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

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

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

WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000

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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 reply comments on Section XV of 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 comments filed in this proceeding confirm that the FCC should address the appropriate intercarrier compensation ("ICC") framework for interconnected VoIP traffic by applying the same intercarrier rates to interconnected VoIP traffic that apply to other voice telephone traffic. At the same time, the record demonstrates that the Commission should not impose bill-and-keep or apply a special rate (e.g., $0.0007 per minute) to interconnected VoIP traffic. Applying different intercarrier rates to interconnected VoIP traffic and other voice traffic would, among other things, contravene the Commission's goals of eliminating arbitrage and unifying intercarrier rates. Moreover, the FCC does not have the statutory authority to mandate bill-and-keep or a rate of $0.0007 for interconnected VoIP traffic.[2]

Several of the comments filed in this proceeding on the issue of phantom traffic request that the FCC permit incumbent LECs to force competitors into interconnection agreement negotiations under Section 252 of the Act. As discussed herein, the FCC should reject this proposal and focus on amending its call signaling rules to determine which provider is responsible for paying terminating rates.

II. DISCUSSION

A. INTERCONNECTED VOIP TRAFFIC

1. Applying The Same Intercarrier Rates To Interconnected VoIP Traffic As Other Voice Traffic Is Sound Public Policy Whereas Mandating Bill-And-Keep Or A Special Rate For Interconnected VoIP Traffic Has No Basis In Policy Or In The Law.

Virtually all commenters in this proceeding agree that there is an urgent need for the Commission to address the appropriate intercarrier compensation ("ICC") framework for

[2] In all events, carriers should remain free to *voluntarily* negotiate their own agreements regarding ICC for interconnected VoIP traffic, including bill-and-keep agreements.

interconnected VoIP service.[3] The FCC's failure to act has resulted in years of regulatory uncertainty and, in turn, opportunities for arbitrage, countless billing disputes, and diminished investment.[4] It has also encouraged unlawful self-help by large carriers such as Verizon and Sprint.[5]

There is also widespread agreement among the commenters that, during the ICC reform transition to unified rates, the Commission should subject interconnected VoIP traffic to the same intercarrier rates (i.e., intrastate access, interstate access, and reciprocal compensation) as

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[3] *See, e.g.,* AT&T Comments at 29 (stating that "the Commission should not put these issues off any longer"); Cablevision and Charter Comments at 13 (explaining the "need for prompt FCC action on this point"); ITTA Comments at 7 (urging the FCC to take action "as soon as possible"); Sprint Comments at 3 ("Prompt release of a Commission order specifying the applicable compensation for IP-PSTN traffic is necessary and long overdue."); Time Warner Cable Comments at 4; USTelecom Comments at 2; Windstream Comments at 2.

[4] *See, e.g.,* AT&T Comments at 29; Frontier Comments at 7-8; Iowa Utilities Board Comments at 4; Sprint Comments at 3; Verizon Comments at 7-10; Windstream Comments at 2; XO Communications Comments at 7-12.

[5] *See* Cbeyond et al. Comments at 5-6 & Attachment A (explaining that, rather than paying the access charges due under Cbeyond's tariffs, Verizon unilaterally decided to pay Cbeyond a rate of $0.0007 per minute for origination and termination of Verizon long distance calls on Cbeyond's IP network); Bluegrass Telephone Co. Comments at 29 ("[T]he Commission's inaction and lack of enforcement against IXC self-help has emboldened carriers to the point that they now invent arguments to stop paying access charges that they have paid for years as part of a strategic and purposeful cash flow management program. By way of example, a recent decision from the Eastern District of Virginia demonstrates that, when the truth really comes to light, the excuses that Sprint uses in order to not pay carriers for access services are mere pretext for company-wide efforts to weather economic challenges on the backs of other carriers.") (citing *Cent. Tel. Co. of Va., et al. v. Sprint Commc'ns Co. of Va., Inc., et al.*, Civ. No. 3:09cv720, Memorandum Opinion, 2011 WL 778402, *3 (E.D. Va. Mar. 2, 2011)); Windstream Comments at 11; *see also* CenturyLink Comments at 5; ITTA Comments at 18 (stating that some "large carriers have recently begun to withhold access payments on [VoIP] traffic, reversing their own established practices").

other voice telephone traffic.[6] The record confirms that this approach is sound policy for several reasons.

