Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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 CTIA–THE WIRELESS ASSOCIATION®

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February 24, 2012

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I. INTRODUCTION AND SUMMARY

CTIA –The Wireless Association® ("CTIA") commends the Commission for beginning, in the *Order*, a transition of terminating elements to a bill-and-keep framework under the reciprocal compensation rules.[1] CTIA presents the following comments on the intercarrier compensation issues in this proceeding. CTIA urges the Commission to continue this work by adopting a transition path for remaining rate elements, implementing competitively- and technologically-neutral default rules for efficient interconnection, ensuring that any recovery

[1] *Connect America Fund,* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*" or "*FNPRM*," as applicable).

mechanism is no larger than necessary and that consumer charges are clearly disclosed, and strengthening its traffic pumping rules.

First, the Commission should adopt a transition path for remaining rate elements not covered in the Order, such as tandem transport and termination, as expeditiously as possible. As the Commission correctly has concluded, bill-and-keep is more efficient than the current regime, and transitioning all rate elements will prevent the development of new forms of arbitrage.

Second, as the transition to bill-and-keep begins, it will be necessary to allocate responsibilities for transport of traffic between networks. This should primarily be a matter for negotiation among carriers. To facilitate such negotiations, the Commission should adopt simple and competitively neutral default interconnection rules. CTIA developed a compromise proposal in 2005 – its Mutually Efficient Traffic Exchange ("METE") framework. Although much has changed in the industry, markets, and technology since then, certain basic principles remain constant. The default rules should provide for the identification of network "edges" or points of interconnection ("POIs") to which other carriers may deliver traffic to a carrier for termination. Originating carriers should be responsible for delivering traffic to the terminating carrier's edge or POI, and carriers should be allowed to elect direct or indirect interconnection. In addition, the Commission should transition away from the tariff regime as quickly as possible, consistent with its adoption of a reciprocal compensation regime under section 251(b)(5).

Third, any mechanism for providing revenue recovery for incumbent LECs should be no larger than necessary to permit a reasonable transition to a regime under which carriers recover their costs from their own end users; revenue neutrality is *not* the goal. End-user charges should be disclosed so that consumers can make apples-to-apples decisions among carriers.

Finally, the Commission also should take the opportunity to strengthen the *Order*'s safeguards against traffic stimulation. Unfortunately, the traffic-stimulation rate level that the Commission adopted is still high enough to permit profitable pumping behavior. In order to prevent that consumer-harming behavior, a bill-and-keep regime should apply or, at minimum, a $0.0007 rate. Carriers engaging in pumping behavior should be required to lower their rates more quickly, without a review process or delay. And the traffic pumping rules should apply to all traffic, including intrastate access and reciprocal compensation traffic.

II. THE COMMISSION SHOULD TRANSITION TANDEM TRANSPORT AND TERMINATION AND OTHER RATE ELEMENTS TO BILL AND KEEP AS EXPEDITIOUSLY AS POSSIBLE

In the *Order*, the Commission correctly identified the numerous benefits of a bill-and-keep ("B&K") regime, which will reduce or eliminate arbitrage opportunities,[2] encourage pricing transparency and efficiency in the operation and marketing of networks,[3] promote the transition to IP networks,[4] and offer greater simplicity for the industry and consumers.[5] The *Order* also appropriately acknowledges the pitfalls associated with setting a positive intercarrier compensation rate in this highly complex market and the resulting superiority of a B&K approach.[6] As the Commission observes, B&K has proven to be a particularly successful model for the wireless industry.[7] The Commission should be commended for recognizing the benefits

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[2] *Order* ¶¶ 738 & 749.

[3] *Id.* ¶¶ 736, 738, 741, 745 & 749.

[4] *Id.* ¶ 736.

[5] *Id.* ¶ 736 & 749.

[6] *Id.* ¶¶ 743 & 753.

