WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

October 3, 2011

VIA ECFS ***NOTICE OF EX PARTE PRESENTATION***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

On September 29, 2011, Jeff Oxley, Executive Vice President and General Counsel for Integra Telecom, Inc. ("Integra"), Roger Fleming, Vice President, Federal Government Affairs for Integra, and the undersigned of Willkie Farr & Gallagher LLP, outside counsel to Integra, met with Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell, to discuss intercarrier compensation reform issues raised in the above-referenced dockets.

Integra reiterated arguments made in its previous filings in the above-referenced dockets and these arguments are summarized in the attached presentation outline (Attachment A). Integra also distributed the attached graphs prepared by COMPTEL (Attachment B), which compare future intercarrier compensation revenue streams for price cap ILECs and CLECs under the price cap ILECs' ABC Plan and COMPTEL's "Competitive Amendment."

Additionally, Integra expressed support for Cablevision's recent proposal that if the Commission "adopt[s] the ILEC proposal that originating carriers pay lower terminating rates for traffic originated or terminated in VoIP during the ICC transition, . . . it should condition the availability of the lower rate on the originating carrier's making IP interconnection available to requesting providers."[1] The Commission should clarify, however, that where the originating carrier is an ILEC, the availability of the lower terminating rate for VoIP interexchange calls originated by such ILEC's customers is conditioned on the ILEC's provision of IP interconnection in a manner that complies with the requirements of Section 251(c)(2) of the Act.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Nirali Patel

Counsel for Integra Telecom, Inc.

Attachments

cc (via email): Christine Kurth

[1] Letter from Howard J. Symons, Counsel to Cablevision, to Marlene H. Dortch, Secretary, FCC, WC Dkt. Nos. 10-90 et al., at 2 (filed Sept. 26, 2011).

ATTACHMENT A

EX PARTE PRESENTATION OF INTEGRA TELECOM
ON INTERCARRIER COMPENSATION/UNIVERSAL SERVICE REFORM
(WC Dkt. Nos. 10-90 et al.)
September 29, 2011

I. THE ABC PLAN ("ILEC PLAN") SUFFERS FROM A NUMBER OF SERIOUS DEFECTS AND MUST BE MODIFIED IN A NUMBER OF WAYS.

A. The Transition Schedule.

- ***The proposed 18-month transition from intrastate terminating access rates to interstate terminating access rates is far too short.***

  - Comments from numerous LECs—including CenturyLink and Frontier, two of the ILEC Plan signatories—demonstrate that carriers need a gradual, multi-year reduction of intrastate terminating access rates to interstate levels in order to adjust to the dramatic reductions in their intrastate access revenues in many states. *See* Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc. ("Cbeyond et al.") Aug. 24th Initial Comments n.8.

  - For instance, CLECs such as Integra Telecom have entered into long-term contracts with many of their business customers and will generally be unable to adjust end-user rates until those contracts expire.

- ***Therefore, the Commission should establish an extended transition for lowering intrastate access charges.*** The FCC can accomplish this by adopting Cbeyond, Integra and tw telecom's proposal to reduce intrastate terminating access rates to interstate levels over a 5-year period (and to then unify all terminating rates to reciprocal compensation levels over a 1- to 2-year period).

B. The Access Replacement Mechanism ("ARM").

- ***There is no basis for allowing price-cap ILECs to recover foregone ICC revenues from an ARM.***

    - If the FCC adopts a TELRIC-based target rate equal to reciprocal compensation for the exchange of all traffic (as Cbeyond et al. and COMPTEL have proposed), there would be no need for funding to replace foregone ICC revenues. Cost-based rates would fully compensate price-cap ILECs for transport and termination.

