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

REPLY COMMENTS OF CENTURYLINK

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CenturyLink submits these reply comments in response to the Commission's recent *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* regarding potential reform of its existing universal service and intercarrier compensation (ICC) frameworks.[1]

[1] *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, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011) (*NPRM*). *See* Public Notice, 76 Fed. Reg. 11,632 (Mar. 2, 2011).

I. INTRODUCTION AND SUMMARY

As detailed in its initial comments, CenturyLink, by virtue of the nature of its diverse service territory and customer base, has a keen interest in the Commission's proposed path for universal service and ICC reform -- particularly as they apply to the evolution of communications and economic development in rural, high cost markets. CenturyLink was particularly pleased to see the Commission focus, in the *NPRM*, on ending the Rural/Rural divide. The voluminous initial comments submitted by other parties largely echoed CenturyLink's support for the general approach reflected in the *NPRM* -- *i.e.*, to transition current high-cost universal service support to targeted support for broadband and voice services in high-cost areas, and to stabilize ICC by harmonizing rates, reducing arbitrage and reducing rate levels over a reasonable transition with offsetting revenue opportunities and support mechanisms. But, the initial comments also reflected a familiar diversity of views regarding a great many of the details of the Commission's proposed reforms -- particularly the more ambitious aspects. This diversity of views, as well as the Commission's struggle to reconcile the vast complexities entailed in achieving its own policy goals in this area while avoiding unintended consequences and meeting applicable legal requirements, has repeatedly stalled past attempts at reform. If meaningful universal service and ICC reform is to be accomplished for the greater public good in this proceeding, it will be essential that the Commission exercise a certain amount of regulatory humility and, overall, pursue more measured, readily achievable reform. To accomplish this, the Commission should focus on certain critical and overarching issues that definitively advance sound investment in fiber-rich, reliable networks.

Regarding universal service reform, the Commission should consider a different approach to interstate access support (IAS) from that set forth in the *NPRM*. The Commission's proposal to eliminate IAS dollars from various states in two years will undercut the

Commission's goal of ending the Rural/Rural divide by taking money away that could be used immediately for broadband deployment in the very areas that are on the wrong side of that divide. The Commission's proposal to repurpose those IAS dollars involves considerable wasted time, transaction costs, and a very real risk that any new use for the money will have less impact on broadband deployment. In addition, the proposal is based only on the Commission's unsubstantiated conclusion that the support is no longer needed. Eliminating the support without a more substantive record is legally infirm and may undermine state-specific broadband projects and initiatives involving unserved areas, healthcare and education of which the Commission may not be aware. Further, contrary to the Commission's unsubstantiated conclusions, IAS is still critical for sustaining good quality voice services, including first-responder and public safety services, in high-cost areas. The Commission should maintain the support.

To better align the support with evolving Commission goals for universal availability of broadband, the Commission should expand IAS support to accelerate broadband deployment in unserved and underserved areas. The Commission can require IAS recipients to use the support to deploy broadband as an interim mechanism as it transitions high-cost universal service funding to support broadband and voice services. In this manner, the Commission can play a meaningful role in helping states achieve their individual broadband objectives by not reducing existing critical funding and avoid harmful delays that would result from reducing IAS through an uncertain and untested mechanism yet to be designed and implemented. This approach also will enable states to retain the certainty of this support during the transition to the long-term Connect America Fund (CAF). IAS should only be transitioned to the long-term CAF, and any transition should take place over a period longer than the two years the Commission has proposed. CenturyLink is confident that a workable proposal related to expanding the role of IAS can and should be developed quickly.

The initial comments also highlight the following additional issues in connection with any universal service reform. First, the Commission should adopt the same targeted CAF methodology in all geographic areas, regardless of the size of the carrier that serves there. Future policies must not discriminate between carriers, must recognize the high cost characteristics of rural areas and must meet the goal of ubiquitous broadband deployment. Assuming there will be some type of cap on the CAF, the Commission must avoid unfairly disadvantaging certain rural customers and some states based on the size of their provider. Likewise, the targeting of support to wire centers, rather than census blocks, will be the most competitively neutral and provide the greatest broadband deployment by taking account of the way in which both wireline and wireless networks have developed over time. It will also minimize issues associated with transferring Carrier of Last Resort (COLR) responsibilities to new providers and shorten the time frame for the Commission to implement reform, as opposed to a new, untested census block distribution approach. Similarly, a Right of First Refusal (ROFR) to COLRs will maximize broadband availability in rural areas by leveraging the extensive deployment COLRs have already made. Particularly if coupled with a Mobility Fund, this approach would not violate the Commission's competitive neutrality principle. Finally, the Commission should not deter participation in the CAF by adopting misguided and unnecessary "public interest" conditions on CAF support, such as Open Internet requirements or interconnection for IP services.

As for ICC reform, multiple comprehensive reform solutions have literally died under their own weight, complexity and industry controversy in attempting to address dozens of interrelated inter-carrier payment moving parts.[2] The Commission should take an approach that focuses on several fundamental guiding principles which had consensus support in the initial comments:

- Minimize unwarranted consumer rate shock that undermines the goals of affordability and ubiquitous coverage;
- Avoid undermining critical, long-term private investment – particularly by avoiding below-cost rate structures;
- Take immediate, targeted action to address existing costly arbitrage;
- Avoid creating a new arbitrage scheme by clarifying that IP-on-the-PSTN traffic will receive the same ICC treatment as other traffic on the PSTN;
- Establish both a reasonably adequate recovery mechanism and a reasonable local subscriber rate benchmark as part of an overall rebalancing process; and
- Treat all carriers the same in any ICC reform approach, rather than, as some suggest, either continuing or, in some cases, increasing the differentiation among carriers or types of carriers.

CenturyLink submits that its ICC rate reform plan that promotes intrastate to interstate parity over a 2-to-4 year time period, combined with a reasonable local rate benchmark and an explicit funding mechanism best serves these core principles. But, in all events, the Commission should reject certain highly risky and questionable bill and keep and $0.0007 reform plans that are

[2] *See, e.g.,* 2005 Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (seeking comments on various industry proposals, including the Intercarrier Compensation Forum (ICF) proposal); the Missoula Plan, filed July 24, 2006 in an *ex parte* by the NARUC, CC Docket No. 01-92; 2008 Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, 6497-6654 (seeking "comment again on specific proposals to reform intercarrier compensation.").

clearly either too aggressive or otherwise depart in significant ways from these guiding principles.

Several other issues raised in the initial comments regarding potential ICC reform also warrant the Commission's attention. First, the Commission should reject calls to impose compensation or interconnection solutions for all-IP networks of the future on present day networks (*e.g.*, new rules mandating fewer, more dispersed POIs). Similarly, it should reject calls to impose existing rules applicable to today's networks on IP networks (*e.g.*, subjecting IP-to-IP interconnection to sections 251 and 252 obligations). The Commission should also reject calls to subject transiting services to section 251 interconnection obligations. The Commission should also reject erroneous legal contentions reflected in the initial comments regarding VNXX. Finally, the Commission must be cognizant of potential limits to its legal authority in adopting ICC rate reform, particularly when it comes to the highly risky bill and keep and $0.0007 plans mentioned above.

