011).

³ 47 U.S.C. § 251(b)(5).

⁴ *Id.* § 201(b).

because the Commission has already found that TELRIC is consistent with the “additional costs” standard of Section 252(d)(2) of the Act.⁵

Second, the Commission should not provide universal service subsidies for the replacement of foregone ICC revenues. Rather, the FCC should (1) address recovery of intrastate access revenues by giving the states sufficient time to rebalance intrastate access rates; and (2) address recovery of interstate access revenues by allowing incumbent LECs to increase their subscriber line charges (in which case the Commission must limit the extent to which incumbent LECs are able to shift recovery from competitive markets to less competitive markets). As discussed in Part III, if the Commission nonetheless establishes an ICC revenue replacement fund as part of the Connect America Fund (“CAF”), it must impose specific limits on recovery from the fund.

Third, the FCC should control the size of the USF by, among other things, (1) setting an overall budget for the CAF that does not exceed the size of the high-cost universal service program in 2010, adjusted for inflation; and (2) ensuring that distribution of CAF funding is consistent with the principles outlined in the National Broadband Plan. The Commission should also promptly initiate a proceeding to reform its universal service *contribution* rules (discussion of which was noticeably absent from the *USF/ICC Transformation NPRM*). In particular, the FCC should broaden the universal service contribution base to include all broadband Internet access service revenues. As discussed in Part IV, requiring all providers of broadband services to contribute to the USF would not only minimize the burden of increasing universal service contributions on consumers and businesses, it would also eliminate the distortions in the broadband Internet access services market created by the current contribution system.

⁵ *Id.* § 252(d)(2).

Fourth, the FCC should regulate tandem transit service and require that such service be provided at TELRIC-based rates. As discussed in Part V, such regulation is necessary because the tandem transit service market is not effectively competitive.

II. THE FCC SHOULD GRADUALLY REDUCE INTRASTATE TERMINATING ACCESS RATES TO INTERSTATE LEVELS AND ULTIMATELY UNIFY ALL TERMINATING RATES TO A SINGLE TELRIC-BASED LEVEL.

In the *NPRM*, the Commission seeks comment on how it should pursue its proposed reduction of ICC rates⁶ and the ICC methodology that it should adopt as the end-point for comprehensive reform.⁷ The Joint Commenters urge the FCC to undertake a two-stage process in which (1) in stage one, it gradually (i.e., over a period of five years) reduces, through a series of lock-step annual reductions, intrastate terminating access rates to interstate levels;⁸ and (2) in stage two, it unifies (over a period of one to two years) all terminating rates (including intrastate access, interstate access, reciprocal compensation, and the ISP-bound terminating rate) to a single TELRIC-based level.⁹ In all events, carriers should remain free to voluntarily negotiate their own agreements regarding ICC, including bill-and-keep agreements.

⁶ See *NPRM* ¶¶ 533-558.

⁷ See *id.* ¶¶ 529-532.

⁸ This aspect of the Joint Commenters' proposal is consistent with the National Broadband Plan's recommendation that ICC reform begin "by reducing intrastate rates to interstate rate levels in equal increments over a period of time." See *Connecting America: National Broadband Plan*, at 149 (Mar. 16, 2010) ("National Broadband Plan").

⁹ To the extent that the FCC were to act pursuant to the Section 251(b)(5) framework, states would apply the FCC's TELRIC methodology to establish the terminating rate for each incumbent LEC (and competitors exchanging traffic with the incumbent LEC). Such rates would be included in interconnection agreements and apply to all local and intrastate terminating access traffic. Interstate terminating access rates would be set forth in FCC tariffs and the FCC would deem the TELRIC-based rates to be just and reasonable for purposes of Section 201(b) of the Act. See 47 U.S.C. § 201(b).

As discussed herein, the Commission should adopt the Joint Commenters' two-stage proposal because it would result in a number of significant public policy benefits. Additionally, this proposal, which relies on the reciprocal compensation framework of Section 251(b)(5), avoids the problems associated with reform based on "the existing jurisdictional framework."¹⁰ Moreover, the FCC has the authority to unify all terminating rates under Sections 251(b)(5) and 201(b) (although it is not apparent that the FCC has such authority with respect to intrastate originating access rates). The Commission also has the authority to adopt TELRIC as the methodology for all terminating rates unified under Sections 251(b)(5) and 201(b) of the Act. Importantly, however, it does not have the authority to adopt a unified terminating rate of \$0.0007 or to mandate bill-and-keep for the exchange of all traffic.

A. A Gradual, Multi-Year Transition That Results In Uniform, Cost-Based Rates For Termination Would Yield Substantial Public Policy Benefits.

The Joint Commenters' proposal would yield several substantial public policy benefits. *First*, unifying intrastate and interstate terminating access rates and ultimately adopting TELRIC as the uniform pricing methodology for all terminating rates would eliminate the inefficient incentives created by the current ICC system. As the Commission has recognized, one of the fundamental problems with the existing regime is that "terminating rates are not uniform despite the uniformity of the function of terminating a call."¹¹ Such disparities lead to arbitrage opportunities such as phantom traffic.¹² Requiring all LECs to charge the same rates for termination of all traffic would eliminate carriers' incentives to misidentify traffic to pay the lowest intercarrier rate or receive the highest intercarrier rate.

¹⁰ *NPRM* ¶ 537.

¹¹ National Broadband Plan at 142.

¹² *See id.*

As the Commission has further recognized, “[m]ost ICC rates are above incremental cost, which creates opportunities for access stimulation, in which carriers artificially inflate the amount of minutes subject to ICC payments.”¹³ If required to charge cost-based rates, however, LECs would no longer have an incentive to invest in such schemes.¹⁴

Second, the gradual reduction of intrastate terminating access rates to interstate levels in combination with the unification of all terminating rates at TELRIC would obviate any need for explicit universal service support for recovery of foregone ICC revenues.¹⁵ To begin with, a multi-year transition for the reduction of intrastate terminating access rates to interstate levels would allow states to undertake rate rebalancing (i.e., to increase local rates as intrastate access rates decrease) gradually and thereby diffuse the impact of higher local rates on consumers. In addition, cost-based rates for termination would fully compensate incumbent LECs for that function.

