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 a 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

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

This submission by USTelecom[1] is in response to the Federal Communications Commission's ("Commission") request for comments on its Further Notice of Proposed Rulemaking ("Further Notice") on the intercarrier compensation aspects of its USF/ICC Transformation Order ("Order") contained in Sections XVII.L-R.[2] USTelecom supports the Commission's efforts to reform high-cost universal service and intercarrier

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1 USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

2 *Connect America Fund,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

compensation and largely endorses the Order. USTelecom respectfully requests that the Commission adopt USTelecom's recommendations contained in its Petition for Reconsideration, its comments filed in response to the further notice on high-cost universal service reform and in these comments.

I. ORIGINATING INTERCARRIER ACCESS REFORM

As indicated by the title of the proceeding reforming high-cost universal service support and intercarrier compensation, the Commission's Order made transformational changes to these two important and interrelated mechanisms. Both the revenue and the basis for receipt of the revenue from high-cost universal service support and intercarrier compensation is significant for all ILECs and particularly for small and rural carriers. The dramatic changes made to these mechanisms reflect the increasingly accelerated changes in the environment in which communications providers operate and the nature of their businesses. The Order included transitions for the phase down of terminating intercarrier compensation and properly distinguished between the situations of price cap carriers and those operating under rate-of-return regulation.

The changes to high-cost universal service support and to intercarrier compensation included in the Order are numerous and complex and will not be fully implemented in some cases for almost a decade. As evidenced by requests for clarification submitted by various parties and by the Commission's own actions clarifying several aspects of its Order, implementing the numerous complex and comprehensive changes to these mechanisms will be challenging and resource intensive for both providers and regulators. Moreover, development of further necessary processes and rules, such as the design of a model for distribution of high-cost universal service support to price cap companies and development of auction mechanisms for the Mobile Fund and the CAF (Connect America Fund) are just at their beginning stages. Completion of those proceedings and their subsequent implementation will involve mechanisms that have heretofore not been used in the universal service context thus will similarly be challenging and resource intensive.

The necessary analysis leading to development of the Joint Letter[3] consensus proposal submitted by representatives of the local exchange carrier industry focused on the terminating portion of the intercarrier compensation regime. Termination has long been a concern of policy makers in the context of what has been viewed as a "terminating monopoly." The actions taken by the Commission address that concern.

On the other hand, call origination and the charges associated with it are different. It is certainly not a "monopoly" in that consumers have many choices for both local and long-distance service. For this and other reasons, the USF/ICC Transformation Order properly focused on terminating intercarrier compensation and left originating access to this Further Notice. This approach is consistent with the ABC Plan and the Joint Letter. The ABC Plan, the Joint Rural Association proposal and the Joint Letter integrating both plans did not address potential reform of originating intercarrier compensation. We expect a continuing diversity of opinion on originating access to be reflected in the comments filed in response to this Further Notice. Developing industry consensus would be an important ingredient to any proposal for action concerning originating access charges.

However, to the extent any reform is undertaken that includes mandated reductions in

[3] See Letter from Jonathan Banks, USTelecom, to Marlene Dortch, Secretary, Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, et. al., July 29, 2011)

originating access charges, there is consensus that a real opportunity be available to ILECs to recover reductions in originating access rates.[4] For 1-plus traffic originating on a local exchange carrier's network and handed off to its facilities-based long-distance operation, originating access may appear to be merely an internal accounting transaction, but in some circumstances it is not. In particular, for ILECs that have sufficiently high originating access rates, the incremental revenue associated with retail long distance service may not provide adequate recovery for lost originating access revenues. The long distance rate-averaging requirements in section 254(g) were designed in part to effectuate implicit subsidies for ILECs with high originating access. For these carriers, reduction of originating access charges even for 1-plus traffic handed off to their facilities-based long-distance operations may be competitively difficult and will require a real opportunity for recovery. Such explicit recovery will be unnecessary for ILECs that do not have high originating access rates.

