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
	)	WC Docket No. 03-109
Lifeline and Link-Up	)	

COMMENTS OF FREE CONFERENCING CORPORATION IN RESPONSE TO FURTHER INQUIRY INTO CERTAIN ISSUES IN THE UNIVERSAL SERVICE—INTERCARRIER COMPENSATION TRANSFORMATION PROCEEDING

August 24, 2011

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Summary

- The Commission's Rulemaking should strive to achieve balance between the three voice communication platforms. It should create a balance between rural and urban regulatory requirements. It should maintain a balance between federal and state regulatory responsibilities as laid out in the Telecommunications Act. It should balance the tiers of access rates—rural and urban, intrastate and interstate—each at a just and reasonable level. It should balance how competitors (RBOCs, ILECs, CLECs, ISPs, Wireless providers, etc.) are treated in any proposed ICC reform.
- The fundamental purpose of an ICC regime is to ensure that calls (even VoIP) can be completed from point to point. If consumers are not paying for origination, transport, and termination, what are they paying for?
- Intercarrier Compensation Charge restructuring should yield overall benefits for consumers: either lower prices for voice usage or universal access to an improved telecommunications system.
- A $.0007 rate regime would dramatically (negatively) affect FreeConferenceCall.com and our 15-20 million monthly customers.

- US Telecom's (USTA) proposal was written by 6 companies that will directly benefit from it—their "consensus" was written at a high cost for competition, consumers and regulators.
- While there are three rural associations that have aligned themselves with a companion proposal to USTA's, there are at least 60 rural carriers that have expressed clear opposition to this proposal. Many other LEC's have spoken out against this proposal, as have consumer groups and associations of regulators.
- Some components of the NPRM when adjusted with recommendations from the State Members' proposal make for the best public policy—not the corporate wish list proposed by USTA.

- USTA's proposed increase in Subscriber Line Charges (SLC) to supplant access rates is not in the consumers' interest because it replaces a volume sensitive cost with a flat rate.
- Increasing the SLC to replace access charges would be cost shifting and the transfer of an implicit subsidy to support carriers and/or broadband deployment at the carriers' discretion.
- The USTA proposal does not contain any requirements that the broadband services provided over facilities built with public funds would be affordable or of high quality.
- The origin of the $.0007 rate is a 2001 settlement between Bell South and Level 3 for dial-up local Internet access traffic—not voice traffic, and not long distance.
- A $.0007 terminating access rate is neither just nor reasonable—it would be regulating a loss on carriers and will lead to lengthy litigation that undermines the certainty that is needed in the marketplace.

- The simple proof that USTA's proposed $.0007 rate is not just and reasonable is in the expressed need for an additional subsidy for carriers.

- The RBOC rate (roughly $.0035-$.007) is a baseline for access that can be carried over in the Commission's ICC reform, as their rates are deemed just and reasonable.
- USTA's proposed preemption of state regulators goes against the Telecommunications Act and will stall Commission action—the longstanding regulatory balance between the Commission and the state utility commissions must be maintained.
- The USTA proposal would eliminate public service obligations would be wiped out for telecommunications carriers serving over 90 percent of the United States.

- VoIP and Wireless have been competing for roughly 15 years, and the consumer has shown a clear preference for wireless.
- For reasons of accessibility and quality, adoption of VoIP has often been in addition to other voice platforms, not in lieu of them.
- Any plan that picks winners and losers in the telecommunications market—such as aiding the competitiveness of VoIP—skews the economics of that market and is not in the consumers' best interest.
- Just as wireline and wireless carriers pay for access to terminate on the Public Switched Telephone Network (PSTN), the Commission must require VoIP providers to connect all calls and fulfill their payment obligation in order to connect.
- With a consistent approach to call traffic originating on different platforms and obligating each to pay access, the Commission should mandate corresponding identifying information on each call being connected to eliminate phantom traffic.
- High volume rural carriers are more of a hybrid between rural (sparsely populated) and urban (high call volumes). With increased call volumes, a downward adjustment in their rates to an RBOC (roughly $.0035-$.007) is warranted.

- The imposition of regulatory requirements upon rural carriers that are not required of LECs or RBOCs will prevent a business environment that encourages the dispersion of telecommunications traffic across rural and urban areas.
- In addition to a straightforward enforcement structure, a fundamental means of achieving this certainty is to set clear definitions, a clear tariff-setting mechanism that is cost-based, and to deem those tariffs lawful to set the rules of engagement in the market.
- Whether IP providers or carriers, mandated interconnection is necessary to maintain a fully integrated telecommunications system.
- The Commission must shape the final rules in line with the consumer and the regulators entrusted to manage a fair telecommunications marketplace, not with the 2 largest telecommunications carriers and their self-interested cohorts.

Free Conferencing Corporation ("FreeConferenceCall.com") hereby responds to the Further Inquiry by the Commission related to the *Notice of Proposed Rulemaking* (*NPRM*) soliciting comment on draft rules developed by the Commission and the subsequent proposals by US Telecom (USTA) and that of the State Members of the Federal-State Universal Service Joint Board (State Members).[1]

"The government's only proper role is as a check on private power, never as an aid to it."[2] – Tim Wu

1. Introduction

FreeConferenceCall.com has previously filed comments and reply comments focused on the issue of rural tariffs and access stimulation.[3] In this document, FreeConferenceCall.com will present its views on the broader policy issues related to proposed changes to ICC and the Universal Service Fund by the Commission, by US Telecom, and by the State Members.

As the Commission considers the comments made with regard to intercarrier compensation reform, the fundamental task is to maintain just and reasonable rates

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[1] *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation System, et al.,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45, FCC 11-13, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* (rel. 2/8/11) (the "*NPRM*").
[2] The Master Switch: The Rise and Fall of Information Empires, Tim Wu (2010)
[3] FreeConferenceCall.com Comments and Reply Comments to NPRM (4/1/11; 4/18/11)

for ICC and overall benefits for consumers: either lower prices for voice usage or universal access to an improved telecommunications system.

A carrier's ability to earn a fair rate for the service it provides (to consumers or to other carriers or providers) is the means for managing a competitive and innovative telecommunications market: "such regulation can avoid price gouging by terminating carriers and ensure that originating and terminating carriers receive compensation that is just and reasonable, is sufficient to ensure continued service, provides for access network capacity to handle increasing traffic demand in a variety of associated protocols, and eliminates practices such as traffic pumping and phantom traffic which "game" the system."[4]

A consumer's use of a technologically advanced network at a fair price is at the core of America's telecommunications system, which is often forgotten due to the economic interests of a select few carriers or providers. This Rulemaking must retain the universal availability voice communication—but it must be quality communication nationwide.

