

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Connect America Fund)	WC Docket No. 10-90
)	
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 T-MOBILE USA, INC.

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EXECUTIVE SUMMARY

T-Mobile urges the Commission to adopt T-Mobile's "Internet-Modeled Network" proposal to foster the development of an IP infrastructure that is efficient and fair. Mirroring the structure that has been developed for the Internet, the Commission should provide a blueprint for a limited number of regional IP points of interconnection ("POIs") that would be used eventually by all carriers as common network edges to exchange IP voice traffic. The Commission should set a timetable for a structural transition from the existing legacy PSTN to an efficient IP interconnection regime to be completed no later than the end of the transition to bill-and-keep intercarrier compensation ("ICC") for price cap carriers in mid-2018. The Commission's ancillary authority under Title I of the Communications Act provides sufficient legal basis to implement a regional IP interconnection infrastructure.

Adoption of T-Mobile's Internet-Modeled Network proposal will increase redundancy, efficiency and security, and minimize the ILECs' ability to leverage their historical dominant position to extract excessive rents from their competitors. The resulting cost savings and public safety benefits will flow directly to all telecommunications consumers.

T-Mobile and other competitive carriers have faced significant ILEC intransigence in interconnection negotiations. For this reason, pending adoption of final IP interconnection rules, the Commission could declare that it will entertain interconnection disputes through the Enforcement Bureau's accelerated docket procedures. The Commission also should place the burden on ILECs to demonstrate their good faith in interconnection negotiations.

The Commission also should establish rules to limit arbitrage and ensure a smooth transition to bill-and-keep and the Internet-Modeled Network. All tandem switching and transport rates should be transitioned to bill-and-keep by the dates set in the *Transformation*

Order for the transition to bill-and-keep for end office rates, to avoid new incentives for arbitrage. Pending the deployment of a regional IP POI infrastructure, the Commission should act to ensure the availability of both ILEC transit services and interconnection facilities at cost-based rates, and to ensure that ILECs do not insist on an unreasonable number of POIs or network edges in the interim. One POI per state could be a reasonable interim rule, or at least a limit of one POI per LATA.

Because the *Transformation Order's* rural transport rule requires enormously inefficient and inequitable interconnections at points deep within the RLECs' networks, it should be phased out as quickly as possible. The rule is particularly anticompetitive now that the Commission has delayed the implementation of bill-and-keep for RLEC-CMRS non-access traffic. ILECs also should not be permitted to establish interconnection terms and conditions through tariffs; interim default interconnection rules are preferable. Finally, ILECs' ability to receive universal service support to replace ICC revenue reduced by the transition to bill-and-keep should be minimized. This support is anticompetitive, and the Commission should not shield ILECs from the revenue loss they otherwise would have sustained from the migration of customers and traffic away from ILEC networks.

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COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) comments on the intercarrier compensation (“ICC”) issues raised by the Further Notice of Proposed Rulemaking (“FNPRM”) in connection with the *Transformation Order*.¹

I. INTRODUCTION

The contribution of the wireless industry to the transition to all-Internet Protocol (“IP”) networks will be vital to the advancement of broadband services and the fulfillment of the goals

¹ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161 (Nov. 18, 2011). The Report and Order is cited herein as *Transformation Order*, and the Further Notice of Proposed Rulemaking is cited as FNPRM.

of the National Broadband Plan (“NBP”).² The most procompetitive and pro-consumer end point for the IP transition is the regional IP points of interconnection (“POI”) regime proposed last year by T-Mobile for a “next generational” network, based on efficient Internet engineering principles (“Internet-Modeled Network”), unconstrained by the wireline architecture that determined the development of the public switched telephone network (“PSTN”).³

The Internet-Modeled Network represents T-Mobile’s vision of the possibilities inherent in an all-IP network free of the limitations of the traditional PSTN framework built around local exchange carrier (“LEC”) legacy infrastructure, with elaborate POI and edge rules that keep traffic unproductively funneled through LEC networks for the indefinite future. America’s future competitiveness depends in part upon the deployment of efficient networks that reflect sound engineering principles rather than regulatory constraints designed for legacy companies that consumers are choosing to leave in droves.