II. INITIAL COMMENTS HIGHLIGHT CERTAIN CRITICAL AND OVERARCHING ISSUES FOR UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION REFORM

A. For Universal Service, The Commission Should Not Eliminate IAS, But Expand It To Accelerate Broadband Deployment

1. A Commission decision to eliminate IAS in the manner it is proposing likely will be unlawful

The Commission proposes to transition amounts from Interstate Access Support (IAS) for price cap carriers to the CAF by capping the IAS funding level for incumbent carriers in 2012 at 50% of the 2011 IAS cap amount and then eliminating the support in 2013. Yet, the Commission proposes these immediate and drastic measures based only on its conclusion that IAS is not still warranted. The Commission's unsubstantiated conclusion is not sufficient to justify eliminating IAS, and if implemented will prove detrimental to achieving its broadband goals at the state level.

First, the Commission's conclusion that IAS is no longer necessary is premised on an unrealistic standard. IAS is an important piece of enabling quality voice services in the high-cost areas where it is provided, but it is not the only piece. Requiring providers to demonstrate that but for IAS, they would fail to provide service in the areas where that support is provided ignores the reality that ILECs, pursuant to COLR and other state obligations as well as customer telephone rate tolerances, must provide those services at affordable rates. Concluding that ILECs have failed to demonstrate that they will cease to provide the supported services at affordable rates, is not a sound basis for eliminating that support, and certainly is not a standard that has been applied to other universal service mechanisms.

Second, the Commission's conclusion does not satisfy the Commission's legal obligation in addressing this issue. It is the Commission's legal obligation to base its decision on whether to make changes to IAS based on an examination of the relevant data with an articulated explanation that includes a rational connection between the facts found and the choices made.[3] Merely conclusive determinations will not suffice. As the Tenth Circuit has explained: "'[i]f the agency has failed to provide a reasoned explanation for its action, or if limitations in the administrative record make it impossible to conclude the action was the product of reasoned decisionmaking, the reviewing court may supplement the record or remand the case to the

[3] *See Qwest Corp. v. FCC*, 258 F.3d 1191, 1198 (10th Cir. 2001) (*Qwest I*) (explaining that to satisfy the Administrative Procedure Act "'the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 443 (1983)).

agency for further proceedings. It may not simply affirm.'"[4] Failure to conduct a review of IAS prior to making a determination to eliminate that support likely will result in an arbitrary decision that will not be sustainable.[5]

The Commission previously determined based on the record before it that the IAS mechanism should be established to help replace incumbent carriers' forgone interstate access revenues and that sizing the mechanism at $650 million sufficiently accomplished that purpose.[6] The Commission cannot now simply eliminate that revenue-replacement support without a record that affirmatively demonstrates that the support is no longer warranted. Further, any Commission determination that the purposes for which IAS was established are being met, does not necessarily lead to the conclusion that IAS is no longer needed. The most it demonstrates is that IAS is working as intended. Thus, such a finding, without more, cannot be a rational basis for wholly eliminating the support for these carriers.[7]

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[4] *Id.* at 1198-99 (quoting *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575 (10th Cir. 1994)).

[5] *See* Windstream at 55 (arguing that "[r]ather than arbitrarily concluding that IAS is no longer required, the Commission should formally conduct a fact-based reexamination of the role and sufficiency of the mechanism, and make any recommendation on that basis.")

[6] *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*Calls Order*), *aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied, Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 70 U.S.L.W. 3444 (2002), *on remand,* 18 FCC Rcd 14976 (2003).

[7] In contrast, IAS for CETCs is not based on a Commission determination that the support was necessary to replace CETC forgone access revenues (because most CETCs never had the access charges that were reduced to create IAS). Instead, it is based on the Commission's application of the identical support rule. In turn, any Commission decision regarding that support should be addressed consistent with its determinations regarding that rule.

Third, the Commission's conclusion is incorrect. As CenturyLink stated in its opening comments, IAS continues to be necessary to provide good-quality voice services at affordable and reasonably comparable rates in the vast majority of the areas in which CenturyLink receives that support. For a majority of the wire centers in which CenturyLink receives IAS, the per-line costs in those wire centers, as calculated by the hybrid-cost proxy model (HCPM), exceed the average basic local service rate (including the subscriber line charge) plus the IAS and all other state and federal high-cost support received. IAS remains a critical component of CenturyLink's ability to sustain quality services at mandated, artificially low prices in these high-cost areas.

2. The Commission should expand IAS to accelerate broadband deployment

The Commission has proposed to eliminate IAS over a two-year period and direct that recovered funding in part to support broadband deployment through a new reverse auction mechanism that still needs to be designed and implemented.[8] This will delay broadband deployment and reduce the amount of deployment by imposing transaction costs and introducing risk.

Assuming today's investment dollars enhance and improve networks for future capabilities and capacity, then to some degree CenturyLink and other providers are already using IAS to aid broadband deployment in high-cost areas.[9] In fact, given that IAS flows to areas served by price-cap regulated carriers, it is the one program that most clearly works to overcome the Rural/Rural divide. The Commission, the industry, and consumers are well-aware that the demand and need for greater capacity is increasing rapidly and exponentially. Thus, such support is even more critical at the state level for continuity and consistency in on-going

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[8] *See NPRM* ¶ 160.

[9] *See, e.g.,* Frontier at 13.

infrastructure planning. There is little merit in requiring consumers and businesses to become the subjects of experimentation with un-tested funding mechanisms. While other mechanisms such as mandated rate caps and Lifeline service ensure affordable basic voice service rates for most consumers throughout the country, the costs to maintain and upgrade the networks to provide those and other services that consumers want and need in low-density, more rural areas remain high. IAS remains a critical component of providing quality services in higher cost areas that are reasonably comparable to those services provided in lower cost areas. And, increasingly, providing reasonably comparable services to higher cost areas requires technology upgrades to networks to enable access to broadband services.

The Commission can direct the support to be used for that additional purpose, and add a reasonable standard of reporting and accountability for how those dollars are spent to provide voice and broadband services. As the Commission transitions high-cost universal service to support broadband services, it can expand the focus of IAS to aid that transition. Allowing IAS to also fund broadband deployment while designing and implementing the long-term CAF will enable continued deployment of broadband to high-cost areas during the transition of universal service to support voice and broadband in high-cost areas. CenturyLink believes the IAS mechanism can successfully evolve at the same rate as the nation's network evolution from digital to IP-based services without harming critical core services used today and would like to work closely with the Commission and the industry to develop this plan. This would provide the Commission with both a vehicle and thoughtful public policy rationale to make needed reforms without jeopardizing both voice and advanced services investment.

The Commission should expand the role of the IAS mechanism to fund the goals the Commission had for an interim broadband fund by requiring recipients to use the support to deploy or upgrade broadband to the appropriate level (for example 4 Mbps downstream) in places where there are no other providers. In this regard, this approach is similar to Frontier's proposal to allow IAS recipients to retain that support where a recipient certifies that the funds received will be used for broadband deployment.[10]

The Commission should leave the IAS funding as allocated to the study areas within each state under the current mechanism. This will enable the simplest, interim transition mechanism for speeding broadband deployment to unserved areas. Such an approach will permit states to retain this support but just expand the focus to spur broadband deployment within each state until the long-term CAF is in place. This also will enable the states to have greater certainty of support during this transition period than recovering the support and reallocating it through an uncertain and unproven mechanism that provides no certainty of any support for any particular state.

The Commission should only modify IAS in conjunction with implementing the long-term CAF. The Commission should not reduce or eliminate IAS to support CAF Phase I, because this can only make the Rural/Rural divide worse. Instead, expanding the role of IAS to directly support broadband deployment in high-cost areas should serve as the interim transitional mechanism for IAS to the long-term CAF.

