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	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

REPLY COMMENTS OF PAETEC HOLDING CORP.
ON FURTHER INQUIRY PUBLIC NOTICE

Dated: September 6, 2011

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EXECUTIVE SUMMARY

The Commission should reject the 18-month flash cut and adopt a longer time period for CLECs that minimizes the adverse impact of substantial revenue loss associated with equalizing terminating access rates. In addition to the business/residential divide and long-term contract pricing commitments that will prevent CLECs from recouping lost revenues from their business end user customer base during the access flash cut, CLECs will face an effective price ceiling that will constrain their ability to recoup significant terminating intrastate access revenue losses through retail rates and/or subscriber line charges. In many cases, the RBOCs' access rates are already equal and they will not experience revenue losses in the first two steps of the plan. Where they suffer revenue losses, the Access Recovery Mechanism ("ARM") minimizes the impact so that they are not required to recover such losses wholly through increased end user rates, reduced profits, and/or restricted investment. A longer transition for CLECs recognizes these disparities and is consistent with many state-ordered transitions, prior Commission efforts to reduce CLEC access charges, and the NPRM's goal of permitting adequate business planning to adjust to change. In order to promote competitive options in the broadband market during the transition to the final rate, the Commission should adopt a longer, slower glide path for CLECs to reduce intrastate access charges.

Many state commissions that have set cost-based rates under sections 251/252 oppose $0.0007 as the final, unified rate. Their overwhelming opposition to $0.0007 as the uniform terminating rate adds to the already substantial record evidence that this rate is unlawful. The Commission should not force all LECs to charge below-cost rates and reverse the current flow of implicit subsidies (from IXCs subsidizing LECs to LECs subsidizing IXCs). Requiring a LEC to charge IXCs a below-cost terminating rate of $0.0007 would force its end users to subsidize others' long distance services, including telemarketers. Deferring to the state-set reciprocal compensation rate as the default cost-based rate for all traffic—at least on an interim basis until such time as state commissions (or the FCC if a state fails to act) have the opportunity to set new cost-based rates based on forward looking networks that reflect IP to IP interconnection—is consistent with the Act, achieves the policy goal of a unified rate to reduce opportunities for arbitrage, minimizes the amount of access revenue replacement support that consumers ultimately will fund, and continues this Commission's commitment to a federal-state partnership.

PAETEC objects to any restriction on a CLEC's ability to charge a composite terminating rate that includes the equivalent of the ILEC's tandem switching component where the CLEC serves the end user. As PAETEC showed in its April 18 Reply Comments, the PAETEC court reconciled seemingly inconsistent statements in various Commission orders to maintain a CLEC's ability to charge the full benchmark rate when providing access to its end users. The Court's interpretation of the benchmark is consistent with the Commission's section 251(b)(5) rules, which reject a functional test. The FCC's benchmark and section 251(b)(5) rules both ensure that a competitor is not penalized by virtue of its more efficient network design. The FCC should not change its access rules to impose a functional test during the transition to a unified section 251(b)(5) rate.

PAETEC agrees with the numerous parties who urge the Commission not to reduce originating access charges, including 8YY charges, at this time. Reducing originating access rates now would add to the burden on the ARM and increase the revenue losses associated with intercarrier compensation reform.

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REPLY COMMENTS OF PAETEC HOLDING CORP.
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PAETEC Holding Corp., ("PAETEC") files these reply comments on the Federal Communication Commission's ("FCC" or "Commission") Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding ("Further Inquiry").[1]

[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, Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, DA 11-1348 (rel. Aug. 3, 2011) ("Further Inquiry").