Default rules regarding POI placement adopted in this proceeding should encourage parties to exchange traffic voluntarily and efficiently while creating as few opportunities as possible to leverage regulations for arbitrage. For the long term, the Commission can most productively set a timetable for a structural transition from the current legacy interconnection regime, characterized by thousands of expensive, inefficient time-division multiplexing POIs offering LECs unlimited opportunities to extract subsidies from their competitors, to a system of

² Federal Communications Commission Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan* at 146-48 (2010) (“NBP”), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

³ See Reply Comments of T-Mobile USA, Inc. at 5-9, *Connect America Fund*, WC Docket No. 10-90 (May 23, 2011) (“T-Mobile Transformation Reply Comments”); Comments of T-Mobile USA, Inc. at 17-22, *Connect America Fund*, WC Docket No. 10-90 (Apr. 18, 2011) (“T-Mobile Transformation Comments”).

a limited number of regional IP POIs serving as common network edges, along the lines of the Internet backbone network.

The Commission's primary goal for its IP interconnection regime eventually should be to transition PSTN voice traffic to the new all-IP network, which requires a new focus on IP voice rules. In the interim, simple but strict POI and edge rules and rules that minimize arbitrage and facilitate the transition to the Internet-Modeled Network must be adopted to direct the ICC transition to bill-and-keep ("B&K").

II. THE PSTN SHOULD TRANSITION WITHIN A REASONABLE TIMEFRAME TO A FAIR AND EFFICIENT IP INFRASTRUCTURE

A. T-Mobile's Internet-Modeled Network Proposal Provides A Good Transition Scheme

The Internet-Modeled Network would encourage the transition to IP networks and minimize incumbent LEC ("ILEC") abuses of their interconnection dominance. Under the current rules, LECs force competitors to subsidize their capital investments through non-recurring charges and their operational costs through above-cost monthly recurring charges. Under an umbrella of regional IP POIs, each carrier would have to invest in its network because it would no longer be enabled by its monopoly control over portions of the PSTN to extract subsidies from its competitors. In effect, neutral regional POIs would become common network edges for the entire industry. Regional POIs would allow for diversification, efficiency and redundancy and would move the PSTN away from singular chokepoints.

The following table illustrates some of the differences between the legacy PSTN and T-Mobile's vision of the Internet-Modeled Network:

Characteristic	Legacy PSTN	Internet-Modeled Network
Redundancy	Limited or none depending upon call and routing options. The dependence on LEC tandems for most traffic flows precludes back-up alternative routing.	Robust for all call types (<i>e.g.</i> , inbound and outbound).
Efficiency	The Legacy PSTN is composed of tens of thousands of connections installed over the past century because LECs are encouraged to force competitors to deliver traffic deep into the LECs' service territories, which rewards LECs for maintaining inefficient internal networks.	With only a minimal set of regional POIs, all carriers would be encouraged to design their internal networks as efficiently as possible in order to minimize the cost of traffic transport and termination.
Security	Despite the tens of thousands of connections, most traffic transits LEC tandem locations that constitute single points of failure where traffic flows for entire LATAs can be disrupted if they fail.	If the regional POIs are designed like the Internet, carriers would simply bypass a disabled regional POI and use alternative POIs to route calls.

The FNPRM cites the IP interconnection scheme proposed in the T-Mobile/Sprint Joint Letter, which proposed a limit of one POI per state,⁴ but, as T-Mobile explained in its

⁴ Letter from Kathleen O'Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., and Charles W. McKee, Vice President, Government Affairs, Federal and State Regulatory, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (Jan. 21, 2011) ("T-Mobile/Sprint Joint Letter"), discussed in FNPRM at ¶ 1372.

comments, a technically, geographically and financially neutral regional POI approach would be more efficient and more closely aligned with the existing Internet.⁵ One POI per state moves closer to the ideal regime, but it would not be as efficient as a structure involving a minimal set of national IP POIs (*e.g.*, anywhere from 8 to 30) that approximates the architecture of the Internet exchange points in use in the U.S. today.⁶ T-Mobile exchanges traffic with other non-LEC affiliated carriers at a relatively few POIs today and has found that employing a handful of exchange points is measurably more efficient and robust than the PSTN. This is no surprise since the Internet has been employing this model for decades, and T-Mobile encourages the Commission to draw upon these Internet engineering principles in designing the transition to an IP infrastructure.

B. Traffic Exchange Rules Should Support A Regional IP POI Regime

A carrier that has deployed an IP network should be required to allow IP interconnection by all requesting carriers, and that requirement should cover all affiliates of the carrier deploying the IP network. All calls should be handed off to receiving carriers at one of the regional POIs on a settlement-free basis. Without the opportunity to charge circuit-switching-related costs to originating carriers, ILECs and other terminating carriers would have a strong incentive to transport calls within their own networks in the most efficient manner possible, thereby reducing costs for themselves, their competitors and consumers. The Commission should set a timeline for identifying regional IP POIs, preferably before the end of 2012, as well as a final deadline for all carriers to accept traffic at the regional IP POIs, preferably along the same timeline as the Commission envisions for the conclusion of the ICC rate transition for price cap carriers, July

⁵ T-Mobile Transformation Comments at 18.

