

**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 ONVOY, INC.

Onvoy, Inc., through its undersigned counsel, hereby submits reply comments in the above-captioned rulemaking proceedings to address (1) oppositions to the Onvoy, Inc. and 360networks (USA) inc. (together, “Onvoy”) Petition for Clarification or Reconsideration¹ of the Commission’s *ICC/USF Reform Order*,² and (2) clarification or reconsideration sought by the

¹ Petition for Clarification or Reconsideration of Onvoy, Inc. and 360networks (USA) inc., WC Dkt. Nos. 10-90 *et al.* (Dec. 23, 2011) (the “Onvoy Petition”).

² *In re 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 & Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*ICC/USF Reform Order*” or “*Order*”).

National Exchange Carrier Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (together, “NECA”) regarding the rules governing intra-MTA LEC-CMRS interexchange traffic.

I. THE COMMISSION SHOULD REJECT OPPOSITIONS TO ONVOY’S PETITION FOR CLARIFICATION OR RECONSIDERATION.

In its Petition for Clarification or Reconsideration, Onvoy asked the Commission to clarify that, where a LEC has already entered into an interconnection agreement to exchange local and toll VoIP-PSTN traffic on a bill-and-keep basis, the default transitional rates adopted in the *Order* do not apply, even if the agreement contains a change-of-law provision.³

Alternatively, to the extent the Commission intended to allow an increase from the agreed-upon bill-and-keep rates to the *Order*’s transitional default rates, Onvoy asked the Commission to reconsider that decision and to abrogate change-of-law provisions to the extent necessary to ensure that pre-existing bill-and-keep arrangements for VoIP-PSTN traffic remain in place.⁴

Both AT&T and CenturyLink oppose the Onvoy Petition and instead argue that carriers should be permitted to rely on change-of-law provisions to replace existing bill-and-keep arrangements with the transitional default rates set forth in the *Order*.⁵ AT&T’s and CenturyLink’s arguments in support of this interpretation should be rejected.

First, allowing LECs that have already agreed to bill-and-keep arrangements to temporarily charge higher intercarrier compensation rates conflicts with the policy objectives established in the *Order*. The Commission made clear that the purpose of its intercarrier

³ See Onvoy Petition at 1-2.

⁴ See *id.*

⁵ See Comments of AT&T, WC Dkt. Nos. 10-90 *et al.*, at 39-40 (Feb. 9, 2012); Opposition of CenturyLink, WC Dkt. Nos. 10-90 *et al.*, at 20-22 (Feb. 9, 2012) (“CenturyLink Opposition”).

compensation reform is to replace intercarrier payments with end user charges.⁶ The Commission described the “significant policy advantages”⁷ of bill-and-keep over other proposals in the record and found that bill-and-keep “best advances the . . . public interest, driving greater efficiency in the operation of telecommunications networks and promoting the deployment of IP-based networks.”⁸ Allowing carriers that have already agreed to exchange traffic under bill-and-keep to now begin using the higher transitional default rates for exchanging VoIP-PSTN traffic would directly undermine these goals by introducing the very charges that the Commission seeks to eliminate.

CenturyLink’s argument that the Commission’s default transitional rates for VoIP-PSTN traffic are an “offset” to the significant revenue reductions required elsewhere in the *Order* is not supportable.⁹ CenturyLink provides no basis for this assertion in the text of the *Order*, and there is none. Moreover, the purported “offset” suggested by CenturyLink would in fact result in a new “deficit” for net payers of new intercarrier compensation charges. Such carriers would experience an even greater revenue *reduction* under the *Order* under CenturyLink’s proposed approach. In any event, it is obvious that carriers that voluntarily exchanged traffic in the past without charge would not be harmed by the requirement that they continue to do so. Thus, no “offset” is needed.

Second, CenturyLink argues that Onvoy’s request that the Commission prohibit the enforcement of change-of-law provisions in interconnection agreements, if necessary, to ensure

⁶ See, e.g., *Order* ¶¶ 737, 742.

⁷ See *id.* ¶ 738.

⁸ *Id.* ¶ 741; see *id.* ¶¶ 742-752 (explaining why bill-and-keep advances the goals of reform).

⁹ See CenturyLink Opposition at 21.

that existing bill-and-keep arrangements remain in place for VoIP-PSTN traffic is impermissible under the *Mobile-Sierra* doctrine.¹⁰ This is incorrect.

Under the *Mobile-Sierra* doctrine, the Commission may unilaterally change the terms of private contracts if the public interest so requires.¹¹ That doctrine grants the Commission the authority to abrogate change-of-law contract provisions where doing so is necessary to prevent subversion of a policy objective established by the agency.¹² In the *Order*, the Commission mandated comprehensive changes to the complex rules governing intercarrier compensation for the purpose of establishing bill-and-keep. It did so because the agency concluded that bill-and-keep is in the public interest. In light of this conclusion, the Commission can abrogate change-of-law provisions that, if applied, would conflict with the transition to bill-and-keep. The Commission should therefore grant the Onvoy Petition.