I. THE COMMISSION SHOULD TAILOR THE GLIDE PATH TO MINIMIZE SUDDEN REVENUE LOSSES THAT COULD HARM A CLEC'S ABILITY TO PROVIDE COMPETITIVE BROADBAND OPTIONS

Competitive carriers echoed PAETEC's call for a longer transition to reduce intrastate access rates in order to recognize the unique circumstances facing CLECs. As CompTel observed, the ABC Plan's rate transition and Access Recovery Mechanism ("ARM") together "provide ILECs with an eight-year transition to adjust to lower ICC revenues."[2] The Competitive Amendment would provide CLECs the same timeframe, until July 1, 2020, to reduce rates to the final target rate and reduce intrastate access rates from July 1, 2012 through July 1, 2020 on a straight-line basis.[3] As the Missouri Commission noted, the ABC Plan's proposed 18-month "time frames for reducing intrastate access rates to parity with interstate access rates are extremely aggressive."[4] Like PAETEC, Cbeyond *et al.*, argued that "[i]t would take several years—not a mere 18 months—for competitive LECs to make these adjustments."[5] EarthLink similarly supported the Competitive Amendment's longer transition for competitive carriers because "the ABC Plan's flash cut in access revenue for competitors threatens their ability to invest in IP-based networks and services for the small and medium sized business customers that they primarily serve."[6]

Both the Michigan and Wisconsin Commissions have explained that their states' intrastate access rate reduction schedules recognize the inherent differences between CLECs and ILECs. Wisconsin "lowers and moves toward unifying intrastate access rates, with varying

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[2] CompTel August 24 Comments, at 20.

[3] CompTel August 24 Comments, at 21 & n.59.

[4] Missouri PSC August 24 Comments, at 10-11.

[5] Cbeyond *et. al* August 24 Comments, at 6.

[6] EarthLink August 24 Comments, at 20-22.

requirements depending on whether a telecommunications provider is a large or small incumbent local exchange carrier, new non-incumbent, or large or small non-incumbent."[7] Michigan "also treats CLECs differently with respect to the timeframe for reductions in intrastate access charges," giving CLECs "four years of additional time not allotted to eligible providers" because CLECs are not eligible for access recovery support.[8] The Commission should reject the ABC Plan Sponsors' suggestion to override these state transition periods.[9] As the Tennessee Regulatory Authority argued, the Commission should "respect the timetable establishing these [state] changes as long as they are not unreasonably longer than the ultimate federal decision."[10] Many of these state transitions were initiated by legislation backed by AT&T and Verizon that was the subject of debate and reflects the state legislature's balancing of competing interests. The Commission should not upset these negotiated compromises adopted by state legislatures.

The Commission also should reject the 18-month flash cut as inconsistent with prior Commission-ordered transition periods to reduce access rates. For example, the CALLS plan stepped down price cap rates over a period of five years[11] and the *CLEC Access Reform Order*

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[7] Wisconsin PSC August 24 Comments, at 4.

[8] Michigan PSC May 23 Reply Comments, at 13.

[9] ABC Plan Sponsor August 24 Comments, at 21 ("any state action that would effect a different transition schedule for terminating rates should be superseded by the Commission order implementing the Plan").

[10] Tennessee Regulatory Authority August 24 Comments, at 2.

[11] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, Low-Volume Long-Distance Users, CC Docket No. 99-249, Report and Order, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, ¶ 37 (2000) (during the CALLS plan five-year term, "[a]ll parties will have a much clearer blueprint for developing their business plans and attracting capital than they would in the absence of CALLS.").

stepped down CLEC access rates over a period of three years.[12] The ABC Plan would give CLECs one-half the time to adjust to lower access rates than the Commission did in 2001.

PAETEC again urges the Commission to adopt a transition timeline for CLECs that minimizes the adverse impact of substantial revenue loss associated with equalizing terminating access rates. Although the Plan sponsors clarified that the multiline business subscriber line charge ("SLC") *may* increase under the Plan, any such increase is limited under the $9.20 cap that the Plan would not raise.[13] As PAETEC showed, AT&T is unlikely to suffer any access revenue losses in one-half of its states because its access rates are already equalized.[14] In those states, AT&T will have no lost access revenues to offset with increased SLCs or retail rates. In addition to the business/residential divide and long-term contract pricing commitments that will prevent CLECs from recouping lost revenues from their business end user customer base during the access flash cut,[15] PAETEC will face an effective price ceiling from AT&T's rates that will constrain its ability to recoup its significant terminating intrastate access revenue losses through retail rates and/or SLCs. And even where the RBOCs suffer revenue losses, the ARM minimizes the impact so that they are not required to recover such losses wholly through increased end user rates, reduced profits, and/or restricted investment. As the ABC Plan sponsors argue, the "transitional access replacement mechanism" "is necessary to avoid flash cuts" and meet the

[12] *Access Charge Reform*, Seventh Report and Order, 16 FCC Rcd 9923, ¶ 52 (2001) ("CLEC Access Reform Order") (adopting a three-year transition period based on a concern about "the effects of a flash-cut" and "to allow sufficient time for CLECs to adjust their business models").