Third, a gradual, multi-year transition would also allow incumbent and competitive LECs to undertake the necessary adjustments in their businesses resulting from the dramatic reductions in their intrastate terminating access revenues in many states.¹⁶ For example, competitive LECs enter into long-term contracts with many of their business customers, and the terms of such contracts generally prevent competitive LECs from adjusting end-user customer rates to account

¹³ *Id.*

¹⁴ While the Commission has already proposed short-term reforms to address phantom traffic and access stimulation, it correctly recognizes that “wasteful attempts to game the system will likely persist as long as ICC rates remain disparate and well above carriers’ incremental costs of terminating a call.” *NPRM* ¶ 40.

¹⁵ *See id.* ¶¶ 559, 585-590.

¹⁶ As the Commission recognizes in the *NPRM*, “any transition [must] be gradual enough to enable the private sector to react and plan appropriately.” *Id.* ¶ 533.

for reduced ICC revenues. It would therefore take several years for competitive LECs to make these adjustments.

Fourth, the predictability of annual lock-step reductions in intrastate terminating access rates would enable LECs to account for access revenue reductions in their investment decisions and thereby make such decisions with a greater level of certainty. As the Commission has recognized, “decline[s] in revenues and free cash flows at unpredictable levels could hamper carriers’ ability to implement network upgrade investments or other capital improvements”¹⁷ and “reform must be staged over time” in order to “minimize regulatory uncertainty for investment.”¹⁸

B. Reform Based On Section 251(b)(5) Of The Act Would Avoid The Problems Posed By Reform Under The Existing Jurisdictional Framework.

In the *NPRM*, the Commission seeks comment on the advantages and disadvantages of two alternative approaches to working with the states to achieve ICC rate reduction.¹⁹ Under what the Commission calls “reform based on the existing jurisdictional framework,” the FCC and the states would pursue reduction of interstate and intrastate access rates, respectively, on parallel tracks.²⁰ Under this approach, the Commission could create incentives for the states to reduce intrastate access rates by, for example, limiting initial distribution of funding under the CAF to states that have taken measures to reduce such rates.²¹ By contrast, under reform based

¹⁷ National Broadband Plan at 142.

¹⁸ *Id.* at 141; *see also id.* (“Success will come from a clear road map for reform, including guidance about the timing and pace of changes to existing regulations, so that the private sector can react and plan appropriately.”).

¹⁹ *See NPRM* ¶¶ 534-535.

²⁰ *See id.* ¶¶ 534, 537-539.

²¹ *See id.* ¶ 544.

on Section 251(b)(5) of the Act, the Commission would “unify all intercarrier rates, including those for intrastate calls” under the reciprocal compensation framework of Section 251(b)(5) and determine a pricing methodology for such rates, which would ultimately be implemented by the states.²²

Reform based on the existing jurisdictional framework poses at least two major problems that would be avoided if reform were to proceed pursuant to FCC preemption of intrastate access rates under Section 251(b)(5). *First*, proposals based on the existing jurisdictional framework would result in a less orderly and predictable reform process because 50 different states—rather than the FCC—would be responsible for reducing intrastate access rates. As discussed above, a predictable reform process is critical for LECs to “react and plan appropriately”²³ for substantial reductions in their ICC revenues. It would also be extremely costly for competitive LECs—which have fewer resources than large incumbent LECs—to participate in the multitude of state commission proceedings that would govern intrastate access rate reductions if reform proceeded based on the existing jurisdictional framework.

Second, there is a greater likelihood of variation among individual states’ intrastate access rates if ICC reform proceeds based on the existing jurisdictional framework. As the Commission acknowledges in the *NPRM*, “intrastate rates w[ould] continue to be different as states grapple with different ways to reform intrastate access, which could result in different transitions and varying rates, potentially allowing continued arbitrage based on the disparity in rates for different jurisdictions.”²⁴ This problem would not exist if the FCC were to preempt

²² *See id.* ¶¶ 534, 550.

²³ *Id.* ¶ 533.

²⁴ *Id.* ¶ 537.

intrastate access rates under Section 251(b)(5). What is more, reform based on the existing jurisdictional framework could result temporarily in a wider gap between interstate access rates and intrastate access rates, depending on the timing of the FCC's and the states' transitions. Pursuing ICC reform in a manner that could lead to such increased disparities makes little sense when the Commission's goal is to eliminate arbitrage by unifying rates.²⁵

C. The FCC Has The Authority To Unify All Terminating Rates Under Sections 251(b)(5) And 201(b) Of The Act.

In the *NPRM*, the Commission seeks comment on whether it has the authority to unify all intercarrier rates under the reciprocal compensation framework of Section 251(b)(5).²⁶ The FCC clearly has the authority to unify all terminating rates under Section 251(b)(5). *First*, the Joint Commenters concur with the FCC that it can bring all telecommunications traffic within the Section 251(b)(5) framework because the reference to “telecommunications” in that provision is not limited in geographic scope (e.g., local, intrastate, or interstate) or confined to particular services (e.g., telephone exchange service, telephone toll service, or exchange access).²⁷ In addition, under Commission precedent, Section 251(b)(5) is not limited to traffic exchanged between LECs and instead applies to all traffic exchanged between a LEC and another carrier (e.g., a CMRS provider).²⁸ Accordingly, the Commission could extend the duty to provide

²⁵ See National Broadband Plan at 149 (recognizing that “transition[ing] all ICC terminating rates to a uniform rate per carrier” “is an important step to eliminate inefficient economic behavior”).

²⁶ See *NPRM* ¶¶ 512-515.

²⁷ See *id.* ¶ 513.

²⁸ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd. 15499, ¶ 1041 (1996) (“Although [S]ection 252(b)(5) [sic] does not explicitly state to whom the LEC's obligations runs, we find that LECs

reciprocal compensation under Section 251(b)(5) to all telecommunications traffic exchanged with LECs.²⁹

Second, the Joint Commenters agree with the Commission that Section 201(b) of the Act “authorizes the Commission to adopt reciprocal compensation rules governing all telecommunications traffic (whether interstate or intrastate).”³⁰ In particular, the Supreme Court has held that Section 201(b) gives the FCC rulemaking authority to carry out the provisions of the Act and in those instances where such a provision encompasses both intrastate and interstate communications, the FCC may regulate both.³¹ Accordingly, given that Section 251(b)(5) encompasses all “telecommunications” regardless of jurisdiction, the FCC has the authority under Section 201(b) to establish reciprocal compensation rules governing all telecommunications traffic, including intrastate access traffic.