    - The price-cap ILECs suggest that, unlike their competitors, they need ARM funds in order to meet their obligation to provide service in high-cost areas. *See* AT&T et al. Sept. 6th Reply Comments at 19. But this rationale does not hold true because:

        - CLECs are subject to the same carrier-of-last-resort ("COLR") obligations as ILECs in many states (*see* Cox Sept. 6th Reply Comments at 6);
        - Many states have eliminated or are eliminating COLR obligations and the price-cap ILECs themselves propose elimination of such obligations in their Plan;
        - ILECs can often recover the costs of providing service to remote areas by assessing construction charges on end users; and
        - In states that have deregulated local service rates, ILECs can recover the costs of providing service through increased rates. *See* Cbeyond et al. Aug. 24th Initial Comments at 8.

- ***There is no basis for allowing price-cap ILECs to recover from the ARM foregone ICC revenues from the provision of service to business customers.***

    - Such recovery would effectively insulate those revenues from competitors. Instead of allowing price-cap ILECs alone to recover those revenues from the ARM, all carriers, including CLECs, should be allowed to compete for and recover those revenues from business end users (if possible).

- ***The ILEC Plan effectively gives price-cap ILECs a longer overall transition than their competitors because eligibility for ARM funds lasts for 3 years after the target rate is achieved.***

    - To make matters worse, competitors would presumably be required to contribute to the ARM in the form of USF contributions.

- ***Therefore, if the FCC adopts an ARM (which it should not), the Commission must ensure that ILECs and CLECs experience a transition of equal duration.*** The FCC can accomplish this by either:

- Extending the duration of the Cbeyond, Integra and tw telecom proposal to 2020; or

- Adopting COMPTEL's proposal to simultaneously reduce CLECs' intrastate terminating access rates and interstate terminating access rates to reciprocal compensation levels over an 8-year period. *See* COMPTEL Aug. 24th Initial Comments, Att. 2, at 4-5.

- ***The Commission should also establish an explicit cap on the size of any ARM, consistent with the Commission's goal of controlling the size of the USF.***

C. The Target Rate.

- ***The Commission lacks the authority to adopt the price-cap ILECs' proposed uniform default rate of $0.0007 per minute.***

    - The record evidence demonstrates that this rate is not cost-based and is therefore inconsistent with the "additional cost" standard of Section 252(d)(2) of the Act. *See* Cbeyond et al. Aug. 24th Initial Comments n.27.

- ***None of the price-cap ILECs' arguments in support of a $0.0007 rate has merit.***

    - A portion of traffic is exchanged at that rate today because of the Commission's so-called mirroring rule, not because the $0.0007 rate is cost-based. *See id.* at 11 & n.30.

    - The fact that some carriers have agreed to the $0.0007 rate in some interconnection agreements does not mean that that rate is cost-based.

        - The fact that an ILEC agrees to a rate of $0.0007 in interconnection agreements in situations where the ILEC is a net terminator of traffic has no bearing on whether the ILEC's own terminating costs are equal to or less than $0.0007.

        - Interconnection agreement negotiations include give-and-take on dozens of issues and a carrier might well agree to below-cost termination rates in return for more valuable concessions on other issues.

        - Many, if not most, carriers have not agreed to the $0.0007 rate, supporting the conclusion that such carriers do not view it as cost-based.

- ***Therefore, the FCC should unify all terminating rates at TELRIC-based, reciprocal compensation levels.***

D. The Treatment Of Interconnected VoIP Traffic.

- ***The FCC should reject the price-cap ILECs' proposal to exempt interconnected VoIP traffic from intrastate access charges during the first 18 months of the transition.***

  - Treating interconnected VoIP traffic in this manner would create additional arbitrage opportunities. The record demonstrates that carriers—including Windstream, one of the ILEC Plan signatories—cannot differentiate interconnected VoIP traffic from other voice traffic on their networks. *See* Cbeyond et al. Aug. 24th Initial Comments n.38. Accordingly, originating carriers would have a strong incentive to misidentify TDM-based long-distance voice traffic as VoIP traffic in order to minimize their ICC liability. This would effectively result in an immediate reduction of intrastate access rates to interstate access rates with no transition whatsoever.

  - Treating interconnected VoIP traffic in this manner would increase the amount of foregone intrastate access revenues that price-cap ILECs—but not their competitors—would be able to recover from the ARM.