The USTA's proposed increase in Subscriber Line Charges (SLC) to partially backfill access rate reductions is a flawed approach that forces consumers to pay more for something they currently pay for in their calling plans. The policy rationale of such a move is anti-consumer:

An increase in the SLC to offset losses in traffic-sensitive access revenue contradicts the basic principle of FCC subsidy policy because it requires a non-traffic sensitive rate element to pay for a traffic sensitive cost – effectively creating a subsidy. Moreover, the USTA plan to increase the SLC squeezes consumers between ballooning revenue

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[4] State Members of Universal Service Joint Board Comments on NPRM, 5/2/11 (p. 146)

replacement demands caused by artificially low access charges and a narrow contribution base of legacy phone customers.[5]

Replacing what is acknowledged as a declining rate (terminating access) due to competition and replacing it with a fixed rate (the SLC) makes no economic sense. Finally, adding to the SLC shifts the subsidy from the caller alone to the caller, the receiver, and those that do not call—every customer will have to pay more.

As for the build-out of broadband, the USTA proposal does not contain any requirements that the broadband services provided over facilities built with public funds would be affordable or of high quality, only that facilities would be built.[6] The USTA proposal is also ignores any net neutrality and non-discriminatory access requirements, despite the proposed use of public funds to build out the facilities.

FreeConferenceCall.com believes there are several points of balance that must be found as the Commission moves forward with a cohesive intercarrier compensation framework. First, the Commission's Rulemaking should strive to achieve balance between the three platforms mentioned above. Second, it should create a balance between rural and urban regulatory requirements. Third, it should maintain a balance between federal and state regulatory responsibilities as laid out in the Telecommunications Act. Fourth, it should balance the tiers of access rates—rural and urban, intrastate and interstate—each at a just and reasonable level. Finally, it should balance how competitors (RBOCs, ILECs, CLECs, ISPs, Wireless providers, etc.) are treated in any proposed ICC reform.

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[5] NPRM *Ex Parte* by State Members, 7/14/11 (p. 3)
[6] "America's Broadband Connectivity Plan (ABC)", Submitted to the FCC July 29, 2011 on behalf of AT&T, Verizon, FairPoint Communications, CenturyLink, Frontier, and Windstream, (p. 7)

In terms of competition and consumer options, FreeConferenceCall.com would be dramatically affected (negatively) by a $.0007 rate regime, as would our 15-20 million monthly customers. The Commission should not cut off consumers' choices in telecommunications through this Rulemaking.

Of the proposals before the Commission, some components of the NPRM when adjusted with recommendations from the State Members' proposal make for the best public policy—not the corporate wish list proposed by USTA. While there are three rural associations that have aligned themselves with a companion proposal to USTA's, there are at least 60 rural carriers that have expressed clear opposition to this proposal. Many other LEC's have spoken out against this proposal, as have consumer groups and associations of regulators. FreeConferenceCall.com must stand up for competition in telecommunications, effective regulation and the consumer. The National Association of Regulatory Utility Commissioners (NARUC) expressed the appropriate concern as the USTA proposal was shaped, "When only industry voices combine in a compromise, the public interest is a frequent casualty."[7]

2. Balance Between Three Platforms for Voice Communication

Balance between the three platforms for voice communications is clearly linked to ICC. Since the Telecommunications Act of 1996, intercarrier compensation has been the driver for competition in the telecommunications marketplace. While abuse and waste should be addressed, the structure of cost-based rates in

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[7] NPRM *Ex Parte* by NARUC, 7/20/11 (p. 2)

transactions among carriers and between platforms encourages new entrants, investment and innovation.

The issues in the intercarrier compensation regime that are raised in the Notice of Proposed Rulemaking are addressed with an eye toward a perceived future of global telecommunications. As voice traffic has gone from a solely wireline service to wireline, wireless, and Voice over Internet Protocol (VoIP) platforms, the complexity and interactions between the various businesses have increased. Although a pattern is evolving, it is impossible to predict the result of these ongoing interplays. Prudent policy should not prejudge specific outcomes that will skew the market and narrow the choices of American consumers.

Each of these platforms represents a significant segment of consumers: the most recent Commission data states that there are 122 million wireline customers, 29 million VoIP customers, and 279 million wireless customers nationwide.[8]

The policy implications are clear that while there has been significant growth in the VoIP customer base, it is equally clear that 6-plus percent is not market dominance in any accepted economic model. Interestingly, VoIP and Wireless have been available in the mass market for roughly 15 years each (not including the “brickphone” phase), and the consumer has shown a clear preference for wireless not VoIP. For reasons of accessibility and quality, adoption of VoIP has often been in addition to other voice platforms, not in lieu of them. In addition, the business model for many VoIP providers is to provide the service for “free” or below cost—but sell their customers’ personal information to marketers or use the customers’

[8] *Local Telephone Competition: Status as of June 30, 2010* (FCC Report, p. 18, 28)

characteristics to market to them directly. A consumer should not have to give up his or her privacy to make a call.

At the same time, the overwhelming usage of wireless devices does not indicate a superior marketplace with the oligopoly of four (possibly three) carriers controlling the market—being characterized by such anti-consumer features as the prevalent two-year customer contracts; confusing, expensive pricing plans; and locked-in hardware.

With regard to wireless carriers, it is absolutely clear that providers of commercial mobile radio service must pay "reasonable compensation" to local exchange carriers for traffic that starts with the provider and ends in the carrier's network.[9] This consistency in law makes good public policy—a communications network requires mandatory connectivity at a just and reasonable price.

Just as wireline and wireless carriers pay for access to terminate on the Public Switched Telephone Network (PSTN), the Commission must require VoIP providers to connect all calls and fulfill their payment obligation in order to connect. This connection is, after all, what the consumer is buying through their carrier/provider (mostly to the ~94% of consumers not on VoIP plans).

