

**Before the  
Federal Communications Commission  
Washington, DC 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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**REPLY OF  
OMNITEL COMMUNICATIONS, INC. AND TEKSTAR COMMUNICATIONS, INC.**

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February 21, 2012

**TABLE OF CONTENTS**

	<b>Page</b>
<b>I. AT&amp;T FAILS TO PROVIDE EITHER ARGUMENT OR EVIDENCE THAT WOULD JUSTIFY FURTHER RESTRICTIONS ON TRANSPORT CHARGES.....</b>	<b>3</b>
<b>II. PROPOSALS TO MANDATE THAT CLECS SUBJECT TO THE ACCESS STIMULATION RULES CHARGE A \$0.0007 RATE FOR TERMINATING SWITCHED ACCESS TRAFFIC HAVE BEEN FULLY VETTED AND REJECTED BY THE COMMISSION .....</b>	<b>5</b>
<b>III. CONCLUSION .....</b>	<b>6</b>

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**REPLY OF  
OMNITEL COMMUNICATIONS, INC. AND TEKSTAR COMMUNICATIONS, INC.**

OmniTel Communications, Inc. (“OmniTel”) and Tekstar Communications, Inc. (“Tekstar”) (both competitive local exchange carriers (“CLECs”)), through their undersigned counsel and pursuant to Section 1.429(g) of the Federal Communications Commission’s (“Commission’s”) rules, hereby respectfully submit their replies to comments<sup>1</sup> regarding

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<sup>1</sup> On February 9, 2011, OmniTel and Tekstar set forth their objections to the parts of the Reconsideration Petitions of Sprint Nextel and the United States Telecom Association (“USTA”) that seek to have the Commission amend its access stimulation rules. *See* Opposition of OmniTel Communications, Inc. and Tekstar Communications, Inc., WC Docket No. 10-90 et al. (filed Feb. 9, 2012) (“OmniTel/Tekstar Opposition”). The new filings that support these Petitions largely make the same arguments set forth in these Petitions. In response to these new filings, OmniTel and Tekstar incorporate their February 9 Opposition and stand by their arguments therein opposing the Petitions and largely limit their arguments in this Reply to emphasize the flaws in the new filings.

reconsideration of the access stimulation rules of the Commission's *Connect America Fund Order*<sup>2</sup> filed by Sprint Nextel Corporation,<sup>3</sup> AT&T,<sup>4</sup> MetroPCS,<sup>5</sup> and Comcast.<sup>6</sup> Without supplying any new evidence or data, each of these comments seeks to reopen the Commission's decision to adopt rules to address concerns with access stimulation. As such, the Commission should reject their requests to amend these rules, which were adopted after careful and deliberate consideration and struck a reasonable balance among a wide array of conflicting interests. The new access stimulation rules will dramatically reduce interstate switched access rates of affected local exchange carriers ("LECs") to reflect large call volumes, and satisfy the just and reasonable standard of Section 201(b) of the Communications Act of 1934, as amended. OmniTel and Tekstar agree with Verizon that "it would be far more productive for parties and the Commission to now focus resources on implementing reforms in an efficient way."<sup>7</sup> If new concerns arise that are accompanied by sufficient evidence, the Commission can address them at that time.

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<sup>2</sup> 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 a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*").

<sup>3</sup> See Comments of Sprint Nextel Corporation ("Sprint"), WC Docket No. 10-90 et al. (filed Feb. 9, 2011) ("Sprint Comments").

<sup>4</sup> See Comments of AT&T, WC Docket No. 10-90 et al. (filed Feb. 9, 2011) ("AT&T Comments").

<sup>5</sup> See Comments of MetroPCS Communications, Inc. on Certain Petitions for Reconsideration and/or Clarification, WC Docket No. 10-90 et al. (filed Feb. 9, 2011) ("MetroPCS Comments").

<sup>6</sup> See Comments of Comcast Corporation, WC Docket No. 10-90 et al. (filed Feb. 9, 2011) ("Comcast Comments").