Whatever the Commission ultimately decides to do with IAS, any transition of that support must occur more slowly than the Commission is proposing in the *NPRM*. For all of the reasons expressed in CenturyLink's and others' opening comments, IAS should not be

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[10] Frontier at 14; *see also* Communication Workers of America at 9 (recommending that the Commission maintain current levels of IAS for incumbent price cap carriers with the support "used specifically for broadband expansion in unserved areas.").

eliminated in two years, but should remain sustainable and sufficient over a longer period of time.[11]

B. For Intercarrier Compensation, A Measured Approach That Focuses On A Consensus Set Of Guiding Principles Is Critical

In its initial comments, CenturyLink emphasized that any ICC reform must be guided by a core set of guiding principles -- first and foremost, the need to avoid unintended rate shock for consumers that would threaten the Commission's policy goals of affordability and ubiquitous coverage and create the risk of an unfunded mandate and the complementary need to avoid a negative impact on private investment. As detailed below, a diverse group of other parties echoed this approach in their initial comments. Indeed, a consensus of support emerged from the initial comments for a set of overall core guiding principles that should guide any ICC reform that the Commission pursues. Given the consensus support for these principles, it is also not surprising that there was strong support for a specific ICC rate reform plan that tracks with CenturyLink's proposal. CenturyLink has proposed: (a) moving intrastate access and Total Element Long Run Incremental Cost (TELRIC) rates for all carriers currently above interstate access to the level of current interstate access rates over a 2-to-4 year time period; and (b) establishing both a reasonable local rate benchmark for consumers and an explicit subsidy fund mechanism. On the other hand, certain parties continue to support risky bill and keep and $0.0007 reform plans that are clearly either too aggressive or otherwise depart in significant ways from these guiding principles and may undermine the Commission's broadband

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[11] *See, e.g.*, Frontier at 12 (stating that a two-year phase down of IAS would undermine its broadband deployment efforts); Communication Workers of America at 9 (advocating for a "slow glide path" of maintaining IAS to incumbent price cap carriers until the CAF is fully implemented); Windstream at 54 (advocating that the Commission should consider retaining IAS until the CAF is fully implemented or at least institute a "longer glide-path" for mid-sized ILECs).

deployment goals. Numerous parties also joined CenturyLink in stressing the pitfalls of such radical approaches and they should be rejected.

A broad subset of the initial comments also voiced support for a core group of principles that should guide any ICC reform. These include the following:

Avoid undermining consumer policy interests and private investment. Numerous parties joined CenturyLink in emphasizing the primary importance of ensuring that any ICC reform does not undermine: (a) the critical policy goals of affordability and ubiquitous coverage and other consumer interests at play here;[12] and (b) the private investment that is necessary for build-out of the broadband networks.[13] State regulators, incumbent and competitive local exchange carriers (CLECs), cable companies, ISPs, and consumer interest groups, among others, filed comments stressing these critical realities that must be the stepping off point of any ICC reform plan. These comments all either explicitly or implicitly recognized what CenturyLink noted in

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[12] *See*, *e.g*., State Members of Universal Service Joint Board at 150; Frontier at 10-11; NASUCA at 113 (acknowledging the need to address, in a revenue recovery mechanism, where carriers' customers are "threatened, as a result of this revenue loss, with basic service rate increases that would make their rates no longer affordable"); Public Knowledge at 25; CompTel at 36 (recognizing the potential need for a revenue recovery mechanism "to ensure that end user rates for quality services remain affordable"); Cbeyond, *et al.*, at 6 ("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."); Windstream at 46-48; GVNW at 23 ("Without this type of revenue offset, rural carriers would be unable to continue the transition to a more ubiquitous broadband network in the highest cost to serve areas of the country, and customers of these carriers face the potential for very significant increases to local rates or SLCs that would not meet the comparable rate standard found in Section 254."); Cox at 15; Earthlink at 11.

[13] *See*, *e.g*., State Members of Universal Service Joint Board at 149; Public Knowledge at 25; Paetec, *et al.*, at 13 ("Most importantly, the financial markets anticipate a measured transition, and have warned that too rapid a transition could result in a market refusal to finance continued broadband deployment, a refusal to extend additional capital to mid-sized and smaller LECs (including CLECs), or at a minimum a substantial increase in their cost of capital that could be avoided with a measured transition with more gradual rate reductions."); Cox at 13; Earthlink at 10; Windstream at 46-48.

its initial comments. That is that there are, effectively, only three policy levers the Commission can work in reforming the existing ICC regime while balancing its underlying policy goals in fostering broadband deployment -- ICC rates/revenue, retail end-user rates/revenue and explicit universal service funding. And, these parties recognized that, if ICC rate reform impacts any one of these levers too aggressively, it will threaten the Commission's essential ICC reform policy goals. For example, if a plan largely eliminates existing carrier ICC revenue and simply shifts the burden of operating networks to a terminating carrier's subscribers alone, it will obviously threaten the Commission's affordability and ubiquitous coverage policy goals.

Eliminate arbitrage, most immediately by confirming that IP-on-the-PSTN traffic[14] *should receive identical ICC treatment and taking action on the other NPRM interim issues.* There was universal support throughout the comments for Commission action to address arbitrage and marketplace distortions identified in the *NPRM*.[15] Indeed, there was strong support for immediate action on the interim issues teed-up in the *NPRM* - the ICC treatment of IP-on-the-PSTN traffic, phantom traffic, and traffic pumping -- which currently result in costly arbitrage throughout the industry.[16] In fact, further to the levers metaphor described above, a diverse group of parties also recognized that few issues are as important as ensuring that IP-on-the-PSTN

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[14] As used herein, this term means voice traffic that originated in Internet protocol and terminates on the PSTN or originated on the PSTN and terminates in IP.

[15] *See, e.g.,* Windstream at 48; T-Mobile at 23-24; Public Knowledge at 27; Nebraska PSC at 6; NARUC at 16; Missouri Small Telephone Company Group at 2; Frontier at 5; AT&T at 46; Verizon at 6; Time Warner Cable at 3; Rural Carriers at 2; MetroPCS at 12; ITTA at 39-40; TIA at 14; USTA at 4.

[16] *See, e.g.,* Charter Communications at 14; CTIA at 35; Global Crossing at 13-14; GVNW at 8; Frontier at 5; MetroPCS at 12; Nebraska PSC at 25; Missouri Small Telephone Company Group at 2.

be treated the same as any other traffic.[17] Carving out special treatment for this subset of traffic permits it to avoid its fair share of the cost of operating telecommunications networks. In addition to creating other problems, this greatly increases the risks of consumer harm and reduces the amount of funding the industry can reinvest in network expansion while undercutting the broadband policy objectives of the Commission and the states.

Measured and stable ICC rate reform. There was also strong support for the principle that any specific ICC rate reform adopted by the Commission must strive to eliminate rate disparity in a measured and stable manner, while balancing the need to give consumers, investors and the industry adequate time to adjust and regulators adequate time to address all the issues associated with a reform.[18]

An adequate recovery mechanism must include a reasonable subscriber rate benchmark and explicit revenue recovery mechanism. There was also strong recognition of the critical need for adequate recovery of lost ICC revenue.[19] Critical to this and to the consumer interests discussed above is the need to deploy a reasonable benchmark mechanism such as that proposed by CenturyLink.[20] CenturyLink proposes that the benchmark start, in an initial phase, at $25.00 and be adjustable thereafter -- although increases should not exceed $1.00 in a given year. Thus, CenturyLink's benchmark mechanism includes two effective limits on local rate charge

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[17] CompTel at 32; Paetec, *et al.*, at 15 (also noting absence of any record to justify any conclusions about distinct costs entailed for IP voice traffic); Earthlink at 14 (same); Core at 18; MetroPCS at 13; Pacwest at 1; Time Warner at 13-17; Missouri Small Telephone Company Group at 2; GVNW at 18.