First, applying the same intercarrier rates to all voice traffic would ensure a level playing field among all providers of voice services and avoid the market distortions created by differential rates.[7] Indeed, the FCC's stated policy of "competitive neutrality" requires application of the same intercarrier rates to all voice traffic.[8] As NARUC explains, "policy makers should not tilt the competitive playing field by choosing to favor (or disadvantage) any particular carrier based solely upon the technology used to deliver a functionally equivalent service."[9]

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[6] *See* Alaska Telephone Association Comments at 2; CenturyLink Comments at 4 (arguing that the FCC should confirm that IP-on-the-PSTN traffic is subject to the same ICC charges as other voice telephone traffic); Frontier Comments at 9; Iowa Utilities Board Comments at 7; ITTA Comments at iii (urging the FCC to "affirm[] that entities choosing to use the PSTN must pay for that use in the same way as others do"); Michigan PSC Comments at 2; NARUC Comments at 5-6; NASUCA et al. Comments at 4 (arguing that the Commission should "logically conclude that VOIP traffic should be subject to the same ICC obligations as all other traffic"); Nebraska Rural Independent Companies Comments at iv (asking the FCC to "determine that VoIP-PSTN voice traffic is subject to the same ICC payment obligations as traditional telephone voice traffic"); Pac-West Comments at 5; PAETEC et al. Comments at 32; Pennsylvania PUC Comments at 4; SureWest Comments at 3; Time Warner Cable Comments at 7; Windstream Comments at 12.

[7] *See* Bright House Comments at 4 ("If the presence or absence of one or another technology entitles a carrier to a better termination rate, that is absolutely guaranteed to produce profound marketplace distortions based on arbitrary regulatory rules rather than the inherent advantages of different technologies."); Frontier Comments at 9; Kansas Corporation Commission Comments at 13-14; Washington UTC Comments at 5; Windstream Comments at 3.

[8] *See* CenturyLink Comments at 13; Pac-West Comments at 5; *see also* Cbeyond et al. Comments at 4-5 (citing *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518, ¶ 44 (2006) ("*Universal Contribution Methodology Report and Order*")).

[9] NARUC Comments at 4-5.

Second, applying the same intercarrier rates to all voice traffic, including interconnected VoIP traffic, would further the Commission's short-term goal of eliminating arbitrage.[10] For example, carriers would no longer have the incentive to identify all of their voice traffic as interconnected VoIP traffic in order to minimize their ICC liability.

Third, applying the same intercarrier rates to all voice traffic would advance the FCC's long-term goal of unifying all intercarrier rates.[11] As Time Warner Cable states, the "Commission should focus on harmonizing the treatment of various forms of telecommunications traffic" rather than creating new, arbitrary distinctions.[12]

For these same reasons, numerous parties agree with the Joint Commenters that the FCC should not apply bill-and-keep to interconnected VoIP traffic or a special rate (e.g., $0.0007 per minute) to interconnected VoIP traffic.[13] Most importantly, because carriers cannot differentiate interconnected VoIP traffic from other voice traffic terminating on their networks,[14] applying

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[10] *See* Ohio PUC Comments at 7; PAETEC et al. Comments at 32.

[11] *See* PAETEC et al. Comments at 32; Time Warner Cable Comments at 10.

[12] Time Warner Cable Comments at 3.

[13] *See* NASUCA et al. Comments at 4 (arguing that imposing a bill-and-keep regime "will only lead to further distortions in the market"); Core Comments at 11 ("VoIP-specific rates would merely increase the multiplicity of different rates for different traffic types"); Michigan PSC Comments at 2-3 ("The FCC has found that the multitude of rates within the framework of intercarrier compensation is problematic and presents the opportunity for arbitrage; therefore, the MPSC respectfully suggests that adding another layer of rates specific for VoIP is not the preferred course of action."); Cablevision and Charter Comments at 10 ("[T]reating VoIP differently than circuit-switched traffic only harms the Commission's policy goals of eliminating arbitrary regulatory distinctions and accompanying arbitrage."); PAETEC et al. Comments at 31-33 & 38-42; Time Warner Cable Comments at 3, 9-11.

