

Attachment 1

Competitive Amendment to the ICC Provisions of the ABC Plan- Legislative Format

Competitive Amendment to the ICC Provisions of the ABC Plan

2. Reforming Intercarrier Compensation to Promote IP Support Broadband Networks

The Commission must confirm that IP-to-IP interconnection is subject to Sections 251/252 of the Act, so that a framework will be put in place for carriers to initiate bilateral, good-faith, negotiations to establish traffic exchange arrangements based on a modern, IP packet-exchange that supports prioritized (and, therefore, quality) voice services.

In order to accommodate this transition, and [c]onsistent with the National Broadband Plan's intercarrier compensation (ICC) recommendations, the Amended ABC Plan creates a glide path to phase down per-minute charges to a lawful, cost-based low uniform rate structure for transport and termination without regard to historical jurisdictional labels, while providing all carriers with a meaningful opportunity to adjust business models, for revenue recovery, and includes interim solutions to address arbitrage.⁸ No changes should be made to originating access. Under the Amended plan, the regulated terminating intercarrier compensation rates each carrier charges to terminate all types of traffic of all carriers except rate of return incumbent LECs are would be transitioned to a unified cost-based, rate over a reasonable transition period phased down to a uniform default rate of \$0.0007 per minute by July 1, 2017. The specifics of the intercarrier compensation transition for rate of return incumbent LECs are outlined in the Joint Statement. The cost-based rate determined for an ILEC will be the proxy cost-based rate of all other carriers serving the ILEC's territory unless a state Commission establishes a different cost-based rate for a non-ILEC.

A Commission statement confirming IP interconnection rights and obligations, in addition to reforming Reform of terminating intercarrier compensation rates, will advance broadband deployment by reducing the disincentives to deploying IP networks and reducing carriers' reliance on unstable implicit support mechanisms. And, by eliminating the disparities between intrastate and interstate terminating access rates, and between terminating access rates and terminating rates for other traffic, the plan will end arbitrage schemes and disputes that divert resources from broadband deployment. Without reform and legal certainty, the ongoing decline in intercarrier compensation revenue and disputes on IP-to-IP interconnection will be an impediment to broadband deployment, frustrate the development of competition, and may jeopardize universal service.

The intercarrier compensation reform, legal clarity, and universal service reform provisions of the Amended ABC Plan are inextricably linked. Carriers are able to reduce their reliance on implicit support from above-cost intercarrier compensation because the plan provides the time to adjust to changing conditions, introduces support from new explicit mechanisms – the CAF and the temporary access replacement mechanism for qualifying local exchange carriers – while providing legal certainty that IP-to-IP interconnection will be implemented in a nondiscriminatory, efficient manner. And, to

⁸ National Broadband Plan at 136.

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ensure that carriers are able to sustain and expand broadband networks during the transition, the plan begins disbursements from the CAF on the same date – July 1, 2012 – that the plan begins reducing terminating intercarrier compensation rates.

Removing Uncertainty Regarding IP-to-IP Interconnection

The broadband architecture of the future is expected to eventually replace the circuit-switched architecture of today's PSTN with an IP architecture supporting a modern PSTN. This IP architecture will provide voice packets the routing priority needed to assure the quality for voice services consumers and businesses expect and demand. In order for competition to survive, nondiscriminatory cost-based IP interconnection agreements must replace the circuit-switched interconnection agreements that underlie today's PSTN so that the transition to an IP-based PSTN will be seamless. There is little point in modifying the intercarrier compensation regime to facilitate an IP environment without also making clear that the basic legal framework so critical to the seamless interconnection that permits all users connected to the public network to reach each other – i.e., the competitive protections of Sections 251/252⁹ – applies in a technology neutral manner. Inability to enter into ICAs for direct IP-to-IP interconnection is the greater barrier to the deployment of competitive IP networks. Addressing compensation without enforcing the appropriate legal framework will do nothing to promote a ubiquitous competitive broadband environment.

Interim Rules

Voice over Internet Protocol (VoIP): The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an “access” call, or at reciprocal compensation rates if the call detail indicates a “non-access” call.¹⁰ All “toll” traffic that originates in IP or terminates in IP will be subject to

⁹ The competitive protection of Sections 251/252 include (but are not limited to) the duty to negotiate in good faith; interconnection equal in quality to any interconnection provided by the incumbent to itself or an affiliate; rates, terms and conditions that are just, reasonable and nondiscriminatory; reciprocal compensation for transport and termination of telecommunications; the public filing of interconnection agreements reached through voluntary agreement; and the arbitration of issues where agreement cannot be reached. Moreover, interconnection agreements filed in accordance with Section 252 must be made available to other providers under the same terms and conditions. Together, these protections assure that differential bargaining power cannot be used to frustrate the deployment of competing IP and broadband providers.