[18] *See, e.g.*, Paetec, *et al.*, at 13-25; Cbeyond, *et al.*, at 5-7; Level 3 at 6-9; Earthlink at 10-13; Frontier at 5-10; GVNW at 23; ITTA at 42-44.

[19] *See, e.g.*, Cox at 14; ITTA at 39; Missouri Small Telephone Company Group at 8; Neutral Tandem at 10; Windstream at 48-49.

[20] CenturyLink at 63-68.

elements. Incumbent carriers would never be required to raise rates above the benchmark and would never be required to raise rates more than $1.00 per year. The benchmark should include all end user charges -- *e.g.*, mandatory EAS charges, intrastate and interstate SLC charges, etc. Revenue recovery should be permitted first via end-user charges up to the benchmark. In the event that end-user charge increases to the benchmark do not, alone, enable providers to recover their lost ICC revenues, carriers should be permitted to draw from an explicit cost recovery fund. A reasonable local rate benchmark, in compliment to a modest rate reform to begin with, ensures that terminating carrier subscribers are not asked to bear the cost of operating networks alone. The Commission should also reject out of hand proposals that include either no recovery mechanism whatsoever or a clearly inadequate one. For example, the Commission should reject proposals that contain no subscriber rate benchmark and thus wholly ignore the potential consumer impacts of ICC reform.[21]

Identical rules for all carriers. There was also strong acknowledgement of the need to treat all carriers the same in any ICC reform approach.[22] In contrast, proposals that rest upon either continuing or, in some cases, increasing the differentiation among carriers or types of carriers for purposes of ICC treatment should be rejected.[23]

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[21] *See, e.g.*, CTIA at 42-44; MetroPCS, *generally*; Global Crossing at 8. The Commission should also reject suggestions that revenue replacement be based on net revenue, *i.e.*, revenue net of purported ICC expense savings (*i.e.*, savings in access or reciprocal compensation expenses). *See, e.g.,* NASUCA at 112. CenturyLink and other parties demonstrate that any ICC expense savings, be it from access or reciprocal compensation expense savings, will be competed away quickly. *See, e.g.*, AT&T at 35-37.

[22] Cox at 12 ("It is particularly important that the transition be designed so that all providers are subject to the same rules and requirements.").

[23] *See, e.g.,* Sprint at 6-9 (suggesting that any initial ICC reform should focus on the three largest price cap ILECs -- AT&T, Verizon and CenturyLink); T-Mobile 26-28 (calling for a quick reduction for the three largest ILECs and competitors operating in their regions to bill and keep and a different approach to other carriers).

Tracking with these guiding principles, a diverse group of parties also proposes ICC reform plans in their initial comments that largely track with CenturyLink's proposal. For example, Paetec, *et al.*, urge the Commission to adopt a reform whereby intrastate rates would be reduced to interstate levels over a three-to-seven-year period.[24] Cbeyond, *et al.'s* proposal similarly focused on a gradual reduction of intrastate rates to interstate rates over a five-year time period, before looking to a potential uniform rate for all traffic at a later date.[25] Level 3's proposed ICC rate reform is very similar.[26] Earthlink proposes a measured ICC rate reform as well -- reducing intrastate to interstate levels over at least five years.[27] Frontier also supports a measured intrastate to interstate parity approach.[28] GVNW also proposes unifying interstate and intrastate rates on a per carrier basis as a "logical first step."[29] ITTA's proposed reform is also quite similar.[30]

On the other hand, the Commission should heed the call of the large number of commenting parties urging it to reject bill and keep and $0.0007 reform plans that are simply too aggressive or otherwise entail significant departures from the critical guiding principles discussed above. For example, rather than proposing true comprehensive ICC reform, Sprint proposes merely that the Commission reduce the ICC rates of the three largest ILECs (AT&T, Verizon, and CenturyLink) to bill and keep over four years, that it exempt wireless traffic from

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[24] Paetec, *et al.*, at 13-25.

[25] Cbeyond, *et al.*, at 5-7.

[26] Level 3 at 6-9.

[27] Earthlink at 10-13.

[28] Frontier at 5-10.

[29] GVNW at 23.

[30] ITTA at 42-44.

any ICC charges during this time, and that any recovery mechanism consist of minimal SLC increases without regard to a benchmark.[31] T-Mobile's proposal for the three largest ILECs (and competitive carriers operating in their service areas) is similar -- calling for a reduction to bill and keep over a short time period.[32] T-Mobile's only suggested recovery mechanism is to eliminate SLC caps.[33] Similarly, CTIA and MetroPCS propose a very quick transition to a bill and keep rate plan, albeit for all carriers, with little or no mention of a need to attend to a recovery mechanism.[34] These proposals, and similar proposals from other wireless parties, plainly seek only to help wireless carriers. AT&T and Verizon each also support ICC rate reforms with relatively quick rate reductions to $0.0007. And, each aggravates the impact of such aggressive plans with other details they propose. For example, AT&T calls for a benchmark -- $27.00 to $30.00 -- that is too high to avoid a damaging impact to subscriber rates.[35] Verizon asks that, while all traffic be subject to a uniform $0.0007 rate after a transition, IP-on-the-PSTN traffic receive special treatment by being subject immediately to a $0.0007 rate -- thereby increasing arbitrage.[36] Each of these proposals departs in significant ways from the guiding principles described above and does little to accomplish the broadband deployment goals of the Commission and of the states. Numerous parties joined CenturyLink in stressing the

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[31] Sprint at 4-16.

[32] T-Mobile at 22-31.

[33] *Id.*, at 4.

[34] CTIA at 34-40; MetroPCS, *generally*.

[35] AT&T at 33.

[36] Verizon at 5.

pitfalls of overly aggressive bill and keep or near zero plans in their initial comments.[37] The Commission should reject these overly aggressive proposals.

III. INITIAL COMMENTS HIGHLIGHT OTHER IMPORTANT ISSUES THAT THE COMMISSION SHOULD ADDRESS IN CONNECTION WITH ANY UNIVERSAL SERVICE OR INTERCARRIER COMPENSATION REFORM

A. Other Important Issues In Connection With Universal Service Reform

1. The Commission should adopt the same targeted universal service methodology for all geographic areas

Many parties acknowledge the existence of a "Rural/Rural divide" -- a disparity in the availability of high-quality broadband services among rural customers. This disparity is due primarily to two factors: (i) vastly different Commission rules for computing high cost for "rural" and "non-rural" carriers, and (ii) the averaging of costs across study areas and states. Continuation of either will perpetuate this divide.

a. The same distribution methodology for CAF support should be applied in all areas

Some parties urge the Commission to adopt preferential treatment for select groups of carriers, either on a temporary or permanent basis. For example, the Rural Carrier Associations advocate for an "evolved" rate-of-return funding mechanism targeted to rural LECs.[38] However, this approach would be geographically and customer-limiting in scope and bring the Commission no closer to its goal of ubiquitous broadband availability.