<sup>7</sup> See Opposition of Verizon, WC Docket No. 10-90 et al. at 2 (filed Feb. 9, 2011).

**I. AT&T FAILS TO PROVIDE EITHER ARGUMENT OR EVIDENCE THAT WOULD JUSTIFY FURTHER RESTRICTIONS ON TRANSPORT CHARGES**

The *Order* required CLECs that meet the new rules' qualifying conditions for access stimulation to benchmark their rates, including their transport rates, to those of the price cap incumbent local exchange carrier ("ILEC") in the state with the lowest rates. AT&T, even though it did not file a petition for reconsideration on this issue, asks the Commission in its comments to either clarify or adopt a new series of onerous rules that would restrict the miles of transport for which a LEC subject to the access stimulation rules may charge.<sup>8</sup> AT&T's request is based on arguments it made and evidence it submitted last spring when it filed comments in the Notice of Proposed Rulemaking in the USF/ICC Transformation docket.<sup>9</sup> No new arguments or information are submitted in its filing. Because AT&T simply seeks to reargue an issue already addressed by the Commission, it should be summarily rejected.

Even were the Commission to once again address AT&T's arguments on their merits, which it should not, the mere fact that a CLEC's mileage may exceed that of the price cap ILEC to which it must benchmark does make the CLEC's mileage excessive, as OmniTel and Tekstar stated in their Opposition.<sup>10</sup> CLECs, after all, are not required to follow the ILEC's network architecture. Many rural ILECs and CLECs, for example, for decades have utilized equal access providers to interconnect indirectly with AT&T and other interexchange carriers ("IXCs"), arrangements which have uniformly been considered acceptable. If the mileage in such

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<sup>8</sup> More specifically, AT&T proposes: "(1) that a LEC may not impose distance-sensitive transport charges for a distance that is any greater than the distance between the nearest tandem switch (of any tandem service provider) and the terminating end office; (2) that a connecting carrier can directly interconnect with the terminating LEC at the terminating end office if not already allowed; and (3) that a LEC engaged in traffic-pumping may only charge terminating access with no transport." *See* AT&T Comments at 42.

<sup>9</sup> *Id.* (citing to Comments of AT&T, WC Docket No. 10-90 et al. at 30-35 (filed Apr. 18, 2011)).

<sup>10</sup> *See* OmniTel/Tekstar Opposition at 8-9.

arrangements was unacceptable, that would have been the case separate and apart from the issue of access stimulation and should be addressed, if at all, outside of the access stimulation context. Allegations of excessive mileage should be addressed on a case-by-case basis, not in a generic rulemaking, as the propriety of individual situations must be addressed on specific facts. Under the new rules, the CLEC and the price cap ILEC to which it must benchmark its rates may operate in completely different parts of the same state and have different network topologies and cost characteristics.

For the foregoing reasons, what might constitute excessive transport mileage in any given situation is not an appropriate issue for reconsideration in this rulemaking. If any provider has proof that a CLEC has excessive transport mileage, it can bring a complaint before the Commission, and the Commission can address that situation on the specific facts and circumstances.<sup>11</sup> That is not an unreasonable process given that AT&T and many other IXCs have demonstrated a willingness to withhold payment of tariffed charges to a LEC pending resolution of a dispute. In contrast, as AT&T recognizes, there is nothing inherently illegitimate about the interconnection arrangements that LECs with revenue sharing arrangements employ.<sup>12</sup> Accordingly, OmniTel and Tekstar contend that AT&T's proposal to place a burden on LECs to seek waivers to collect their transport charges is unreasonable. If such a process were adopted, it would only further burden the LEC in seeking to collect the amounts it can lawfully charge and significantly skew the procedural balance in favor of IXCs.

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<sup>11</sup> The *Order* does not modify the Commission's complaint procedures.

<sup>12</sup> See AT&T Comments at 43.