    - To make matters worse, the ILEC Plan would require CLECs to contribute to a fund that allows Verizon and other price-cap ILECs to recover foregone intrastate access revenues for interconnected VoIP traffic while Verizon simultaneously refuses to pay CLECs for tariffed access charges on the basis that such charges do not apply to interconnected VoIP traffic. *See* Cbeyond et al. Sept. 6th Reply Comments at 7 & n.20.

  - Interconnected VoIP traffic is *not* inseverable and jurisdictionally interstate. Carriers can rely on established mechanisms (such as percent interstate usage factors or the safe harbor for assessing USF contributions) to estimate the percentage of their interconnected VoIP long-distance traffic that is interstate and intrastate. *See id.* at 5 & n.10.

- ***The Commission should instead apply the same ICC rates—including intrastate access charges—to interconnected VoIP traffic that apply to TDM-based voice traffic from the beginning of the transition.*** This approach is sound policy because it:

  - Is technology-neutral;

  - Furthers the Commission's goal of eliminating arbitrage; and

  - Will eliminate costly disputes and litigation about which rates apply.

E. Transport Rates.

- ***The price-cap ILECs' proposed treatment of transport rates creates significant opportunities for them to raise rivals' costs.***

  - For example, the ILEC Plan would maintain transport rates at higher interstate levels between July 1, 2013 and July 1, 2017, thereby causing competitors—who must frequently purchase transport from ILECs but who rarely sell transport to ILECs—to make larger net payments to the price-cap ILECs during those 4 years.

  - The ILEC Plan also fails to specify whether and in what circumstances "transport" is defined as it is in the reciprocal compensation context (where cost-based rates apply) or in the access context (where much higher interstate access rates apply). The price-cap ILECs could exploit this ambiguity to increase competitors' transport costs during the transition between July 1, 2013 and July 1, 2017.

  - Under the ILEC Plan, the target rate of $0.0007 per minute would apply to both transport and end office switching if the terminating carrier owns both the tandem switch and the end office switch. The $0.0007 rate, however, would apply only to end office switching if the terminating carrier owns only the end office switch. Thus, where competitors need to purchase transport from the ILEC to carry traffic from the competitors' networks to the ILECs' end offices, price-cap ILECs would have the ability to charge as high a price for that transport as possible.

- ***Therefore, the Commission should modify the ILEC Plan to limit the opportunities for price-cap ILECs to increase competitors' transport costs.*** Specifically, the FCC should:

  - Reduce all transport rates at the same pace as end office switching in each step of the transition to the target rate;

  - Clearly define "transport" for all traffic as it is in the access context (i.e., as the transmission from the calling party's network to the called party's end office in the same LATA); and

  - Price all transport at TELRIC-based rates beginning on the date that the end-point for rate reform is reached.

F. Tandem Transit Rates.

- ***The ILEC Plan fails to reform tandem transit rates. It would be illogical for the FCC to reform access charges on the basis that they are above cost but permit tandem transit service rates that are above cost when that service includes nearly all of the same functionalities.***

- ***Record evidence shows that ILECs have substantial and persisting market power in the provision of tandem transit service for a significant portion of the local traffic exchanged among LECs and that they offer tandem transit service at rates that are well above cost.***

    - Legacy Qwest offers CLECs tandem transit service at a rate of $0.0045, which is more than 3 times Qwest's average TELRIC rate for tandem transit service. *See* Cbeyond et al. Apr. 18th Initial Comments at 20.

    - In the legacy BellSouth territory, AT&T offers CLECs tandem transit service at a rate of $0.0025, which is nearly 2.5 times legacy BellSouth's average TELRIC rate for tandem transit service. *See id.*

- ***CLECs such as Integra remain dependent upon ILECs for transit of a significant portion of their local traffic for a number of reasons.***

    - Unlike ILECs' networks, alternative transit providers' networks are not ubiquitous. For this reason, some CLECs must still use the ILEC's local tandem switch in every market they serve.