A number of analysts and regulators agree that, "the Commission should take this opportunity to establish its authority over Internet Protocol (IP) traffic."[10] As this authority over IP voice traffic is exercised, the Commission should move "toward integration into the ICC system."[11]

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[9] 47 C.F.R. § 20.11(b)(2)
[10] Public Knowledge and Benton Foundation Comments on NPRM, 4/18/11 (p. iii)
[11] Public Knowledge and Benton Foundation Comments on NPRM, 4/18/11 (p. 25)

The California Public Utilities Commission (CPUC) points out that, "Customers themselves clearly do not consider their VoIP subscriptions as anything other than telephone service."[12] It states clearly that, "providers of VoIP traffic should compensate the terminating carrier for use of its network. As long as intercarrier compensation exists, interconnected VoIP providers should pay their fair share."[13]

It is the incentive of not paying (as a VoIP provider) and the ability to strip identifying information from call that creates the conditions for "cost cutting" phantom traffic. With a consistent approach to call traffic originating on different platforms and obligating each to pay access, the Commission should mandate corresponding identifying information on each call being connected, and "(t)raffic that is delivered on a dedicated trunk or delivered on a per-call basis with sufficient identifying information would be treated as billable."[14] A caution in this regard relates to international call traffic, which does not have identifying information. In order to strengthen enforcement, the Commission should require payment for phantom calls that have occurred in the last several years along with a fine for carriers who have been documented as having stripped calls of calling party identification. This combination of Commission actions will eliminate phantom traffic going forward.

3. Regulatory Balance for Urban and Rural Regions

[12] CPUC Comments on Section XV of NPRM, 4/1/11 (p. 5)
[13] CPUC Comments on Section XV of NPRM, 4/1/11 (p. 3)
[14] State Members Comments, 5/2/11 (p. 157)

Balance between urban and rural regulatory requirements is necessary for a competitive marketplace and in order to achieve universal service throughout our diverse demography and geography. The USTA proposal, with its shifting of USF resources, intimates that rural America is of decreasing importance. However, in light of the large carriers selling off rural assets (such as Verizon's sale of companies in New England and Hawaii), rural carriers are as vital as ever. Even within large carriers' footprint, "this market dynamic means that underserved communities nominally within the service area of a large carrier will often remain underserved."[15]

In addressing high call volumes in rural areas, it is fair to adjust rates for terminating access. However, the imposition of regulatory requirements upon rural carriers that are not required of urban LECs or RBOCs will prevent a business environment that encourages the dispersion of telecommunications traffic across rural and urban areas and thus remove the need for special treatment of many carriers. For example, caps on call volume, onerous reporting obligations between LECs and IXCs, or limitations on business practices imposed on rural carriers will drive up costs and significantly disadvantage them in relation to urban carriers. The Commission should avoid making it less likely that rural carriers can provide the most efficient telecommunications services in already hard-to-serve areas.

4. Balance Between Federal and State Jurisdictions

[15] Public Knowledge and Benton Foundation Comments on NPRM, 4/18/11

In order to keep faith with the Telecommunications Act and avoid litigation that could stall Commission action, the longstanding regulatory balance between the Commission and the state utility commissions must be maintained in any final proposal.

For intrastate access traffic, the Commission should establish a mechanism in conjunction with the state regulators to achieving parity between interstate and intrastate rates. This process acknowledges the dual regulatory scheme assumed in the Communications Act, which grants the Commission authority over interstate communications but reserves wholly intrastate matters for the states.[16] With an agreed-upon procedure and timeframe, the market will know what to expect and carriers can plan accordingly. As with urban and rural rate reductions, intrastate rates could be narrowed.

The National Telecommunications Cooperative Association (NTCA) addressed the issue of the Commission's authority to act unilaterally in comments filed in 2008—the laws governing telecommunications have not changed in the intervening years regardless of the "negotiation" that led NTCA to be aligned with USTA. At the time, Verizon and AT&T were the champions of these policies; these have since become a core component of the USTA proposal. NTCA's two core arguments on preemption state that the Commission "does not have legal authority to set state access rates and reciprocal compensation rates for voice traffic on the PSTN, and the existing access charge and reciprocal compensation arrangements pose no obstacle to the telecommunications industry, so there is no need for a

[16] 47 U.S.C. § 151

uniform rate."[17] Since NTCA presented the case so strongly against these proposed policies, FreeConferenceCal.com will not attempt to refashion their work: it is included as Addendum 1 to this document.

FreeConferenceCall.com does not believe that the cure for potential regulatory imbalances is the elimination of proper oversight. Again, the USTA proposal seeks to obtain advantages in this Rulemaking: they eliminate Carrier of Last Resort (COLR) and Eligible Telecommunications Carrier (ETC) obligations.[18] The USTA proposal would eliminate public service obligations would be wiped out for telecommunications carriers serving over 90 percent of the United States. Although the Commission has not asked for comment on this power grab by the 6 USTA members, it must be rejected as it is neither ICC restructuring nor USF reform.

5. Balancing Access Rates

Perhaps the most volatile issue to be balanced is the billion of dollars in rates for the origination, transport and termination of telecommunications traffic. The mandate for just and reasonable rates is clear, and should be applied fairly in both urban and rural areas. In order to achieve increased efficiencies, the Commission should seek to narrow the bands for access rates for rural and intrastate jurisdictions but not to an artificial level.

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[17] *In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; In the Matter of the High-Cost Universal Service Support and Federal-State Joint Board on Universal Service, WC Docket 05-337 and CC Docket 96-45; IP-Enabled Services,* WC Docket No. 04-36. NTCA *Ex Parte*, 10/17/08

[18] ABC Plan, USTA (p. 13)

The context for this rate reform is the market dominance of the RBOCs, with AT&T and Verizon controlling a significant portion of ILEC lines (estimated at 77% at an FCC workshop)[19] and wireless (two of the top four, and possibly three, carriers nationwide) traffic in the country. Currently, the RBOC rate (again, roughly $.0035-$.007) is a baseline for access that can be carried over in the Commission's ICC reform, as their rates are deemed just and reasonable—covering the cost of service and allowing for investment in infrastructure.

For rural access traffic, there are hundreds of carriers and a distinction needs to be made between carriers with low and high call volumes. Low volume rural carriers maintain the rationale for the rural exemption: low volumes in sparsely populated areas should receive a higher rate. However, high volume rural carriers are more of a hybrid between rural (sparsely populated) and urban (high call volumes). With nongeographic services such as call forwarding, conference calling, three way calling, voice mail, etc., (in addition to call centers operating in rural areas) that increase call volumes, a downward adjustment in their rates is warranted to reflect the volume.

FreeConferenceCall.com believes that a revenue-sharing test (as proposed by the Commission) is a good first step in reducing rural tariffs related to access stimulation, but we support a volume measure using a monthly or quarterly minute of use measure as a second test to manage this reduction in rates as volumes increase, as is explained in our comments and most recent discussions with the

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[19] Statement of Charles McKee, Sprint/Nextel – 4/6/11 FCC ICC Reform Workshop (Washington, D.C.)

Wireline Bureau.[20] To be clear, the Commission would reestablish that revenue sharing is permitted, but will lead to a downward glide path for tariffs. Revenue sharing is a regular component of economic transactions in many businesses that are not vertically integrated (such as AT&T and Verizon) and cannot therefore share revenue with their parent company.

