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

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

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

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Pursuant to the Commission's August 3, 2011 *Public Notice*[1] in the above-captioned dockets, Cbeyond, Inc. ("Cbeyond"), Integra Telecom, Inc. ("Integra"), and tw telecom inc. ("tw telecom") (collectively, the "Joint Commenters"), through their undersigned counsel, hereby submit these reply comments on the America's Broadband Connectivity Plan ("ILEC Plan" or "Plan") filed by six price cap incumbent LECs ("Price Cap ILECs").[2]

[1] *Further Inquiry Into Certain Issues In The Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; CC Dkt. Nos. 01-92, 96-45; GN Dkt. No. 09-51, DA 11-1348 (rel. Aug. 3, 2011) ("*Public Notice*").

[2] Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al. (filed July 29, 2011) ("ILEC Plan" or "Plan").

I. INTRODUCTION AND SUMMARY.

There is widespread agreement among the commenters on the ILEC Plan that, contrary to the Price Cap ILECs' claims,[3] it is anything but a "consensus" proposal.[4] Many components of the Plan were obviously designed to benefit the Price Cap ILECs' interests at the expense of competitive LECs, wireless carriers and even consumers. As the Joint Commenters explained in their comments, in order to rectify the substantial defects in this self-serving Plan, the Commission must modify the Plan in a number of ways.[5] The Joint Commenters need not repeat those recommendations here. There are, however, certain aspects of the Price Cap ILECs' and other parties' comments on the Plan that warrant attention.

First, the Price Cap ILECs' comments confirm that the Commission should reject their proposal to exempt interconnected VoIP traffic from intrastate access charges during the first 18 months of the transition. The Price Cap ILECs' claim that treating interconnected VoIP traffic differently from other voice traffic in this manner would be "manageable" is not supported by the record. In addition, this proposed treatment of interconnected VoIP traffic would increase the amount of foregone intrastate access revenues that Price Cap ILECs, but not their competitors, would be able to recover from the access replacement mechanism ("ARM"). In fact, the Plan would require competitive LECs to contribute to a fund that allows Verizon and other Price Cap ILECs to recover foregone intrastate access revenues for interconnected VoIP

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[3] *See* ILEC Plan at 1.

[4] *See, e.g.*, Google Comments at 14 ("The prospect of an 'industry consensus' is admittedly attractive but in reality is limited to a subset of all wireline incumbent carriers."); XO Comments at 1-2; Level 3 Comments at 2; ACA Comments at 15. Unless otherwise indicated, all references to "Comments" refer to those filed in the above-captioned dockets on August 24, 2011 and all references to "Initial Comments" and "Reply Comments" are to those filed in the above-captioned dockets on the dates specified.

[5] *See generally* Cbeyond et al. Comments.

traffic while Verizon simultaneously refuses to pay competitive LECs (such as Cbeyond) for tariffed access charges on the basis that such charges do not apply to interconnected VoIP traffic.

Second, the Commission should also reject other commenters' proposal to impose bill-and-keep on interconnected VoIP traffic. The Commission does not have the authority to adopt this proposal, and the evidence provided by these commenters in support of their request for bill-and-keep is irrelevant to this proceeding.

Third, the Price Cap ILECs' failure to defend their proposed treatment of transport in response to questions in the *Public Notice* confirms that their proposal should be rejected. The proposal, including maintaining transport rates at higher interstate levels during the transition, would in fact give rise to "problematic incentives" for Price Cap ILECs to raise competitors' costs.

Fourth, the Commission should reject the Price Cap ILECs' proposal to allow increases in an ILEC's multiline business subscriber line charge ("SLC") only after its residential SLC reaches the same level as the multiline business SLC. There is no basis for this limitation.

Fifth, the Commission should dismiss suggestions that it should not give competitors the option to interconnect at at least one point of interconnection ("POI") for IP voice traffic in each local access and transport area ("LATA"). Irrespective of whether the voice traffic at issue is IP-based or TDM-based, competitive LECs should have the right to establish at least one POI per LATA in order for competitors to directly interconnect with the ILEC and avoid unnecessary transport costs.