It is not entirely clear, however, that the FCC has the authority to regulate *intrastate originating* access rates under Section 251(b)(5).³² That provision refers only to the “transport

have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers.”) (“*Local Competition Order*”).

²⁹ See *NPRM* ¶ 513.

³⁰ See *id.* ¶ 515.

³¹ See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 377-85 (1999).

³² The Commission has the authority to regulate *interstate originating* access rates under Sections 2(a), 201(b), and 202(a) of the Act. See 47 U.S.C. § 152(a) (giving the Commission jurisdiction over “interstate” “communication”); see also *id.* §§ 201(b) & 202(a) (requiring rates for interstate communication services to be just and reasonable and not unjustly or unreasonably discriminatory). Moreover, as discussed above, the FCC has the authority to establish a pricing methodology for the transport and termination of all telecommunications traffic—both intrastate and interstate—subject to Section 251(b)(5). But it is not clear that the Act grants the FCC jurisdiction over intrastate originating access rates.

and termination”—not origination—of telecommunications.³³ Nor does any other provision of the Act grant the FCC authority over intrastate originating access rates. While the Commission suggests that Section 251(g) of the Act³⁴ broadly permits “regulations prescribed by the Commission” to replace the current access charge system and those “regulations” can cover originating access charges,³⁵ the Commission provides no support for this proposition.

D. The FCC Has The Authority To Adopt TELRIC As The Uniform Pricing Methodology For All Terminating Rates.

In the *NPRM*, the Commission seeks comment on its “authority to adopt a methodology for traffic that is within the scope of [S]ection 251(b)(5)” and on what that methodology should be.³⁶ As the Commission recognizes, Section 252(d)(2) of the Act prescribes the standards for setting rates for the termination of telecommunications traffic subject to Section 251(b)(5).³⁷ Section 252(d)(2) provides that such rates are not just and reasonable unless they allow for the recovery of the “additional costs” of termination.³⁸ The Commission should adopt TELRIC as the pricing methodology for all terminating rates unified under Section 251(b)(5) other than those already governed by Section 201(b)³⁹ because the FCC has already found that TELRIC

³³ 47 U.S.C. § 251(b)(5).

³⁴ *Id.* § 251(g).

³⁵ *See NPRM* ¶ 517.

³⁶ *See id.* ¶ 516.

³⁷ *See id.*

³⁸ 47 U.S.C. § 252(d)(2)(A)(ii). Although the terms of Section 252(d)(2) apply to incumbent LECs, competitive LECs should also be able to recover the additional costs of termination. Absent a right to collect the same level of access charges, competitive LECs would be disadvantaged in the downstream retail telecommunications services market.

³⁹ *See supra* note 9.

satisfies the “additional costs” standard of Section 252(d)(2).⁴⁰ In addition, as some of the Joint Commenters have explained in the past, there is no question that carriers incur additional costs, such as switching costs, when terminating traffic.⁴¹ This is true regardless of the technology used in a particular network, whether TDM or IP technology used in softswitches.⁴²

Importantly, the FCC does not have the authority to adopt a unified terminating rate of \$0.0007⁴³ or to impose bill-and-keep on all telecommunications traffic subject to Section 251(b)(5).⁴⁴ To begin with, while the FCC has the authority to establish a rate *methodology* for traffic subject to Sections 251(b)(5) and 252(d)(2), it does not have the authority to set *specific rates* for such traffic.⁴⁵ Thus, the Commission cannot set a unified rate of \$0.0007 or a rate of

⁴⁰ See *Local Competition Order* ¶ 1054 (finding that “the ‘additional cost’ standard permits the use of the forward-looking, economic cost-based pricing standard that we are establishing for interconnection and unbundled elements”). Specifically, the FCC has held that the traffic-sensitive portion of the TELRIC methodology constitutes the “‘additional cost’” of transport and termination for purposes of Section 252(d)(2). See *id.* ¶ 1057 (“For the purposes of setting rates under [S]ection 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes an ‘additional cost’ to be recovered through termination charges.”).

⁴¹ See Comments of tw telecom inc., One Communications Corp., and Cbeyond, Inc., WC Dkt. No. 05-337 et al., at 5 & nn.3-4 (filed Nov. 26, 2008) (“tw telecom et al. 2008 ICC Comments”); Reply Comments of tw telecom inc., One Communications Corp., and Cbeyond, Inc., WC Dkt. No. 05-337 et al., at 5-6 (filed Dec. 22, 2008) (“tw telecom et al. 2008 ICC Reply Comments”); see also Letter from Thomas Jones, Counsel for tw telecom inc. and One Communications Corp., to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 et al., at 5-6 (filed Oct. 14, 2008) (“tw telecom et al. Oct. 14, 2008 Ex Parte Letter”) (explaining that the TELRIC-based method of calculating the “additional costs” of switching continues to be fundamentally sound).

⁴² See tw telecom et al. 2008 ICC Comments at 5 & nn.3-4; tw telecom et al. 2008 ICC Reply Comments at 5-6.

⁴³ See Comments of Verizon and Verizon Wireless, WC Dkt. No. 05-337 et al., at 49-52 (filed Nov. 26, 2008) (advocating adoption of a uniform terminating rate at or below \$0.0007).

⁴⁴ See *NPRM* ¶ 530 (seeking comment on this issue).

⁴⁵ See *Iowa Utils. Bd.*, 525 U.S. at 385 (holding that “the Commission has jurisdiction to design a pricing methodology” under its rulemaking authority in Section 201(b) of the Act); see *id.* at 384

zero (which would be the consequence of mandating bill-and-keep) for termination of traffic subject to Section 251(b)(5). While the FCC set a specific rate of \$0.0007 for ISP-bound traffic, it did so pursuant to Section 201(b) because all ISP-bound traffic is interstate.⁴⁶ The Commission could not have adopted a specific rate for ISP-bound traffic if it had been purely intrastate traffic or intrastate traffic that was severable from interstate traffic. The FCC would have instead needed to rely on Sections 251(b)(5) and 252(d)(2), which only permit the Commission to establish a pricing methodology implemented by the states.