The trajectory is discussed in various proposals, but most of the constructive comments agree that the RBOC (roughly $.0035-$.007) or predominant ILEC rate should be the floor for high volume rural tariffs. At this juncture, high volume rural carriers would be on a level playing field with urban carriers—certainly a just and reasonable outcome in the market. In implementing this tariff structure, the Commission would flatten the band of rural rates as many rural carriers would be reduced to RBOC levels and the overall average terminating rate would drop accordingly.

With regard to the USTA proposal, after years of complaining (and engaging in self-help) about access stimulation, it is peculiar that the 6 companies are silent on this problematic issue.

In various comments, there are advocates of an overall rate at zero or near zero (i.e., .0007). This approach would be patently unjust and unreasonable: "(t)he rate standard set by subsection 255(d) is that rates must be based on cost and may include a reasonable profit. A zero rate by definition fails both of these tests."[21] Beyond this barrier, there are economic considerations, "(s)tate members cannot

[20] FreeConferenceCall.com Comments on NPRM, 4/1/11 (p. 38-44), FreeConferenceCall.com ex parte, 7/7/11
[21] State Members Comments, 5/2/11 (p. 144)

understand how a market could operate requiring some participants to offer their assets to others without charge….Prescribing zero rates for intercarrier compensation can inhibit sufficient investment."[22] The State Members of Universal Service Joint Board, "conclude that subsection 254(k) requires intercarrier compensation payments to cover a reasonable portion of network costs that are commonly used with wholesale access services."[23]

The USTA proposal, borrowing generously from Verizon's advocacy, is to reduce terminating access to $.0007. It is important to note that the origin of the $.0007 rate is in a 2001 settlement between Bell South and Level 3 for dial-up local Internet access traffic—not voice traffic, and not long distance.

Just last month, NARUC shared its analysis of the USTA $.0007 proposal:[24]

> The industry proposal, which is centered on a nationally uniform intercarrier compensation rate of $0.0007/MOU and annual increases to the federal subscriber line charge is inimical to end-user consumers and ultimately undermines the FCC's stated goals. The $0.0007 rate is not compensatory, will unquestionably have detrimental effects on the financial stability and network reliability of providers with carrier of last resort obligations serving rural areas that have already, and will continue to, invest in broadband deployment. It will also place unmanageable pressure on limited federal USF funding resources.

The proof that USTA's proposed $.0007 rate is not just and reasonable is found in the expressed need for an additional subsidy for carriers.

Rather than reinventing the wheel, FreeConferenceCall.com again refers to the work of a pre-"negotiation" NTCA. NTCA argues that "a uniform rate will drastically impact small rate-of-return rural LECs and the consumers they serve, and Verizon's factual and legal bases to justify a uniform terminating access rate of

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[22] State Members Comments, 5/2/11 (p. 149)
[23] State Members Comments, 5/2/11 (p. 150)
[24] NPRM *Ex Parte* by NARUC, 7/20/11 (p. 3)

$.0007 are false, misleading, and without merit."[25] Clearly the principles of economics and the telecommunications marketplace have not vanished in the intervening years due to changing association norms. NTCA's comments are included in this document as Addendum 2.

The State Members agrees with this strong opposition to the USTA $.0007 rate, "Except for the non-probative and necessarily self-serving statements of interested parties, there is NO record evidence – no empirical data – no actual cost studies – to support imposing a single industry-wide $.0007 rate as compensatory."[26] It is important to emphasize that $.0007 does not work as the unitary rate in rural or urban areas.

6. Balance Within Competitive Telecommunications Market

The final balance that must be struck is in the treatment of competitors as part of ICC reform. The three components of this balance are deeming these new tariffs lawful; mandated interconnection; and passing some portion of the benefit of narrower, lower rate bands to consumers.

To go through this significant effort to reduce access tariffs with a focus on just and reasonable rates should start to produce stability in the market. With non-payment, litigation and self-help flaring up in the telecommunications market, the Commission must put an end to the disorder that interferes with innovation and

[25] *In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; In the Matter of the High-Cost Universal Service Support and Federal-State Joint Board on Universal Service, WC Docket 05-337 and CC Docket 96-45; IP-Enabled Services,* WC Docket No. 04-36. NTCA *Ex Parte*, 10/17/11

[26] NPRM Ex Parte by State Members, 7/14/11 (p.2)

investment. It is this instability that significantly harms the development of broadband and other investment in rural America. In fact, Commissioner Copps' statement upon issuance of the NPRM decried excessive litigation, self-help and use of market power over ICC disputes. The Commission must create an environment for rural carriers to develop business plans, book revenue, and eliminate damaging disputes.

In addition to a straightforward enforcement structure, a fundamental means of achieving this certainty is to set clear definitions, a clear tariff-setting mechanism that is cost-based, and to deem those tariffs lawful to set the rules of engagement in the market. A clear statement by the Commission of definitions and mandatory equal treatment of voice traffic will eliminate much of the self-help and litigation that plagues the marketplace. The Commission should clarify that a minute is a minute if a consumer-dialed call occurs—including conferencing, voice mail, call forwarding, and other robust customer services. Moreover, if an RBOC rate is just and reasonable, a rate that parallels that rate should receive similar treatment—being deemed lawful.

The basic counter to disparities in market power in telecommunications is to mandate interconnection under any scenario. FreeConferenceCall.com agrees with the CPUC, "Our concern earlier and now is that the classification of IP/PSTN traffic as information services may "provide telecommunications providers with a basis to deny interconnection to VoIP or IP-enabled service providers," an ironic outcome in the context of efforts to reform the intercarrier compensation regime, and a result that "would neither enhance competition nor place the voice providers on a level playing field."[27] Whether IP providers or carriers, mandated interconnection is necessary to maintain a fully integrated telecommunications system.

7. Conclusion

The Commission's mandate for reform must acknowledge the significant disruption to carriers of a wholesale shift away from the ICC regime. The fundamental purpose of an ICC regime is to ensure that calls can be completed from point to point. If consumers are not paying for origination, transport, and termination, what are they paying for? An access charge regime is in place throughout the world except for a few (monopolistic) nations because it is the standard—and it works.

"Even after all of the meticulously catalogued waste, fraud, and abuse in the ICC/USF system is eliminated, and after every high-cost carrier upgrades its network to more efficient equipment, that the subsidy function of ICC is still necessary to keep networks running….it may be better, in the case of voice traffic, to keep the current general ICC framework in place (with much-needed improvements to address specific abuses) than to phase it out entirely."[28] With tangible reductions in tariffs and these systemic improvements, the Commission can turn to the consumer and provide them resulting benefits.