II. DISCUSSION.

A. The Treatment Of Interconnected VoIP Traffic.

Under the ILEC Plan, interconnected VoIP traffic is initially subject to different intercarrier compensation ("ICC") rates than other voice traffic. In particular, during the first 18 months of the proposed transition, all long-distance VoIP traffic would be subject to current interstate access rates regardless of whether it is intrastate or interstate.[6] In defense of this proposal, the Price Cap ILECs argue that "[a]ny operational or logistical issues with a 'different' [ICC] treatment for VoIP traffic during the Plan's transitional period are manageable."[7] They assert that the Commission can require LECs to use traffic-factoring methods "to determine which traffic is VoIP and which is not."[8] But the record makes clear that it is not technically feasible to differentiate interconnected VoIP traffic from other voice traffic terminating on their networks.[9] To be sure, long distance providers could submit traffic studies to access providers for the purpose of estimating the portion of their traffic that is interconnected VoIP traffic. But exempting interconnected VoIP traffic from intrastate access charges while applying intrastate access charges to TDM-based voice traffic would give long-distance carriers powerful incentives to overstate the percentage of traffic classified as interconnected VoIP traffic. Moreover, the absence of existing studies against which to benchmark traffic studies used to differentiate interconnected VoIP from TDM-based voice traffic will make it difficult and extremely costly for access providers to review the reliability of traffic studies submitted in the future. In many, probably most, situations, LECs will have little ability to ensure that long-distance carriers' traffic studies are accurate.

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[6] *See* ILEC Plan, Att. 1, at 10-11.

[7] Price Cap ILEC Comments at 36.

[8] *Id.*

[9] *See, e.g.*, Cbeyond et al. April 1, 2011 Initial Comments at 6; Cablevision and Charter April 1, 2011 Initial Comments at 4; Kansas Corporation Commission April 1, 2011 Initial Comments at 15; PAETEC et al. April 1, 2011 Initial Comments at 31 ("Facilities-based CLECs are not aware of any industry standard, published or commonly accepted, to distinguish [IP-originated traffic from TDM-originated traffic]."); Windstream April 1, 2011 Initial Comments at 7 (explaining that terminating carriers lack the ability to verify claims that traffic is in fact VoIP-originated).

By contrast, carriers *can* rely on established mechanisms to differentiate interstate long-distance VoIP traffic from intrastate long-distance VoIP traffic. There is no reason to expect that the proportion of interconnected *VoIP* long-distance traffic that is interstate and intrastate is any different from the proportion of *TDM-based* long-distance traffic that is interstate and intrastate. In fact, the FCC has already established a safe harbor percentage for purposes of assessing USF contributions on interconnected VoIP service providers on this exact basis.[10] The Commission could therefore permit carriers to use their existing carrier-specific percent interstate usage ("PIU") factors for TDM-based long-distance traffic to estimate the percentage of their interconnected VoIP long-distance traffic that is interstate and intrastate. And where an interconnected VoIP service provider (e.g., Vonage) has no existing PIU factors for TDM-based long-distance traffic, the Commission could require it to rely on the safe harbor percentage for assessing USF contributions[11] as a proxy for the percentage of its interconnected VoIP long-distance traffic that is interstate and intrastate. Thus, there is no need for the Commission to treat all interconnected VoIP long-distance traffic as interstate, as proposed in the ILEC Plan.[12] As the Joint Commenters have explained,[13] the Commission should instead apply the same ICC

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[10] *See Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518, ¶ 53 (2006) (adopting a safe harbor of 64.9 percent for the percentage of interconnected VoIP services revenues that are interstate based on the fact that "[t]he percentage of interstate revenues reported to the Commission by wireline toll providers [wa]s 64.9 percent").

[11] *See id.*; *see also* Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A (2011), at 23.

[12] *See* ILEC Plan, Att. 1, at 10-11.

[13] *See* Cbeyond et al. Comments at 13-14.

rates—including intrastate access charges—to interconnected VoIP traffic that apply to TDM-based voice traffic from the beginning of the transition.[14]

Subjecting interconnected VoIP traffic to the same ICC rates as other voice traffic during the first 18 months of the proposed transition (i.e., by applying intrastate access charges to interconnected VoIP traffic) would also reduce the profound inequities caused by the ARM. In their comments, the Price Cap ILECs expressly acknowledge that they will recover intrastate access revenues for interconnected VoIP traffic that are lost due to the proposed treatment of all interconnected VoIP long-distance traffic as interstate during the first 18 months of the transition.[15] According to the Price Cap ILECs, this proposal is the result of "a carefully negotiated compromise among the [six] signatories to the Plan."[16] Indeed, the ILEC Plan effectively (1) allows the smaller price cap ILECs that have advocated that access charges apply to interconnected VoIP traffic (i.e., CenturyLink and Windstream)[17] to receive payments—based largely on mandatory contributions to the ARM by competitors—for intrastate access charges for such traffic; and (2) enables Verizon, which has zealously advocated that access charges do not

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[14] *See id.* This approach is sound policy because, among other things, the Commission's ICC rules should not favor one form of voice service over another based on the technology used to transmit the voice signals. *See, e.g.*, Cbeyond et al. April 1, 2011 Initial Comments at 4-6.