As the Commission found in the National Broadband Plan, the vast majority of consumers lacking access to broadband services today reside in areas served by "non-rural"

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[37] *See, e.g.*, CompTel at 33-34.

[38] NECA, *et al.*, at 27-36 (the rural carrier associations). *See also* American Cable Association at 34 (proposing a ROFR limited to smaller wireline ETCs).

ILECs.[39] These carriers receive but a small portion of total federal high-cost support, despite the fact that they serve significant portions of the nation's rural areas. And these carriers currently receive no high-cost support for broadband deployment; indeed, HCPM, the computer model used to compute that support, assumes a network capable of providing only voice services. CenturyLink recognizes that the investment levels made by price cap carriers vary by carrier. However, investment in high-cost markets, regardless of the type of regulatory classification of the ILEC providing service, is more often than not driven by its business model, focus and expertise in serving such markets. Mid-sized price cap ILECs such as CenturyLink, Frontier, Windstream and others have demonstrated through their continued investment and high service quality the critical role they will play going forward in reaching millions of unserved and underserved customers in the majority of the fifty states.

At a minimum, both fairness and the legal strictures of section 254 require the Commission to adopt rules that treat *all* rural customers equitably, determining support in a given area by the cost of serving that area, rather than the type of carrier serving it. This is not to suggest that CAF support is not needed to maintain high quality voice and broadband services in areas served by rural LECs. Rather, the CAF should be designed to guarantee the availability of such services in all rural areas. Particularly if the Commission adopts a cap on the CAF, it may not be possible to maintain the status quo for certain carriers while ensuring universal availability of broadband services.

Ultimately it is about the customer -- especially the remaining small percentage of customers with no broadband availability today. Sufficient and targeted universal service

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[39] *The Broadband Availability Gap*, FCC Omnibus Broadband Initiative Technical Paper No. 1, at 21 (2010) http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf (*Broadband Availability Gap*).

support will enable a business case to bring and maintain the benefits of broadband to most consumers and businesses. Targeted universal service support is a prerequisite to the availability of broadband services in many rural areas served by non-rural LECs. As recognized by Public Knowledge and the Benton Foundation, "[t]he economics of broadband provisioning suggest that some percentage of American households will not be served under normal market conditions."[40] It therefore is critical that the Commission adopt a uniform CAF program that enables the availability of broadband to all households, regardless of the size of the carrier serving them.

b. Support should be targeted to the wire center

Most commenters implicitly acknowledge that the CAF must be targeted to small geographic areas in order to accomplish the Commission's objectives for broadband deployment. There is significant disagreement in the record, however, whether support should be targeted to wire centers or collections of census blocks.

Some parties claim that census blocks are more competitively neutral than wire centers because they do not align with any provider's service territory.[41] Therein lies the problem with census blocks, however. As their name suggests, census blocks were developed by the Census Bureau for purposes of collecting and tabulating various types of data; they have no relation to the manner in which networks have been deployed over the past century, or are being deployed today. This is important. As noted by the state members of the Joint Board, if a wireline provider's service territory serves only a portion of a census block or aggregation of census blocks, the provider must either extend its footprint to cover the entire census block or collection of census blocks, potentially as an overbuilder, or, more likely, decline CAF support in that area.

[40] Free Press and Benton Foundation at 2.

[41] Comcast at 18; Rural Cellular Association at 18.

In such situations, an approach based on census blocks may result in higher costs to the CAF than necessary and eliminate the best candidate to provide broadband services to the residents living in that area.[42]

This is not just an issue for wireline providers, however. As the Commission has recognized, mobile wireless networks ultimately are an extension of the existing wire-center based wireline networks.[43] Calls -- or broadband transmissions -- are carried wirelessly from customer handsets to cell towers, and from there are transported via the wireline network. Over time, therefore, wireless networks have been contoured to wireline networks. This continues today, as mobile providers extend fiber facilities to cell sites to handle increased traffic volumes associated with smartphones. Thus, the targeting of CAF support to census blocks would lead to inefficient patchwork funding bearing no relationship to existing wireline and wireless networks.

2. A right of first refusal would be the most efficient methodology to extend broadband to rural areas

A ROFR to the provider with COLR in each geographic area offers the most efficient approach to maximizing broadband deployment in rural areas, while wisely using limited CAF funding. As noted by AT&T, "an existing broadband provider's costs of upgrading and extending service to nearby areas will generally be far lower than the costs that a new broadband provider would incur to deploy comparable service there."[44] Thus, a ROFR will further the Commission's goal of constraining the size of the CAF.

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[42] *See* State Members at 86.

[43] National Broadband Plan at 143.

[44] AT&T at 99. Sprint's claim that a ROFR would eliminate a COLR's "incentive to provide service efficiently" overlooks the Commission's proposal to use a cost model to determine the amount of support offered to the COLR to serve a particular geographic area. *See* Sprint at 41.

Rather than contesting this fact, opponents of the ROFR approach wrongly claim that it would not be competitively neutral. In establishing the competitive neutrality principle, the Commission stated that "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[45] A ROFR would not provide an unfair advantage to COLRs, but rather would take account of the unique position of a COLR and the inherent efficiency of upgrading and expanding the COLR's existing network, rather than funding the construction of a new network. The fact that the ROFR would initially be made available to one carrier -- typically the ILEC -- does not violate the competitive neutrality principle. The Commission's competitive neutrality principle has never required that every universal program be open to all providers and technologies. If it did, then the creation of a Mobility Fund would be unlawful. It would be both rational and lawful for the Commission to adopt separate mechanisms -- the CAF and the Mobility Fund -- to further the important goals of efficiently deploying and maintaining robust broadband services in rural areas *and* ensuring the availability of mobile broadband services. Finally, like all principles arising from section 254(b), competitive neutrality must be balanced against the other principles in that section,[46] including ensuring the availability of reasonably comparable services in rural and urban areas and not unduly burdening consumers with a fund that is larger than necessary.[47]

A ROFR would facilitate the deployment of both a fixed and mobile broadband network, given that they both require an underlying fiber network, potentially offering consumers the

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[45] *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801 ¶ 47 (1997); *aff'd in part, remanded in part and reversed in part sub nom., Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

[46] *Qwest I,* 258 F.3d at 1199.

[47] *See* 47 U.S.C. § 254(b)(3); *Qwest I* at 1199.

benefits of both. Providing support solely to a mobile provider would not likely lead to construction of a fixed broadband network, given the cost of extending fiber in the last mile. This would be unfortunate because fixed networks offer certain advantages over mobile networks.

Fixed broadband typically provides higher speeds and capacity than mobile broadband, enabling the use of popular bandwidth-heavy broadband applications. Today, for example, mobile 3G services generally do not support high-quality video streaming, whereas real-time entertainment now represents almost half of total peak period bytes carried over fixed networks in North America, with Netflix alone accounting for almost a quarter of total bytes on those networks.[48] While high-quality video streaming will become more feasible over mobile devices with the availability of 4G services, new applications will continue to be launched that take advantage of the superior performance of fixed networks, but will not work as well, if at all, on mobile networks.[49] Moreover, at least today, mobile networks are not designed to connect entire home networks to the Internet, with multiple devices generating traffic in parallel.[50]

Mobile providers acknowledge the different performance characteristics of fixed and mobile broadband. For example, while T-Mobile asserts that the Commission should treat all market participants equally,[51] it also urges the Commission to avoid performance standards that cannot be met by mobile providers, due to the inherent variability in the performance of these

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[48] Sandvine, "Global Internet Phenomena Report: Spring 2011" 5, 6 available at http://www.sandvine.com/downloads/documents/05-17-2011_phenomena/Sandvine%20Global%20Internet%20Phenomena%20Report.pdf.