The consumer gets lost in many of the discussions regarding intercarrier compensation, yet the only reason this industry exists is to help the consumer to

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[27] CPUC Comments on Section XV of NPRM, 4/1/11 (p. 5)
[28] Public Knowledge and Benton Foundation Comments on NPRM, 4/18/11 (p. 26-27)

communicate. Section 254(b)(1) of the Communications Act is absolutely clear, "Quality services shall be available at just, reasonable, and affordable rates." These rates have allowed AT&T, Verizon, and CenturyLink, to attain Dividend Pay-Out Ratios (dividend/net income) from 74% to 212% in each of the last three years.[29] In addition, the spate of sporting venue naming-rights, multi-billion dollar acquisitions, and compensation for attorneys, economists, and consultants to shape the USTA proposal and convince the Commission of their righteous motivations, show that the true implicit subsidies lie with the large carriers. If at the end of this Rulemaking, the main result is more profit for a handful of carriers and providers, the process will have failed.

A significant portion of the headroom created between existing rates and the lower tariffs envisioned throughout the market must produce one of two results—a lower price for the consumer or universal access to quality broadband. Neither of these outcomes can be left to the explanations and promises of the large carriers who drove the USTA proposal, after all, "(h)istory suggests policy makers should be skeptical of such promises."[30]

The Commission must shape the final rules in line with the consumer and the regulators entrusted to manage a fair telecommunications marketplace, not with the 2 largest telecommunications carriers and their self-interested cohorts.

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[29] Communications Workers of America Comments on ICC Reform NPRM, 4/18/11 (p. 18)
[30] NPRM Ex Parte by State Members, 7/14/11 (p. 3)

ADDENDUM 1

V. THE FCC DOES NOT HAVE LEGAL AUTHORITY TO SET STATE ACCESS RATES AND RECIPROCAL COMPENSATION RATES FOR VOICE TRAFFIC ON THE PSTN.

Verizon and AT&T argue that the 1999 Supreme Court case *AT&T Corp. v. Iowa Utilities Board* provides the FCC the legal authority to establish the regulatory framework for setting Section 251(b)(5) rates (*i.e.*, the TELRIC regulatory framework), under the provisions contained in the 1996 Telecommunications Act.[31] Under this theory, Verizon and AT&T argue that the FCC also has legal authority to set a cap/default rate of $0.0007 for Section 251(b)(5) traffic. Verizon and AT&T's arguments, however, fail to address the unambiguous distinction made by the Supreme Court in *Iowa Utilities Board.* In its finding, the Supreme Court concluded that while the Commission has authority to design and implement pricing standards and methodologies, it is the states that have the authority to apply the pricing standards and implement the methodologies to determine and set the actual rates.[32] Contrary to Verizon's assertions, Supreme Court precedent dictates that the role of the state commission is to establish rates; therefore, the Commission does not have legal authority to establish a single default rate for all traffic routed over the PSTN.[33] In fact, Verizon and Verizon Wireless in their most recent legal filing on October 2, 2008, concerning ISP-bound traffic and the *WorldCom/Core Remand* correctly stated "Congress tasked the "state commission[s]" – not this Commission – with the duty to establish any rates" for reciprocal compensation. 47 U.S.C. §252(c)(2)."[34] An examination of the prevailing federal statutory regime and case law on state preemption reveals this is true for establishing reciprocal compensation rates as well as intrastate toll access rates. Further, Section 152(b) of the Act provides the state commissions with exclusive jurisdiction over intrastate rates and services. In *Louisiana Public Service Commission v. FCC,* the United States Supreme Court examined this statute and the Supremacy Clause in reviewing the FCC's authority to preempt state control over depreciation for intrastate rates. [35]

[31] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S.Ct. 721 (Jan 25, 1999) (*Iowa Utilities Board*). [32] *Id*., 525 U.S. at 385. [33] Verizon Ex Parte, September 19, 2008 at 5. [34] Supplemental Comments of Verizon and Verizon Wireless, *Intercarrier Payments for ISP-bound Traffic and The WorldCom Remand*, CC Docket Nos. 01-92, 96-98, and 99-68, page 3, filed October 2, 2008.

In this case, the Court found that the Supremacy Clause provides Congress with the power to preempt state law and that preemption occurs:

1. When Congress, in enacting a federal statute, expresses a clear attempt to pre-empt state law;
2. When there is outright or actual conflict between federal and state law;
3. Where compliance with both federal and state law is in effect physically impossible;
4. Where there is implicit in federal law a barrier to state regulation;
5. Where Congress has legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law; or
6. Where the law stands as an obstacle to the accomplishment and execution of the

full objectives of Congress.[36]

The Court, however, said: "In our view, the jurisdictional limitations placed on the FCC by 152(b), coupled with the fact that the Act provides for a "separations" proceeding to determine the portions of a single asset that are used for interstate and intrastate service, 47 U.S.C. 410(c), answer both pre-emption theories." The Court specifically found that Section 152(b) "denies the FCC the power to preempt state regulation of depreciation for intrastate ratemaking purposes"[37] and held:

[Section 152(b)] asserts that "nothing in this chapter shall be construed to apply or give the Commission jurisdiction with respect to (1) charges, classifications, practices, facilities, or regulations for or in connection with intrastate communications service...."

By its terms this section fences off from the FCC reach or regulation intrastate matters-indeed, including matters "in connection with" intrastate service.

[35] *Louisiana Public Service Commission v. FCC,* 106 S.Ct. 1890, 476 U.S. 355, 90 L.Ed.2d 369, 54 USWL 4505, p. 12, (May 27, 1986) (*Louisiana*). [36] *Louisiana*, 476 U.S. at 368-370 *citing Jones v. Rath Packing Co.,* 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed. 604 (1977); *Free v. Bland,* 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed. 180 (1962); *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 312, 83 S.Ct. 1210, 10 L.Ed. 284 (1963); *Shaw v. Delta Airlines, Inc.,* 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed. 4909 (1983); *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947); and *Hines v. Davidowitz,* 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941). The Court also noted that "Preemption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation. *Fidelity Savings & Loan Assn. v. De la Cuesta, 485* U.S. 141, 102 S.Ct. 3014, 73 L.Ed. 664 (1982); *Capital Cities Inc.,* 467 U.S. 691, 104 S.Ct. 2964, 81 L.Ed. 580 (1984)." *Id.*
[37] *Id*., 476 U.S. at 373.