II. TRANSIT SERVICE SHOULD REMAIN UNREGULATED

As the NPRM acknowledges, the Commission does not currently regulate the terms and conditions of transit traffic. Rather, as the Order notes[5], "Transit service is typically offered via commercially-negotiated interconnection agreements rather than tariffs." The intercarrier compensation reforms adopted by the Commission in the USF/ICC Transformation Order move towards commercial agreements for intercarrier compensation as opposed to regulation, so it would be a step backwards for the Commission to begin regulating transiting when it is not regulated today. Moreover, as

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[4] *See* United States Telecom Association Petition for Reconsideration and Clarification, WC Docket No. 10-90 (filed Dec. 29, 2011)("*USTelecom Petition*"). The USTelecom Petition already requested that the Commission provide for appropriate recovery through the CAF if there are any lost originating intrastate access revenues associated with PSTN-to-VoIP traffic (USTelecom Petition at 39).

[5] See *USF/ICC Transformation Order,* FN 2366.

networks evolve and IP-to-IP interconnection becomes more prevalent, regulation of transiting should become increasingly unnecessary.

There is substantial evidence, both publicly available and in this proceeding, that competition for transit services exists in most urban and suburban territories and is growing. Accordingly, buyers of transit services typically have real and growing third-party alternatives for the provision of transit services, along with the options of self-provisioning and direct interconnection.

One such competitive alternative in the transit market is Inteliquent (formerly known as Neutral Tandem). Inteliquent is a neutral exchange point for over 110 major wireless, CLEC and cable service providers and routes billions of minutes of traffic each month.[6] In its most recent third quarter 2011 earnings statement, Inteliquent stated that following the introduction of its tandem interconnection services, it "began to face competition from other non-ILEC carriers, including Level 3, Hypercube and Peerless Network," and over the past several years, "this competition has intensified causing us to lose some traffic as well as significantly reduce certain rates we charge our customers in various markets, including with respect to our major customers."[7]

Accordingly, in the absence of specific showing that purchasers of transiting service lack alternatives for obtaining transit, the Commission should not regulate terms and conditions of this service. The most appropriate rate for transit services is established through a negotiation process between the tandem transit provider and the user of transit services. A negotiated rate is necessary to allow transit providers and users

[6] *See*, Inteliquent Media Kit 2012, p. 6 (available at: http://www.inteliquent.com/about/upload/Inteliquent_MediaKit_2012_v2.pdf) (visited February 22, 2012).

[7] *See*, Neutral Tandem Inc., Form 10Q, filed November 9, 2011 for the period ending September 30, 2011, p. 14 (available at: http://files.shareholder.com/downloads/TNDM/1707536840x0xS1193125-11-304064/1292653/filing.pdf).

the opportunity to negotiate mutually beneficial rates that account for such cost differences including the location of the tandem switch (urban vs. rural areas) and the utilization level of the tandem switch providing the intermediary service. A default rate established by regulation fails to account for the numerous factors that cause transit costs to vary and, accordingly, would fail to result in rates that are more closely aligned with costs.

III. END-USER CHARGES SHOULD NOT BE ELIMINATED, AND IN THE LONGER TERM, RATES SHOULD NOT BE REGULATED

The Access Recovery Charge (ARC) should not be phased out. Loop costs are not going away and the ARC will be a critical component of funding well beyond the transition to $0.0007 or bill and keep. Moreover, the ARC is consistent with the new framework which moves away from cross-subsidies and toward carrier recovery from cost-causing end-users. Similarly, the Subscriber Line Charge (SLC) and current SLC levels are appropriate and should be maintained as they too recover loop costs.

In the longer term, at the point when ILEC subscriber rates are no longer regulated at the federal or state level, elimination of the SLC and ARC charges may be appropriate. Competition is and will further intensify as a more than an effective governor of consumer rates for communications services. The portion of voice lines served by ILECs is already well below 50 percent and continues to decline. Consumers have many and growing choices for voice service from both network and over-the-top providers.

The Commission should not require those charging a SLC to include such charges in their advertised prices. The SLC has been in effect since access charges were first instituted more than 25 years ago without such a requirement in place, and the vigorous state of the market for telecommunications services, accompanied by a significant loss of

ILEC market share, belie any argument that consumers are unable to make accurate price comparisons and determine their preference for a service provider absent such a mandate. Moreover, examination of advertising and marketing practices is far outside the scope of this proceeding, and to be equitably examined by the Commission, would require inquiry into the advertising and marketing practices of not only ILECs but all the various providers with whom they compete.

