

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

Bright House Networks Information Services, LLC (“Bright House”) submits these reply comments with respect to one of the issues raised in the *Further Inquiry* released on August 3, 2011.¹ The issue of concern to Bright House is the proposal to create a separate intercarrier compensation rule for intrastate toll traffic that originates or terminates with an end user that subscribes to an interconnected Voice over Internet Protocol (“VoIP”) service.

As Bright House explained in earlier comments, it is a competitive local exchange carrier (“CLEC”) providing connectivity to the public switched telephone network (“PSTN”) for the interconnected VoIP services provided by means of its cable affiliate’s high-bandwidth

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

multifunction network.² Bright House and its affiliate have invested, and are continuing to invest, in the aggregate, hundreds of millions of dollars to deploy and upgrade the networks used to provide those services. In other words, Bright House (along with other cable-affiliated firms) is already *doing* what the Commission says it is trying to “encourage” or “promote” – deploying broadband infrastructure to serve the needs of consumers.³ These accomplishments stand in stark contrast to those of the large incumbent local exchange carriers (“ILECs”), whose efforts to deploy IP-based technologies in their consumer networks, and to provide interconnected VoIP services to consumers, can only be described as tepid at best.⁴ Indeed, some of the cable operators’ investment must be dedicated to maintaining “backward compatibility” with the legacy TDM-based PSTN, *i.e.*, to ensuring that the IP-based voice services provided by cable operators can seamlessly interconnect with the networks of the legacy ILECs and interexchange carriers (“IXCs”).

This vast difference in actual investment in consumer broadband and IP-based technology as between the cable industry, on the one hand, and the large ILECs, on the other,

² See Comments of Bright House Networks Information Services, LLC in WC Docket No. 10-90 *et al.* (filed April 1, 2011) (“Bright House NPRM Comments”); Reply Comments of Bright House Networks Information Services, LLC in WC Docket No. 10-90 *et al.* (filed April 18, 2011) (“Bright House NPRM Reply Comments”); Comments of Bright House Networks Information Services, LLC On Further Inquiry in WC Docket No. 10-90 *et al.* (filed August 24, 2011) (“Bright House Further Inquiry Comments”).

³ See, *e.g.*, *Connect America Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) at ¶¶ 9, 44 (one purpose of ICC reforms is to “encourage new broadband investment and innovation”); *id.* at ¶ 508 (Commission seeking comment on ways to reform the current intercarrier compensation system “to realign incentives and promote investment and innovation in IP networks”).

⁴ The Commission’s own most recent industry statistics show that interconnected VoIP services comprise about 30% of all residence services today, but that *ILEC-provided* interconnected VoIP services are only a tiny fraction of either residential service in general (less than 2%) or residential interconnected VoIP service (less than 7%). See Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2010* (March 2011) (“*Status Report*”), Figure 4 (ILEC residential interconnected VoIP, nationwide, is only 1,962,000 out of 28,895,000 interconnected VoIP customers, and 89,753,000 total residential customers).

provides a critical perspective on the specific proposal in the so-called “ABC Plan” regarding intercarrier compensation for calls that originate or terminate with an interconnected VoIP service. The ABC Plan proposes that intrastate toll traffic that originates or terminates with an interconnected VoIP service be subject to *interstate* terminating access charges, effective more or less immediately (starting January 1, 2012). Thus, while the plan proposes that intrastate access charges applicable to *all* intrastate toll traffic be reduced to interstate levels by mid-2013, access charges for this particular type of traffic would be reduced right now.

Bright House explained in its earlier comments that creating this new, entirely artificial, technology-based distinction among otherwise indistinguishable calls on the PSTN would inevitably create new opportunities for arbitrage.⁵ Not only do the ABC Plan proponents offer nothing to show that arbitrage will *not* be a serious problem, their comments actually (if inadvertently) confirm that serious problems will, in fact, exist.⁶ Rather than focus on the

⁵ See Bright House NPRM Comments, *passim*; Bright House NPRM Reply Comments at 1-5; Bright House Further Inquiry Comments at 3, 8-10. Here, we also note that the proposal to treat intrastate toll calls involving an interconnected VoIP service differently from other intrastate toll calls would create an unjustified discrimination in the rates applicable to otherwise indistinguishable intrastate toll calls. The terminating access services that a LEC provides to an IXC are not at all affected by whether the end user uses a VoIP service or a plain old telephone service. It would seem discriminatory on its face, in violation of Section 202(a), for the Commission to take affirmative steps to establish a regime in which different rates apply to identical services.