Moreover, the language with which it does so is certainly as sweeping as the wording of the provision declaring the purpose of the Act and the role of the FCC.[38][Emphasis Added]

In *Louisiana,* the Commission attempted to support its claim of preemption of depreciation methods with two arguments. First, the Commission could regulate intrastate because Congress had intended the depreciation provisions of the Communications Act to bind state commissions--*i.e.,* that the depreciation provisions "applied" to intrastate ratemaking.[39] The Supreme Court observed that "[w]hile it is, no doubt, possible to find some support in the broad language of the section for respondents' position, we do not find the meaning of the section so unambiguous or straightforward as to override the command of § 152(b) ...."[40] The Commission also argued that, even if the statute's depreciation provisions did not apply to intrastate commerce, regulation of state depreciation methods would enable it to effectuate the federal policy of encouraging competition in interstate telecommunications.[41] The Supreme Court also rejected that argument because, even though the FCC's broad regulatory authority normally would have been enough to justify its regulation of intrastate depreciation methods that affected interstate commerce,[42] Section 152(b) prevented the Commission from taking intrastate action solely because it furthered an interstate goal.[43] The Supreme Court further affirmed this finding in the *Iowa Utilities Board* case and stated the need for both limitations [federal and state] is exemplified by *Louisiana* where the FCC claimed authority to issue rules governing depreciation methods applied by local telephone companies.[44]

[38] *Id*., 476 U.S. at 370. [39] *Id.,* 476 U.S. at 376-7 [40] *Id.,* 476 U.S. at 377. [41] *Id.,* 476 U.S. at 369. [42] *Id.,* 476 U.S. at 370; cf. *Houston & Shreveport R. Co. v. United States,* 234 U.S. 342, 358, 34 S.Ct. 833, 58 L.Ed. 1341 (1914). [43] *Louisiana,* 476 U.S. at 374. [44] *Iowa Utilities Board*.

As demonstrated, analysis of the precedent established in both the *Louisiana* and *Iowa*

Utilities Board cases clearly rejects Verizon's preemption argument. Congress, in enacting the Communications Act of 1934, as amended, did not "express a clear attempt to preempt state law."[45] To the contrary, Congress expressly preserved State Commission jurisdiction over charges, classifications, practices, facilities, or regulations for or in connection with intrastate communications services pursuant to Section 152(b). Indeed, Congress enhanced State Commission jurisdiction in 1996, when it amended the Communications Act of 1934 with Section 251(d)(3) entitled in capital letters by Congress the "PRESERVATION OF STATE ACCESS REGULATIONS." Section 251(d)(3) states that in "prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State Commission that -
(A) Establishes access and interconnection obligations of local exchange carriers;
(B) Is consistent with the requirements of this section; and (C) Does not substantially prevent the implementation of the requirements of
this section and the purposes of this part. Furthermore, Section 251(b)(5) explicitly provides the state commissions with the legal "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications" for voice calls that originate and terminate in a local calling area shared by two competing carriers.[46]

[45] *Jones v. Rath Packing Co.,* 430 U.S. 519, 97 S.Ct. 1305, 51 L.Ed. 604 (1977). [46] Section 252(d)(2)(B) states that this paragraph shall not be construed - to precluded under Section 252(d)(2)(B)(i) arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or to authorize under 252(d)(2)(B)(ii) the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to additional costs of such calls.

Thus, Congress has expressly directed that the State Commissions, and not the FCC, shall exercise jurisdiction over charges, classifications, practices, facilities, or regulations for or in connection with intrastate communications services, including local reciprocal compensation.[47]

For obvious reasons, Verizon ignores the Supreme Court's *Louisiana* analysis and holding in its legal arguments and asserts that the Supremacy Clause provides the FCC with the power to preempt state commission jurisdiction and ratemaking authority under Sections 152(b), 251(b)(5), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii) of the Act.[48] Verizon is wrong and is attempting to deceive the Commission. As demonstrated below, the circumstances for federal preemption as described above do not apply in this proceeding. Verizon's attempt to gut Sections 152(b), 251(b)(5), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii) of the Act and the entire federal/state access regime should be completely rejected.

[47] Section 252(b)(2)(A) states for the purpose of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable – (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the traditional costs of terminating such calls. [48] Verizon Ex Parte, September 19, 2008, at 1-39.

In addition, there is no outright or actual conflict between federal and state law.[49] Congress has clearly established that the FCC has jurisdiction over interstate (Federal) communications pursuant to Section 151, and state commissions have jurisdiction over intrastate (State) and reciprocal compensation (local) communications pursuant to

Sections 152, 251, and 252 of the Act. These jurisdictional and authoritative boundaries have worked together since 1934 and have flourished throughout the 1990s and 2000s in establishing vibrant competitive communications markets that have led to new and innovative services, new jobs, and opportunities for new entrants and consumers. Indeed, compliance with both federal and state
intercarrier compensation laws and regulations has never been nor is it now physically impossible to implement and enforce.[50]
Moreover, there is nothing in federal law, implicit or explicit, which provides a barrier to state commissions to set intrastate (state) toll access rates or reciprocal compensation (local) access rates[51] nor has Congress legislated comprehensively, thus occupying an entire field of regulation and leaving no room for the States to supplement federal law.[52]

Indeed, as demonstrated, the Act, itself, pursuant to Sections 152(b), 251(b)(5), 251(d)(3), 252(c)(2), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii) explicitly provides multiple barriers which prevent the FCC, not state commissions, from setting intrastate (state) toll access rates and reciprocal compensation (local) access rates.

49 *Free v. Bland,* 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed. 180 (1962). 50 *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 312, 83 S.Ct. 1210, 10 L.Ed. 284 (1963). 51 *Shaw v. Delta Airlines, Inc.,* 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed. 4909 (1983). 52 *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947).

VI. THE EXISTING ACCESS CHARGE AND RECIPROCAL COMPENSATION ARRANGEMENTS POSE NO OBSTACLE TO THE TELECOMMUNICATIONS INDUSTRY, SO THERE IS NO NEED FOR A UNIFORM RATE.

Verizon argues that Sections 152(b), 251(b)(5), 251(d)(3), 252(d)(2)(A)(ii), and 252(d)(2)(B)(ii) pose an obstacle to the accomplishment and execution of the full objectives of Congress, and thus the FCC should preempt state commission jurisdiction to set and regulate intrastate access charges and reciprocal compensation rates.[53] As shown below, Verizon arguments are self-serving, misleading and without merit. The FCC would be acting outside the scope of its congressionally delegated authority if it adopts and implements rules under these false legal arguments.[54]

53 Verizon Ex Parte, September 19, 2008, at 19-26, 29-35. 54 *Hines v. Davidowitz,* 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941).