¹⁰ The MTA rule would continue to apply to wireless VoIP traffic. For example, intraMTA VoIP traffic originated by a wireless carrier would be subject to reciprocal

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current ~~interstate~~ access rates (regardless of whether it is interstate or intrastate); local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for the termination and transport of all classes of terminating interstate access traffic are reduced to a unified cost-based level and eventually unified at \$0.0007 pursuant to the comprehensive reform plan described below. ~~Under the plan, intrastate access rates will not be applied to VoIP traffic.~~

Measures to address arbitrage: The Commission should adopt rules to address phantom traffic and arbitrage schemes involving both originating and terminating traffic, including traffic pumping. The plan does not recommend specific rules, but the plan supporters agree that the Commission should adopt an order addressing phantom traffic, traffic pumping, and other arbitrage schemes that is effective no later than January 1, 2012.

Comprehensive Reform: Measured Transition to a Unified Transport and Termination Rate Schedule for All Classes of Traffic Grounded in Section 251(b)(5) Unified \$0.0007 Rate for Transport and Termination

The plan transitions each all-price cap incumbent LEC's, CLEC, and CMRS provider's terminating intercarrier compensation rates to a unified cost-based rate plan for the transport and termination of all types of traffic in compliance with Section 251(b)(5) uniform default rate of \$0.0007 per minute by July 1, 2017.¹⁴ The five-year transition period is designed to give carriers adequate time to prepare and make adjustments to offset lower the lost intercarrier compensation revenues.¹² The scheduled July 1, 2012 start date for the transition, and the specific transition schedule, both presume that the CAF begins disbursing support on July 1, 2012 and is funded according to the timeline specified above. Any changes to the proposed timeline for funding the CAF would necessitate corresponding changes to the timeline for implementing intercarrier compensation reforms.

The rates specified in the transition schedule below and the ultimate \$0.0007 rate are default rates. Carriers are free to enter into negotiated arrangements that depart from the default rates.

The default schedule achieves a unified rate for all classes of traffic for transport¹³ and termination – that is, rates for tandem-switching, tandem-switched transport, dedicated

compensation rates. The rules should also be modified to clarify that CLECs have the same rights as ILECs to interconnection and compensation with wireless carriers.

¹⁴ ~~_____ This framework applies only to TDM interconnection. IP-IP interconnection would continue to be governed by commercial agreements.~~

¹² National Broadband Plan at 149.

¹³ We define transport here consistently with Commission Orders and Rules – that is, as the transmission and any necessary tandem switching of traffic from the interconnection point between the two carriers to the terminating carrier's end-office

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transport and termination are transitioned into a unified rate schedule that applies to any minute, whether previously considered interstate, intrastate or local. However, cost-based differences in rate level among LECs are preserved.

Transition Schedule for Incumbent Local Exchange Carriers

- **July 1, 2012:** Each carrier reduces its ~~reciprocal compensation rate and~~ intrastate terminating access rate for transport and switching, if above the carrier's interstate access rate, by 50% of the differential between the rate and the carrier's interstate access rate. To the extent that a carrier applies a different rate structure for transport in its interstate and intrastate tariff, the carrier will adopt the interstate rate structure;
- **July 1, 2013:** Each carrier reduces its ~~reciprocal compensation rate and~~ intrastate terminating access rate for transport and switching, if above the carrier's interstate access rate, to parity with the carrier's interstate access rate;
- **July 1, 2014:** Each carrier reduces its terminating transport and end office access rates by one quarter ~~third~~ of the differential between its end office rates and its reciprocal compensation rates for transport and termination. ~~\$0.0007. Transport rates remain unchanged from the previous step;~~
- **July 1, 2015:** Each carrier reduces its terminating transport and end office access rates by an additional one-quarter ~~third~~ of the differential to its reciprocal compensation rates for transport and termination. ~~\$0.0007. Transport rates remain unchanged;~~
- **July 1, 2016:** Each carrier reduces its transport and terminating end office access rates by an additional one-quarter of the differential to its reciprocal compensation rates for transport and termination ~~\$0.0007. Transport rates remain unchanged;~~
- **July 1, 2017:** Each carrier unifies all transport and termination ~~terminating traffic~~ under 251(b)(5) at a rate of \$0.0007 for transport and termination consistent with ~~some existing interconnection agreements that have adopted the "ISP remand" rate. Beginning with this step, the rate for transport and termination shall only apply to termination at the end office where the terminating carrier does not own the serving tandem switch (in which case, additional charges may or may not apply depending on the arrangement used to deliver traffic), and it shall only apply to transport and termination within the tandem serving area where the terminating carrier does own the serving tandem switch.~~

switch that directly serves the called party. This definition includes both tandem-switched and dedicated transport and, in effect, addresses all facilities from the network delivering the call to the end office switch, less any facilities encompassed by the definition of interconnection facilities under Section 251(c)(2).