[13] ABC Plan Sponsor August 24 Comments, at 34.

[14] PAETEC August 24 Comments, at 12-13 (demonstrating that CLECs serve more business customers than ILECs as a percentage of their customer base).

[15] *Id.*, at 13-14.

"goal for measured transitions."[16] In order to promote competitive options in the broadband market during the transition to the final rate, the Commission must recognize these disparities and adopt a longer, slower glide path for CLECs to reduce intrastate access charges.

II. THE BELOW-COST RATE OF $0.0007 WOULD REQUIRE THE TERMINATING LEC TO SUBSIDIZE INTEREXCHANGE SERVICE

A. Section 254 Requires the Commission to Abolish Implicit Subsidies, not Create New Ones

Section 254(e) requires that subsidies to promote universal service be explicit. Since passage of the Telecommunications Act of 1996, the Commission has taken action to remove the subsidies from *above-cost* access charges and make them explicit through universal service fund support.[17] As the Vermont and Maine Commissions argued, the ABC Plan

> results in intercarrier compensation charges that in some circumstances are below their costs, even short-run marginal costs. Rates at that level are not only unlawful but will result in an inefficient use of the transport network. It would be economically foolish for end users and other carriers to use dedicated access if they can receive switched access virtually for free. Moreover, the establishment of intercarrier compensation rates below the long-run incremental costs of access by definition results in a subsidy of access users.[18]

PAETEC agrees that requiring it to charge IXCs a below-cost terminating rate of $0.0007 would force its end users to subsidize others' long distance services, including telemarketers. Charging below-cost rates for terminating access also harms local competition by sending incorrect price signals that will discourage vertically integrated firms from competing for end

[16] ABC Plan Sponsors August 24 Comments, at 24.

[17] *In the Matter of 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, ¶ 501 (rel. Feb. 8, 2011) ("NPRM").

[18] Vermont PSB and Maine PUC August 24 Comments, at 14.

users. Just as the FCC acknowledged that inappropriate price signals from below-cost UNEs can harm local competition,[19] the same harm will arise if the FCC sets rates for terminating access below cost. As Dr. Selwyn noted, when the FCC reduced the rate for ISP-bound traffic to the below-cost rate of $0.0007:

> ILECs, whose customers originated most of the dial-up ISP-bound traffic were not required to rate these "information access service" calls any differently from other local calls. They could continue to collect full local call charges from their customers while off-loading those ISP-bound calls to another carrier for completion at a fraction of the incremental cost that the ILECs themselves would have incurred were they to carry that traffic end-to-end, to their own ISP customer. Not surprisingly, few if any ILECs chose to offer inbound ISP call termination services or to aggressively compete for dial-up ISP business.[20]

If a vertically integrated firm such as AT&T can terminate long distance calls at $.0007 to a CLEC's end user, which state commissions have affirmed is below AT&T's own termination costs, then AT&T will forego competing for that end user's local service since it would cost AT&T more than $.0007 if it self-provisioned terminating access to that end user.

Moreover, if PAETEC is forced to provide below-cost termination service to IXCs, it cannot be made whole by receiving low-cost service from the IXCs. Unlike locally-dialed calls, there is no mutual or reciprocal exchange of long distance traffic between CLECs and IXCs. PAETEC therefore cannot offset the economic harm of providing below-cost services by "exchanging" like amounts of PAETEC-originated long distance traffic with these IXCs at below-cost rates. To the extent that PAETEC uses the same IXCs to provide long distance

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[19] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, Docket No. 96-98, 11 FCC Rcd 15499, ¶ 360 ("First Local Competition Order") (subsequent history omitted) ("We observed in the NPRM that economists generally agree that prices based on forward-looking long-run incremental costs (LRIC) give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure.").