[15] *See* Price Cap ILEC Comments at 24 ("[T]he ABC Plan's proposed access replacement mechanism . . . would offer support in response to revenue losses that may arise due to the interim [ICC] treatment of VoIP traffic going forward under the Plan (i.e., interstate access charges for access calls and reciprocal compensation charges for non-access calls)."). The Price Cap ILECs' proposal to recover foregone intrastate access charge revenues for interconnected VoIP traffic undermines their claim that interconnected VoIP traffic is "inseverable." *See* ILEC Plan, Att. 5, at 21.

[16] Price Cap ILEC Comments at 35.

[17] *See* CenturyLink April 1, 2011 Initial Comments at 3-5, 11-18; CenturyLink April 18, 2011 Reply Comments at 3-17; Windstream April 1, 2011 Initial Comments at 2-13.

apply to interconnected VoIP traffic,[18] to avoid paying intrastate access charges and force competitors to make those payments (through contributions to the ARM) on its behalf.[19] The Plan thus foists Verizon's future intrastate access charge payments for interconnected VoIP traffic on competitors and in the process, allows Verizon to escape retroactive liability for its refusal to pay Cbeyond's and other competitive LECs' tariffed intrastate access charges for interconnected VoIP traffic on the basis that access charges do not apply to interconnected VoIP traffic.[20]

This outcome is profoundly prejudicial to competitive LECs, and it cannot be justified. The Commission should therefore reject the Price Cap ILECs' proposal to exempt interconnected VoIP traffic from intrastate access charges during the first 18 months of the transition and to allow themselves to recover those foregone revenues from the ARM.

Finally, the Commission should also reject the proposal by several commenters to apply bill-and-keep to interconnected VoIP traffic.[21] The Joint Commenters have already explained that the Commission lacks the authority to mandate bill-and-keep for the exchange of

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[18] *See, e.g.,* Verizon April 1, 2011 Initial Comments at 2-3, 19-34; Verizon April 18, 2011 Reply Comments at 14-21.

[19] Verizon must make some contribution to the ARM, but that amount is likely significantly less than the amount that Verizon would otherwise pay in intrastate access charges for interconnected VoIP traffic.

[20] *See, e.g.,* Answer to Complaint, *Cbeyond Communications, LLC v. MCI Communications Services, Inc. d/b/a Verizon Business*, No. 1:11-cv-0693-TCB, ¶ 45 (N.D. Ga.) (filed Mar. 28, 2011) ("Verizon Business admits that, since August 2010, it has refused to pay tariffed switched access charges for traffic that it exchanges with Cbeyond that originates and/or terminates in IP format, on the ground that access charges do not apply to that traffic.").

[21] *See* Google Comments at 16-17; Sprint Comments at 17-20; VON Coalition Comments at 2; Vonage Comments at 2-4.

telecommunications traffic subject to Section 251(b)(5) of the Act.[22] Nevertheless, Google and Vonage assert that the Commission should impose bill-and-keep on interconnected VoIP traffic because in a 2008 Further Notice of Proposed Rulemaking ("FNPRM"),[23] "the FCC used a conservative usage and pricing model to estimate that the incremental cost of delivering voice service over an IP network was roughly $0.0000001 per minute."[24] However, the focus of this proceeding is the rate that should apply to the termination of voice (TDM or IP) traffic on *TDM networks*. Accordingly, an estimate in an FNPRM on the cost of terminating voice traffic on *IP networks* is irrelevant.

B. Transport Rates.

In the *Public Notice*, the Commission asks whether "any problematic incentives" would "arise from or be left in place by" the Plan's proposal "to reform substantially terminating rates for end office switching while taking a more limited approach to reforming certain transport elements."[25] In fact, the Price Cap ILECs' proposed treatment of transport creates significant opportunities for them to raise rivals' costs.[26] For example, as the Joint Commenters have explained, the ILEC Plan would maintain transport rates at higher interstate levels for four years, thereby causing competitors—who must frequently purchase transport from incumbent LECs but who rarely sell transport to incumbent LECs—to make larger net payments to the Price Cap

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[22] *See* Cbeyond et al. April 18, 2011 Initial Comments at 12-15.

[23] *See High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6475, ¶ 261 (2008).

[24] Google Comments at 16; *see also* Vonage Comments at 3-4.

[25] *Public Notice* at 13.

[26] *See* Cbeyond et al. Comments at 15-18.

ILECs during those four years.[27] Rather than address these concerns, the Price Cap ILECs sidestep them entirely, and do not even attempt to defend their proposed treatment of transport.[28] It is thus clear that there is no basis for treating transport as proposed in the Plan.