[14] *See* Cablevision and Charter Comments at 4; Kansas Corporation Commission Comments at 15; PAETEC et al. Comments at 31 ("Facilities-based CLECs are not aware of any industry standard, published or commonly accepted, to distinguish [IP-originated traffic from TDM-originated traffic]."); Windstream Comments at 7 (explaining that terminating carriers lack the ability to verify claims that traffic is in fact VoIP-originated).

bill-and-keep or a special rate to interconnected VoIP traffic would only perpetuate regulatory arbitrage.[15] As Frontier explains, "Frontier cannot identify whether the traffic [that] it receives originates as either VoIP traffic or traditional switched access traffic, nor is there a simple technical solution that would enable it to do so. Accordingly, the potential for arbitrage abounds should the Commission find that VoIP-originating traffic is not subject to traditional terminating access charges."[16]

There are several additional reasons that the FCC should not apply bill-and-keep or a rate of $0.0007 to interconnected VoIP. *First*, the Commission cannot bring VoIP traffic within the framework of Section 251(b)(5) of the Act[17] and establish specific rates for such traffic (and, in the case of bill-and-keep, that rate would be zero). While the Commission has the authority to establish a rate *methodology* for traffic subject to Sections 251(b)(5) and 252(d)(2) of the Act,[18] it lacks the authority to set *specific rates* for this traffic.[19] Thus, as NARUC states, proposals to

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[15] *See* Nebraska Rural Independent Companies Comments at 6-14; PAETEC et al. Comments at 31-32; Time Warner Cable Comments at 3; Windstream Comments at 4 ("Anything short of a confirmation that interconnected VoIP providers are required to pay the same jurisdictionalized [ICC] charges as other voice telephone traffic would only exacerbate the current problems, because terminating providers are unable to verify the claims of originating providers.").

[16] Frontier Comments at 5.

[17] 47 U.S.C. § 251(b)(5).

[18] *Id.* § 252(d)(2).

[19] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (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 ("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).

adopt bill-and-keep or VoIP-specific rates are "prescriptions for protracted litigation – litigation the FCC is likely to lose."[20]

Importantly, although the Commission set a specific rate of $0.0007 for ISP-bound traffic, it did so pursuant to Section 201(b) of the Act[21] because all ISP-bound traffic is interstate.[22] As discussed below, however, interconnected VoIP traffic is *not* purely interstate. Accordingly, contrary to Verizon's assertions,[23] the Commission could not rely on Section 201(b) to set a specific rate for interconnected VoIP traffic.

Second, a rate of $0.0007 for interconnected VoIP traffic would not allow carriers to recover the "additional costs" of termination, as required by Section 252(d)(2) of the Act.[24] As PAETEC, TelePacific, and RCN discuss, there is substantial evidence in the record demonstrating that a rate of $0.0007 would not cover carriers' costs of terminating traffic.[25]

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[20] NARUC Comments at 6; *see also id.* (explaining that such proposals would impermissibly preempt state jurisdiction); Ohio PUC Comments at 8 ("Should the FCC ultimately rely on section 251(b)(5) for the legal authority to require specific intercarrier compensation charges for VoIP traffic, . . . the actual setting of rates should be left to the states as mandated by the Act."); Pennsylvania PUC Comments at 4.

[21] 47 U.S.C. § 201(b).

[22] *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).

[23] *See* Verizon Comments at 15.

[24] 47 U.S.C. § 252(d)(2)(A)(ii).

[25] *See* PAETEC et al. Comments at 38-42 (discussing studies and comments submitted by NECA, NTCA, ITTA, CenturyTel, Windstream, Embarq, XO Communications, NuVox, PAETEC, and others).

Moreover, as tw telecom has explained in the past, the fact that some carriers have agreed to this rate in some interconnection agreements does not lead to the conclusion that it is cost-based.[26]

Third, the FCC lacks the authority to mandate bill-and-keep where there is a traffic imbalance.[27] To begin with, 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. In addition, 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,"[28] 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*."[29] 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 would not be "mutual and reciprocal." Nor would it constitute

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[26] *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).

[27] 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* Cbeyond et al. Comments at 16-18. 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.

[28] 47 U.S.C. § 252(d)(2)(A)(i) (emphasis added).

[29] *Id.* § 252(d)(2)(B)(i) (emphasis added).

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.[30]

Finally, while Verizon and a few other commenters assert that VoIP traffic is inseverable and jurisdictionally interstate[31] (and therefore, intrastate access charges could not apply to such traffic as it does for other intrastate voice traffic), tw telecom has already explained at length that this is not true for geographically fixed VoIP service.[32] Moreover, contrary to some of these commenters' claims, if the FCC subjected interconnected VoIP traffic to the same intercarrier rates (including intrastate access charges) as other voice traffic, interconnected VoIP providers would not need to make wholesale changes to their operations or their systems.[33] Indeed, for universal service contribution purposes, the FCC has already established a safe harbor for the percentage of interconnected VoIP telecommunications revenues—whether from the provision

[30] *See* 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 22 & n.55 (filed Oct. 14, 2008); 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).