    - ILECs have used various strategies to reduce the size of the addressable market for alternative transit providers and to force CLECs to continue to buy tandem transit service from the ILEC for the traffic at issue.

        - For example, when an Integra customer calls the customer of any CLEC (including another Integra customer) that is served by legacy Qwest's QLSP (UNE-P replacement) product, Qwest requires Integra to use Qwest for transit of that traffic. *See* Cbeyond et al. July 29th Ex Parte Letter at 3 & n.10.

        - According to Peerless Network, an alternative transit provider, in many markets in the AT&T ILEC territory, AT&T's long distance and wireless affiliates have refused to interconnect with Peerless. *See id.* at 3. Instead, "AT&T will deliver traffic to other carriers from any of its affiliates . . . only through interconnections to AT&T [incumbent] LEC tandems." *See* Peerless Network May 31st Petition to Deny, WT Dkt. No. 11-65, at 7.

    - There are costs associated with relying on an alternative transit provider. For instance, a CLEC must establish trunks between its switch and the alternative transit provider's switch, but the CLEC must pay for these trunks if there is insufficient traffic for the alternative transit provider to justify the cost of establishing the trunks. *See* Cbeyond et al. July 29th Ex Parte Letter at 4-5.

- ***For these reasons, the Commission should clarify that ILECs have a duty to provide tandem transit service, and it should require that such service be provided at TELRIC-based rates.***

    - There is no doubt that ILECs have the duty to provide tandem transit service under the Act. The FCC has already held that all LECs have "a duty to route and terminate traffic" under Section 251(b)(5). *Local Competition Order* ¶ 176. Thus, ILECs have the duty under Section 251(b)(5) to route or "transport" telecommunications traffic, including between carriers that lack direct interconnection.

    - The Commission can rely on Section 251(b)(5) to exercise jurisdiction over tandem transit service rates because that service involves the "transport" of telecommunications, as defined in the Commission's rules. *See* 47 C.F.R. § 51.701(c). The Commission can also rely on its rulemaking authority under Section 201(b) of the Act to interpret the term "compensation" in Section 251(b)(5) and establish TELRIC-based pricing for the "compensation" paid to ILECs for tandem transit service.

G. Subscriber Line Charges ("SLCs").

- ***There is no basis for the price-cap ILECs' proposal to allow an ILEC to increase its multiline business SLC only after its residential SLC reaches the same level as the multiline business SLC.*** *See* AT&T et al. Aug. 24th Initial Comments at 34.

- ***The Commission should instead allow ILECs to increase all of their business SLCs irrespective of whether they increase their residential SLCs.***

- ***Additionally, the Commission should not allow ILECs to charge residential SLCs that are higher than business SLCs because revenues from residential access lines should not subsidize prices for business services.***

- ***Further, if the Commission establishes an ARM (which, as discussed, it should not), it must immediately impute to ILECs the maximum permissible SLC revenues for business and residential lines before allowing recovery from the ARM.***

- ***Finally, the Commission should ensure that ILECs cannot use SLC increases to shift recovery from competitive markets to less competitive markets.*** Specifically, the FCC should:

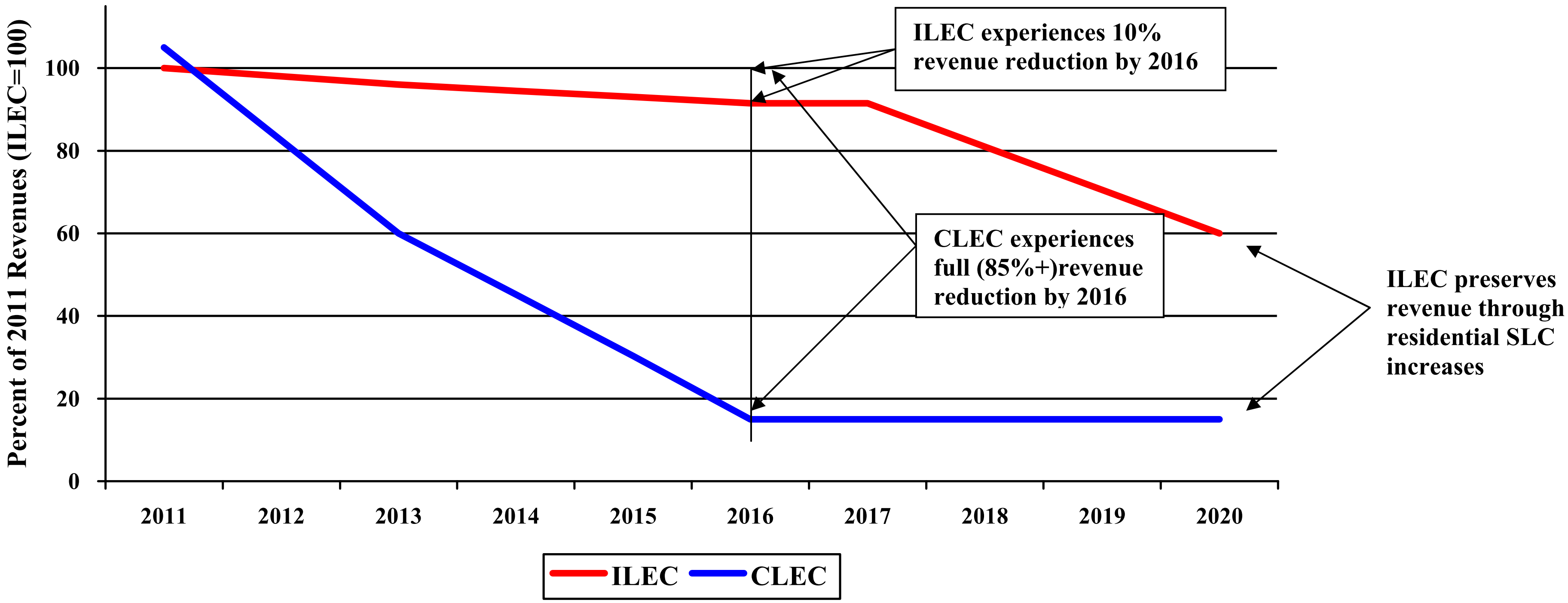
  - Not allow price-cap ILECs to selectively raise SLCs in geographic areas with little or no competition, while lowering them in areas subject to greater competition; and

  - Only permit price-cap ILECs to recover foregone ICC revenues associated with business lines through higher SLCs imposed on business customers, not residential customers.

ATTACHMENT B

Source: COMPTEL Notice of Ex Parte Meeting, WC Dkt. Nos. 10-90 et al., Attachment, at 3 (filed Sept. 23, 2011).

Illustrative Comparison of ICC Revenue Streams:
CLEC and Price-Cap ILEC under ABC Plan