Verizon asserts that prevention of arbitrage and fraud provides the basis for the FCC to assert preemption and the need for a uniform rate of $0.0007 per minute.[55] Verizon claims that different rates are an obstacle to competition, investment, and deployment of new services.[56] These arguments are false. Competition particularly from wireless has flourished under the current regulatory regime. New services and investment have blossomed under this regulatory regime. The record does not contain evidence, much less substantial evidence, that going to a uniform rate would increase competition, investment, or new services in the communications industry.

Indeed, the Commission's most recent report on the state of competition in the wireless industry using a new data source that allows for a significantly more granular and accurate analysis of mobile telephone service deployment and competition found that:

- Approximately 280 million people, or 99.8 percent of the U.S. population, have one or more different operators offering mobile telephone service in the census blocks in which they live.

- More than 95 percent of the U.S. population lives in areas with at least three mobile telephone operators competing to offer service.
- More than half of the U.S. population lives in areas with at least five competing mobile telephone operators.
- Approximately 99.3 percent of the U.S. population living in rural counties, or 60.6 million people, have one or more different operators offering mobile telephone service in the census blocks within the rural counties in which they live.
- Approximately 82 percent of the U.S. population lives in census blocks with at least one mobile broadband provider offering service.[57]

[55] Verizon Ex Parte, September 19, 2008 at 28. [56] *Id.* at 26-28. [57] FCC Release Annual Report on State of Competition in the Wireless Industry (FCC 08-28), New Release, February 4, 2008. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279986A1.doc.

In addition, during 2006, the number of mobile telephone subscribers in the United States rose from 213 million to 241.8 million, increasing the nationwide penetration rate to approximately 80 percent. Subscribers in the second half of 2006 spent 714 minutes per month using their mobile devices, up from 708 minutes per month during the second half of 2005. Also, the volume of text messaging traffic rose from 9.8 billion messages sent during December 2005 to 18.7 billon messages sent during December 2006. Revenue per minute, which can be used to measure the per-minute price of mobile telephone service, remained unchanged during 2006 at $0.07.[58] As the foregoing data illustrates, new services and investment are flourishing under today's federal/state access charge regime. Verizon further argues that the FCC should preempt state jurisdiction over state and local access charges because carriers cannot or will not be able to determine the federal/state/local jurisdiction of the majority of voice traffic in the future.[59] In other words, landline, wireless and Internet voice traffic today and in the future will be "inseverable."[60] This is also untrue. Today, the overwhelming majority of voice traffic is separated, categorized and jurisdictionalized. In 2007, there were 15 billion identified and jurisdictionalized interstate (federal) access minutes according to the National Exchange Carrier Association (NECA) Access Service Tariff F.C.C. No. 5.[61] Billing between carriers for originating and terminating voice calls in all jurisdictions – federal, state, and local - is estimated at approximately $8 billion dollars per year. If these voice calls were inseverable, unbillable, and unrecoverable as alleged by Verizon, the industry would have come to a screeching halt a long time ago.

[58] *Ibid.* [59] Verizon Ex Parte, September 19, 2008 at 3-4. [60] *Ibid.* [61] NECA Access Service Tariff F.C.C. No. 5, Transmittal No. 1214, Volume 3, pg 4 (June 16, 2008).

Instead, the opposite is happening in the communications market under the existing federal/state access charge regime. Markets for access today are extremely competitive and opportunities to raise federal and state access rates are prohibited and constrained by competition. The correct conclusion, as the then BellSouth, now AT&T, noted with respect to special access, is for the government not to regulate and certainly not for the government to insist on uniform rates.[62] Wireless and VoIP traffic has flourished under the current federal/state regulatory regime. Current federal/state regulation is not an impediment to competition, to new investment, or to new broadband services. There is no need for the government to change the regulatory structure to achieve the FCC's and Congress' stated policy goals. Those goals are being achieved under the current federal/state access structure.[63]

Verizon further claims that under today's federal/state access rate regime the FCC's policies to encourage the deployment of broadband as set forth in Section 706 of Act have been limited.[64] This claim is false. In June 2008, the Commission submitted its Fifth Section 706 Report to Congress on the status of broadband deployment throughout the United States. In this Report, the FCC concluded that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion and therefore the FCC is not required to take "immediate action" to rectify any failure.[65] Verizon's argument that the current federal/state access regime stands as an obstacle to the accomplishment and execution of the objectives of Congress in Section 706 of the Act, falls on its face in light of the FCC's most recent Section 706 findings and Report to Congress.

62 Comments of BellSouth, *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers,* WC Docket No. 05-25, *AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* RM 10593, pp. 13-19, filed June 13, 2005. See, http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517632863.

63 See, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,* GN Docket No. 07-45, Report (rel. June 12, 2008) (Fifth 706 Report); Also see, *12th Annual CMRS Competition Report, Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services,* Report FCC 08-28 (rel. Feb. 4, 2008).

64 Verizon Ex Parte, September 19, 2008 at 26-28. 65 Fifth 706 Report.

ADDENDUM 2

II. A UNIFORM RATE WILL DRASTICALLY IMPACT SMALL RATE-OF-RETURN RURAL LECS AND THE CONSUMERS THEY SERVE.

A. The Agreed Upon Reciprocal Compensation Rates Between Verizon and CLECs Are Significantly Different than Rates Negotiated by Rural LECs for § 251(b)(5) Traffic.

Verizon argues that adopting a federal default rate of $0.0007 per minute, which is the same rate currently applicable to dial-up Internet traffic and currently under Federal Appellate Court Review, would result in no change in the rate at which carriers exchange voice traffic.[6] This argument is false, misleading and without merit. Verizon ignores the fact that virtually no rural LEC has ever adopted a $0.0007 rate for the exchange of interstate, intrastate or local voice traffic. Adopting a default rate of $0.0007 per minute would result in a significant change in the rates at which rural LECs exchange voice traffic subject to §251(b)(5) and would seriously jeopardize the ability of rural ILECs to recover the costs associated with such voice traffic.

According to Verizon, the $0.0007 per minute rate is consistent with Verizon's more recent experience in negotiating agreements with CLECs. As an example, Verizon negotiated and publicly filed interconnection agreements with a number of carriers, including AT&T and Level 3, which set a rate at or below $0.0007 per minute for terminating local traffic and for ISP- bound traffic. Verizon maintains that since it negotiated the $0.0007 per minute rate with carriers such as AT&T and Level 3, such agreements provide substantial evidence that the $0.0007 per minute rate is a just and reasonable rate.[7] Verizon is wrong.