In addition, a unified terminating rate of \$0.0007 would not satisfy the “additional costs” standard of Section 252(d)(2). Indeed, as commenters in this proceeding have explained, there is substantial evidence in the record demonstrating that a rate of \$0.0007 would not cover carriers’ costs of terminating traffic.⁴⁷ Moreover, as tw telecom has explained in the past, the fact that

(“It is the States that will apply th[e] [pricing] standards [of Section 252(d)] and implement that methodology, determining the concrete result in particular circumstances.”); *see also Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000) (“The Supreme Court held that the FCC ‘has jurisdiction to design a pricing methodology.’ However, the FCC does not have jurisdiction to set the actual prices for the state commissions to use. Setting specific prices goes beyond the FCC’s authority to design a pricing methodology and intrudes on the states’ right to set the actual rates pursuant to § 252(c)(2).”) (internal citation omitted), *rev’d on other grounds*, 535 U.S. 467 (2002).

⁴⁶ *See 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; Intercarrier 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, ¶¶ 17-21 (2008).

⁴⁷ *See* Comments of PAETEC Holding Corp., Mpower Communications Corp., and U.S. TelePacific Corp., and RCN Telecom Services, LLC, WC Dkt. No. 10-90 et al., at 38-42 (Apr. 1, 2011) (discussing studies and comments submitted by NECA, NTCA, ITTA, CenturyTel, Windstream, Embarq, XO Communications, NuVox, PAETEC, and others).

some carriers have agreed to this rate in some interconnection agreements does not lead to the conclusion that it is cost-based.⁴⁸

Furthermore, the FCC lacks authority to mandate bill-and-keep where there is a traffic imbalance.⁴⁹ *First*, requiring bill-and-keep in such a situation would prevent the LEC that terminates more traffic than it originates from recovering the “additional costs” of termination. *Second*, Section 252(d)(2)(A)(i) of the Act requires that interconnection agreements “provide for the *mutual and reciprocal recovery* by each carrier of costs associated with the transport and termination on each carrier’s network facilities,”⁵⁰ and Section 252(d)(2)(B)(i) only permits bill-and-keep where it “afford[s] the *mutual recovery* of costs through the *offsetting of reciprocal obligations*.”⁵¹ If a terminating carrier must recover costs incurred as a result of a traffic imbalance from end users or the USF, as would be the case under bill-and-keep, such recovery

⁴⁸ See Letter from Thomas Jones, Counsel for tw telecom inc. and One Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 05-337 et al., Attachment, at 3 (filed Oct. 6, 2008) (explaining that (1) the fact that an incumbent LEC agrees to a rate of \$0.0007 in interconnection agreements in situations where the incumbent LEC is a net terminator of traffic has no bearing on whether the incumbent LEC’s own terminating costs are equal to or less than \$0.0007; (2) interconnection agreement negotiations include give-and-take on dozens of issues and a carrier might well agree to below-cost termination rates in return for more valuable concessions on other issues; (3) many, if not most, carriers have not agreed to the \$0.0007 rate, supporting the conclusion that such carriers do not view it as cost-based).

⁴⁹ The Joint Commenters have proposed the use of bill-and-keep between competitive LECs as a means of addressing traffic pumping schemes perpetuated by one competitive LEC against another. See Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc., WC Dkt. No. 10-90 et al., at 16-18 (filed Apr. 1, 2011). That proposal does not implicate the concerns described herein with regard to bill-and-keep because the concerns discussed herein pertain to statutory provisions—most importantly, Section 252(d)(2)—that only apply where an incumbent LEC is involved in the traffic exchange. In all events, the Joint Commenters’ proposal for addressing traffic pumping between competitive LECs would only require that bill-and-keep apply until the parties reach an agreement for the exchange of local traffic.

⁵⁰ 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added).

⁵¹ *Id.* § 252(d)(2)(B)(i) (emphasis added).

would not be “mutual and reciprocal.” Nor would it constitute recovery “through the offsetting of reciprocal obligations.” Rather, under these statutory provisions, carriers must recover the net costs of transport and termination from each other.⁵²

III. THE FCC SHOULD NOT PROVIDE UNIVERSAL SERVICE SUBSIDIES FOR THE REPLACEMENT OF FOREGONE ICC REVENUES.

In the *NPRM*, the Commission proposes to provide explicit universal service support for recovery of reduced ICC revenues and seeks comment on how to design this funding mechanism.⁵³ As discussed above, however, if the FCC were to adopt the Joint Commenters’ proposal to set ICC rates at cost (i.e., using the TELRIC methodology), there would be no need for funding to replace foregone ICC revenues. That is, any cost-based rates for transport and termination (and, as explained, TELRIC-based rates qualify as cost-based) fully compensate incumbent LECs for those functions. Accordingly, the Commission should not establish an ICC revenue replacement fund as part of the CAF.

The Commission should instead address recovery of reduced intrastate access revenues by allowing sufficient time for states to rebalance intrastate rates (i.e., to increase local rates as intrastate access rates decrease). In addition, the FCC should address recovery of reduced interstate access revenues (as well as intrastate access revenues)⁵⁴ by permitting incumbent LECs to increase their residential and business interstate subscriber line charges (“SLCs”) to their respective caps. The FCC could also increase interstate SLC caps.⁵⁵

⁵² See *tw telecom et al.* Oct. 14, 2008 Ex Parte Letter at 22 & n.55; Letter from Thomas Jones, Counsel for *tw telecom inc.* and *One Communications Corp.*, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 et al., Attachment, at 4-5 (filed Oct. 6, 2008).

⁵³ See *NPRM* ¶¶ 585-590.

⁵⁴ See *id.* ¶ 583.

⁵⁵ See *id.* ¶ 582.

In all events, the Commission must limit the extent to which incumbent LECs can shift recovery from competitive markets to less competitive markets. Specifically, the Commission should (1) not permit incumbent LECs to recover lost ICC revenues by selectively raising SLCs in geographic areas with little or no competition, while lowering them in areas subject to greater competition; and (2) only permit incumbent LECs to recover foregone ICC revenues associated with business lines through higher SLCs imposed on business customers, not residential customers.

If the FCC nevertheless establishes a fund for the replacement of ICC revenues, it should impose certain limits on recovery from the fund. *First*, the Commission should require incumbent LECs to recover from end users the maximum amount permitted under existing or increased interstate SLC caps before allowing recovery from the replacement fund.