[49] *See* Adtran at 8 (for applications "where network capacity and reliability are critical, only fixed broadband services will suffice").

[50] *Id.* at 13.

[51] T-Mobile at 6.

services.[52] The Commission must recognize the evolving parallel needs of consumers: voice mobility and high-capacity home entertainment.

In contrast to a ROFR, the use of competitive bidding would present fundamental problems. As noted by the state members of the Joint Board, competitive bidding could result in areas with no, or only limited numbers of, bidders or limited bidders, depending on the auction procedures adopted.[53] In many sparsely populated rural areas, the COLR may be the only entity interested in providing service,[54] in which case an auction would be a cumbersome and unnecessary exercise. And strategic bidding and uncertain outcomes could drive up the cost of building out broadband in rural areas,[55] while potentially leading to underinvestment and stranded networks.[56]

3. The Commission should not impose misguided "Public Interest" obligations

The Commission should reject out of hand the wish list of conditions on CAF support proposed by various parties.[57] These conditions are not necessary to protect the public interest and are likely to deter providers from participating in the CAF program.[58] These conditions

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[52] *Id.* at 9. *See also* Sprint at 40-41 ("The Commission should also be cautious about setting minimum 'actual' speeds because it is difficult to maintain consistent mobile broadband speeds . . . .").

[53] State Members at 78-79.

[54] ITTA at 33.

[55] State Members at 80-83.

[56] Nebraska PSC at 24; NECA at 76-77; ITTA at 23-24. The presence of high fixed cost networks distinguishes the telecommunications industry from other industries where competitive bidding is frequently used. *See* Verizon at 59 (noting the use of competitive bidding for military equipment, bridge and road repair and government procurement).

[57] *See, e.g.*, Sprint at 42; Free Press and Benton Foundation at 15-23; Vonage at 9-11; Google at 15-18; Earthlink at 17-18.

[58] AT&T at 106.

generally are either duplicative (*e.g.*, Open Internet requirements) or are already being considered by the Commission in this or other proceedings (*e.g.*, interconnection for IP services, pricing of backhaul services).

B. Other Important Issues In Connection With Intercarrier Compensation Reform

1. The Commission should reject calls to impose compensation or interconnection solutions for all-IP networks on present day networks or to impose existing rules on all-IP networks

In its initial comments, CenturyLink demonstrated why the Commission should let the market determine the best end-state compensation and interconnection mechanisms for the all-IP networks of the future. Numerous other parties echoed these contentions in their comments and, indeed, many criticized the notion that TDM networks are delaying a transition to all-IP networks.[59] However, certain parties contended that the Commission should strive to impose such mechanisms today. For example, Level 3 argues that the Commission should migrate from a single POI per LATA rule to a rule allowing for state-wide POIs or other "market-determined" POI rules.[60] Sprint and T-Mobile have argued for rejection of the single POI per LATA rule and suggested that more dispersed POIs should be mandated.[61] For the reasons detailed by CenturyLink and numerous other parties, however, it would be a mistake for the Commission to prejudge what an all-IP network should look like -- the result accomplished if it adopted these proposals. Nor should it assume that compensation or interconnection mechanisms for present day networks should be imposed on all-IP networks or that the Commission could lawfully do so. For example, certain parties incorrectly assert that existing law already requires the offering

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[59] *See, e.g.*, NECA at 24-25, n.54.

[60] Level 3 at 11-13.

[61] Sprint at 22-26; T-Mobile at 18-22.

of IP-to-IP interconnection pursuant to the terms of section 251(c)(2).[62] These comments focus on the purported technical feasibility of such interconnection, while ignoring section 251(c)(2)'s limitation to interconnection for the "transmission and routing of telephone exchange service and exchange access."[63] As noted in the *NPRM*, "the Commission thus far has not addressed the classification of interconnected VoIP services."[64] Thus, there currently is no obligation under section 251(c)(2) to provide interconnection for VoIP services. If and when the Commission determines the classification of interconnected VoIP as a telecommunications or information service, it will also determine whether there is a duty to provide technically feasible IP-to-IP interconnection service pursuant to the terms of section 251(c)(2). In the meantime, interconnected VoIP services can be terminated through standard TDM interconnection arrangements.

In short, for all the reasons detailed in CenturyLink's initial comments, the focus of the Commission for any near-term ICC reform should be to get TDM ICC right -- then move on to addressing regulatory implications of an all-IP network at a later date.

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[62] *See, e.g.,* CompTel at 4-9; Cox at 18-19; Earthlink at 3-7; Paetec at 3-8.

[63] 47 U.S.C. § 251(c)(2)(A). *See, e.g.,* CompTel at 5 (listing three of the four requirements of section 251(c)(2), and omitting section 251(c)(2)'s applicability only to interconnection "for the transmission and routing of telephone exchange service and exchange access").

[64] *NPRM* ¶ 618. Paetec's reference to IP-in-the-middle traffic being terminated on the PSTN has no bearing on whether IP-to-IP interconnection falls within the scope of section 251(c)(2). *See* Paetec at 5, n.10. As Paetec recognizes, the Commission has classified IP-in-the-middle traffic as a telecommunications service, whereas the Commission has not resolved the classification of interconnected VoIP service. Likewise, CompTel's reference to the *Time Warner Declaratory Ruling* is unavailing because that case concerned the interconnection of a wholesale service found to be a telecommunications service. *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007).

2. The Commission should reject calls to subject transiting services to section 251 interconnection obligations

Numerous parties also argue in their initial comments that the Commission should now rule that transiting services should be subject to section 251(c) interconnection obligations and, as a result, that ILECs have a mandatory obligation to provide such services and must provide them at TELRIC-based rates.[65] For example, Cbeyond, *et al.* argue that somehow sections 251(b)(5) and 251(c)(2) create a mandatory obligation for ILECs to provide transiting and require transit service providers to do so on a regulated cost basis.[66] The Commission should reject these calls to subject transiting services to this new regulatory status. In this vein, the initial comments also provide further record support for the Commission's own conclusion that transit services are competitive services.

By way of background, transit services occur when an intermediate carrier, one that has no relationship with an end user involved in the traffic at issue, transports traffic received from the calling party's carrier to the terminating carrier (who has the customer relationship with the called party end user). As transit service providers have no end user involved in the traffic at issue, the only potential source of compensation for their services (unlike the originating and terminating carriers, each of which have end users involved in the call) are the carriers that hand them traffic for termination. At the same time, as a general rule, transit service providers currently have no ability to prevent other carriers from using them as transit service providers -- *i.e.*, they cannot stop the traffic from coming to them once the originating carrier is interconnected with the tandem for other non-transit services.

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[65] Cbeyond, *et al.*, at 20; Cox at 16-18; Level 3 at 18-21; MetroPCS at 29-30.

[66] CBeyond, *et al.*, at 16-18.