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Transition Schedule for Competitive Local Exchange Carriers

Competitive local exchange carriers should have the same effective opportunity to adapt their business model to lower intercarrier compensation revenues as incumbent local exchange carriers. To the extent that the Commission adopts an access replacement mechanism (see below) that mitigates revenue loss for an incumbent, competitive local exchange carriers should be provided a comparable transition to reciprocal compensation-based transport and termination rates.¹⁴

- **Beginning July 1, 2012, and annually thereafter,** each competitive local exchange carrier shall reduce its intrastate terminating access rate for transport and switching by 1/9th of the difference between its intrastate access rate and its reciprocal compensation rate such that its intrastate access rates shall be identical to its reciprocal compensation rates by July 1, 2020.
- **Beginning July 1, 2012, and annually thereafter,** each competitive local exchange carrier shall reduce its interstate terminating access rate for transport and switching by 1/9th of the difference between its interstate access rate and its reciprocal compensation rate such that its interstate access rates shall be identical to its reciprocal compensation rates by July 1, 2020.

The following applies to all carriers:

No terminating or other intercarrier compensation rates may increase. A carrier may not, for example, increase interstate or intrastate originating access rates from the rates in effect as of January 1, 2012. All bill and keep arrangements and/or other voluntary arrangements remain in place.

Throughout ~~During the first two steps~~ of the transition, both originating and terminating intrastate and interstate dedicated transport rates are transitioned to the dedicated transport rates that apply to reciprocal compensation traffic interstate levels. No other changes to originating access (either interstate or intrastate) are contemplated by the plan.

All Local Exchange Carriers shall be permitted to file tariffs with the FCC for the transport and termination of traffic with carriers with whom they have no otherwise binding interconnection agreement, with rates and charges that can be no higher than the rate schedules reflected above. Coincident with the introduction of the default rates described above, the Commission should take strong and clear actions to put an end to

¹⁴ This “equal opportunity” transition model is comparable to the system adopted in Georgia whereby the Georgia Legislature directed that incumbent local exchange carriers would reduce intrastate access charges to interstate levels over five years, yet provided offsetting revenues for small local exchange carriers through a universal service additive lasting ten years. Competitive local exchange carriers (that did not qualify for the universal service additive) were permitted to reduce their access rates over the full ten years of the plan. See Telecom Jobs and Investment Act, House Bill 168.

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self-help, including (but not limited to) making clear carriers must pay before disputing the application of a particular rate.

Price-Cap Incumbent LEC Subscriber Line Charges

As terminating intercarrier compensation revenue is reduced, ~~price cap~~ incumbent LECs are given the opportunity to adjust their business plans and rely to a greater extent on retail customer revenue. To facilitate that shift, the plan lessens restrictions on incumbent LECs' federal subscriber line charge (SLC) rates and pricing flexibility. Although any increases in SLC rates ~~may~~ will be significantly constrained by competition from wireless carriers, cable companies, "over the top" VoIP providers, and other competitors, the plan nonetheless retains a SLC cap and benchmark mechanism as consumer backstops.

~~The plan provides two separate paths for reducing constraints on price cap LEC SLC rates. If a price cap LEC elects to receive support from the transitional access replacement mechanism described below, the cumulative increase in the SLC may not exceed \$0.50 effective July 1, 2012; \$1.00 effective July 1, 2013; \$1.50 effective July 1, 2014; \$2.00 effective July 1, 2015; and \$2.50 effective July 1, 2016. If a price cap LEC does not elect to receive support from the transitional access replacement mechanism, The cumulative increase in the SLC may not exceed \$0.75 effective July 1, 2012; \$1.50 effective July 1, 2013; \$2.25 effective July 1, 2014; \$3.00 effective July 1, 2015; and \$3.75 effective July 1, 2016.~~

In addition, any single-line SLC increase may not cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of \$30 per month. The benchmark comparison uses the local rate, state SLC, and EAS rate in effect on January 1, 2012.

The cap on the multi-line business SLC would be eliminated on July 1, 2012. However, for purposes of calculating the potential support from the Transitional Access Replacement Mechanism, the multi-line business SLC will be assumed to increase in the same steps as the cap on the residential SLC.