⁶ The plan proponents’ comments contain nothing meaningful about how to deal with the arbitrage opportunities that setting up this new, artificial compensation category would create. First, they assert that somehow the industry could sort the problem out cooperatively by agreeing on factors that would estimate how much VoIP traffic was being delivered by a carrier to a LEC. Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon and Windstream (“Plan Proponents’ Comments”) at 36. Given the long-standing industry controversy over intercarrier compensation, it is hard to see why this is a reasonable prediction. More revealing is their proposal that the Commission require affected carriers to include provisions in their tariffs that would require LECs and IXCs to implement this “factoring” approach. *Id.* If industry consensus on this topic were actually possible, mandatory tariff provisions would not be needed. To resolve this matter the Commission is going to have to order *something*. The tariffing requirement shows that, if the Commission issues an order in accordance with the ABC Plan, further direct Commission intervention, by means of binding tariff rules, is needed to make the proposal work. Of course, disputes about the meaning and application of those newly tariffed rules would surely follow. On the other hand, simply treating intrastate toll calls to or from interconnected VoIP services

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administrative problems of this aspect of the ABC Plan, however, these reply comments focus on the fact that even considering the filing made by the plan's proponents, it is clear that this proposal makes no economic sense.

As Bright House has explained, the proposal rewards carriers that have not upgraded their networks to use IP technology (mainly, the large ILECs and their IXC affiliates), and punishes those who have (mainly, the CLEC affiliates of cable operators who use their IP-enabled multi-function networks to offer their subscribers IP-based voice services along with video, data, and other services).⁷ The original submission describing the ABC Plan provided no cogent policy explanation – indeed, no explanation at all – for this proposal. Bright House, therefore, awaited with interest the comments of the principal plan supporters to see why they thought this idea was good *public policy*, as opposed to merely a quick-and-dirty way to line their own pockets for a couple of years at the expense of their major strategic competitors.

At the outset, it appears (somewhat ironically) that the plan proponents recognize the policy and practical problems with setting different intercarrier compensation rates based on the technology used. They state:⁸ “The byzantine system of different intercarrier compensation rates that depends on the location of the calling and called parties, *the technology used to make and receive a call*, or the legacy regulatory status of the providers involved is not sustainable.” This statement is correct. And yet, with respect to calls to and from interconnected VoIP subscribers, the plan proponents seek to enshrine, in a formal Commission ruling, the establishment of a *new* compensation distinction, based directly and entirely on “the technology used to make and

...(note continued)

like any other PSTN intrastate toll calls does not entail any of these problems. Calls would simply be rated based on the calling and called telephone numbers, with no room for disputes – or arbitrage.

⁷ Bright House Further Inquiry Comments, *passim*.

⁸ Plan Proponent Comments at 2-3 (emphasis added).

receive a call” – whether or not it originates or terminates on an interconnected VoIP service – even though in all cases the calls are carried on the legacy PSTN and are handed off to CLECs using legacy TDM-based technology. This internal inconsistency in the thinking of the plan’s proponents should raise a red flag in the Commission’s consideration of their proposal.

This problem is confirmed by the fact that the plan proponents’ comments are devoid of any effort to explain why this proposal actually makes any policy sense.⁹ Their filing notes that this aspect of the plan reflects a compromise among differing views.¹⁰ Other than that, however, their comments make only the vaguest references to the supposed effects of the plan in creating “innovations” or sound “incentives” on the part of the industry.¹¹ The plan’s proponents evidently depend on the Commission being willing to base major policy determinations on vague generalities. While Bright House views that prospect to be unlikely, it is nonetheless advisable to state clearly for the record just what incentives this aspect of the ABC Plan would create, so that vague generalities will not obscure sound policy thinking.

⁹ See Plan Proponents’ Comments, *passim*. Most likely, the lack of any effort at a policy justification for the plan’s proposed treatment of calls to or from interconnected VoIP services reflects the fact that there is no such justification, even from the perspective of the plan’s proponents. Instead, this aspect of the plan is the result of horse-trading among the proponents, who have different views. See note 10, *infra*.