IV. THERE IS NO DEMONSTRABLE NEED FOR REGULATION OF IP INTERCONNECTION

One of the hallmarks of the development of IP networks to date has been the ability of those networks to grow and thrive in the absence of regulatory mandates. The Commission should continue to facilitate the deployment of IP networks by maintaining a regulatory “hands-off” approach in the absence of clear and specific market failures. No such evidence exists – indeed, IP networks continue to be deployed at an increasing rate. Accordingly, regulatory intervention by the Commission is, at best, premature and unwarranted.

As VoIP grows more popular, the existing business incentives to interconnect IP networks to provide voice service will only grow stronger, and negotiated commercial agreements best serve the development of IP voice interconnection. A regulatory mandate – even one that may seem innocuous, such as 251(a) – will disrupt the transition to IP networks and harm consumers. The transition to IP interconnection for voice is already underway and the Commission should allow the market to continue to lead to the benefit of consumers.

The fact that IP networks are interconnecting now in a myriad of ways under many physical and financial arrangements further demonstrates that there is no need for regulation of IP interconnection. With the innovation and evolution of the Internet, Internet architecture has moved from traditional hierarchical networks to more open architecture. As the ATLAS Report highlights, there are today a new core of multi-connected content and consumer networks that have resulted in "dramatic improvements in capacity and performance."[8] This shift in network design has resulted in tremendous disintermediation; in some instances it has resulted in the direct interconnection between content and consumers. This in turn has resulted in the majority of Internet traffic by volume flowing "directly *between* large content providers, datacenter/CDNs and consumer networks."[9] As Danny McPherson, the VP and CSO of Arbor Networks (one of the contributors to the study), commented, "[t]he Internet is a lot flatter today, more densely connected."[10] Changing broadband connectivity patterns will continue, likely resulting in more direct connections.

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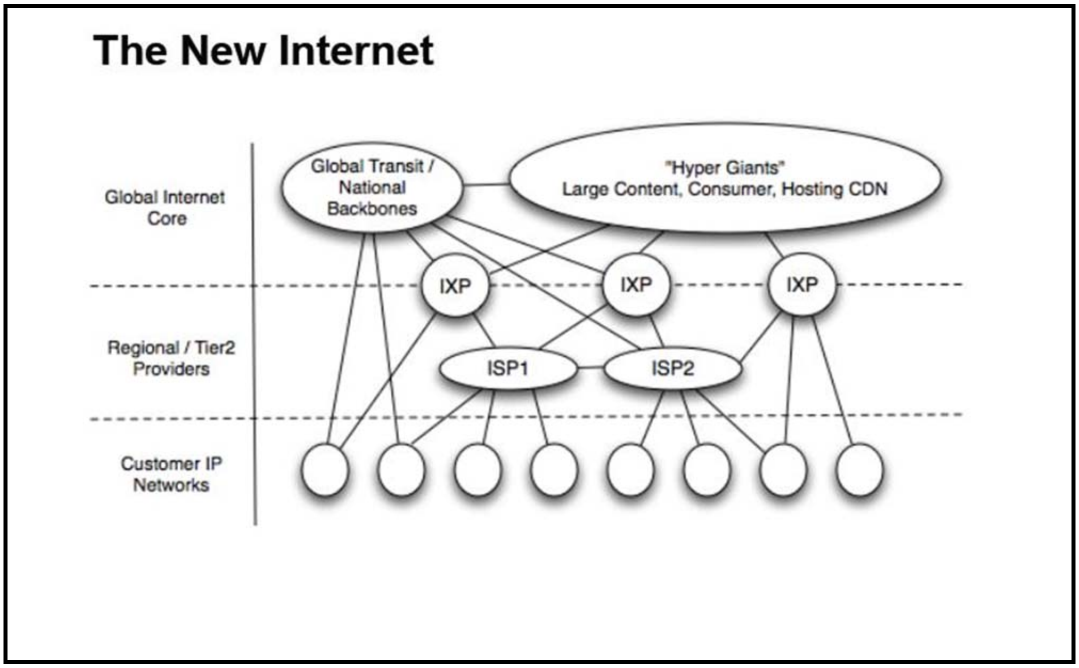
[8] *ATLAS Report*, p. 17.

[9] *Atlas Report Website* (emphasis added).