Second, the Commission must take into account the high per-line revenues incumbent LECs earn when selling voice bundled with broadband and/or video services before allowing recovery from the replacement fund. Accordingly, if the FCC adopts its proposed residential benchmark approach to ICC revenue recovery,⁵⁶ all revenues that an incumbent LEC earns from an access line—including revenues from broadband and video service—should be compared to the residential benchmark. If the total revenues associated with the line exceed the benchmark, then the incumbent LEC would not receive any payments from the replacement fund.

Third, the replacement fund should not support lines in those areas where local telephone service rates have already been deregulated. That is, there is no need for subsidy payments to the incumbent LEC where the relevant state commission has effectively determined that, if the incumbent LEC were to increase prices (such as by increasing SLCs to recover lost ICC

⁵⁶ See *id.* ¶¶ 573-578.

revenues), there is sufficient competition to ensure that local telephone service remains affordable.

Fourth, the replacement fund should not subsidize an incumbent LEC for costs associated with an access line that the incumbent LEC no longer uses to provide service to a customer (i.e., recovery should be calculated on a per-line basis).

IV. THE FCC SHOULD CONTROL THE SIZE OF THE USF AND REVISE ITS UNIVERSAL SERVICE CONTRIBUTION RULES AS PART OF COMPREHENSIVE USF/ICC REFORM.

In the *NPRM*, the Commission seeks comment on numerous aspects of its proposal to transform the existing high-cost universal service program into a broadband-focused CAF (e.g., the size of the CAF).⁵⁷ The Joint Commenters strongly support the Commission’s goal of “[c]ontrol[ing] the size of USF as it transitions to support broadband, including by reducing waste and inefficiency.”⁵⁸ In order to achieve this goal, the FCC should take the following actions. *First*, the Commission should adopt the proposal in the *NPRM* to “set an overall budget for the CAF such that the sum of the CAF and any existing high-cost programs (however modified in the future) in a given year are equal to the size of the current high-cost program in 2010,” adjusted for inflation.⁵⁹

Second, the FCC should ensure that distribution of CAF funding adheres to the following principles outlined in the National Broadband Plan: (1) the “CAF should only provide funding in geographic areas where there is no private sector business case to provide broadband and high-

⁵⁷ *See id.* ¶¶ 412-416.

⁵⁸ *Id.* ¶ 10.

⁵⁹ *Id.* ¶ 414.

quality voice-grade service”;⁶⁰ (2) “[t]here should be at most one subsidized provider of broadband per geographic area”;⁶¹ (3) the “FCC should identify ways to drive funding to efficient levels, including market-based mechanisms where appropriate, to determine the firms that will receive CAF support and the amount of support they will receive”;⁶² and (4) “[r]ecipients of CAF support must be accountable for [their] use and subject to enforceable timelines for achieving universal access.”⁶³

Third, the FCC should immediately transfer high-cost support currently provided to incumbent LECs in areas where local telephone service rates have been deregulated to the CAF for use in areas unserved by broadband providers. It is wasteful and inefficient for the Commission to continue to subsidize local telephone service in areas where the relevant state commission has effectively determined that numerous service providers can efficiently serve the relevant market.

Importantly, as it undertakes universal service *distribution* reform, the FCC should also undertake universal service *contribution* reform. The current universal service contribution

⁶⁰ National Broadband Plan at 145. In contravention of this principle, the Commission suggests in the *NPRM* that CAF funding could be provided in areas already served by unsubsidized providers of high-quality voice service and broadband Internet access services. *See NPRM* ¶ 409. This would be a wasteful and inefficient use of federal support because the presence of such a competitor demonstrates that subsidies are unnecessary.

⁶¹ National Broadband Plan at 145; *see also NPRM* ¶ 402.

⁶² National Broadband Plan at 145; *see also NPRM* ¶ 25 (explaining that using “a market-driven process [in Phase I CAF] to award support will spur high-impact broadband deployment and give the Commission and the private sector experience with a mechanism for providing consumers access to high-quality network infrastructure in an efficient manner” in the long term).

⁶³ National Broadband Plan at 145; *see also NPRM* ¶ 457-478 (proposing a variety of measures to increase accountability of fund recipients).

factor is at a near historic high of 14.9%.⁶⁴ As the National Broadband Plan recognizes, the FCC must adopt revised contribution methodology rules to “minimize the burden of increasing universal service contributions on consumers” and to “ensure that USF remains sustainable over time.”⁶⁵ Indeed, the legacy contribution base—which “has remained flat over the last decade”⁶⁶—cannot support the construction and operation of new and expanding broadband networks. Accordingly, the FCC should broaden the universal service contribution base⁶⁷ to include all broadband Internet access service revenues.

Requiring all providers of broadband services to contribute to the USF would not only decrease the contribution burden on consumers and businesses, but it would also eliminate the distortions in the broadband Internet access services market created by the current contribution system. As tw telecom has explained elsewhere, under existing contribution rules, competitive LECs that purchase special access as inputs to broadband Internet access services are indirectly subject to universal service contribution obligations,⁶⁸ but incumbent LECs that rely on their own special access loops to provide broadband Internet access services are not subject to any universal service contribution obligations.⁶⁹ Without contribution reform, this systematic

⁶⁴ *Proposed Second Quarter 2011 Universal Service Contribution Factor*, Public Notice, DA 11-473, CC Docket No. 96-45, at 1 (rel. Mar. 10, 2011).

⁶⁵ *See* National Broadband Plan at 149 (Recommendation 8.10).

⁶⁶ *Id.*

⁶⁷ *See id.*

⁶⁸ While wholesale providers of special access must contribute to the USF, they generally pass this contribution obligation through to their customers, such as tw telecom.

⁶⁹ *See* Letter from Thomas Jones, Counsel for tw telecom inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 06-122, at 1-6 (filed Apr. 27, 2010).

discrimination in favor of incumbents and against competitors in the provision of broadband Internet access services will only continue.