[20] ETI Views and News, A New Approach to Intercarrier Compensation (March 2001), available at http://www.econtech.com/newsletter/march2011/march2011a2.php.

service to its end users (rather than its own long haul fiber network), those rates are commercially negotiated. Nothing in the ABC Plan requires IXCs to reduce their wholesale long distance rates by the amount of terminating access savings they realize.

The ABC Plan sponsors argue against relying on state action in part because states that keep their rates high will permit implicit subsidies to flow from consumers in other states.[21] The solution to that potential problem is not to force all LECs to charge below-cost rates and reverse the current flow of implicit subsidies (from IXCs subsidizing LECs to LECs subsidizing IXCs). Rather, if all traffic is subject to section 251(b)(5), the Act provides the backstop necessary to ensure state action. If a state fails to act, as the ABC Plan sponsors fear, the FCC can take action to reduce rates.[22] In no event should a state commission or the FCC reduce terminating rates below-cost. If a terminating LEC's cost-based rate is too high when compared to some national benchmark, then the Act requires any support to be explicit, not shifted to a different implicit subsidy.

B. Because $0.0007 Is Below-Cost for Many LECs, Imposing it on All LECs Would Create New Implicit Subsidies

Many state commissions that have set cost-based rates under sections 251/252 oppose $0.0007 as the final, unified rate. The Pennsylvania Commission "has strenuously and repeatedly argued" that $0.0007 is "not a cost-based rate and not TELRIC compatible" and "by definition non-compensatory, unreasonable, discriminatory, and unlawful."[23] Similarly, the Connecticut Commission maintains that it "does not believe the proposed $0.0007 rate is cost

[21] ABC Plan Sponsor August 24 Comments, at 21.

[22] 47 U.S.C. § 252(e)(5).

[23] Pennsylvania PUC August 24 Comments, at 14.

based" based on its recent cost of service investigation in which it "became familiar with AT&T Connecticut's incremental costs associated with its intercarrier compensation rate."[24]

The Vermont and Maine Commissions also argue that "adoption of the $0.0007 rate would appear to be so far from any cost-justified amount that it would be an abuse of discretion to use that amount for intercarrier compensation purposes."[25] The Louisiana Commission expresses concern that "[c]arriers with network costs greater than $0.0007 per MOU could be unable to recover their costs, or worse, may be compelled to downgrade their respective infrastructures to such a level as to compromise the availability, affordability, and/or sustainability of services provided to their customer bases."[26] The Massachusetts Department notes the lack of "any supporting data or cost analysis indicating why the $.0007 rate is appropriate" and expresses concern that

> [i]f the Commission sets a uniform terminating rate for all interstate and intrastate traffic without sufficient supporting data, then the long-term viability of numerous providers may be threatened, resulting in the loss of competitive choice to consumers. Without sufficient competition, end-user rates are bound to increase.[27]

The Nebraska Commission calls $0.0007 "an arbitrary rate for the convenience of the industry rather [than] one that reflects real costs."[28] Similarly, the Virginia Commission argues $0.0007 "is not cost-based, may not be fully compensatory, and does not reflect the costs of individual carriers."[29]

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[24] Connecticut PURA August 24 Comments, at 5.

[25] Vermont PSB and Maine PUC August 24 Comments, at 15.

[26] Louisiana PSC August 24 Comments, at 4-5.

[27] Massachusetts DTC August 24 Comments, at 13.

[28] Nebraska PSC August 24 Comments, at 18.

[29] Virginia SCC August 24 Comments, at 6.

