

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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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 CHARTER COMMUNICATIONS, INC. TO THE
COMMISSION'S FURTHER INQUIRY**

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Charter Communications, Inc. (“Charter”) hereby submits these reply comments in response to the Commission’s Further Inquiry (“Further Inquiry”) in the above-captioned dockets.¹ Charter urges the Commission to heed the numerous comments calling on the Commission to reject the “ABC Framework’s” proposal to treat calls originated or terminated in Voice over Internet Protocol (“VoIP”) differently than circuit-switched traffic for purposes of intercarrier compensation. As these comments recognize, such an approach has no basis in sound policy, and would create significant practical problems that are wholly unwarranted for an

¹ See *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 11-90, *et al.*, Public Notice, DA 11-1348 (Aug. 3, 2011).

interim transition period. With respect to universal service, Charter urges the Commission to adopt the “Amended ABC Plan” put forward by the National Cable & Telecommunications Association (“NCTA”). That approach would best utilize the universal service fund’s limited resources, prevent unduly burdening unsubsidized consumers and carriers, and would not unfairly advantage legacy monopolies at the expense of competitive providers as proposed by the incumbent LECs’ ABC Framework.

I. VOIP AND CIRCUIT-SWITCHED TRAFFIC SHOULD BE TREATED EQUITABLY DURING THE FIRST EIGHTEEN MONTHS OF THE ABC FRAMEWORK’S GLIDE PATH.

Support is widespread for the Commission’s objective to reform the access charge regime in this proceeding, and many commenters agree that the ILEC-proposed ABC Framework’s approach of reducing those charges gradually over a five-year glide path represents a reasonable approach for implementing reform.² However, it is also clear from the comments filed in response to the Commission’s Further Inquiry that there is no sound basis in law or in policy for the Commission to treat VoIP differently from circuit-switched traffic during the first eighteen months of the glide path as proposed by the ABC Framework.

As Charter explained in its opening comments, the ABC Framework’s proposal to impose differential access charges during the first eighteen months of the glide path would be arbitrary, irrational, and would thwart the Commission’s goals.³ A chorus of commenters, ranging across various industry participants and state regulators, agree.⁴ First, as numerous

² See, e.g., Comments of Time Warner Cable at 4 (filed Aug. 24, 2011); Comments of Cox Communications at 9 (filed Aug. 24, 2011); Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream at 2-3 (filed Aug. 24, 2011) (“Joint ILEC Comments”); Comments of CTIA – The Wireless Association at 2-3 (filed Aug. 24, 2011).

³ See Comments of Charter Communications at 5 (filed Aug. 24, 2011).

⁴ See, e.g. Comments of Bright House Networks at 10 (filed Aug. 24, 2011); Comments of Comcast Corp. at 7 (filed Aug. 24, 2011); Cox Comments at 5; Comments of Surewest

commenters recognize, access services are almost always provided on the Public Switched Telephone Network (“PSTN”) using TDM interconnection. There is therefore no meaningful *technical* difference between the service of providing access for a call that is originated in VoIP, terminated in VoIP, or that remains a circuit-switched call throughout its path.⁵ If the service is the same, the pricing should be the same. Second, there is no *legal* justification for treating all VoIP calls as interstate for intercarrier compensation purposes during the transition period, as the ABC Framework contemplates. As numerous commenters point out, the ABC Framework already recognizes that carriers have the ability to tell the difference between calls subject to reciprocal compensation and calls subject to access charges, including when those calls are originated or terminated in VoIP.⁶ If carriers can tell the difference between local and toll calls for purposes of assessing whether reciprocal compensation or access charges apply, they can tell the difference between intrastate and interstate toll calls for purposes of assessing whether intra- or interstate access charges apply. Indeed, carriers that utilize VoIP technology in their networks, such as Charter, routinely administer such distinctions in assessing tariffed intrastate access charges today. There is no valid reason to embrace the fiction advanced by the ABC Framework that all traffic originated or terminated in VoIP must be treated as interstate.

Communications at 15 (filed Aug. 24, 2011); Comments of CBeyond, Inc., Integra Telecom, Inc., and TW Telecom Inc. at 13 (filed Aug. 24, 2011); Comments of Coalition for Rational Universal Service Reform at 18-19 (filed Aug. 24, 2011); Comments of CompTel at 22-23 (filed Aug. 24, 2011); Comments of Consolidated Communications at 22 (filed Aug. 24, 2011); Comments of Level 3 Communications at 12-13 (filed Aug. 24, 2011); Comments of Pac-West Telecom at 6 (filed Aug. 24, 2011); Comments of Nebraska Public Service Commission at 21 (filed Aug. 24, 2011); Comments of Earthlink at 12 (filed Aug. 24, 2011).