V. THE FCC SHOULD REGULATE TANDEM TRANSIT SERVICE AND REQUIRE THAT SUCH SERVICE BE PROVIDED AT TELRIC-BASED RATES.

In the *NPRM*, the Commission states that “the record in this proceeding indicates that a competitive market for transit services exists” and seeks comment “on the need for the Commission to regulate transiting service.”⁷⁰ In fact, the market for tandem transit service is *not* effectively competitive. To begin with, in most areas, the incumbent LEC has a monopoly over transit service and is able to charge above-cost rates. For example, in legacy BellSouth territory, AT&T offers competitive LECs such as Cbeyond a tandem transit rate of \$0.0025—almost two-and-a-half times legacy BellSouth’s average TELRIC rate for tandem transit service.⁷¹ Similarly, legacy Qwest’s average TELRIC rate for tandem transit service is \$0.0014, but legacy Qwest has taken the position that tandem transit service need not be priced at cost-based rates and it offers a rate of \$0.0045—more than three times the TELRIC rate—in its current Negotiations Interconnection Agreement Template.⁷²

⁷⁰ See *NPRM* ¶ 683.

⁷¹ See Declaration of Greg Darnell on behalf of Cbeyond, Inc. ¶¶ 4-5 (attached hereto as “Attachment A”). While the TELRIC rates for the services comprising tandem transit service were established in the legacy BellSouth territory in 2001 and 2002, there is no reason to expect that AT&T’s costs of providing these services have increased since that time. See *id.* ¶ 4. In fact, AT&T has suggested that average switching costs have decreased by 3% per year between 2000 and 2008. See Letter from Henry Hultquist, Vice President-Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 et al., at 2 (filed Oct. 13, 2008).

⁷² See Declaration of Douglas K. Denney on behalf of Integra Telecom, Inc., ¶¶ 4-5 (attached hereto as “Attachment B”). Interestingly, while Qwest has argued that a terminating rate of \$0.0007 is “a reasonable approximation of the additional cost to terminate traffic” (see Reply Comments of Qwest Communications International Inc., WC Dkt. No. 05-337 et al., at 17 (filed Dec. 22, 2008)), the same functionality is included in tandem transit service, for which Qwest seeks to charge a market-based rate of \$0.0045. Qwest cannot have it both ways (i.e., seek

In addition, Integra and Cbeyond have found that there are few viable alternative tandem transit service providers to the incumbent LEC in the geographic markets they serve.⁷³ For example, Integra has found that Qwest faces only one significant competitor, Neutral Tandem, in the provision of tandem transit service in the majority of the markets in which Integra provides service.⁷⁴ But Neutral Tandem does not offer service in all of Integra's markets, and Neutral Tandem's network does not reach all of the networks (such as rural incumbent LEC networks) to which Integra needs to route traffic.⁷⁵ Similarly, because Neutral Tandem's service does not reach all of the networks that subtend the RBOC's local tandem switch to which Cbeyond needs to route traffic, Cbeyond must still use the RBOC's local tandem switch in every market that Cbeyond serves.⁷⁶ Furthermore, in order to make use of Neutral Tandem's limited tandem transit service, Cbeyond must incur the additional expense of disaggregating traffic and building additional facilities to reach Neutral Tandem's network.⁷⁷ These burdens have the effect of significantly increasing the real cost of purchasing tandem transit service from Neutral Tandem.

In light of these facts, the FCC should compel incumbent LECs to offer tandem transit service at TELRIC-based prices. There are at least two bases for the FCC's authority to compel incumbent LECs to offer tandem transit service. *First*, Section 251(c)(2) of the Act requires

regulation of a functionality where Qwest is obligated to pay for the functionality and seek deregulation of the same functionality where Qwest has the ability to charge for the functionality).

⁷³ See Denney Declaration ¶ 6; see also Darnell Declaration ¶ 6 (explaining that Cbeyond has one alternative tandem transit provider, Neutral Tandem, in certain Cbeyond markets).

⁷⁴ See Denney Declaration ¶ 6.

⁷⁵ See *id.*

⁷⁶ See Darnell Declaration ¶ 6.

⁷⁷ See *id.*

incumbent LECs to interconnect with competitors at any technically feasible point for the “transmission and routing of telephone exchange service.”⁷⁸ This duty unquestionably requires incumbent LECs to establish interconnection for the “transmission and routing of telephone exchange service” between carriers that lack direct interconnection (i.e., tandem transit). Moreover, this interconnection duty would be meaningless unless it included the obligation to carry out the “transmission and routing” functions. *Second*, the language of Section 251(b)(5) confirms this conclusion. Under Section 251(b)(5), all LECs have the “duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”⁷⁹ The duty to establish reciprocal compensation for the “transport” of traffic implicitly includes the duty to transport the traffic to which the compensation applies. Finally, the duty of telecommunications carriers to provide “indirect[]” interconnection under Section 251(a) of the Act⁸⁰ would be meaningless if incumbent LECs did not have the duty to provide tandem transit service under Section 251(b)(5).⁸¹ That is because it is generally not possible for two carriers to interconnect indirectly for the exchange of local traffic unless they can utilize the incumbent LEC’s ubiquitous network.

Furthermore, the Commission has jurisdiction to set prices for tandem transit service under Section 251(b)(5) because such service involves the “transport” of telecommunications.⁸²

⁷⁸ 47 U.S.C. § 251(c)(2)(A).

⁷⁹ *Id.* § 251(b)(5).

⁸⁰ *Id.* § 251(a)(1).

⁸¹ See Petition of the Competitive Carriers of the South for Rate Setting, *In re BellSouth Telecommunications, Inc. Petition for Declaratory Ruling Regarding Transit Traffic*, Georgia PSC Dkt. No. 16772-U, at 4-7 (filed Apr. 7, 2008).

⁸² See 47 C.F.R. § 51.701(c) (defining “transport” as “the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the

And, the Commission has the authority under Section 251(b)(5) to establish a cost-based pricing methodology applicable to the “compensation” paid to incumbent LECs. Accordingly, the FCC should require that such rates be set at TELRIC. Indeed, it would be absurd for the Commission to pursue reduction of access charges on the basis that they are above cost but permit providers of tandem transit service to charge above-cost rates when that service includes the exact same functionalities (with the exception of local switching).

VI. CONCLUSION

For the foregoing reasons, the Commission should take the actions recommended herein by the Joint Commenters.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

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*Attorneys for Cbeyond, Inc., Integra Telecom, Inc.,
and tw telecom inc.*

April 18, 2011

interconnection point between two carriers to the terminating carrier’s end office switch that directly serves the called party”). Tandem transit service consists of the transmission and tandem switching functions.