The FCC has repeatedly recognized standard economic principles in adopting pricing policies that establish rates in close alignment with costs. For example, the Commission has said that:

> Costs are traditionally and naturally a benchmark for evaluating the *reasonableness of rates*, because cost based rates both deliver price signals which contribute to efficient use of networks and generally distribute network costs to the customer who causes those costs.[30]

The Commission has also recognized the role cost-based rates play in promoting competition:

> It is clear that the success of efficient competitive entry through interconnection depends on the interconnectors' ability to obtain access to the LEC's transmission facilities at *rates that reflect costs* under terms, and conditions that are just and reasonable.[31]

The Act charges state commissions with reviewing cost studies and setting section 251(b)(5) rates to open local markets to competition. Indeed, most of those rates have been set after contested case hearings with fully developed records. Their overwhelming opposition to \$0.0007 as the uniform terminating rate adds to the already substantial record evidence that this rate is unlawful.[32] The Commission should respect the state commissions' analysis and expertise and reject the proposed final rate of \$0.0007. On the other hand, deferring to the state-set reciprocal compensation rate as the default for all traffic—at least on an interim basis until such time as state commissions have the opportunity to set new cost based rates based on forward

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[30] *Investigation of Special Access Tariffs of Local Exchange Carriers*, CC Docket 85-166, Memorandum Opinion and Order, 4 FCC Rcd. 4797, ¶ 32 (1988) (emphasis added).

[31] *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, 12 FCC Rcd 18730, ¶ 2 (June 13, 1997) (emphasis added).

[32] *See*, *e.g.*, PAETEC August 24 Comments, at 2 & n.4 (collecting citations to record evidence).

looking networks that reflect IP to IP interconnection—is consistent with the Act, achieves the policy goal of a unified rate to reduce opportunities for arbitrage, minimizes the amount of access revenue replacement support that consumers ultimately will fund, and continues this Commission's commitment to a federal-state partnership.

III. THE PAETEC COURT'S INTERPRETATION OF THE CLEC BENCHMARK IS CONSISTENT WITH THE CLEC ACCESS CHARGE ORDER AND THE COMMISSION'S SECTION 251(B)(5) GEOGRAPHIC COMPARABILITY RULES

PAETEC objects to any restriction on a CLEC's ability to charge a composite terminating rate that includes the equivalent of the ILEC's tandem switching component where the CLEC serves the end user.[33] As PAETEC showed in its April 18 Reply Comments, the PAETEC court[34] reconciled seemingly inconsistent statements in various Commission orders to maintain a CLEC's ability to charge the full benchmark rate when providing access to its end users.[35] When a CLEC "originates or terminates traffic to its own end-users, it is providing the functional equivalent [of the services set forth in 61.26(a)(3)], even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem."[36] Section 61.26(a)(3) provides that interstate switched exchange access services

> shall include the functional equivalent of the ILEC interstate access services typically associated with the following rate elements: carrier common line

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[33] *See, e.g.*, Level 3 August 24 Comments, at 16-18 (a CLEC that serves an end user with a single switch "should be entitled to tariff and collect end office switching plus common transport (i.e. tandem termination and tandem transport) and not for the tandem switching that is not separately provided").

[34] *See Paetec Communications, Inc. v. MCI Communications Services, Inc.*, 712 F. Supp. 2d 405 (ED. Pa. 2010), *appeal pending, PAETEC Comm. Inc., et al., v. MCI Comm. Services, et al.*, No. 11-2268.

[35] PAETEC *et. al*. April 18 Reply Comments, at 24-29.

[36] *Access Charge Reform*, CC Docket No. 96-262, Eighth Report and Order, FCC 04-110, ¶ 13 (2004).

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> (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); *tandem switching*."[37]

The Commission should not reverse this aspect of its benchmark rule, especially as it moves all intercarrier compensation under the section 251(b)(5) framework. The Commission's section 251(b)(5) rules recognize that CLECs' newer technology entitles them to the tandem rate:

> Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.[38]

The Commission rejected a functional test that would discriminate against new networks and therefore local competition. After the FCC adopted its geographic comparability rule, SBC and other incumbents claimed that a CLEC is not entitled to the tandem rate unless it meets the geographic equivalence test *and provides the functional equivalent of tandem switching* (*i.e.*, trunk to trunk switching).[39] The FCC rejected this argument, finding that its rules require the CLEC to meet "*only* the comparable geographic area test."[40] The FCC's benchmark and section 251(b)(5) rules both ensure that a competitor is not penalized by virtue of its more efficient network design. As CompTel has argued, if the Commission chooses to move all forms of traffic under section 251(b)(5), then it must apply section 251(b)(5) and its implementing rules to all

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[37] 47 C.F.R. § 61.26(a)(3)(emphasis added).