Transiting services are not subject to the section 251 regulatory obligations that Cbeyond describes. While the Act, when it comes to local competition matters, gives states authority under sections 251 and 252, those provisions do not extend to transit services. As the Commission acknowledged in its *2005 ICC Further Notice*, "[t]he Commission's rules define the term 'interconnection' to mean 'the linking of two networks for the mutual exchange of traffic' and not 'the transport and termination of traffic.'"[67] Thus, the "interconnection" obligations imposed upon telecommunications carriers generally and upon ILECs under sections 251(a)(1) and 251(c)(2), respectively, have no application to transiting services. As the D.C. Circuit has recognized, section 251(a) (like section 251(c)(2)), on its face, deals only with physical connections and therefore does not impose a transiting duty on carriers.[68] Similarly, section 251(c)(2) plainly only speaks to the ILEC duty to provide interconnection with the ILEC's network. Nor does section 251(b)(5), whether under the Commission's previous interpretation limiting section 251(b)(5) to local traffic or under any new broader interpretation, address the compensation to be paid to a transit service provider when it transits traffic.[69]

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[67] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4741-42 ¶ 128 (2005) (citing 47 C.F.R. § 51.5) (*2005 ICC FNPRM*).

[68] *See AT&T v. FCC*, 317 F.3d 227, 234-35 (D.C. Cir. 2003).

[69] Third-party transiting services by a carrier unaffiliated with the terminating carrier also do not fall within the ambit of section 251(b)(5) "transport and termination." That provision, and the Commission's implementing rules, contemplate that reciprocal compensation payments will be made for the transport and termination of traffic on the terminating carrier's network. *See, e.g.*, *2005 ICC FNPRM*, 20 FCC Rcd at 4737-38 ¶ 120 ("The reciprocal compensation provisions of the Act address the exchange of traffic between an originating carrier and a terminating carrier, but the Commission's reciprocal compensation rules do not directly address the intercarrier compensation to be paid to the transit service provider."); *In the Matter 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, 16015 ¶ 1039 (1996) (defining "transport" as that term is used in section 251(b)(5) to mean transmission "from the interconnection point between *the two carriers* to the terminating

Even if transiting were subject to section 251, that would also not lead to the conclusion that ILECs have a mandatory obligation to provide transit services or that transit services are required to be provided at TELRIC rates. It could be argued that transiting is covered by section 251(a)(1)(establishing a duty for all carriers "to interconnect directly or indirectly with … other telecommunications carriers"). Again, as described above, CenturyLink does not believe this is the best reading of the Act. But, even if it were, section 251(a) interconnection is not subject to the section 252 pricing and other requirements applicable to section 251(b)(5) and section 251(c)(2) agreements.[70]

The Commission's prior rulings also support this reading of section 251. The Commission addressed transiting in the *Texcom Order*. In that case, intraMTA calls, that originated on the networks of third-party carriers, transited the network of GTE North (GTE) and terminated on the network of Answer Indiana, a CMRS provider. Answer Indiana filed a formal complaint with the Commission challenging GTE's attempt to charge it for the delivery of that traffic. In denying Answer Indiana's complaint, the Commission stated:

> Currently, our rules in this area follow the cost causation principle of allocating the cost of delivering traffic to the carriers responsible for the traffic, and ultimately their customers. Thus, through reciprocal compensation payments, the cost of delivering LEC-originated traffic is borne by the persons responsible for

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carrier's end office switch") (emphasis added) (subsequent history omitted); *Atlas Telephone Company v. Oklahoma Corporation Commission*, 400 F.3d 1256, 1261 (10^{th} Cir. 2005) ("Under the Act, reciprocal compensation is based solely on the costs of transport and termination incurred by the terminating carrier.") To the extent carriers trading traffic rely on intermediate providers, that carriage does not supplant the otherwise applicable intercarrier compensation obligations. Rather, underlying wholesale services are properly accounted for by the carriers involved via tariff or via commercial arrangements. *See, e.g., id.* (recognizing that transport may be provided over the terminating carrier's own facilities or "[m]any alternative arrangements").

[70] *In the Matter of the Petition of WorldCom, Inc. pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27101 ¶ 117 (2002) (*FCC Virginia Arbitration Order*).

> those calls, the LEC's customers. As we stated in the *Local Competition Order*, "[t]he local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call"... In the case of third-party originated traffic, however, the only relationship between the [transiting carrier's] customers and the call is the fact that the call traverses the [transiting carrier's] network on its way to the terminating carrier. Where the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic from a CLEC's network to that of a CMRS carrier like Answer Indiana. Thus, the originating third-party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network.[71]

On reconsideration, the FCC, in *Texcom*, also noted that "carriers are free to negotiate different arrangements for the costs associated with indirect interconnection."[72]

Similarly, the FCC's Wireline Competition Bureau (the Bureau) addressed a similar issue in the *FCC Virginia Arbitration Order*, issued during an FCC arbitration of interconnection agreements between AT&T and Verizon in lieu of the Virginia commission.[73] In that case, AT&T contended that Verizon should treat transiting traffic from third-party carriers to AT&T as Verizon's own traffic. However, the Commission ruled that "when a third-party LEC places a call that terminates to [an AT&T customer], AT&T must bill the third-party LEC directly."[74]

While these decisions dealt directly with the liability of the third-party carrier (transit service provider) for access charges billed by the terminating carrier in a transiting context, both decisions make clear that the originating carrier is responsible for transiting costs <u>and</u> that carriers should be free to negotiate market-based arrangements for transiting. In the *FCC*

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[71] *Texcom, Inc. v. Bell Atlantic Corp.*, File No. EB-00-MD-14, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21495 ¶ 6 (citations omitted).

[72] *Texcom, Inc. v. Bell Atlantic Corp.*, Order on Reconsideration, 17 FCC Rcd 6275, 6277 n.12 (citation omitted).

[73] *FCC Virginia Arbitration Order*, 17 FCC Rcd 27039.

[74] *Id.* at 27305 ¶ 544 (footnote omitted).

Virginia Arbitration Order, decision, the Bureau acknowledged, with respect to whether or not carriers had an obligation to provide transiting, that there is no "clear Commission precedent or rules declaring such a duty."[75] Finally, the Bureau also concluded in that case that "any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC" and the Bureau expressly approved Verizon's charging of non-TELRIC rates for transiting.[76]

As noted above, the initial comments also provide further record support for the Commission's own conclusion that transit services are competitive services. For example, Neutral Tandem describes its own "ubiquitous alternative tandem network" as well as the numerous other wholesale carriers currently providing local tandem transit service in competition with it "throughout part or much of the country," and the decreasing prices for transit services resulting nationwide as a result of this competition.[77] Even Level 3, which seeks to have the Commission now rule that transit services are subject to section 251, acknowledges

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[75] *Id.* at 27101 ¶ 117; *see also In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, 18 FCC Rcd 25887, 25908-09 ¶ 38 (2003) (Wireline Competition Bureau found there was no FCC precedent or rule holding that Verizon has a duty to provide transiting under the Act and expressly declined to create such a ruling under its delegated authority); *In the Matter of Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, 18 FCC Rcd 7325, 7376 n. 305 (2003) ("Although we do not address the merits of AT&T's assertion that Commission rules require Qwest to provide transit service under section 251(c)(2), we note that the Commission has not had occasion to determine whether incumbent LECs have such a duty, and we find no clear Commission precedent or rules declaring such a duty.").

[76] *FCC Virginia Arbitration Order*, 17 FCC Rcd at 27100 ¶ 115, 27101 ¶ 117 (approving non-TELRIC rates and stating "we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates… any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.") (footnote omitted).