ATTACHMENT A

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

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

**DECLARATION OF GREG DARNELL
ON BEHALF OF CBeyond, INC.**

1. I am Director of Local Exchange Carrier (“LEC”) Relations for Cbeyond Communications, LLC, the operating company of Cbeyond, Inc. (“Cbeyond”). In this position, I am responsible for negotiating and resolving all operational, financial, and contractual escalations between Cbeyond and other LECs. Prior to joining Cbeyond in March 2007, I was President of Public Servant Consulting, Inc., a consulting company providing unbundled network element cost analysis services and interconnection agreement negotiation services. Between January 1984 and January 2006, I was employed by MCI and Verizon, where I held numerous positions including Financial Analyst Telecommunications Cost, Supervisor Telecommunications Cost Analysis, Senior Financial Analyst Federal Regulatory, Manager Economic Analysis, Chief of Staff Southeast Region Carrier Management, Manager Vendor Relations, Senior Manager Regulatory Economics, and Executive Staff Member State

Regulatory. I am a graduate of the University of Maryland, where I received a B.A. in Behavioral and Social Sciences in Economics and an M.S. in Telecommunications Management. I have testified in more than 40 state regulatory proceedings on telecommunications cost, universal service, interconnection, intercarrier compensation, and other issues.

2. Cbeyond is a leading IP-based managed services provider that delivers integrated packages of high-speed Internet, local and long distance phone, and mobile services, as well as productivity-enhancing applications such as web hosting and virtual private networking, to approximately 57,000 small businesses in 14 markets throughout the United States (i.e., Atlanta, Boston, Chicago, Dallas-Fort Worth, Denver, Detroit, Houston, Los Angeles, Miami, Minneapolis/St. Paul, San Diego, the San Francisco Bay area, Seattle, and the greater Washington, D.C. area).

3. Where Cbeyond exchanges an insufficient level of traffic with another carrier to justify direct interconnection, Cbeyond purchases tandem transit service from an intermediary carrier and routes its traffic through the intermediary carrier's network. The purpose of this declaration is to describe (1) the methodology I used to determine legacy BellSouth's average TELRIC rate for tandem transit service; and (2) Cbeyond's experience with non-incumbent LEC providers of tandem transit service.

4. The table below shows BellSouth's TELRIC rates for tandem switching, common transport, common transport per mile, and shared tandem trunk port in each of the 9 states in legacy BellSouth's territory. I obtained these rates from state public utility commission orders and proceedings establishing rates for unbundled network elements and interconnection services consistent with the TELRIC methodology in 2001 and 2002. While these rates are from 2001 and 2002, there is no reason to expect that AT&T's costs of providing these services have

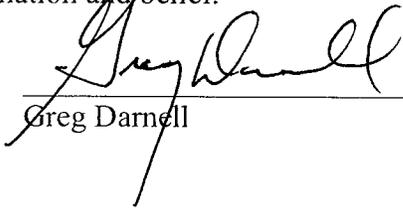
increased since that time. The TELRIC rate for tandem transit service listed for each state is the sum of the rates for tandem switching, common transport, common transport per mile at 10 miles, and shared tandem trunk port. The table shows that legacy BellSouth's average TELRIC rate for tandem transit service across its 9-state territory is \$0.0010432.

State	Tandem Switching TELRIC Rate	Common Transport TELRIC Rate	Common Transport Per Mile Rate	Shared Tandem Trunk Port Rate	Transit TELRIC @ 10 Miles Of Common Transport	Source
AL	0.0000950	0.0003224	0.0000023	0.0002015	0.0006419	AL PSC Dkt 27821, Order 5/31/02
FL	0.0001319	0.0004372	0.0000035	0.0002252	0.0008293	FL PSC Dkt 990649-TP, Order 10/18/01
GA	0.0006757	0.0004152	0.0000080	0.0002126	0.0013835	GA Dkt 10692-U, Order 2/1/00
KY	0.0001940	0.0007466	0.0000030	0.0002416	0.0012122	KY Admin Case 382, Order 12/18/01
LA	0.0001067	0.0003748	0.0000032	0.0003000	0.0008135	LA PSC Dkt U-24714 (sub A), Order 10/17/01
MS	0.0001723	0.0004541	0.0000026	0.0001828	0.0008352	MS PSC Dkt 2000-UA-999, Order 10/12/01
NC	0.0006000	0.0003400	0.0000100	0.0003000	0.0013400	NCUC Dkt P-100, Sub 133d, Order 12/11/01
SC	0.0001634	0.0004095	0.0000045	0.0002863	0.0009042	SC PSC Order 2001-1089, 11/30/01
TN	0.0009778	0.0003871	0.0000064	0.0000000	0.0014289	TRA Dkt 97-01262, Order 2/27/01
Legacy BellSouth Average	0.0003463	0.0004319	0.0000048	0.0002167	0.0010432	

5. AT&T currently offers competitive LECs, such as Cbeyond, a tandem transit rate of \$0.0025.

6. In certain markets, Cbeyond does have an alternative to the RBOC's tandem transit service for some tandem transit traffic. This alternative tandem transit provider is called Neutral Tandem. However, Neutral Tandem's service does not reach all of the networks (e.g., rural incumbent LEC networks) that subtend the RBOC's local tandem switch to which Cbeyond needs to route traffic. As such, Cbeyond must still use the RBOC's local tandem switch in every market. In addition, in order to make use of Neutral Tandem's limited tandem transit service, Cbeyond must incur the additional expense of disaggregating traffic and building additional facilities to reach Neutral Tandem's network.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Greg Darnell

Dated: 4/13/11

ATTACHMENT B

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

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

**DECLARATION OF DOUGLAS K. DENNEY
ON BEHALF OF INTEGRA TELECOM, INC.**

1. I am Director of Costs and Policy for Integra Telecom, Inc. (“Integra”). In this role, my responsibilities include negotiating interconnection agreements, monitoring, and reviewing and analyzing the wholesale costs that Integra and its affiliates pay to carriers such as Qwest. I received a B.S. degree in Business Management from Phillips University in 1988. I spent three years doing graduate work at the University of Arizona in Economics, and then I transferred to Oregon State University, where I completed all of the requirements for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I focused on cost models and the measurement of market power. I taught a variety of economics courses at the University of Arizona and Oregon State University. I was hired by AT&T in December 1996 and spent most of my time with AT&T analyzing cost models. In December 2004, I was hired by Eschelon Telecom, Inc., which was subsequently purchased by Integra, where I am presently

employed. I have participated in more than 50 proceedings in the 14-state Qwest region and have also testified about issues relating to the wholesale cost of local service (including universal service funding, unbundled network element pricing, geographic rate deaveraging, and competitive local exchange carrier (“LEC”) access rates) and interconnection agreement arbitrations.

