

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

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

**COMMENTS OF BRIGHT HOUSE NETWORKS INFORMATION SERVICES, LLC  
ON FURTHER INQUIRY**

Bright House Networks Information Services, LLC (“Bright House”) submits these comments with respect to certain issues raised in the *Further Inquiry* issued in these matters on August 3, 2011.<sup>1</sup> Bright House is a competitive local exchange carrier (“CLEC”) affiliated with Bright House Networks, LLC, a provider of video, voice and data services. Bright House provides local exchange telecommunications services to its cable affiliate, which uses those telecommunications services in conjunction with the Voice over Internet Protocol (“VoIP”) services provided to its own subscribers. Bright House interconnects directly and indirectly with other entities on the public switched telephone network (“PSTN”) that send traffic to, or receive traffic from, the interconnected VoIP subscribers served by our cable affiliate. As a result, 100%

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<sup>1</sup> *Connect America Fund, et al., Further Inquiry Into Certain Issues In The Universal Service-Intercarrier Compensation Transformation Proceeding, WC Docket Nos. 10-90 et al., DA 11-1348* (released August 3, 2011) (February 9, 2011) (the “*Further Inquiry*”).

of the traffic that Bright House exchanges with other entities on the PSTN would count as “VoIP traffic” in the sense that term is used by the proponents of the so-called “ABC Plan.” Bright House, therefore, has a keen interest in the question of intercarrier compensation for such “VoIP traffic,” and these comments focus on that issue.<sup>2</sup>

### 1. **There Is No Such Thing As “VoIP Traffic” On The PSTN.**

The ABC Plan’s proposed treatment of so-called “VoIP traffic” is based on a fiction. That fiction is that there is some technically or economically meaningful distinction between different “types” of calls on the PSTN based on the technology used to originate or terminate them. A natural, logical understanding of the term “VoIP Traffic” would be voice traffic that is *actually being transmitted and routed* using IP technology. Yet what the ABC Plan evidently means by the term “VoIP traffic” is plain old PSTN traffic that – before or after it actually is on the PSTN – might have *originated* or *terminated* using IP technology.<sup>3</sup>

That isn’t “VoIP traffic” in any meaningful sense. That’s just plain old telephone service, getting calls from here to there, in circuit-switched, time-division-multiplexed (“TDM”) format. Once a call is on the PSTN, being handled in standard circuit-switched, TDM format, the type of technology used to originate or terminate it has nothing to do with how it is handled. Traffic on the PSTN is just that – traffic on the PSTN. Calls on the PSTN use the same signaling format,

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<sup>2</sup> Bright House filed comments and reply comments in this matter, and several *ex parte* letters, all focused on this issue. See Comments of Bright House Networks Information Services, LLC in WC Docket No. 10-90 *et al.* (filed April 1, 2011); Reply Comments of Bright House Networks Information Services, LLC in WC Docket No. 10-90 *et al.* (filed April 18, 2011); Letter from C.W. Savage to M. Dortch dated May 25, 2011 in WC Docket No. 10-90 *et al.*; Letter from C.W. Savage to M. Dortch dated May 26, 2011 in WC Docket No. 10-90 *et al.*; Letter from C.W. Savage to M. Dortch dated May 27, 2011 in WC Docket No. 10-90 *et al.*; Letter from C.W. Savage to M. Dortch dated June 14, 2011 in WC Docket No. 10-90 *et al.*

<sup>3</sup> See Letter from R.W. Quinn *et al.* to Chairman Genachowski *et al.* dated July 29, 2011 in Docket Nos. WC 10-90 *et al.* (“ABC Plan Letter”), Attachment 5 (“Legal Authority White Paper”) at 2 (referring generally to “traffic *routed to or from* the PSTN”) (emphasis added); *id.* at 4 (referring to “VoIP traffic *routed to or from* the PSTN”) (emphasis added).