Accordingly, the Commission should modify the Plan's treatment of transport to limit the opportunities for incumbent LECs to raise rivals' costs. In particular, the Commission should modify the ILEC Plan by (1) reducing all transport rates at the same pace as end office switching in each step of the transition to the target rate; (2) clearly defining "transport" for all traffic as the transmission from the calling party's network to the called party's end office in the same LATA; and (3) pricing all transport at TELRIC-based rates beginning on the date that the end-point for rate reform is reached.[29]

C. Subscriber Line Charges.

In their comments, the Price Cap ILECs clarify that, under the Plan, residential SLCs can be increased up to $9.20 and that "whenever the residential SLC reaches the same level as the multiline business SLC, the two rates could be raised in lockstep [up to $9.20] under the Plan."[30] In other words, the Plan permits an ILEC to increase its multiline business SLC only after its residential SLC reaches the same level as the multiline business SLC. There is no justification

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[27] *See id.* at 15-16; *see also* EarthLink Comments at 25 (explaining that the ILEC Plan "reforms rates for the 'termination' function that incumbents *buy* from competitors but does not reform rates for the 'transport' function incumbents *sell* to competitors") (emphasis in original).

[28] *See* Price Cap ILEC Comments at 22-23. In a recent *ex parte* meeting, Commission Staff also asked AT&T for "more detail regarding whether and how the [ILEC Plan] would affect certain transport services," and it is entirely unclear whether and how AT&T responded to this request. *See* Letter from Mary L. Henze, Assistant Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 1 (filed Aug. 26, 2011).

[29] *See* Cbeyond et al. Comments at 18.

[30] Price Cap ILEC Comments at 34.

for this unnecessary limitation on an ILEC's ability to increase its multiline business SLCs. Therefore, the Commission should reject this proposal. Instead, the Commission should adopt the following recommendations.

First, the Commission should permit ILECs to increase all of their business SLCs irrespective of whether they increase their residential SLCs. *Second*, ILECs should not be permitted to charge residential SLCs that are higher than business SLCs because revenues from residential access lines should not subsidize prices for business services. *Third*, if the Commission establishes an ARM (which, as explained, it should not),[31] it must immediately impute to ILECs the maximum permissible SLC revenues for business and residential lines (i.e., the revenues that would be yielded by charging SLCs equal to the relevant SLC caps for all business and residential lines) before ILECs can become eligible for recovery from the ARM. *Fourth*, as the Joint Commenters and other commenters have explained, the Commission should also ensure that ILECs cannot use SLC increases to shift recovery from competitive markets to less competitive markets.[32] Specifically, the Commission should (1) not permit price-cap ILECs to recover lost intercarrier compensation revenues by selectively raising SLCs in geographic areas with little or no competition, while lowering them in areas subject to greater competition; and (2) only permit price-cap ILECs to recover foregone ICC revenues associated with business lines through higher SLCs imposed on business customers, not residential customers.[33]

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

[32] *See* Cbeyond et al. April 18, 2011 Initial Comments at 16-17; XO Comments at 18 (explaining that "[i]f ILECs are permitted to increase the SLC for customers or areas that face less competition and leave SLCs untouched or increased only slightly for customers or areas that face more competition, . . . CLECs will experience significant adverse consequences as they will be constrained from increasing their SLCs to customers and in areas where their major competitor (*i.e.*, the ILEC) has refrained from increasing its SLCs").

[33] *See* Cbeyond et al. April 18, 2011 Initial Comments at 16-17.

D. Interconnection.

In its comments, Sprint argues that "the ABC Plan appears to lay the groundwork for, at a minimum, one POI for IP voice traffic in each LATA," and that "[r]equiring an IP POI in each of the approximately 220 LATAs is woefully inefficient."[34] But it is critical that competitive LECs have the right to establish at least one POI per LATA regardless of whether the traffic at issue is IP voice traffic or TDM voice traffic.[35] This right diminishes ILECs' opportunities to raise rivals' costs by imposing inefficient interconnection arrangements on competitors while allowing competitors to act on their wholesome incentives (derived from their lack of market power) to establish the most efficient interconnection arrangements. That is, it enables competitors to directly interconnect with the ILEC within the LATA where it is efficient to do so. If it is more efficient for competitors to interconnect at less than one POI per LATA, they will of course do so.[36] In this way, the default right to a single POI per LATA ensures efficient interconnection.

III. CONCLUSION.

To the extent that the Commission adopts the ILEC Plan as a framework for ICC/USF reform, it should modify the Plan as discussed in the Joint Commenters' initial comments and as further explained herein.

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[34] Sprint Comments at 5.

[35] *See 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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554, ¶ 682 (2011) (explaining that "[t]he Commission has interpreted [Section 251(c)(2)(B) of the Act] to mean that competitive LECs have the option to interconnect at a single POI per LATA").

[36] Indeed, it may be that competitors determine that the optimal architecture for exchanging VoIP traffic requires fewer POIs than one per LATA. Granting competitors the backstop right to one POI per LATA will not prevent competitors from choosing a different interconnection architecture.

Respectfully submitted,

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