[38] 47 C.F.R. § 51.711(a)(3).

[39] *Cost-Based Terminating Compensation for CMRS Providers*, Order, 18 FCC Rcd 18441, 18488 (2003), *aff'd SBC v. FCC*, 414 F.3d 486 (3rd Cir. 2005).

[40] *Id.*

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forms of intercarrier compensation.[41] Because those rules rejected a functional test and include only a geographic comparability test, the FCC should not change its access rules to impose a functional test during the transition to a unified section 251(b)(5) rate.

IV. THE COMMISSION SHOULD NOT SUBJECT 8YY ORIGINATING RATES TO THE SCHEDULE FOR TERMINATING RATE REDUCTIONS

PAETEC agrees with the numerous parties who urge the Commission not to further exacerbate the revenue losses and ARM support by reducing originating access charges at this time.[42] An important piece of leaving originating access charges intact is 8YY access. NCTA and Time Warner erroneously state that 8YY access is already treated as terminating access.[43] The Order they cite as extending such treatment to CLECs only asks whether it should be extended,[44] but the Commission never answered that question.[45] NCTA and Time Warner cite no rule requiring that the 8YY switched access charges for premium minutes of use of price cap LECs, or for the CLECs mirroring their rates, be capped at terminating access rate levels.[46] The

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[41] CompTel August 24 Comments, at 15-16.

[42] *See, e.g.*, ABC Plan Sponsors August 24 Comments, at 22 ("ABC Plan does not call for reductions in originating access charges" and "any further reforms of those rates would likely make it more difficult to keep the access replacement fund at a manageable size").

[43] NCTA August 24 Comments, Attachment, at n.9; Time Warner August 24 Comments, at n.8.

[44] *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982 (1997) ("Access Charge Reform Order") (subsequent history omitted). Compare paragraph 355 (acknowledging that the NPRM solicited comment on whether regulatory treatment of "open end" services as terminating access should be extended to CLECs) with paragraph 396 (finding it "unnecessary to apply any of our part 69 regulations to competitive LECs").

[45] CLEC Access Reform Order, at ¶ 56 (applying benchmark to both originating and terminating access services, including 8YY traffic without specifying whether 8YY is treated as originating or terminating).

[46] "For purposes of this section [69.105] and § 69.113," 69.105(b)(1)(iii) provides that "[a]ll open end minutes on calls with one open end (e.g., an 800 or FX call) shall be treated as terminating minutes." Section 69.105 "is applicable only to local exchange carriers that are not subject to price cap regulation." 47 C.F.R. § 69.105(a). Further, this section only applies to the carrier common line charge, which no

(Footnote continued on next page.)

Commission should not adopt such a rule as part of its intercarrier compensation reform either. It is not clear that the ARM was calculated based on reductions in 8YY access rates. Reducing 8YY access rates now would unnecessarily add to the burden on the ARM and increase the revenue losses associated with intercarrier compensation reform.

V. CONCLUSION

The Commission should adopt intercarrier compensation reforms that preserve competition. As the National Broadband Plan recognizes, competition is a key driver of investment and innovation and therefore a key pillar of any regulatory polices to increase broadband deployment. PAETEC looks forward to working with the Commission to develop measured reforms for all classes of LECs that promote competition through the establishment of cost-based rates for terminating intercarrier compensation.

(Footnote continued from previous page.)

longer exists for most ILECs and CLECs, and is not applicable to the local switching and transport charges targeted in the ABC Plan. Section 69.113 addresses charges for non-premium access minutes of use, not all access minutes of use, and does not refer to originating or terminating charges in any event. 47 C.F.R. § 69.113 ("Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is *not deemed to be premium access*.") (emphasis added). CLECs are not subject to the Commission's Part 69 rules. Access Charge Reform Order, at ¶ 396 (1997) (amending definition of "telephone company" under rules to be synonymous with incumbent LEC, in recognizing that CLECs lack market power in access market and that as a result the FCC "should not apply Part 69 to" CLECs), *amending* 47 CFR § 69.2(hh) (definition of "telephone company" and "local exchange carrier").

Respectfully submitted,

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