⁵ See, e.g., Surewest Comments at 16; CBeyond, Integra Telecom, and TW Telecom Comments at 14.

⁶ See Pac-West Comments at 7; Bright House Comments at 2-3; Comments of Cincinnati Bell at 15 (filed Aug. 24, 2011); CBeyond, Integra Telecom, and TW Telecom Comments at 13-14.

The few commenters that support a rate disparity for VoIP traffic do not present any meaningful legal or policy argument. Rather, they argue primarily that the proposed disparate treatment is simply a split-the-baby “compromise.”⁷ As explained above and in Charter’s opening comments, however, any such “compromise” is bad policy. Some commenters repeat the refrain that it does not make sense to apply per-minute access charges to calls that are transmitted using IP packets.⁸ But VoIP-originated and terminated traffic exchanged in TDM use the network in exactly the same ways and impose the same access costs as circuit-switched traffic. Finally, commenters hoping to avoid their own intercarrier compensation obligations make the oft-repeated argument that subjecting VoIP to any charges at all would subject VoIP providers to “rate shock” and result in higher costs to consumers.⁹ But that is true only in the sense that the carriers refusing to comply with their obligations under the present access charge regime have been getting something for nothing – access to other carriers’ networks at the other carriers’ expense, while their competitors are forced to pay for that same service – and want to perpetuate that unfair competitive advantage. The Commission should not provide support for that approach.

Commenters have also emphasized that an 18-month VoIP carve-out would present intractable *practical* problems as a result of the difficulty of meaningfully identifying traffic that was VoIP at some point during the call path. Carriers are already embroiled in extensive intercarrier compensation disputes regarding VoIP traffic – disputes that are currently driven solely by some carriers’ hopes that a court *might* find that different intercarrier compensation

⁷ See Joint ILEC Comments at 2-5.

⁸ See, e.g., Comments of Vonage Holdings Corp. at 4 (filed Aug. 24, 2011); Comments of MetroPCS at 17 (filed Aug. 24, 2011).

⁹ See, e.g., Comments of Sprint Nextel Corp. at 19 (filed Aug. 24, 2011); Comments of Voice on the Net Coalition at 3-4 (filed Aug. 24, 2011).

rules apply to VoIP traffic, even though the Commission has never so held. If the Commission followed the ABC Framework's proposal and made such a price differential between intrastate VoIP and circuit-switched traffic *explicit*, it would increase the incentive for carriers to engage in arbitrage, to obfuscate the nature of their traffic, and to challenge one another's categorizations. Commenters agree that the proposed 18-month disparity would needlessly perpetuate and exacerbate these kinds of intercarrier disputes.¹⁰

No meaningful proposals have been put forward for solving these practical problems. The ILECs promoting the ABC Framework insist that carriers can "work cooperatively" to identify which traffic is VoIP,¹¹ but ignore the reality that a pricing differential of the sort proposed would provide every incentive for carriers *not* to "work cooperatively." Indeed, to administer such a regime, the ILECs are forced to propose a cumbersome process of traffic factoring, studies, and audits,¹² just as some CLECs and over-the-top providers hoping to minimize their intercarrier compensation obligations urge the FCC to require new technical standards for signaling whether or not calls are originated using VoIP.¹³ All of these "solutions" neglect that under the proposed framework, the price differential for access between intrastate VoIP and circuit-switched traffic would exist for a mere 18 months. As many commenters point out, requiring carriers to engage in cumbersome software upgrades and changes to their signaling and billing systems, or to conduct elaborate traffic studies, all in order to support a temporary pricing regime, would not only be disproportionately cumbersome relative to the benefit of those measures, there is substantial doubt that any of these things can be properly completed

¹⁰ See, e.g., Pac-West Comments at 6.

¹¹ See Joint ILEC Comments at 36.

¹² See *id.*

¹³ See Comments of XO Communications, LLC at 10 (filed Aug. 24, 2011); Vonage Comments at 5.

throughout the industry in the short timeframe envisioned.¹⁴ Moreover, as the continuing difficulties with traffic-pumping, phantom traffic, and similar arbitrage schemes demonstrate, as long as the intercarrier compensation regime provides an incentive for arbitrage, unscrupulous carriers will simply break whatever rules the FCC sets to exploit those price differentials to their advantage. Such arbitrage and fraud opportunities are best eliminated not by establishing a new set of complicated policing mechanisms and technical requirements, but by eliminating the *reason* that carriers mislabel, obfuscate, or dispute traffic – differential rates for essentially identical services.

