

**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
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**REPLY COMMENTS OF
CBEYOND, EARTHLINK, INTEGRA TELECOM, AND TW TELECOM**

Cbeyond, Inc. (“Cbeyond”), EarthLink, Inc. (“EarthLink”), Integra Telecom, Inc. (“Integra”), and tw telecom inc. (“tw telecom”) (collectively, the “Joint Commenters”), through their undersigned counsel, hereby submit these reply comments in response to USTelecom’s argument in its petition for reconsideration¹ of the *ICC/USF Order*² that the Commission should

¹ Petition for Reconsideration of The United States Telecom Association, WC Dkt. Nos. 10-90 et al. (filed Dec. 29, 2011) (“USTelecom Petition”).

² 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) (“ICC/USF Order” or “Order”)*.

change its definition of IP-compatible customer premises equipment (“CPE”) for purposes of classifying traffic as “VoIP-PSTN” under the intercarrier compensation rules.

The *ICC/USF Order* establishes a sound framework for the identification of “VoIP-PSTN” traffic. The *Order* defines “VoIP-PSTN” traffic as “traffic exchanged over PSTN facilities that originates and/or terminates in IP format.”³ In addition, under new Section 51.913 of the Commission’s rules, “[t]elecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.”⁴ The Commission implicitly recognized that, in some instances, the process of precisely determining the extent to which the traffic carried by a LEC meets this standard would be a complex and costly undertaking. The *Order* therefore permits a LEC to “specify in its intrastate tariff that the default percentage of traffic subject to the VoIP-PSTN framework is equal to the percentage of VoIP subscribers in the state based on the Local Competition Report, as released periodically, unless rebutted by the other carrier.”⁵ This alternative provides a reasonably accurate proxy for the proportion of minutes that a given LEC originates and/or terminates in IP format in each state, and it can be rebutted in the limited instances in which it yields inaccurate results.⁶ The Commission’s approach is more than sufficient to address what is largely a transitional issue that will disappear after 17 months (i.e., after July 1, 2013).

³ *Id.*, ¶ 940.

⁴ 47 C.F.R. § 51.913.

⁵ *Order*, ¶ 963.

⁶ *See id.*, n.1994.

In its petition for reconsideration, however, USTelecom asks the Commission to expand the scope of “VoIP-PSTN” traffic for intercarrier compensation purposes by construing IP-compatible CPE to include “any equipment at *or within proximity of* a customer premises that enables the use of voice handsets or other equipment used for voice functions.”⁷ USTelecom further requests that “[i]n addition, or in the alternative, . . . the Bureau . . . make clear in section 51.913 that the new rule covers terminating traffic when the associated revenues are reported by providers as interconnected VoIP on their 2011 FCC Form 499As.”⁸ These requests should be denied for several reasons.

First, basing the IP-compatible CPE standard for the first time on whether equipment is at *or within the proximity of* a customer’s premises would introduce unneeded ambiguity into this analysis. As the Commission recognized by providing a safe harbor, the process of identifying “VoIP-PSTN” traffic can already be difficult under the current standard. The Joint Commenters have been making a good faith effort, given their limited resources, to estimate the extent to which their customers are served by IP-compatible CPE. If USTelecom’s proposal were adopted, this process would only become more difficult. The Joint Commenters and other LECs

⁷ USTelecom Petition at 35 (emphasis added). This request apparently stems from a series of disputes in which Verizon has sought to deny access charges to carriers whose networks perform IP/TDM conversions near (but not on) customers’ premises. *See id.*, n. 54 (citing *Complaint Against Verizon Florida, LLC and MCI Communications Services, d/b/a Verizon Business Services for Failure to Pay Intrastate Access Charges for the Origination and Termination of Intrastate Interexchange Telecommunications Services by Bright House Networks Information Services (Florida), LLC*, Docket No. 110056-TP, Direct Testimony of Michael Starkey, at 10-14 & 38 (filed Nov. 1, 2011); *Armstrong Telecommunications Inc. v. Verizon Pennsylvania, Inc.*, Docket Nos. C-2010-2216205, *et seq.*, Main Brief of Armstrong Telecommunications Inc. at 36 (filed Dec. 6, 2011)). Notably, however, Verizon itself has not sought the clarification requested by USTelecom. In fact, Verizon did not even address this issue in the comments it filed in response to the petitions for reconsideration of the *ICC/USF Order*.