## II. PROPOSALS TO MANDATE THAT CLECS SUBJECT TO THE ACCESS STIMULATION RULES CHARGE A \$0.0007 RATE FOR TERMINATING SWITCHED ACCESS TRAFFIC HAVE BEEN FULLY VETTED AND REJECTED BY THE COMMISSION

Sprint,<sup>13</sup> AT&T,<sup>14</sup> MetroPCS,<sup>15</sup> and Comcast<sup>16</sup> argue that LECs meeting the conditions for access stimulation should be permitted to charge no more than \$0.0007 per minute for terminating interstate switched access traffic. This position, of course, was argued repeatedly in these dockets and was rejected in the *Order*. The Commission concluded that there was “insufficient evidence to justify abandoning competitive LEC benchmarking entirely.”<sup>17</sup> The Commission also determined that requiring CLECs to benchmark to the price cap LEC with the lowest rates in the state would adequately address the concern regarding unjust and unreasonable rates “within the parameters of the existing access charge regulatory structure.”<sup>18</sup> Sprint, AT&T, MetroPCS, and Comcast offer no basis for the Commission reconsidering that decision apart from the arguments the Commission has already rejected and which it should reject again.

Finally, MetroPCS argues that adopting a \$0.0007 rate will avoid the “complicated formulas” of the rate benchmarking process which invite disputes and arbitrage.<sup>19</sup> Benchmarking by CLECs, however, is a familiar process, in use by them and accepted by the industry for a decade. It will be just as simple to monitor in the access stimulation context as it has been outside of it for both rural CLECs and non-rural CLECs. The complications involved in calculating such rates are minor, especially in contrast to the outright arbitrary nature of the

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<sup>13</sup> See Sprint Comments at 4-5.

<sup>14</sup> See AT&T Comments at 43-44.

<sup>15</sup> See MetroPCS Comments at 4-8.

<sup>16</sup> See Comcast Comments at 9-12.

<sup>17</sup> *Order*, ¶ 692.

<sup>18</sup> *Id.*

<sup>19</sup> See MetroPCS Comments at 7.

\$0.0007 rate, which, under the resurrected proposals being made, would be applied even if traffic amounts are far lower than price cap ILECs charging higher terminating switched access rates.

Under the *Order*, the \$0.0007 rate will apply to price cap carriers and all CLECs that benchmark to them as of July 1, 2016.<sup>20</sup> Accordingly, CLECs engaged in access stimulation as of that date will be charging a rate of \$0.0007. Neither Sprint, AT&T, MetroPCS, nor Comcast have provided additional evidence to justify a flash cut to the \$0.0007 rate and Commission reconsideration of its transition rules. The Commission should not reconsider its decision on the basis of their arguments, which have already been presented to it and rejected.<sup>21</sup>

### III. CONCLUSION

After four years of intense advocacy and in-depth consideration, the Commission struck a balance in adopting access stimulation rules. Neither the Sprint nor USTA Reconsideration Petitions, which OmniTel and Tekstar responded to in its Opposition filed on February 9, 2012, nor the comments filed in support of those petitions raise new arguments or produce new evidence. Consequently, the Commission should dismiss the Petitions with respect to access stimulation issues.

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<sup>20</sup> See *Order*, ¶ 801, Figure 9.

<sup>21</sup> See *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*; CC Docket Nos. 99-200, 96-98, 95-116, Fourth Order on Reconsideration, FCC 07-65, ¶ 5 (2007) (“The Commission will entertain a petition for reconsideration if it is based on new evidence, changed circumstances or if reconsideration is in the public interest. The Commission, however, does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented. This is particularly true, where a petitioner advances arguments that the Commission previously considered and rejected in prior orders.”) (citing 47 C.F.R. § 1.429(b),(i)).

Respectfully submitted,



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February 21, 2012

**Certificate of Service**

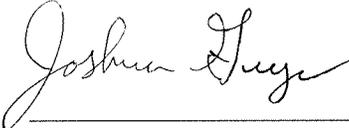
I, Joshua T. Guyan, hereby certify that on this 21<sup>st</sup> day of February, 2012, I caused a copy of the foregoing Reply of OmniTel Communications, Inc. and Tekstar Communications, Inc. to be served by USPS First Class Mail on the following:

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