are transmitted and routed using the same equipment, and impose the same costs on network operators, no matter whether those calls start or end on an old analog telephone, a wireless handset, a digital PBX, a modern VoIP PBX, a Skype-out connection, or anything else. Claiming that calls *on the PSTN* should be treated in some special way because they use IP equipment before or after they hit the PSTN makes no more sense than it would have made, back in the 1980s, to claim that calls using new-fangled “digital” PBXs, or that made their way to an ILEC’s PSTN switch using a gee-whiz “fiber” loop, should get special treatment. There is no technical or economic reason to make such distinctions.<sup>4</sup>

Because there is no technical or economic distinction between “VoIP Traffic” (as the ABC Plan uses that term) and any other PSTN traffic, introducing a rule that requires such traffic to be treated in some special manner for rating purposes is guaranteed – with 100% certainty – to introduce distortions in sensible economic behavior in order to exploit the arbitrage opportunities created by the new rule. It would be odd indeed for the Commission, in the course of a proceeding intended to harmonize and unify intercarrier compensation, and to eliminate arbitrage opportunities, to start off by introducing a new and highly contentious one.

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<sup>4</sup> In this regard, the Commission should recognize that the introduction of IP-based technology is unique – just like all the other new technologies that have been introduced into the network over the past several decades. As the Commission long recognized, when a new basic network technology is deployed – and IP technology certainly qualifies – during a sometimes long transition period, network operators need to take steps to translate between the signaling and transmission formats used by the new technology and that used by the then-existing PSTN. But that translation activity does not even get the new technology out of the “basic service” category, much less entitle it to special rating treatment. *See* Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, *Order*, 19 FCC Rcd 7457 (2004) (“*AT&T IP-in-the-Middle Order*”) at ¶ 4 n.13 (*citing* Amendment to Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Phase II Carrier Service and Facilities Authorization Thereof; Communications Protocols Under Section 64.702 of the Commission’s Rules and Regulations, *Report and Order*, 2 FCC Rcd 3072 (1987) at ¶¶ 64-71; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905 (1996) at ¶ 106).

## 2. The ABC Plan's Treatment Of "VoIP Traffic" Would Distort Competitive and Investment Decisions.

The ABC Plan proposes that, effective January 1, 2012, compensation for calls to or from an interconnected VoIP service be set at interstate access rates, even if the call is an intrastate toll call.<sup>5</sup> This amounts to creating an immediate distinction between intrastate toll calls based on the technology used to originate or terminate the call, even though off-the-PSTN technology – that is, what happens to the call before it enters, or after it exits, the PSTN – has no impact on the PSTN functions, costs, and activities involved in handling the call.

There is no reason to make this artificial distinction. The reason the ABC Plan proposes it becomes clear, however, by considering its effects. Basically, the beneficiaries of this proposal would be the major interexchange carriers ("IXCs") – Verizon and AT&T – who originate and terminate the vast majority of intrastate toll traffic on the PSTN. If they could establish that the intrastate toll calls they picked up from an ILEC or CLEC started in VoIP, or if they knew that the calls ended in VoIP, they would have to pay less to the originating and/or terminating LECs. So Verizon and AT&T would save a lot of money on the IXC side.

On the ILEC side, though, this plan would have little or no effect on Verizon and AT&T. This is because they have been exceedingly slow in taking steps to invest in upgrading their own local networks to include IP technology.<sup>6</sup> Because they have *failed* to invest in upgrades, they would *continue to be rewarded* with existing intrastate access rates for intrastate toll calls. In particular, they would continue to charge normal intrastate access charges on the vast majority of

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<sup>5</sup> The ABC Plan proposes that local calls that originate or terminate on an interconnected VoIP service continue to be rated as local. *See ABC Plan Letter*, Attachment 1 ("Framework of the Proposal") at 10.

<sup>6</sup> Only about 28% of residential lines, and only about 19% of total lines, are interconnected VoIP lines. But only about 1.3% of total lines are *ILEC* interconnected VoIP lines. Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2010* (March 2011) ("*Status Report*"), Figure 4.

traffic they receive.