⁸ USTelecom Petition at 35. It is unclear whether USTelecom also seeks to eliminate the Local Competition Report safe harbor that the Commission established in the *Order*.

would be left scrambling to divine which devices are or are not *within the proximity of* a customer's premises, a standard which has never been applied and has therefore never been interpreted.⁹ This process would undoubtedly lead to widespread disputes, undermining the Commission's desire to "minimize future uncertainty and disputes regarding VoIP compensation, and thereby meaningfully reduce carriers' future costs."¹⁰

Second, Form 499A data would not provide an accurate proxy for the proportion of traffic that a LEC originates and/or terminates in IP format in a given state. To begin with, Form 499A filers report only *revenue* data,¹¹ but LECs must estimate the proportion of their *minutes* that originate and/or terminate in IP format for intercarrier compensation purposes. Using revenue as a proxy for minutes would require the assumption that VoIP services are priced identically to TDM-based services. Of course, this is often not the case. Furthermore, Form 499A filers report only nationwide figures and thus do not account for state-by-state variations.¹² This is particularly troubling because the principal effect of this dispute will be to determine the access charges that will apply to *intrastate* toll calls during the transition period. The Local Competition Report, by contrast, provides state-by-state information,¹³ and indeed shows that the

⁹ See Comments of General Communication, Inc., WC Dkt. Nos. 10-90 et al., at 5 (filed Feb. 9, 2012) (explaining that USTelecom's proposal would create "massive disruption and uncertainty").

¹⁰ *Order*, ¶ 935.

¹¹ See 2011 FCC Form 499A, Block 4-A.

¹² See *id.*

¹³ See *Order*, n.1993 (citing Comments of Cox Communications, Inc., WC Dkt. Nos. 10-90 et al., at 7 (filed Aug. 24, 2012) (noting the availability of state specific data)).

percentage of end-user connections that are VoIP varies widely from state to state.¹⁴ For these reasons, Form 499A data would be an unreliable proxy for the proportion of a LEC's traffic that originates and/or terminates in IP format in a given state. The Commission's existing safe harbor provides a more sound approach and, in all events, a sufficient one to address the need to identify "VoIP-PSTN" traffic until July 1, 2013.

For the foregoing reasons, the Commission should deny USTelecom's petition for reconsideration to the extent it seeks to modify the *Order's* framework for identifying "VoIP-PSTN" traffic.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones
Matthew Jones
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
(202) 303-1000

*Attorneys for Cbeyond, Inc., EarthLink, Inc.,
Integra Telecom, Inc., and tw telecom inc.*

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¹⁴ For example, as of the last Local Competition Report, only 723,000 of the 4,528,000 (or 16%) of end-user connections in Virginia were VoIP, while 613,000 of the 2,019,000 (or 30%) of end-user connections in Connecticut were VoIP. See IATD, Wir. Comp. Bur., *Local Telephone Competition: Status as of December 31, 2010*, Table 8 (rel. Oct. 2011).

CERTIFICATE OF SERVICE

I, Matthew Jones, do hereby certify that on this day, February 21, 2012, I caused to be served a true and correct copy of the foregoing Comments of Cbeyond, EarthLink, Integra Telecom, and tw telecom via First-Class U.S. Mail, postage prepaid, to the following:

Jonathan Banks
Glenn Reynolds
United States Telecom Association
607 14th Street, N.W., Suite 400
Washington, D.C. 20005

/s/ Matthew Jones