Accordingly, as Charter explained in its opening comments, the Commission should amend the ABC Framework to eliminate any differential treatment for VoIP. Instead of causing all intrastate access charges for calls that use VoIP to revert to interstate access rates on January 1, 2012, those charges should remain at current tariffed rates until July 1, 2012. Beginning on July 1, 2012, the intrastate access rates (and, if higher than the interstate rate, reciprocal compensation rates) for calls involving VoIP should be reduced in the same manner as the ABC Framework envisions for circuit-switched traffic. From July 1, 2012 forward, rates for VoIP calls should be the same as circuit-switched traffic and undergo reduction on the same glide path.

II. UNIVERSAL SERVICE SUPPORT SHOULD BE FISCALLY RESPONSIBLE AND MUST NOT BE USED TO PERPETUATE LEGACY MONOPOLIES.

The Commission must also ensure that any approach it undertakes for universal service reform in this proceeding be fiscally prudent, not unduly burden unsubsidized consumers and carriers, and be structured in a manner that does not unfairly advantage legacy monopolies at the expense of competitive providers who can provide broadband connectivity at a lower cost.

¹⁴ See, e.g., Level 3 Comments at 14; Coalition for Rational Universal Service Reform Comments at 11.

Several commenters in this proceeding have offered valuable policy recommendations to achieve these goals, and Charter urges the Commission to give serious consideration to the points raised in these proposals.¹⁵ Charter also fully supports NCTA’s “Amended ABC Plan” proposal for revising universal service support.¹⁶

The Size of the Connect America Fund (“CAF”) Should Be Predictable: In particular, Charter strongly supports NCTA’s proposal to ensure that High-Cost support will be meaningfully capped and that the fund will not grow to such a size that it begins to impose an undue burden on consumers who do not enjoy the benefit of its subsidies.¹⁷ Other commenters echo this recommendation to set a sensible upward limit on the size of the fund.¹⁸ Absent real and meaningful limits, there is considerable risk that the CAF could unduly burden and raise the cost of providing unsubsidized service, a result clearly contrary to the Commission’s goal of increasing broadband affordability for everyone.

The Criteria For Subsidies Require Further Refinement: Second, Charter agrees with NCTA that the ABC Framework’s proposed disbursement criteria are currently unfairly slanted in favor of incumbent, voice-centric ILECs and require further refinement to ensure that funds are appropriated in the most cost-effective manner. For instance, as proposed by the ILECs, the ABC Framework fails to consider alternative means of providing broadband connectivity (such as wireless), fails to apply equally to areas served by rate-of-return LECs, and fails to account for

¹⁵ See Reply Comments of Cablevision Systems Corp. (filed Sept. 6, 2011); Time Warner Cable Comments at 16-24; Cox Comments at 21-26.

¹⁶ See generally Comments of National Cable & Telecommunications Association (filed Aug. 24, 2011).

¹⁷ See *id.* at 6-8.

¹⁸ See Comcast Comments at 22; Time Warner Cable Comments at 25.

broadband support provided from a number of other sources and programs.¹⁹ These flaws create the potential for funds to be wasted through redundant and unnecessary spending.²⁰ In addition, by granting ILECs the right of first refusal under most conditions, the ABC Framework effectively guarantees that funds will be wasted in areas where competitive providers might be able to supply broadband connectivity at lower cost.²¹

Price Cap Carriers Should Not Be Eligible for Access Replacement Funding: Third, Charter strongly agrees with NCTA that price cap LECs should not be entitled to receive access replacement funding, as contemplated by the ILECs' ABC Framework.²² One of the principal purposes of this proceeding is to eliminate the competitive distortions inherent in the current access charge regime by replacing implicit, poorly-targeted subsidies with high-cost support that reflects actual need and furthers the Commission's goal of universal service. Phasing out the access charge regime, while simultaneously allowing price cap carriers to replace those lost revenues through an access recovery mechanism unaccompanied by any conditions, is contrary to fair competition as well as the prudent use of the fund's resources. Indeed, such an approach would amount to little more than handing over money to legacy ILECs without any underlying policy purpose – providing those ILECs with a windfall while removing revenues from their CLEC competitors. The Commission should not adopt such an approach.

¹⁹ See NCTA Comments at 8-10.

²⁰ See *id.*

²¹ See *id.* at 15-16.

²² See *id.* at 21.

CONCLUSION

Charter urges the Commission to adopt the ABC Framework's proposed glide path for reducing access charges, but without any differential treatment for VoIP, as proposed in Charter's initial comments. In addition, Charter urges the Commission to adopt NCTA's Amended ABC Plan with respect to universal service support.

Respectfully Submitted,

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