[7] *Id.* ¶ 737.

of a B&K framework for the services that consumers value most.[8] Consistent with the Commission's expressed intent to unleash a new wave of innovation,[9] introducing a greater degree of market discipline through an expeditious transition to B&K will benefit consumers.[10] These rationales apply equally to tandem switching and transport, and the Commission should therefore confirm that B&K is the appropriate end state for these rate elements.[11]

There is no reason that the transition period for any of the remaining rate elements needs to occur in stages, or take longer than the transition applied to end-office switching. An extended transition would not only prolong the harms associated with the current regime, but also exacerbate them. For example, a regime that brought switching rates down while leaving transport rates high would create incentives for some carriers to allocate more costs to the transport element and to unnecessarily and inefficiently increase transport mileage (a practice sometimes known as "mileage pumping").[12] Without careful stewardship by the Commission, carriers will face strong incentives to make decisions based on the hope of continued subsidies rather than on the imperative to improve service and cut costs.

CTIA also believes that B&K is the appropriate end state for *originating* access rate elements. In the current market, reform of originating access charges is less critical than reform of terminating charges, because interexchange service is very often provided by the originating carrier itself, such that the access payment is simply an intra-company charge. However, to the

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[8] *Id.* ¶ 748.

[9] *Id.* ¶ 750.

[10] *See id.* ¶ 751 (stating that the *CALLS Order* "resulted in substantial decreases in calling prices but in largely unexpected ways").

[11] The *FNPRM* seeks comment on the appropriate transition for terminating tandem switching and transport charges, among other remaining rate elements. *FNPRM* ¶¶ 1308-09.

[12] *See, e.g.*, *Order* ¶ 820.

extent that payments are made by interexchange carriers ("IXCs") to third-party originating providers, the appropriate framework for such charges is B&K, and the originating providers should collect relevant revenues from their own end users.

Finally, CTIA notes that the reduction of rates should not lead to any increase in a carrier's recovery under the access recovery mechanism. As discussed below, the concept of "revenue neutrality" should not guide the next phase of the Commission's reform efforts.[13]

III. THE COMMISSION SHOULD IMPLEMENT SIMPLE AND COMPETITIVELY NEUTRAL DEFAULT INTERCONNECTION RULES AND PROMOTE RELIANCE ON NEGOTIATED INTERCONNECTION AGREEMENTS

As the Commission contemplates the transition to an intercarrier compensation regime that will promote efficient network architecture and migration toward next-generation facilities, it should adopt simple, efficient, default rules to govern interconnection, permitting carriers to negotiate their own alternative arrangements where desirable. Further, the Commission should take steps to promote negotiated interconnection agreements by transitioning away from the tariff regime as expeditiously as possible and by rejecting efforts to apply Section 252 to agreements that do not involve an incumbent LEC.

A. The Commission Should Adopt Simple Default Interconnection Rules

As the Commission has noted, as part of the effort to develop fair default interconnection rules in 2005, CTIA submitted a proposal – its METE framework.[14] While there have been many relevant developments since then – including technological, marketplace, and consumer usage changes – the overarching principles set out in 2005 provide a solid foundation for default interconnection rules today. Most importantly, the new bill-and-keep regime should allocate

[13] *See infra* Section IV.

[14] *See FNPRM* ¶ 1321.

responsibilities equitably, while permitting parties to negotiate alternative arrangements between and among themselves. That is, the Commission should establish fair and efficient defaults, and then let providers depart from those defaults when they agree to do so. Indeed, this is the framework envisioned by Congress when it enacted Sections 251 and 252 of the Act – the provisions that will govern all intercarrier compensation after the *Order*'s transition period lapses.

More important than the specifics of the METE framework are the basic principles it suggests for any default interconnection regime. ***First***, terminating carriers should be permitted to designate one or more network "edges" to which other carriers would deliver traffic. ***Second***, a carrier handing traffic to a terminating carrier should be permitted to deliver traffic to any of the terminating carrier's designated edges in a given LATA, or to a preexisting POI. ***Third***, the non-terminating carrier should bear all costs for bringing traffic to the terminating carrier's edge. The terminating carrier, in turn, should be responsible for all costs associated with transmission from the edge to the called party. The non-terminating carrier's obligation to bear all costs associated with bringing traffic to the network edge does not entail an obligation to carry such traffic itself. Rather, originating carriers should be entitled to decide to connect indirectly if they prefer. ***Fourth***, in cases involving indirect interconnection, the originating carrier should be permitted to rely on third-party transiting services. To ensure that carriers may connect indirectly, terminating carriers should be prohibited from refusing traffic from another carrier that has established either direct or indirect interconnection with it.