¹⁰ The plan proponents’ comments make clear that they actually disagree among themselves about how to handle access charges for traffic that originates or terminates in IP format, and that this aspect of the proposal is simply a compromise. Plan Proponents’ Comments at 35 (This aspect of the ABC Plan was “a carefully negotiated compromise among the signatories to the Plan, who have widely divergent views about the intercarrier compensation rules that do and should apply to VoIP”). The fact that a few ILECs (or even other industry participants) reached a compromise on what they want the Commission to do obviously does not mean that the compromise they reached makes any sense from the point of view of the industry as a whole, or a broader public policy perspective.

¹¹ See, e.g., Plan Proponents’ Comments at 3, 9, 33-34 (alluding, with no specifics, to possible “service innovations” and “innovative technology”); *id.* at 19, 28 (alluding to sound carrier “incentives” to be created by the plan); *id.*, *passim* (alluding to the supposed benefits of the plan in terms of “promoting” the deployment of broadband technology). Note that *none* of these supposed benefits of the plan are discussed in, or represented as being relevant to, the plan’s proposed treatment of calls to or from interconnected VoIP services. See *id.* at 35-36 (discussion devoid of any attempt at policy justification).

VoIP subscribers connect to the PSTN by purchasing network connectivity, typically from a competitive local exchange carrier (“CLEC”). In the case of so-called “over-the-top” VoIP providers, the CLEC is usually unaffiliated with the VoIP provider. In the case of cable-based VoIP providers, some rely on unaffiliated CLECs, while others have established CLEC affiliates that perform these functions. This means that for a long distance call to reach a VoIP provider, the IXC carrying the call has to connect not to the VoIP provider, but, instead, to the CLEC that connects the VoIP provider to the PSTN.¹²

Access charges normally apply when an IXC picks up a call from, or delivers a call to, a LEC. So the question at hand is whether anything other than normal access charges should apply when the IXC is delivering a call that either (a) was originally picked up from a LEC that was providing connectivity, with respect to that call, to a VoIP provider; or (b) is going, ultimately, to a VoIP provider served by the LEC to which the call is being delivered.¹³ The ABC Plan says that in such cases, even if the call is (in normal terms) an intrastate toll call, typically much lower *interstate* access rates should apply. In other words, in those cases the LEC will receive significantly less money than it would receive otherwise, and the IXC will pay significantly less money than it would pay otherwise.

What economic incentives does this system create?

¹² The fact that the access charges would be assessed directly on traditional IXCs by LECs makes this proposal critically different from the Commission’s decision in prior decades to allow Internet Service Providers to connect to a LEC’s network at the end-user rates applicable to business end users, rather than the access rates applicable to IXCs. As far as Bright House is aware, no one seriously suggests that a LEC should impose access charges *on interconnected VoIP providers* when they purchase PSTN connectivity from the LEC. The issue here is whether LECs (mainly cable-affiliated CLECs) should be penalized, in the form of lower access charges from IXCs (mainly large-ILEC-affiliated IXCs), simply because the LECs have interconnected VoIP providers as *their* customers.

¹³ Notably, the ABC Plan does not propose to modify *originating* access charges. Plan Proponents’ Comments at 26-27. That means that with respect to the increasing number of calls that ILEC end users make to VoIP subscribers, the ILEC gets full originating access charges from the IXC (affiliated or otherwise) that is picking up the call.

For the ILECs, the critical economic imperative under this system is *not to offer any IP-based services to end users, whether directly or indirectly* (that is, by providing connectivity to interconnected VoIP providers.) Adding a VoIP end user results in a direct and immediate reduction in terminating intrastate access charge revenues. Not that the ILECs have been aggressive in deploying IP-based services, or meeting the needs of interconnected VoIP providers – they haven’t been.¹⁴ But the system they are proposing is not remotely designed to promote or encourage *their* deployment of IP-based services. It has exactly the opposite effect.¹⁵