[77] Neutral Tandem at 3-5.

the presence of competition in the market for transit services and the fact that "transit markets … are not as difficult to enter as last mile markets."[78]

For all these reasons, the Commission should reject the arguments of Cbeyond and others and clarify the regulatory status of transiting consistent with the preceding section. As discussed more fully in CenturyLink's initial comments, the Commission would adequately address transiting if it clarified that transit service is not subject to sections 251 and 252 and transit service providers have no mandatory obligation to provide such service, clarified that transit providers must be adequately compensated for the use of their networks, and clarified several other issues regarding the financial obligations associated with transiting services.[79]

3. The Commission should reject erroneous legal contentions reflected in the initial comments regarding VNXX traffic

Certain parties include in their initial comments certain legal or factual contentions which are simply erroneous. CenturyLink addresses these briefly simply to ensure that the record in this proceeding is accurate. Longstanding FCC rules require that interexchange carriers, including CLECs acting as toll providers or interexchange carriers, pay switched access charges for use of local switching facilities for the origination of interstate interexchange traffic. The Commission's existing rules also base the determination of whether a given call is local or interexchange upon the endpoints of the call. However, at least one commenter has argued that the FCC's access charge rules do not apply to VNXX traffic.[80]

VNXX describes a situation where a call originating in one local calling area using a dialed local number is routed to another LEC which terminates to an end user (typically an ISP)

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[78] Level 3 at 19.

[79] CenturyLink Initial Comments at 75-77.

[80] *See, e.g.,* Level 3 at 14-15.

physically located in another local calling area. CLECs use VNXX precisely so that they might both avoid access charges (which apply to the interexchange use of ILEC local exchange networks) and collect unwarranted reciprocal compensation payments.[81] VNXX calls are properly classified as interexchange calls subject to access charges under the current regulatory structure.

Level 3 has argued that the Commission's rule permitting requesting telecommunications carriers to interconnect at a single point in a LATA should be read to mean that all traffic, including VNXX traffic, routed through that single point of interconnection is subject to the same intercarrier compensation rules.[82]

There is no basis in Commission precedent for this position. The Commission's rules have long maintained a distinction between local calls which are subject to reciprocal compensation and interexchange calls which are subject to the access charge regime. The applicability of access charges has never depended upon where or how many places the originating LEC and the interexchange carrier interconnect. Level 3 is also incorrect in its contention that the Commission and courts have decided that all ISP traffic, including VNXX traffic, is subject to reciprocal compensation as opposed to access charges under the Commission's rules. Neither *WorldCom* nor the *ISP Remand Order*[83] under review ever addressed VNXX traffic. At issue in these decisions and the subsequent 2008 *ISP Mandamus Order* was whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing

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81 *Global Naps v. Verizon New England*, 454 F.3d 91, 103 (2nd Cir. 2006).

82 Level 3 at 14-15.

83 *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (subsequent history omitted).

LEC -- so-called "ISP-bound calls."[84] Not only is it clear under the Act and the Commission's rules and decisions that VNXX calls are properly classified as interexchange calls subject to access charges, but federal and state judicial and regulatory decisions that have addressed the issue concur in this conclusion.[85]

Accordingly, the Commission should reject Level 3's arguments and simply clarify that this is the state of the law. In doing so, the Commission would help prevent unnecessary disputes based on baseless claims of purported uncertainty in the law regarding VNXX. It will also help prevent other similar schemes. For example, certain CLECs are aggressively marketing and selling local platform/local DID services. These services allow customers to dial a local telephone number to reach a platform which, in turn, prompts the caller to enter a PIN number and the telephone number that the caller ultimately wants to be connected to, causing the call to be routed and terminated outside the local calling area or state. The intent of this scheme

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[84] *WorldCom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002); *Global Naps v. Verizon New England*, 603 F.3d 71, 82-83 (1st Cir. 2010).

[85] *See, e.g., Global Naps, supra*, (upholding district court decision finding that state access charges apply to VNXX-enabled, ISP-bound traffic and that the FCC had not preempted state decisions on this issue). Additionally, both the Indiana and Ohio state commissions have expressly ruled that access charges apply to VNXX-enabled, ISP-bound traffic. *Petition of MCIMetro Verizon Access Transmission Services, LLC d/b/a Verizon Access Transmission Services for Arbitration of an Interconnection Agreement with United Telephone Company of Indiana, Inc., d/b/a Embarq Under Section 252(b) of the Telecommunications Act of 1996*, Case No. 43373-INT-01, Order, at 14 (Ind. Util. Reg. Comm., rel. Mar. 12, 2008) ("We therefore conclude that the calls in question, VNXX enabled calls that terminate outside the local calling area of the party originating the call, are not local calls for the purpose of intercarrier compensation and access charges, instead, apply."); *Petition of Verizon Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Embarq; Arbitration Award*, Case No. 06-1485-TP-ARB, at 7 (Pub. Util. Comm. Ohio, May 30, 2007) ("Therefore, consistent with Local Service Guideline IV.C and previous Commission decisions, the Commission finds that, for ISP-bound VNXX calls that originate or terminate outside the ILEC's local calling area, the call is considered toll or interexchange. Compensation is based upon the originating or terminating party's access charges.").

is to make the called number appear to be local, so that toll charges are avoided and the calling party's carrier is wrongly subjected to reciprocal compensation charges. Eliminating these types of schemes is particularly important because they would not be eliminated by ICC rate reform – for example, reform that results in uniform ICC rates for all traffic. This type of arbitrage seeks to improperly flip the payment obligation from the carrier acting as toll provider to the originating carrier. Thus, the presence or absence of rate disparities between types of ICC charges is irrelevant.

4. The Commission must also be cognizant of potential limitations to its legal authority with respect to any ICC rate reform

As in the case of universal service reform, the Commission's authority to adopt ICC rate reform is not unbounded. In addition to the difference of views, well reflected in the initial comments, regarding the Commission's ability to pursue the 1996 Act jurisdictional framework outlined in the *NPRM* versus the existing shared jurisdictional framework,[86] the initial comments also establish a considerable record regarding the issues raised in the *NPRM* as to the Commission's legal authority to establish various types of ICC rate reform plans. The Commission must be cognizant of potential limits to its legal authority in adopting any ICC rate reform -- and this is particularly so when it comes to the types of risky bill and keep and $0.0007 plans described above.[87]

[86] For example, *compare* AT&T at 37-54, and Core at 8-11.

[87] Numerous parties discuss these potential limits in their initial comments. *See, e.g.,* CompTel at 33-34 (argument regarding legal limitations on Commission's ability to impose bill and keep reform plan, particularly in circumstances where traffic may be out of balance); Cbeyond, *et al.*, at 12-15 (same, regarding bill and keep and $0.0007 plans); Core at 8-11 (same); Earthlink at 14 (argument regarding absence of evidence in record that termination of traffic over IP networks entails no usage-sensitive costs).

IV. CONCLUSION

The Commission is on the cusp of taking a significant step towards modernizing both universal service and ICC for the foreseeable future. The key question the Commission should ask is whether or not all of the reforms proposed in its *NPRM* surpass philosophical policy objectives and truly advance broadband availability and usage at the state and local levels. The true opportunity for all stakeholders to be successful in achieving balanced reform may rest in the Commission's ability to implement those reform elements that will clearly and definitively advance needed investment, create jobs and help to advance the technology and economic goals of businesses, consumers, the states and the industry.

Respectfully submitted,

CENTURYLINK

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May 23, 2011

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF CENTURYLINK** to be: 1) filed with the FCC via its Electronic Comment Filing System in WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51 and CC Docket Nos. 01-92 and 96-45; 2) served via e-mail on Mr. Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau at Charles.tyler@fcc.gov; and 3) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/Richard Grozier

May 23, 2011