[10] Thomas Claburn, Information Week, *Google Now Largest Source Of Internet Traffic*, October 13, 2009 (available at: http://www.informationweek.com/news/infrastructure/management/showArticle.jhtml?articleID=220600387&cid=RSSfeed_IWK_All) (visited July 13, 2010).



The evolution of the Internet away from its traditional hierarchical structure has resulted in numerous forms of broadband Internet connectivity service in today's Internet between and amongst its different segments. Connections may be made directly through ISPs, Internet Exchange Points or Global Transit/National Backbones. The practical reality of this evolution is that broadband Internet connectivity has now moved into – and throughout – different levels of the Internet.

The historical position of ILECs with respect to voice telephony and the interconnection requirements attached thereto do not and should not translate to the IP world and do not warrant singling out ILECs for application of legacy interconnection requirements. Mere addition of another application, albeit an important one such as VoIP, does not change the vibrant competition among providers both network and edge-based for services. There is no evidence of IP-market failure and thus no need to regulate IP-IP interconnection. The current market-based Internet peering model appears to be working well. ILECs have incentives to interconnect in IP and IP voice interconnection should be based on the existing IP infrastructure, not the legacy PSTN model.

Interconnection by an IP network provider with a provider that operates in both IP and TDM modes should be at the discretion of the provider receiving the request. That provider will interconnect in the most efficient way. If IP interconnection at a particular location is unavailable or would require additional investment to provide, having the costs of IP-to-TDM conversion borne by the carrier to whom the request is made would unnecessarily have the potential of diverting resources from expanding broadband to enhancing IP interconnection. As ILECs evolve their networks from TDM to IP, and as terminating access charges transition downward, they will have increased financial incentives to interconnect on an IP-to-IP basis. Interconnection for the delivery of IP-originated traffic will develop based on voluntary, market-based arrangements.

V. CONCLUSION

The USF/ICC Transformation Order properly focused on terminating intercarrier compensation and left originating access to this Further Notice. This approach is consistent with the ABC Plan and the Joint Letter. We expect a continuing diversity of opinion on originating access to be reflected in the comments filed in response to this Further Notice. Developing industry consensus would be an important ingredient to any proposal for action concerning originating access charges. However, to the extent any reform is undertaken that includes mandated reductions in originating access charges, there is consensus that a real opportunity be available to ILECs to recover reductions in originating access rates.

In the absence of specific showing that purchasers of transiting service lack alternatives for obtaining transit, the Commission should not regulate terms and conditions of this service. The intercarrier compensation reforms adopted by the Commission in the USF/ICC Transformation Order move towards commercial agreements for intercarrier compensation as opposed to regulation, so it would be a step backwards for the Commission to begin regulating transiting when it is not regulated today. Moreover, as networks evolve and IP-to-IP interconnection becomes more prevalent, regulation of transiting will become increasingly irrelevant.

The Access Recovery Charge (ARC) should not be phased out. Loop costs are not going away and the ARC will be a critical component of funding well beyond the completion of the intercarrier compensation transition. Moreover, the ARC is consistent with the new framework which moves away from cross-subsidies and toward carrier recovery from cost-causing end-users. Similarly, the Subscriber Line Charge (SLC) and current SLC levels are appropriate and should be maintained as they too recover loop costs. In the longer term, at the point when ILEC subscriber rates are no longer regulated at the federal or state level, elimination of the SLC and ARC charges may be appropriate.

As VoIP grows more popular, the existing business incentives to interconnect IP networks to provide voice service will only grow stronger, and negotiated commercial agreements best serve the development of IP voice interconnection. A regulatory mandate – even one that may seem innocuous, such as 251(a) – will disrupt the transition to IP networks and harm consumers. The transition to IP interconnection for voice is already underway and the Commission should allow the market to continue to lead to the benefit of consumers. The fact that IP networks are interconnecting now in a myriad of ways under many physical and financial arrangements further demonstrates that there is no need for regulation of IP interconnection. Accordingly, regulatory intervention by the Commission is, at best, premature and unwarranted.

Several implementation issues relating to intercarrier compensation were addressed in the USTelecom Petition and many more are the subject of this Further Notice. USTelecom respectfully requests that the Commission adopt USTelecom's recommendations contained in both its Petition for Reconsideration and in these comments.

Respectfully submitted,

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