The situation for the large ILEC-affiliated IXC is slightly different. The large IXCs have no control over the communications technology used by end users, either those whose calls they pick up on the originating end, or those to whom they are sending calls on the terminating end. Because they have no control over these things, it is senseless to speak of giving the IXCs any economic “incentive” with respect to them. What would happen under the proposed system is that the large ILEC-affiliated IXCs would receive an unearned windfall – free money for doing nothing. Plain old intrastate toll calls, on which the IXCs would normally have to pay plain old intrastate access charges, would suddenly and for no reason (at least, no reason relevant to the IXCs) be cheaper to terminate than they were before. This will leave more money in the ILEC corporate “families,” but has no conceivable impact on the motivation of the IXCs to invest in IP network technology. Indeed, given that (as described above) the plan affirmatively *discourages*

¹⁴ See note 4, *supra*.

¹⁵ It is conceivable that some of the large ILECs may be receiving some intrastate access charges for inbound calls that originated on interconnected VoIP services. While it is highly unlikely that such revenues exceed the amount that the large ILEC-affiliated IXCs would save by not having to pay intrastate access charges to the ILECs’ strategic competitors, it is noteworthy that the ABC Plan contemplates that ILECs harmed by the loss of VoIP-related access charges could make up those losses via a new transitional access recovery mechanism. See Plan Proponent Comments at 24. No access recovery mechanism is proposed, however, for the ILEC’s competitors – the cable-operator-affiliated CLECs – who will bear the brunt of the proposed treatment of intrastate toll calls to or from interconnected VoIP services.

their ILEC affiliates from providing IP-based services to consumers, this “free money” will almost certainly go to achieve some other purpose.

For the CLECs that serve cable company interconnected VoIP services (whether cable-affiliated or independent), the effect of the proposed system is to reduce revenues. Since cable-affiliated telephone service is almost universally in IP format, there is little, if anything, that these CLECs could do to avoid the revenue reductions. By lowering the CLECs’ revenue, the proposed system will interfere with their economic ability to invest in their networks and new technologies, and place indirect pressure on the cable operators’ ability to do so as well.¹⁶

Finally, while Bright House fully supports the Commission’s objective of reducing and rationalizing intercarrier compensation over time, it must be noted that making it *cheaper* to originate and terminate calls on the plain old PSTN (that is, lowering intercarrier compensation) cannot possibly have the effect of encouraging the transition from the traditional PSTN to alternative, IP-based networks. The economic effect of making a resource cheaper is to encourage the use of that resource and discourage the use of substitutes. The Commission must recognize, therefore, that two of its key objectives in this proceeding – lowering and rationalizing traditional PSTN intercarrier compensation, and encouraging the deployment of new IP-based technology – are to some extent in conflict rather than in harmony. While the Commission must

¹⁶ Although Bright House is most familiar with the situation facing cable-affiliated CLECs that provide PSTN connectivity for interconnected VoIP services provided by cable operators, the same situation applies as well to other CLECs that provide PSTN connectivity to “over-the-top” interconnected VoIP providers as well. For this reason, several non-cable-affiliated CLECs oppose this aspect of the ABC Plan, for many of the same reasons as Bright House. *See, e.g.*, Comments of Level 3 Communications LLC On The Universal Service-Intercarrier Compensation August 3, 2011 Public Notice, WC Docket No. 90-10 *et al.* (filed August 24, 2011) at 12-15 (urging the Commission not to distinguish between traffic that originates or terminates with an interconnected VoIP service and other traffic); Comments of cBeyond, Inc., Integra Telecom, Inc., and TW Telecom Inc., WC Docket No. 90-10 *et al.* (filed August 24, 2011) at 13-15 (same).

strike a reasonable balance among these and other conflicting objectives, it would be unfortunate if the Commission were to fail to see that the conflicts actually exist.

In sum, there is no basis on the record, or in economic or policy logic, to conclude that lowering the access charges associated with intrastate toll calls going to or from VoIP subscriber-end users will have any positive effect on any entity's incentives to invest in advanced IP technology – or, indeed, to invest at all. To the contrary, this proposal would do little more than effect a wealth transfer from entities that *have* invested to deploy or enable IP-based communications (notably, cable operators and their CLEC affiliates) to those that have not (notably, ILECs and their IXC affiliates). That certainly explains why the ILECs have proposed it, but that is no reason for the Commission to adopt it.

Respectfully submitted,



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