[31] *See* Verizon Comments at 19-25; *see also* CTIA Comments at 13; Vonage Comments at 4 (arguing that "the historical federal/state jurisdictional division" is not compatible with IP technology); XO Communications Comments at 14-16.

[32] *See* Letter from Thomas Jones, Counsel for tw telecom inc., to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 et al., at 2-8 (filed Oct. 23, 2008) (explaining that fixed VoIP service is not inseverable because (1) there is no meaningful difference, at least for purposes of jurisdictional analysis, between the communications initiated by fixed VoIP subscribers and those initiated by circuit-switched telephone service subscribers; and (2) there is no meaningful difference for these purposes between the network architectures utilized to provide fixed VoIP service and circuit-switched telephone service).

[33] *See* Verizon Comments at 28 ("Forcing facilities-based VoIP providers artificially to break apart their . . . offerings solely to provide states with an intrastate communications component they can regulate would require VoIP providers to change multiple aspects of their service operations."); XO Communications Comments at 16.

of fixed or nomadic interconnected VoIP service—that is interstate.[34] There is no reason that a similar safe harbor could not be established for the percentage of interconnected VoIP traffic that is interstate and intrastate for purposes of assessing access charges.

The Commission also permits interconnected VoIP providers to contribute to the USF based on traffic studies that rely on statistical sampling techniques to establish the proportion of their traffic that is interstate.[35] For decades, providers of circuit-switched telephone services have used such techniques when necessary to establish the proportion of their traffic that is interstate and intrastate for purposes of assessing access charges. There is no reason that the industry could not rely on similar methods today.[36]

2. The Simplest Way For The FCC To Apply The Same Intercarrier Rates To Interconnected VoIP Traffic That Apply To Other Voice Traffic Is By Clarifying That Interconnected VoIP Service Is A "Telecommunications Service."

As the Joint Commenters have explained,[37] the simplest way for the Commission to apply the same intercarrier rates to all voice traffic, including VoIP traffic, is by clarifying that interconnected VoIP service is a "telecommunications service" under the Act.[38] In particular, if the FCC made such a clarification, access charges would automatically apply to interstate

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[34] *See Universal Service Contribution Methodology Report and Order* ¶ 53 (establishing a safe harbor of 64.9%); *see also* Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2011), at 23 ("2011 Form 499-A Instructions").

[35] *See* 2011 Form 499-A Instructions at 24.

[36] *See* PAETEC et al. Comments at 33 (stating that "if TDM and VoIP traffic are subject to the same compensation obligations, the industry could rely on existing rules and standards to determine jurisdiction of traffic and apply the correct rate").

[37] *See* Cbeyond et al. Comments at 7-8.

[38] *See* 47 U.S.C. § 153(46).

interconnected VoIP traffic under Section 69.5(b) of the Commission's rules[39] and reciprocal compensation would apply to the termination of local interconnected VoIP traffic under Section 251(b)(5) of the Act.[40]

Moreover, it is probably necessary to clarify that interconnected VoIP service is a telecommunications service if the FCC seeks to rely on Section 251(b)(5) to preempt state jurisdiction over intrastate access charges applicable to interconnected VoIP as part of long-term ICC reform. As discussed in the Joint Commenters' initial comments, the *Universal Service Contribution Methodology Report and Order* on which the Commission relies in the *NPRM* does not necessarily support the proposition that interconnected VoIP traffic is "telecommunications" traffic.[41] Accordingly, the more prudent course of action is for the FCC to clarify that interconnected VoIP service is a telecommunications service under the Act.

The statute defines the terms "telecommunications service" and "information service"[42] based on the functionality offered to the end user.[43] There is no question that providers of interconnected VoIP service offer end users the same functionality—voice transmission—as providers of circuit-switched telephone service.[44] Indeed, the FCC has used this fact as the basis

[39] *See* 47 C.F.R. § 69.5(b) (applying access charges to the provision of interstate "telecommunications services").

[40] *See* 47 U.S.C. § 251(b)(5) (imposing the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications").

[41] *See* Cbeyond et al. Comments at 8-9 & nn.20-22.

[42] *See* 47 U.S.C. § 153(20).

[43] *See* Cbeyond et al. Comments at 9-10 & n.23.