In other words, precisely because the legacy ILECs have done such a terrible job of upgrading their networks to use modern, IP-based technology, their own operations would be largely insulated from the VoIP-related compensation decreases in their plan. And precisely because IXCs affiliated with the large ILECs carry the vast majority of intrastate toll traffic, they would receive the overwhelming majority of the benefits of the proposed rate reductions.

This application of the ancient maxim, “cui bono?” – who benefits? – shows that this is the real impact of this aspect of the ABC Plan. The plan’s proponents try to frame their VoIP compensation proposal as a way to encourage or promote the use of modern IP-based technology, but it does no such thing. This aspect of the ABC Plan is simply a slightly disguised effort to manipulate the Commission into using its regulatory powers to transfer wealth *from* the competitors who have invested in new technology – the cable operators – *to* the competitors who haven’t – the ILECs.

The one-sided, distorted impact of the ABC Plan on cable operators can be seen by considering the Commission’s own most recent industry data. The ABC Plan speaks in general terms about “VoIP traffic.” The Commission’s own industry data, however, show that in the overwhelming majority of cases, what is really at issue is calls to and from the cable-affiliated competitors of the major ILECs.<sup>7</sup> According to the most recent *Local Telephone Competition* status report, 28% of all residential switched access lines are interconnected VoIP services.<sup>8</sup> But

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<sup>7</sup> The ABC Plan proponents actually acknowledge this, but that acknowledgement is buried in the depths of the 68-page “Legal Authority White Paper” included as Attachment 5 to the *ABC Plan Letter*. See Attachment 5 at 21.

<sup>8</sup> Status Report at Figure 2. The percentage is derived by dividing the number of residential interconnected VoIP lines (25,231,000) by the total number of residential lines (89,753,000).

the overwhelming majority of *those* lines – at least 80% – are provided by cable operators.<sup>9</sup> So, in practical terms, when the ABC Plan talks about lowering the intercarrier compensation payable in connection with intrastate toll calls that are “VoIP traffic,” that is just a code for giving the major IXCs – AT&T and Verizon – a price break on calls their ILEC affiliates send to or receive from their cable operator competitors.<sup>10</sup>

The primary policy-jargon fig leaf that the ABC Plan proponents provide for this one-sided, unwarranted price break is a statement from Professor Jerry Hausman purporting to justify the intercarrier compensation aspects of the plan. That statement, however, simply shows that an overall lowering of intercarrier compensation rates would improve consumer welfare, as long as the carriers who would receive lower intercarrier compensation payment did not recoup the revenues somewhere else.<sup>11</sup> This boils down to saying that consumers are better off if they get the same service they got before, but at lower prices. This is certainly true, but it hardly takes an MIT economics professor to establish that point. His discussion shows that it is a good idea to bring down overall intercarrier compensation rates – a proposition with which no one disagrees. It provides no basis, however, for saying that the right *way* to bring down those rates is by establishing an immediate, special, low rate for intrastate toll calls to or from an interconnected

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<sup>9</sup> Figure 6 of the *Status Report* indicates that 20,473,000 non-ILEC Internet connections used to support an interconnected VoIP service are provided using cable modem technology within a broadband bundle. That is slightly more than 81% of the total residential interconnected VoIP lines. Some small number of those cable-based broadband bundles may have been sold to business rather than residential customers. As discussed *infra*, the fact that the overwhelming majority of calls to and from interconnected VoIP services involve cable-based VoIP services is fatal to the ABC Plan proponents’ claim that VoIP traffic is “inseparably” interstate in nature.

<sup>10</sup> To the extent that an intrastate wireless call is also inter-MTA, and therefore subject to access charges, here again the largest beneficiaries of the plan would be the major wireless carriers – again, AT&T and Verizon. This further demonstrates that the ABC Plan’s proposal for dealing with “VoIP traffic” is really just a ploy to help the technologically laggard large ILECs (along with their affiliates) and harm the technologically advanced cable sector (along with their affiliates).

<sup>11</sup> *ABC Plan Letter*, Attachment 4, “Consumer Benefits of Low Intercarrier Compensation Rates” at 11-15 (gains from lower rates) and n.25 (gains reduced if carriers raise other rates).