II. THE COMMISSION SHOULD CONTINUE TO ALLOW ORIGINATING ACCESS CHARGES FOR INTRA-MTA LEC TO CMRS INTEREXCHANGE TRAFFIC ROUTED THROUGH AN IXC TO A CMRS PROVIDER.

In its Petition for Reconsideration, NECA describes the obstacles LECs would face if required to apply bill-and-keep to interexchange calls that originate from a wireline LEC

¹⁰ The Supreme Court established the *Mobile-Sierra* doctrine in two cases, both holding that private contracts can be abrogated by an agency when doing so is in the public interest. *See United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332, 344 (1956) (finding that public utility companies' contracts "remain fully subject to the paramount power of the [Federal Power] Commission to modify them when necessary in the public interest"); *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348, 355 (1956) (finding that an agency has authority to determine whether rates set in private contracts are contrary to the public interest).

¹¹ *See* CenturyLink Opposition at 22 (arguing that the *Mobile-Sierra* public interest standard "cannot be satisfied in this context").

¹² *See BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs., LLC*, 425 F.3d 964, 969-70 (11th Cir. 2005) (upholding FCC abrogation of change-of-law provisions of interconnection agreements that would have perpetuated the availability of unbundled switching even though the Commission had determined that unbundled switching should be eliminated).

customer, terminate at a CMRS carrier customer in the same MTA, and are transmitted via an interexchange carrier (“IXC”).¹³ In light of these obstacles, Onvoy urges the Commission to adopt sound rules governing the application of originating access charges for such calls.

As other commenters have observed, MTAs are large geographic areas that include many local exchanges.¹⁴ For example, MTA 12 spans six different states, including effectively all of Minnesota and North Dakota, most of South Dakota, and parts of Iowa, Wisconsin, and Michigan.¹⁵ Due to the size of MTA 12, many of the calls originating and terminating within this single MTA are interexchange. Further, for a significant portion of these calls, the originating LEC and the calling party’s presubscribed interexchange carrier (“PIC”) are two different carriers. Onvoy estimates that this is true of approximately 60 percent of the non-8YY-bound interexchange calls that traverse access tandems in Minnesota. It follows that a high percentage of interexchange calls originated by customers in Minnesota and terminated to called parties in MTA 12 are subject to originating access charges assessed by a calling party’s LEC on the calling party’s PIC.

Today, when the originating calling party dials a 1+ number, the end office switch of the calling party’s LEC is designed to route the call as toll and to switch the call to the calling party’s PIC. The originating LEC end office switch does not have the capability to route a 1+ dialed call based on the called party’s service provider.

¹³ See Petition for Reconsideration of NECA *et al.*, WC Dkt. Nos. 10-90 *et al.*, at 37 n.96 (Dec. 29, 2011); see also Letter from Larry D. Thompson, CEO, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, at 2 (Oct. 21, 2011) (“Vantage Ex Parte”); Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, at 3 (Feb. 9, 2011).

¹⁴ See, e.g., Vantage Ex Parte at 1-2.

¹⁵ See *id.*

If the originating caller does not dial a 1+ number, the calling party LEC's end office switch is designed to route the call to a Local Screening Table ("LST") within the switch. The LST contains a list of all NPA/NXX codes that are assigned to the LEC's local calling area, as defined by the state utility commission. When a LEC's customer dials a non-1+ number, the LEC's end office switch validates the dialed digits against the NPA/NXX entries in the LST. If the dialed digits are not in the LST, the calling party is notified that the dialed digits are outside the local calling area and the caller must dial a 1+ number.¹⁶

It is unfortunately not possible to modify the LST to ensure that intra-MTA calls to CMRS carriers are treated as local by a rural ILEC. To enable a rural ILEC end office switch to route a call to a CMRS provider's customer located outside the rural ILEC's local calling area but within the same MTA as a local call, all of the NPA/NXX codes in the MTA would need to be loaded into the ILEC's LST.¹⁷ This would be extremely burdensome. For example, a rural ILEC's LST typically contains only 5 to 20 NPA/NXX code entries, and there are over 4600 NPA/NXX codes assigned to MTA 12. Adding and supporting 4600 NPA/NXXs in the LST would be a substantial undertaking for a rural ILEC.

But even if all 4600 NPA/NXX codes were loaded into the ILEC's LST, this would not solve the problem. The ILEC's end office switch would treat every call within the MTA as local even if the call were destined for a called party served by a carrier other than a CMRS provider.

¹⁶ Some rural ILEC end office switches are capable of routing a non-1+ number call to the PIC if the dialed digits are not found in the LST. However, LECs generally do not follow this practice because the calling party would be charged for a toll call when he or she expects the call to be charged as a local number.