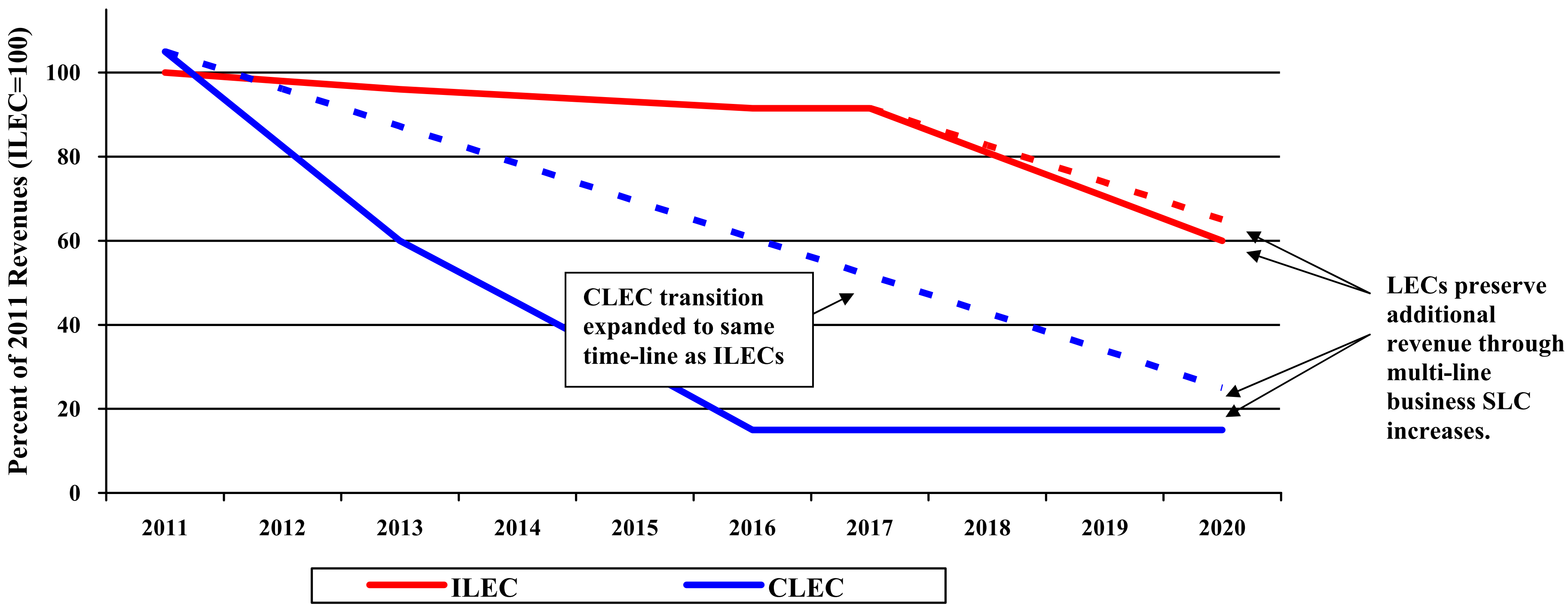
Revenue relationships depicted by graph:

1. $0.0007 rate reduces ICC revenues by 85% overall.
2. CLEC serves the business market and, therefore, obtains no offsetting revenues from residential SLC increase.
3. CLEC access revenues are 5% larger than price-cap ILEC at initiation of plan because of higher intrastate access in some states.
4. ILEC is able to partially offset ICC revenue loss through increases in residential (and single-line business) SLC.
5. Revenue streams are shown as a percentage of 2011 revenue (ILEC=100), and include ARM and estimated revenues from residential SLC increases (for ILEC). Revenue trends account only for changes caused by ABC plan.

Note: Revenue relationships in the chart are intended to provide a conservative illustration of the likely overall relative impact of the ABC Plan and Competitive Amendment on CLECs and Price Cap ILECs and are not intended to measure the specific impact on any individual company. The illustration takes in consideration general review of access information filed in state proceedings and ILEC estimates regarding access replacement. The actual impact on most CLECs may actually be larger than the 85% reduction shown.

Source: COMPTEL Notice of Ex Parte Meeting, WC Dkt. Nos. 10-90 et al., Attachment, at 4 (filed Sept. 23, 2011).

Illustrative Comparison of ICC Revenue Streams:
CLEC and Price-Cap ILEC under ABC Plan with Competitive Amendment



Revenue relationship changes that are part of the Competitive Amendment:

1. ARM is reduced by imputed increases in multi-line SLCs (not shown).
2. CLEC revenue reduction partially offset by enhanced revenue increases in the business market (to the extent ILECs actually increase multi-line business SLCs). Increase for the CLEC and ILEC is intend to illustrate higher (but unknown) revenues. Higher revenues (compared to the ABC Plan) are also expected if termination rates are cost-based (but the precise level is unknown).
3. CLEC transition extended to same time-line as ILEC transition (equal annual reductions in intrastate and interstate access).
4. Transport <u>and</u> termination rates are consistently governed by 251(b)(5) (not shown).