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Transitional Access Replacement Mechanism

The plan provides a transitional access replacement mechanism for ~~price-cap~~ qualifying incumbent LECs that may have more limited opportunities to adapt to reduced experience exceptionally large reductions in intercarrier compensation revenue. Such LECs, if they elect the appropriate SLC cap progression specified above, may recover a limited portion of their intercarrier revenue reductions from universal service support. ~~The transitional access replacement mechanism is necessary to ensure that the intercarrier compensation reforms do not jeopardize the operations of broadband providers that rely on intercarrier compensation revenues for implicit support of networks in high-cost areas.~~

To the extent that the impact of the reductions in access rates under the plan ~~and the net impact of the reduction in reciprocal compensation rates exceeds~~ the an imputed SLC increases detailed above, of \$0.50 effective July 1, 2012; \$1.00 effective July 1, 2013; \$1.50 effective July 1, 2014; \$2.00 effective July 1, 2015; and \$2.50 effective July 1, 2016, or exceeds the maximum SLC increase permitted by the \$30 benchmark, the qualifying incumbent LEC may recover 90 percent of any revenue reduction greater than the imputed SLC increases. The impact of the reduction in access rates is calculated relative to the rates in effect on January 1, 2012, and is recalculated each year to reflect changes in traffic volumes. Support from the access replacement mechanism is calculated at the holding company level, i.e., by comparing the total holding company-level impact of the rate reductions to the imputed SLC increases applied to all holding company lines. The access replacement support available to qualifying ~~price-cap~~ incumbent LECs is transitional: beginning on July 1, 2018, the incumbent LEC's access replacement support is reduced each year by one-third of the July 1, 2017 amount until the access replacement support is eliminated entirely on July 1, 2020.

~~The We estimate that the transitional access replacement mechanism shall be capped at an amount no greater than will disburse approximately \$60- \$80 million.¹⁵ This cap shall remain in effect until the peak year and then decline over time as access demand declines. We estimate that the mechanism will disburse approximately \$40- \$60 million in support in the year beginning July 1, 2017. The that amount dispersed in the year beginning July 1, 2017 will be reduced by one-third each year, beginning on July 1, 2018, until access replacement support is eliminated entirely on July 1, 2020. The transitional access replacement mechanism shall be fully funded during the transition.~~

3. Regulatory Framework

~~The transition from POTS to IP-based broadband networks that serve all Americans will require hundreds of billions of dollars of private sector investment. To encourage that~~

¹⁵ The \$80 million should be reduced by the FCC in its final Order as this ILEC calculation assumes (1) that access rates are reduced to \$0.0007 (and not the cost-based reciprocal compensation rates recommended here), and (2) does not consider the additional revenues associated with the imputed increases in the multi-line business SLC discussed above.

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~~investment, the Commission must follow a policy of non-regulation of broadband and other information services, which permits those services “to flourish in an environment of free give and take of the marketplace.”⁴⁶ The Commission must conclude that VoIP services are interstate services, and reaffirm that broadband services are interstate services. The Commission must also preempt any state regulation of those services that is inconsistent with the federal policy of non-regulation.~~

~~In addition, the Commission should eliminate legacy regulations that act as a barrier to the transition to IP broadband networks. In particular, The Commission should must eliminate legacy ETC regulations and requirements imposed on price cap incumbent LEC ETCs and CETCs when it eliminates those carriers’ support from the legacy universal service programs, no later than July 1, 2016, and before then, make clear that any such requirements apply only in the particular areas that receive support and end whenever an ETC no longer receives any legacy high-cost or CAF support for a given area. Access, interconnection and unbundling obligations should apply to any facility constructed using high-cost or CAF support for the life of the facility. At the same time, the Commission should eliminate all remaining federal rate and other service regulations imposed on price cap incumbent LECs.~~

~~Moreover, in any order creating a federal Access Replacement Mechanism, the FCC should make clear that it will preempt any state plan that attempts to replace additional revenues caused by the changes described here.~~

~~State commissions should review the calculation of default ICC for local exchange carriers providing service in their state. The FCC should adopt procedures that enable the state-process of discovery and, if requested, hearings, to ensure that the data used to implement each aspect of the ICC transition plan is implemented in an open and transparent way.~~

~~If a state maintains obligations to serve, including carrier of last resort (COLR) obligations for price cap incumbent LECs, the Commission must preempt such obligations as inconsistent with federal broadband policy unless the state fully funds the obligations with explicit support and the ILEC agrees to accept the obligations in exchange for funding. Otherwise, COLR obligations are incompatible with the transition to broadband networks because in many cases they require incumbent LECs (and only incumbent LECs) to divert resources from the deployment of broadband networks.~~

⁴⁶ ~~_____ Vonage Order at ¶ 21 (internal quotations and citations omitted).~~