¹⁷ It would be necessary to train calling parties to dial 10 digits (rather than 1+ 10 digits) for calls destined to a CMRS provider customer. In the alternative, the rural ILEC could inform customers that 10 digit dialed calls could result in toll charges depending on the type of carrier serving the called party.

That is, once the LST screen has been satisfied, the end office switch would consider the call local, and there is no way to get the call back to the toll side of the switch. The switch would therefore attempt to terminate the call by performing a local number portability (“LNP”) look-up to determine the local routing number (“LRN”) to be used to terminate the call. If the end office switch does not have a route to the switch associated with the LRN, which will often be the case in a large MTA area, the calling party would be notified that no route is available to complete the call. Thus, even if a LEC were able to load all of the NPA/NXX codes associated with an MTA to the LST, calls destined to carriers other than CMRS providers would fail. As a result, Onvoy estimates that if all NPA/NXX codes in MTA 12 were added to the rural ILECs’ LSTs, calls to fewer than 0.5% of those NPA/NXX codes would be successfully delivered over local trunks to the called party in that MTA.¹⁸

In all events, it would be difficult, if not impossible, to determine the geographical location of the called party using a CMRS carrier network. This is because CMRS customers are mobile, and there is currently no way for an originating LEC to determine the location of a called CMRS customer at any particular time.¹⁹

Nor can this issue be solved by relying on traffic studies or other approximations, as these studies do not provide a reliable estimate of the percentage of CMRS-bound calls, let alone the percentage of CMRS-bound calls that are intra-MTA. Again, there is no way to determine if, at the time of the call, both the calling party and the CMRS provider customer whose mobile

¹⁸ See also *Vantage Ex Parte* at 2. (“[E]ven if some means *did* exist for the originating LEC to determine that this call should be delivered on a local basis, it would still not be possible to deliver the call in that manner, since many CMRS carriers have not deployed local trunks into many rural LEC offices, so there would be no route for the LEC to use.” (emphasis in original)).

¹⁹ See *id.*

number the calling party has dialed are within the same MTA. In addition, many calls to numbers associated with business wireline customers are forwarded to mobile phones via call forwarding. Where this is so, the calling party's dialed digits do not identify the final terminating carrier as a CMRS provider. This is the case, for example, where the called party uses follow me services provided by most PBX platforms, hosted PBX carriers, and enhanced service providers to mask the final terminating carrier. In sum, percentages yielded by traffic studies designed to track CMRS-bound calls would be arbitrary because neither an originating rural ILEC nor the PIC has visibility into whether any given call on its network is terminating to a CMRS provider customer in the same MTA as the calling party. In addition, LECs would have no means of auditing an IXC's traffic studies, leading to more opportunities for arbitrage at a time when the Commission is working hard to reduce the number of arbitrage schemes. Further, even modest inaccuracies in the traffic studies could have significant impact on the viability of the rural ILEC and PIC, whose margins are already razor thin.

For all these reasons, most if not all LECs in MTA 12 (and likely elsewhere) simply cannot implement a rule in which 1+ intra-MTA LEC to CMRS interexchange calls are routed to a carrier other than the PIC. Accordingly, for the time being, the Commission should continue to allow LECs to charge originating access to ensure that they are compensated for performing the originating access function on the large number of interexchange calls that customers transmit via an IXC.

Given time, the Commission could address this problem by permitting LECs to transmit all 1+ dialed calls to a carrier other than the calling party's PIC. LECs could instruct their customers to dial ten digits (rather than 1+ ten digits) or the LECs could strip the 1+ from the

originating call²⁰ and route all calls to the LST in the end office switch. If the dialed NPA/NXX code were not defined as local, the call could be default routed to an intermediate carrier capable of performing an LNP look-up to determine if the dialed number belongs to a CMRS provider in the MTA area. If the call is not routed to a CMRS provider, the intermediate carrier could pass the call to the PIC.²¹ This approach would ensure that the Commission can implement its bill-and-keep policy, provide the rural ILEC an opportunity to charge the consumer for the services delivered, and eliminate the unnecessary routing of calls to an IXC.

III. CONCLUSION.

For the foregoing reasons, the Commission should grant the Onvoy Petition. In addition, it should continue to allow originating access charges for intra-MTA LEC to CMRS interexchange calls until alternative options are available to resolve the technical routing issues.

Respectfully submitted,

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²⁰ To implement this alternative, the Commission would need to create an exception to the requirement that carriers transmit originating call information intact.

²¹ To implement this proposal, it would be necessary to develop a method for informing the calling party that the non-1+ call is subject to toll charges.

CERTIFICATE OF SERVICE

I, Jessica F. Greffenius, hereby certify that on February 21, 2012, I caused true and correct copies of the foregoing Reply Comments of Onvoy, Inc. to be served by First Class Mail on the following parties:

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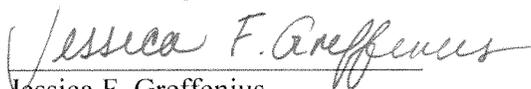
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