Under this proposal, each terminating provider would be required to identify one or more network edges in each local access and transport area ("LATA") it serves. Non-terminating carriers would be required to bring all traffic to the edge of its choice – which may include any point of interconnection that existed as of the *Order*'s adoption – and to bear all costs associated with carriage to that point.[15] The terminating carrier would bear all costs of carrying traffic between the network edge within its LATA and the called party. Non-terminating carriers would be permitted to interconnect indirectly if they preferred, and terminating carriers would be required to accept traffic from entities with whom they interconnected indirectly.[16] CTIA believes that, at minimum, every tandem switch in a particular LATA must be designated as an edge for traffic terminating to its customers in that LATA.

In addition, the non-terminating carrier should be permitted to continue delivering traffic to any POI that it and the terminating carrier employed prior to the adoption of the *Order*. Carriers that have made investments in interconnection facilities should not be required to give up those investments under the new regime.

Consistent with this framework, the Commission should decline any suggestion that it adopt on a permanent basis the interim "rural transport rule" for non-access traffic contemplated by the *Order*. The *Order* noted that the Commission was seeking further comment on appropriate default interconnection rules, but established an "interim default rule" regarding transport costs incurred by non-access traffic exchanged between CMRS providers and rate-of-

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[15] To facilitate the terminating carrier's delivery of traffic to its end users, the METE proposal would require the originating carrier to segregate traffic delivered to the network edge. Specifically, the non-terminating carrier would be required to segregate traffic delivered into separate trunk groups based on the highest level of switching on the terminating carrier's network that directly serves the point of termination for each call.

[16] The METE proposal provides that where indirectly interconnected originating and terminating carriers are both interconnected with an incumbent LEC that is able to deliver traffic to the terminating carrier, the incumbent LEC should be required to provide transit services for the originating carrier.

return incumbent LECs.[17] The Commission indicated that this approach was "warranted for the interim period to help minimize disputes and provide greater certainty until rules are adopted to complete the transition to a bill-and-keep methodology for all intercarrier compensation."[18]

Whether or not this rural transport rule is appropriate for "the interim period" (and CTIA believes that it is not), the Commission must not perpetuate this rule's application. If adopted, the rural transport rule would permit rural LECs to foist inefficient legacy wireline network costs onto consumers as well as competitors. The Commission's rules should not perpetuate this negative and unnecessary impact on consumers.

The rule would also contravene the Order's commitment to symmetrical intercarrier obligations. Revised rule 51.711 provides that, with limited exceptions, "[r]ates for transport and termination of Non-Access Telecommunications Traffic shall be symmetrical, unless carriers mutually agree otherwise . . . ."[19] The rural transport rule, which requires non-rural terminating carriers to bear the costs of transporting traffic from a meet point to the edge of its network even though the rural carrier bears no reciprocal burden when *it* terminates traffic, falls short of such symmetry. Such a framework is no less lopsided than an outright imposition of disparate per-minute rates.

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[17] *Order* ¶ 999 ("Specifically, for such traffic, the rural, rate-of-return LEC will be responsible for transport to the CMRS provider's chosen interconnection point when it is located within the LEC's service area. When the CMRS provider's chosen interconnection point is located outside the LEC's service area, we provide that the LEC's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point.") (citations omitted).

[18] *Id.* (citation omitted).

[19] *Id.* at App. A ¶ 27.

Further, permanent adoption of the rural transport rule would be incompatible with the source of the Commission's legal jurisdiction here, Section 251(b)(5). That section requires the terminating carrier to perform (and be compensated for performing) "transport" and "termination," defined as transmission "from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party" or equivalent facility[20] and "the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises,"[21] respectively. Transport between the meet point and the terminating carrier's service area is neither "transport" nor "termination" as those terms are used by the Act, and the Commission may not, under Section 251(b)(5)'s authority, saddle terminating providers with the costs incurred by such transport.[22]

B. The Commission Should Transition Away From the Tariff Regime And Resist Calls to Extend the *T-Mobile Order*'s Application

The Commission should also take steps to move toward market-based negotiations between and between interconnecting parties rather than continuing to rely on tariffs or on detailed legal regimes intended to govern only the behavior of incumbent LECs.