VoIP service.

In fact, imposing a special low rate for VoIP traffic is economically perverse. It punishes firms that have invested in modern, IP-based technology and rewards those who have not:

- Under the ABC Plan, if a plain old TDM-based IXC on the PSTN picks up an intrastate toll call from a CLEC that has invested in the equipment needed to serve an interconnected VoIP provider, the CLEC that has made the investments gets *less* money than it would have otherwise. Its reward for its investment is to see its revenues decrease. The *IXC* is rewarded – by paying lower access charges – for doing nothing other than what it would have done anyway, which is pick up an outbound call from a CLEC.
- Under the plan, if the IXC picks up a call from a legacy, TDM-based ILEC – perhaps even an affiliate – and delivers it to a cable-affiliated CLEC like Bright House – which has made the investments needed to provide for interconnection between the PSTN and an affiliate’s VoIP service – the CLEC that has made the investments gets *less* money: its reward for its investment is to see its revenues decrease. The TDM-based *IXC*, however – delivering traffic from an affiliated TDM-based ILEC – is rewarded, by paying lower access charges, for doing nothing other than it would have done anyway, which is deliver a call to the CLEC from whose network the called party receives PSTN connectivity.

There is no rational policy basis for setting up a special, new regulatory rule the sole effect of which is to *punish* the network service providers that have invested in modern, IP-based facilities and *reward* the network service providers that have not done so. Yet that is exactly what the ABC Plan’s treatment of VoIP traffic would accomplish.<sup>12</sup>

Moreover, the legal analysis underlying this aspect of the ABC Plan rests on erroneous factual premises. The plan proponents argue that the Commission should find that traffic that originates or terminates in an interconnected VoIP service is “inseverably interstate” in nature.<sup>13</sup> Yet their own analysis recognizes that an inseverability determination is essentially *factual* in

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<sup>12</sup> The ABC Plan would also implement this new regime for intrastate toll calls on “a market-disruptive flash-cut” basis as of January 2012, thus doing maximum harm to the proponents’ cable competitors. This is exactly the kind of impact that the plan proponents otherwise claim to want to avoid. See *ABC Plan Letter*, Attachment 5, at 38 (quoting *Implementation 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) (“*ISP Remand Order*”) at ¶¶ 77-78) (discussing need for reasonable transition mechanisms to avoid market disruptions).

<sup>13</sup> *ABC Plan Letter*, Attachment 5, *passim*.

character – that is, a Commission ruling that traffic is inseverably interstate must be based on a factual finding that it is not “practical” to sort out the intrastate traffic from the interstate traffic.<sup>14</sup> Completely absent from the ABC Plan documents, however, is any explanation of where the supposed impracticality comes from. In fact, it is no harder to identify the end points of the vast majority of interconnected VoIP calls – which begin or end on non-nomadic cable-affiliated VoIP services – than it is to identify the end points of plain old telephone calls. Indeed, this Commission has recognized that in many cases – notably for non-nomadic services – there is no barrier to identifying the jurisdiction of calls to or from interconnected VoIP services.<sup>15</sup> These prior Commission rulings are fatal to the ABC Plan proponents’ “inseverability” arguments.<sup>16</sup>

### **3. The ABC Plan’s Proposed Treatment Of “VoIP Traffic” Would Be Difficult To Administer And Would Encourage Arbitrage.**

Not only is the ABC Plan’s proposal regarding VoIP Traffic bad on the merits, it would create administrative problems as well. As the *Further Inquiry* recognizes, there is no practical

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<sup>14</sup> *Id.* at 3, 8, 19, 20, *passim*.