Verizon's negotiating history with carriers such as AT&T and Level 3, along with the rates it negotiated with such carriers, is not representative or consistent with the experience of rural LECs. For example, per minute rates between $0.02 and $0.025 are consistent with rural carriers' experience in Nebraska, Iowa, and South Dakota in negotiating agreements with CMRS carriers. In Iowa in particular, there are over 270 interconnection agreements on file between rural ILECs and various CMRS carriers at $0.02. In South Dakota, there are some interconnection agreements on file between rural ILECs and CMRS carriers at rates from $0.007 up and 50 such agreements between $0.02 and $0.03. In Nebraska, 38 interconnection agreements are on file between rural ILECs and CMRS carriers at rates between $0.02 and $0.024. The quantity of negotiated or arbitrated agreements at these rates constitute evidence that for rural ILECs these rates are just and reasonable. What Verizon cites as its additional terminating cost does not represent the reality of rural LECs and cannot be considered a just and reasonable terminating rate for rural LECs.

[6] *Id.* at 29. [7] *Id.* at 31.

B. Verizon's Plan Ignores the Basic Principles of Economics.

Verizon argues that the current system prevents market forces from distributing limited investment resources to their most efficient uses.[8] This argument is also false. If market forces were left alone to distribute investment resources to their most efficient uses, rural areas in the United States today would not have access to telecommunication or advanced services, such as broadband, because the costs would be unaffordable to customers. Since rural customers are an integral part of the telecommunications market, the costs of providing service to this market segment are part of the total economic costs of having an efficient, nationwide telecommunications system. The current system of non-uniform rates from carrier to carrier for intercarrier compensation is an efficient way to address cost disparities. Differentiated rates from carrier to carrier for intercarrier compensation are efficient because they allocate resources according to the cost associated with conducting business in different geographies.

It would be irresponsible for the FCC to adopt an intercarrier compensation reform plan without conducting a complete cost-benefit analysis of changing from the current practice to Verizon's proposed plan. There are multiple economic concerns with Verizon's proposed plan. First, Verizon does not quantify the supposed benefit of its plan. Verizon refers to the benefit of its plan as being simpler and easier to administer. Only anecdotal evidence is provided for how the proposed rate of $0.0007 per minute was determined, which leads to a second concern. According to Verizon, the Commission should adopt $0.0007 for all traffic because Verizon negotiated other interconnection agreements at this rate.[9] The laws of supply and demand for the entire market should be used to determine the equilibrium price of any service. When determined by the rules of the market, the prices of many goods and services - for example, gas, food, electricity, and many others - vary regionally to reflect variations in cost. The price of interconnection (access and reciprocal compensation) should not be any different. Third, the Verizon proposal does not provide any information on the economic costs of the proposed plan. There is no evidence that standard economic methodology was applied or even considered in the preparation of the proposed plan. Before adopting a reform plan, the Commission should conduct a comprehensive cost-benefit analysis that would take into account the full economic costs and benefits of such a plan.

[8] *Id.* at 21. [9] *Id*. at 5.

III. VERIZON'S FACTUAL AND LEGAL BASES TO JUSTIFY A UNIFORM TERMINATING ACCESS RATE OF $0.0007 ARE FALSE, MISLEADING, AND WITHOUT MERIT.

On September 19, 2008, Verizon filed an Ex Parte letter with the FCC regarding the FCC's legal authority to adopt the comprehensive intercarrier compensation reform plan filed by Verizon and Verizon Wireless on September 12, 2008.[10] With the Ex Parte letter, Verizon attached a "White Paper" entitled "The Commission Has Legal Authority to Adopt a Single, Default Rate for All Traffic Routed on the PSTN." The White Paper contains several factual misrepresentations relative to the following: (1) inseverability and the jurisdictional nature of traffic on or touching the Public Switched Telephone Network (PSTN); (2) the rapidity of decline in the demand for traditional wireline services; (3) the universality of a $0.0007 rate in negotiated or arbitrated agreements; and (4) the economics of a uniform rate applied to all carriers. The following analysis permits the FCC to clearly see that the factual foundation on which Verizon bases its legal and policy arguments in its radical plan is invalid.

[10] Verizon Ex Parte, September 19, 2008.

Verizon's prognosis of the demise of traditional landline subscriptions and long distance service is at best premature. By citing several statistics, Verizon attempts to drive the Commission to the conclusion that traditional landline subscriptions and long distance services are in the last days of their life cycle and complete substitution by CMRS and VoIP services is imminent. To make its case for VoIP substitution, Verizon cites reports from Morgan Stanley and Frost and Sullivan that indicate VoIP providers will reach 31% of households by 2011. What Verizon fails to say is that only managed private network VoIP is a viable substitute for carrier grade two-way voice service and the market for Internet based voice service (computer to computer and computer to PSTN) has limited application, especially for enterprise customers who cannot tolerate the poor quality of service delivered by unmanaged VoIP services.[11] Verizon cites a National Center for Health Statistics report that estimates 15.8% of households have fully cut the cord and substituted with CMRS.[12] Verizon also cites the 2008 Trends in Telephone Service report which indicates that wireline access minutes have dropped from 792 billion minutes in 2000 to 544 billion minutes in 2006.[13] A reasoned assessment of these figures should lead one to conclude that while CMRS substitution is occurring for some landline subscriptions and traditional long distance market, fully 84.2% of households have not cut the cord. Moreover, there is still significant demand for traditional long distance service. Finally, Verizon fails to provide any evidence of CMRS substitution in business and enterprise markets.

Verizon claims that all the evidence indicates that substitution trends will continue at an ever-increasing rate. Based on this claim, Verizon argues that the Commission should anticipate changes in the communications marketplace and not wait until changes have arrived or have finished before revising its regulatory regime.[14] Based on the Commission's Twelfth Report on CMRS Competition, growth in CMRS subscriptions has slowed from 14.2% in 2004 to 12.1% in 2006.[15] This evidence contradicts Verizon's claims. Furthermore, the Commission should not anticipate market substitution unless there is ample and compelling evidence that a particular service is nearing the end of its life cycle. That is not the case with either landline or traditional long distance service based on circuit switching and the North American Numbering Plan (NANP).

[11] *Id*. at 6. [12] *Id*. at 7. [13] *Ibid*. [14] *Id.* at 8. [15] FCC Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Twelfth Report*,* WT Docket No. 07-71, released Feb. 4, 2008; at Para. 207, Table A-1: CTIA's Semi- Annual Mobile Telephone Industry Survey, pg. 126.