As an initial matter, in implementing the transition to B&K, the Commission should transition away from the tariff regime as quickly as feasible, migrating to negotiated

[20] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 116015 ¶ 1039 (1996).

[21] *Id.* at 16015 ¶ 1040.

[22] Likewise, Section 202(a) bars any "unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services," 47 U.S.C. § 202(a), yet the rural transport rule would impose arbitrary and unreasonably distinctions between traffic involving a rural provider and other traffic.

interconnection agreements. Negotiated interconnection agreements are the mechanism contemplated by Sections 251 and 252, which now form the basis for the Commission's oversight of the ICC regime. As the *Order* states, "good-faith negotiations generally are preferable to tariffing as a means of implementing carriers' compensation obligations."[23] Wireless providers have operated under mandatory detariffing for nearly 20 years. Negotiated agreements, subject to background default interconnection rules such as those described above, will best promote flexibility and efficiency, helping to ensure a smooth transition to IP networks. Continued reliance on unilateral tariffing, on the other hand, will merely replicate the flaws of the current regime, promoting gaming, arbitrage, and inefficiency.

Similarly, the Commission should *not* extend the *T-Mobile Order*'s reach to cover CLECs or other providers of telecommunications services.[24] Such an extension would increase, not reduce, the Commission's role in regulating interconnection. Specifically, it would apply the Section 252 framework far beyond that provision's scope – *i.e.*, to agreements not involving any incumbent LEC. There is thus no legal basis for extending the *T-Mobile Order*'s reach. Nor is there any policy rationale for doing so. Neither wireless providers, nor competitive LECs, nor IXCs enjoy market dominance. These entities thus have incentives to interconnect with one another – and will have greater incentives once those who are today permitted to tariff their access services are no longer permitted to do so. Indeed, the adoption of efficient default interconnection rules such as those described above will further promote negotiated interconnection agreements without the threat of Section 252 oversight.

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[23] *Order* ¶ 964 (citation omitted).

[24] *See FNPRM* ¶¶ 1324.

IV. ANY RECOVERY MECHANISM MUST REMAIN MODEST, AND MUST BE PHASED OUT ACCORDING TO PLAN

As CTIA has consistently argued, the only appropriate purpose for the access recovery mechanism is to ease the transition to a state in which carriers recover their costs from their end users.[25] The *Order* acknowledged that consumers are overburdened by the inefficiencies and distorted incentives of the current ICC system.[26] An access recovery mechanism should provide an expeditious transition to LECs for diminished intercarrier compensation payments and ensure reasonable rates to their consumers during the transition to the new regime, but such a mechanism should *not* guarantee "revenue neutrality" or jeopardize the desired incentives associated with that regime.[27] Among the many problems with "revenue neutrality" is that it targets a carrier's revenues with no regard to customers' welfare – including not only the originating CMRS customers, but also the terminating carrier's own customers.

This approach is consistent with the Commission's goal of incentivizing efficient traffic exchange. As the Commission previously observed, intercarrier compensation revenues often exceed the actual costs of providing originating, transport and termination functions,[28] and the current system ignores the benefits to all parties from the completion of traffic.[29] Any access recovery mechanism that would require revenue neutrality would simply perpetuate the current

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[25] *See, e.g.*, CTIA Comments, WC Docket No. 10-90 at 42-43 (filed Apr. 18, 2011).

[26] *Order* ¶ 859.

[27] *Id.* ¶ 858. CTIA agrees with the *Order*'s suggestion that all revenues derived from the supported network, including revenues derived from unregulated services, should be considered in analyzing necessary support. *Order* ¶¶ 540 & 926-28. There is no compelling reason to ignore any network-related revenues when considering how much support a provider "needs" to serve end users following intercarrier compensation reform.

[28] *Connect America Fund,* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4731 ¶ 567 (2011).

[29] *Order* ¶ 744.

regime's distortions and force other carriers' customers – particularly CMRS customers – to continue to subsidize incumbent LECs and their investors. This harmful impact on customers should not be perpetuated. Thus, as the Commission translates its general guidance into specific action, it must take care to limit the recovery mechanism's scope and ensure that any access recovery funding supplied through explicit support sunsets as quickly as possible.