[44] As NARUC states, interconnected VoIP service "fits precisely the functional definition of a 'telecommunications service.'" NARUC Comments at 5; *see also* Iowa Utilities Board Comments at 6 (arguing that interconnected VoIP services that exhibit a functional equivalence to telecommunications services should be classified as telecommunications services).

for imposing numerous regulations applicable to providers of telecommunications services on providers of interconnected VoIP services.[45] This fact is also the basis for commenters' arguments that the Commission should apply the same intercarrier rates to all voice telephone traffic.[46] As these commenters also point out, consumers view interconnected VoIP service as a substitute for traditional telephone service and interconnected VoIP providers market their services in that manner.[47] Nor is there any question that interconnected VoIP providers offer this functionality to the public for a fee.[48] Thus, interconnected VoIP service falls squarely within the definition of a telecommunications service.

Several commenters argue that, on the contrary, interconnected VoIP service is an "information service" under the Act because (1) it involves a net protocol conversion;[49] and/or

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[45] *See* Cbeyond et al. Comments n.32; ITTA Comments at 11-12 (explaining that the FCC has recognized that VoIP service is functionally equivalent to traditional telephone service when imposing Title II-like obligations on interconnected VoIP providers); Windstream Comments at 9-10 ("[I]n light of the substantial similarities between circuit-switched and interconnected VoIP traffic, the Commission since 2004 has determined that VoIP services must comply with numerous common carrier obligations," including CALEA, E911 requirements, USF contribution requirements, CPNI rules, disability access requirements, number portability requirements, and discontinuance obligations.).

[46] *See* CenturyLink Comments at 15 ("Interconnected VoIP providers use the PSTN in the same way, and for the same purpose, as any traditional voice provider"); Windstream Comments at 5-6 (arguing that the failure to pay ICC rates for VoIP traffic notwithstanding the "functional similarities between circuit-switched and interconnected VoIP traffic" undermines broadband deployment).

[47] *See* NARUC Comments at 5 (stating that Vonage and other VoIP providers "constantly advertise their services as 'telephone services' competing with existing telecommunications services"); Windstream Comments at 4 ("From a customer's perspective, VoIP providers' voice services may appear virtually identical to the ones offered by traditional wireline providers, and in fact, such services are marketed as substitutes for switched telecommunications services.").

[48] *See* Cbeyond et al. Comments at 11-12 & nn.33-34; Kansas Corporation Commission Comments at 9.

[49] *See* Google Comments at 4; Sprint Comments at 4; Verizon Comments at 32-33; VON Coalition Comments at 8.

(2) VoIP service offerings include capabilities, such as voicemail,[50] that fall within the literal definition of an information service.[51] As the Joint Commenters have already explained, however, these facts do not render interconnected VoIP service an information service and we need not repeat that explanation here.[52]

For these reasons, the Commission should clarify that interconnected VoIP service is a telecommunications service. This clarification would not only facilitate ICC reform, but it would reaffirm competitors' statutory rights to interconnection and unbundled network elements.[53]

B. PHANTOM TRAFFIC.

When addressing the issue of phantom traffic, a few commenters argue that the FCC should give incumbent LECs the ability to invoke the negotiation and arbitration provisions of Section 252 of the Act[54] with other carriers with which they exchange traffic.[55] The Commission should reject this proposal for several reasons.

First, it would force competitors to interconnect directly with incumbent LECs even where it is inefficient to do so, thereby driving up competitors' costs of providing service. Requiring competitors to incur these costs will, in turn, diminish competition and raise entry barriers.

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[50] *See* Verizon Comments at 33.

[51] *See* Google Comments at 4; Verizon Comments at 33.

[52] *See* Cbeyond et al. Comments at 12-15.

[53] *See id.* at 15-16.

[54] 47 U.S.C. § 252.

[55] *See* USTelecom Comments at 5-6; CenturyLink Comments at 24-25; Windstream Comments at 17-19.

Second, the proposal would force competitors to interconnect directly with incumbent LECs even though the Act expressly grants competitors the choice to interconnect "directly *or indirectly*" with incumbent LECs as they see fit.[56]

Third, there are less costly and less inefficient means of addressing the problem of phantom traffic. Indeed, the Commission should focus on amending its call signaling rules to determine which provider is responsible for paying terminating rates, not on "misguided attempts to address unrelated concerns under the pretext of achieving phantom traffic[] reform."[57]

III. CONCLUSION.

For the foregoing reasons, the Commission should clarify that interconnected VoIP service is a "telecommunications service" and apply the same intercarrier rates to interconnected VoIP traffic that apply to other voice telephone traffic. In addition, the Commission should not permit incumbent LECs to force competitors into interconnection agreement negotiations under Section 252 of the Act.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones
Nirali Patel
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000

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

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[56] 47 U.S.C. § 251(a)(1) (emphasis added).

[57] XO Communications Comments at 39.