2. Integra is the fourth largest competitive LEC in the United States. Integra owns and operates a 3,000-route mile metropolitan area network and a 5,000-mile long haul network. It provides voice, data, and Internet communications to thousands of business and carrier customers predominately in 11 Western states (Arizona, California, Colorado, Idaho, Minnesota, Montana, Nevada, North Dakota, Oregon, Utah, and Washington).

3. Where Integra is unable to justify direct interconnection (e.g., due to an insufficient level of traffic with another carrier), Integra purchases tandem transit service from an intermediary carrier and routes its traffic through the intermediary carrier’s network. The purpose of this declaration is to describe (1) the methodology I used to determine legacy Qwest’s average TELRIC rate for tandem transit service; and (2) Integra’s experience with non-incumbent LEC providers of tandem transit service.

4. The table below lists Qwest’s TELRIC rates for tandem switching and tandem transport in each of the 14 states in Qwest’s territory. I obtained these rates for each state (except Wyoming)¹ from the Exhibit As to Qwest’s Statements of Generally Available Terms (“SGATs”) on file with state public utility commissions.² These Exhibit As generally include

¹ I obtained Qwest’s TELRIC rates for tandem switching and tandem transport in Wyoming from “Wyoming Exhibit A 12-17-10” to Qwest’s Negotiations Interconnection Agreement Template, *available at* <http://www.qwest.com/wholesale/clecs/nta.html#> (last visited Apr. 7, 2011).

² *See* <http://www.qwest.com/about/policy/sgats/> (last visited Apr. 7, 2011).

the latest state public utility commission Order TELRIC rates for the elements used to provide transit traffic. The TELRIC rate for tandem transit service listed for each state is the sum of the TELRIC rate for tandem switching and the TELRIC rate for tandem transport. The tandem transport component sometimes contains both a fixed and per-mile component. Qwest charges a state-specific mileage for the per-mile component, which I used in these calculations. The state-specific mileage for transit traffic is contained in the SGAT Exhibit A for each state. The table shows that Qwest's average TELRIC rate for tandem transit service across its 14-state territory is \$0.001416. This average is weighted by the number of Qwest lines in each state, which I obtained from FCC Form 477 data.³

State	Recip Comp (LS + TS + TT)	Tandem Transit (TS + TT)	Tandem Switching (TS)	Tandem Transport (TT)	Local Switching (LS)	Lines (477)
Arizona	\$ 0.00231	\$ 0.001340	\$ 0.000550	\$ 0.000790	\$ 0.000970	1,494,281
Colorado	\$ 0.00272	\$ 0.001112	\$ 0.000690	\$ 0.000422	\$ 0.001610	1,576,581
Idaho	\$ 0.00275	\$ 0.001403	\$ 0.000690	\$ 0.000713	\$ 0.001343	357,914
Iowa	\$ 0.00359	\$ 0.002030	\$ 0.000690	\$ 0.001340	\$ 0.001558	659,527
Minnesota	\$ 0.00164	\$ 0.001640	\$ 0.001120	\$ 0.000520	\$ -	1,232,521
Montana	\$ 0.00351	\$ 0.001934	\$ 0.000690	\$ 0.001244	\$ 0.001574	208,388
Nebraska	\$ 0.00271	\$ 0.001455	\$ 0.000690	\$ 0.000765	\$ 0.001260	226,104
New Mexico	\$ 0.00372	\$ 0.001674	\$ 0.000853	\$ 0.000821	\$ 0.002046	563,084
North Dakota	\$ 0.00421	\$ 0.002728	\$ 0.002100	\$ 0.000628	\$ 0.001482	102,825
Oregon	\$ 0.00246	\$ 0.001125	\$ 0.000690	\$ 0.000435	\$ 0.001330	765,446
South Dakota	\$ 0.00189	\$ 0.001186	\$ 0.000690	\$ 0.000496	\$ 0.000702	116,871
Utah	\$ 0.00299	\$ 0.001366	\$ 0.000686	\$ 0.000680	\$ 0.001626	646,739
Washington	\$ 0.00222	\$ 0.001040	\$ 0.000690	\$ 0.000350	\$ 0.001178	1,378,685
Wyoming	\$ 0.00616	\$ 0.003537	\$ 0.002856	\$ 0.000681	\$ 0.002622	152,350
Weighted Average	\$ 0.002639	\$ 0.001416				

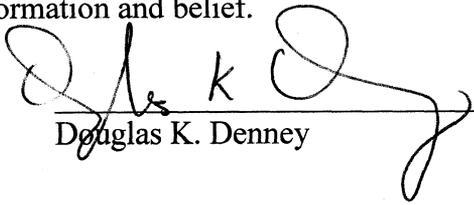
³ See "Selected RBOC Local Telephone Data As of 6/30/10," available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/RBOC_Local_Telephone_June_2010.xls (last visited Apr. 7, 2011).

5. Qwest has taken the position that tandem transit service need not be priced at cost-based rates. Qwest offers a tandem transit service rate of \$0.0045 in its current Negotiations Interconnection Agreement Template, which Qwest offers as the baseline for negotiating new interconnection agreements.⁴

6. I have found that there are few alternative tandem transit service providers to Qwest in the geographic markets that Integra serves. In fact, in my experience, Qwest faces only one large competitor in the provision of tandem transit service in the majority of the markets in which Integra provides service. In Integra's larger markets, such as Minnesota, Oregon, and Washington, that competitor is Neutral Tandem. Neutral Tandem does not offer service in Integra's small markets, such as Idaho, North Dakota, Nevada, and Montana. In addition, Neutral Tandem's network does not reach all of the networks (such as rural incumbent LEC networks) to which Integra needs to route traffic.

⁴ See Exhibit A to Qwest's Negotiations Interconnection Agreement Template, *available at* <http://www.qwest.com/wholesale/clecs/nta.html#> (last visited Apr. 7, 2011).

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Douglas K. Denney

Dated: 4/14/2011