<sup>15</sup> The Commission has addressed this issue in the context of applying universal service contribution obligations on interconnected VoIP providers, and has found that it has no basis to preempt state authority over VoIP providers who can identify the jurisdiction of calls their subscribers make. *See Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (“*Federal USF Assessment Order*”) at ¶ 56; *Universal Service Contribution Methodology*, Declaratory Ruling, 25 FCC Rcd 15651 (2010) (“*State USF Assessment Order*”) at ¶ 14 (Commission has “recognized that some interconnected VoIP providers have the capability to track the jurisdiction of their calls”). And the Commission made expressly clear to the 8<sup>th</sup> Circuit that its inseverability-based preemption of state regulation of *nomadic* VoIP providers did not extend to providers of non-nomadic VoIP services. *See Minnesota Public Utilities Commission v. FCC*, 483 F.3d 570, 582-83 (8th Cir. 2007).

<sup>16</sup> Bright House takes no position at this time on the scope of the Commission’s authority to set uniform intercarrier compensation rates for both interstate and intrastate traffic under Sections 251(b)(5) and/or 251(g). Our point here is simply that the impossibility/inseverability doctrine does not provide a valid basis for overriding otherwise existing state authority over intrastate toll calls that originate or terminate on an interconnected VoIP service. This matters because – as the ABC Plan proponents at least implicitly recognize – their proposal to immediately set a new, special rule for compensation for intrastate toll calls that start or end with a VoIP service requires a finding of inseverability. *See ABC Plan Letter*, Attachment 5 at 37 n.42.

way to distinguish VoIP traffic from any other traffic, whether on the basis of call detail records, call signaling information, or otherwise.<sup>17</sup> So, creating a new, special compensation rule for this unidentifiable set of calls would create new administrative hassles, and new opportunities for arbitrage.<sup>18</sup> The ABC Plan offers no explanation as to why the Commission should take affirmative steps to *create* these new administrative hassles and arbitrage opportunities, and it makes no suggestions for how to deal with them.<sup>19</sup>

In asking the Commission to create yet another layer of complexity in the intercarrier compensation system – a special rule for VoIP-originated or –terminated intrastate toll calls – the ABC Plan proponents have lost sight of the basic idea that traffic that uses the PSTN in the same way should be subject to the same compensation obligations. As the Commission observed in the *AT&T IP-in-the-Middle Order*, that is bad policy:<sup>20</sup>

any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.

Again, the basic proposal in the ABC Plan – the gradual harmonization and reduction of *all* intercarrier compensation rates – is consistent with this longstanding Commission policy. But the jarring suggestion that the Commission should suddenly, right now, set up a new, special rule for certain intrastate toll calls on the PSTN based on the technology used to originate or

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<sup>17</sup> *Further Inquiry* at page 17.

<sup>18</sup> We have previously explained the serious arbitrage and administrative problems that setting a special intercarrier compensation rate for VoIP traffic would create. See Bright House Comments, *supra* note 2.

<sup>19</sup> Somewhat bizarrely, the proponents of the ABC Plan complain about the arbitrage opportunities “made possible by today’s complicated, multi-tiered system,” and yet see no problem with suggesting that things would be improved by the Commission adding a *new* tier of complexity – the need to sort out the intrastate toll calls that originate or terminate on an interconnected VoIP service from those that don’t. See *ABC Plan Letter* at 3. Apparently it isn’t arbitrage when it saves *them* money.

<sup>20</sup> *AT&T IP-in-the-Middle Order* at ¶ 11 n.47, quoting In the matter of IP-Enabled Services, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004) at ¶ 61.

terminate those calls, makes no sense at all.

**4. Conclusion.**

The ABC Plan's proposal to immediately and disruptively lower intercarrier compensation for intrastate toll calls to or from interconnected VoIP services punishes those entities that have invested in modern, IP-based technology and rewards those that have not. It would unjustly enrich the legacy ILECs and their IXC and wireless affiliates without providing the slightest economic incentive to them to deploy modern IP-based technology. For these reasons, and those described in Bright House's other filings in this matter, the Commission should reject this proposal. Instead, during the transition to a system of low, unified rates, so-called VoIP traffic should be subject to exactly the same compensation rules as any other traffic on the PSTN, based on the calling and called telephone numbers associated with each call.

Respectfully submitted,



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August 24, 2011