The ultimate goal of ICC reform is to ensure that all carriers recover their costs from their own customers in a transparent manner. Most critically, charges applied to end users must be clearly disclosed to customers so that they can make informed, apples-to-apples decisions between different service options. That is why CTIA's *Consumer Code for Wireless Service* includes a provision that requires signatories to indicate to consumers whether any additional taxes, fees or surcharges apply to advertised rates. By contrast, the Commission notes that several parties have raised questions about the manner in which some LECs disclose (or, in some instances, fail to disclose) these charges to consumers.[30] A regime in which LECs could include ARC charges on their bills but not include such charges in advertised prices would only perpetuate these anti-consumer practices. If a LEC applies an ARC (or SLC) to customers on top of its basic rate plan, it should be required to make this point clear to customers in any advertised price. Otherwise, ARC recipients will enjoy an unfair advantage in marketing products at one rate and charging a higher rate, and consumers will face greater difficulty selecting among competing service alternatives.

[30] *FNPRM* ¶ 1334.

V. THE COMMISSION SHOULD STRENGTHEN ITS SAFEGUARDS AGAINST TRAFFIC PUMPING

Finally, as CTIA recently argued at greater length,[31] the Commission also should strengthen its rules aimed at curbing traffic pumping by adopting proposals made by Sprint and MetroPCS. CTIA applauds the clarifications to the traffic pumping rules set out in the Wireline Competition Bureau's ("WCB's") February 3, 2012 Order.[32] In addition to confirming these WCB rulings, the Commission should take the following additional actions:

- Reconsider the rate remedy that will apply when the traffic pumping triggers are met, moving to a B&K methodology or, alternatively, adopting a rate remedy no higher than \$0.0007 per minute.[33]

- Revise its rules to prevent gaming of the new framework by recalculating rates of any competitive LEC whose stimulated traffic volume exceeds the traffic volume of an incumbent LEC against whose rates it benchmarks its own; establishing a true-up mechanism to ensure that rates are just and reasonable throughout the monitoring period; and requiring traffic-pumping LECs to submit new tariffs within 15 (not 45) days of meeting the triggers.[34]

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[31] Opposition and Comments of CTIA—The Wireless Association®, WC Docket No. 10-90 (filed Feb. 9, 2012) ("CTIA PFR Opposition and Comments").

[32] *Connect America Fund*, Order, DA 12-147 (WCB/WTB rel. Feb. 3, 2012) ("*February 3 Order*"). Consistent with requests made by Sprint and MetroPCS, WCB properly clarified that (1) nothing in the *Order* overturned previous rulings and existing standards for determining whether pumped traffic is access traffic at all, such as those set out in the *Sprint v. Northern Valley, Qwest v. Northern Valley,* and *Qwest v. Farmers and Merchants* matters, *see id.* at ¶ 25 & n.69 (*citing Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801 (2009); *Qwest Communications Corp. v. Northern Valley Communications, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 8332 (2011), *reconsideration denied*, 26 FCC Rcd 14520 (2011); *Sprint Communications Company, L.P. v. Northern Valley Communications, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10780 (2011), *reconsideration denied*, 26 FCC Rcd 16549 (2011)), and (2) "any arrangement between a LEC and another party, including affiliates, that results in the generation of switched access traffic to the LEC and provides for the net payment of consideration of any kind, whether fixed fee or otherwise, to the other party, including an affiliate, is considered to be "'based upon the billing or collection of access charges.'" *Id.* ¶ 27.

[33] *See* CTIA PFR Opposition and Comments at 10-11.

[34] *See id.* at 11.

- Extend its traffic-pumping rules to cover intrastate access traffic explicitly.[35]

These additional modifications to the Commission's rules will help ensure that American consumers are not further burdened by the scourge of access stimulation.

VI. CONCLUSION

CTIA looks forward to continuing to work in partnership with the Commission and other stakeholders to safeguard the benefits of its ICC reform. To cement those benefits, CTIA urges the Commission to take action consistent with the above.

Respectfully submitted,

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[35] *See id.* at 12-13.