⁶ *Id.* at 18-19.

2018.⁷ When more than 90 percent of all traffic is exchanged on a B&K basis, carriers will have little incentive to delay IP traffic exchanges.⁸

The Commission cannot leave IP interconnection to be largely determined by market forces, as AT&T and Verizon propose, because existing incentives under the current PSTN architecture would delay IP interconnection, while the ILECs continue to extract substantial implicit subsidies from their competitors.⁹ Also, as a practical matter, some guidance will be necessary to transition over 1,000 ILECs to a handful of common regional POIs. The PSTN will not automatically transition itself to an Internet architecture model.

The Commission's ancillary authority under Title I of the Communications Act of 1934, as amended ("the Act"), provides a sufficient legal basis for IP interconnection rules as a means of ensuring reasonable ILEC telecommunications service rates and practices, although Sections 251 and 252 of the Act, as well as Section 706, also provide authority.¹⁰ Establishing IP interconnection rules that govern how ILECs may interconnect with the IP network and exchange traffic with other carriers promotes the statutory policies in Sections 201(b), 202(a), 251 and 252 of the Act, in addition to other Commission objectives regarding carrier interconnections and the promotion of competition. In establishing such rules, the Commission would be furthering its goal of ensuring just and reasonable telecommunications service rates, terms and interconnections by removing ILEC tollgates that raise telecommunications service

⁷ See *Transformation Order* at ¶ 801.

⁸ See T-Mobile Transformation Reply Comments at 11; T-Mobile Transformation Comments at 26 (three largest price cap carriers alone, which do not include all price cap carriers, account for roughly 90 percent of all ILEC access lines).

⁹ See FNPRM at ¶ 1377.

¹⁰ 47 U.S.C. §§ 151 *et seq.*, 201(b), 202(a), 251, 252. See *Transformation Order* at ¶ 1397.

costs and reduce efficiency.¹¹ Furthermore, as the FNPRM points out, Section 251(a)(1) has been interpreted to cover VoIP traffic.¹² The Commission also should establish IP interconnection rules to fulfill its Section 706 mandate to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”¹³

C. Pending Final IP Interconnection Rules, The Commission Should Encourage Good Faith IP Interconnection Negotiations

The Commission emphasizes in the *Transformation Order* that it expects parties to negotiate IP interconnections in good faith.¹⁴ In order to ensure successful IP interconnection negotiations pending final IP interconnection rules, the burden should be on ILECs to demonstrate their good faith. Without such a requirement, ILECs will still be able to refuse to discuss IP interconnection and inhibit successful negotiations. The Commission should clarify promptly that ILECs have such a burden pending final rules.

Speedy dispute resolution techniques also are essential for carriers’ interconnection negotiations with ILECs. For example, T-Mobile has faced the arbitrary exercise of ILEC interconnection dominance in its negotiations with one incumbent that insists that T-Mobile negotiate an interconnection agreement with each of the incumbent’s affiliates, rather than a corporate-wide agreement, in every state in which they exchange traffic. Moreover, the ILEC

¹¹ See *Computer and Communications Industry Ass’n v. FCC*, 693 F.2d 198, 213 (D.C. Cir. 1982), *cert denied sub nom. Louisiana Pub. Serv. Comm’n v. FCC*, 461 U.S. 938 (1983) (upholding Commission’s “exercise of ancillary jurisdiction over both enhanced services and CPE” as “necessary to assure [common carrier] wire communications services at reasonable rates”).

¹² FNPRM at ¶ 1382 (citing *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, Declaratory Ruling, 26 FCC Rcd 8259, 8273-74 ¶¶ 26-27 (2011)).

¹³ 47 U.S.C. § 1302(a).

¹⁴ *Transformation Order* at ¶ 1011.

insists that T-Mobile pay transit charges for the ILEC's transport of traffic from its tandem to its own affiliate. T-Mobile has agreed to these onerous terms because of the prohibitive cost, time, effort and risk of litigating the issues. The result is a duplicative set of interconnections that disserves the consumer.

Accordingly, to establish a uniform nationwide IP interconnection policy, the Commission should resolve interconnection disputes, for example, through informal complaints or the Enforcement Bureau's Accelerated Docket and mediation procedures. To facilitate the use of these procedures, the Commission could make a blanket finding that all interconnection disputes are suited for those procedures and must be placed on the Accelerated Docket at the request of either party.¹⁵ Mediation and Accelerated Docket procedures recognize the need for speedy resolution of interconnection disputes, particularly in light of competitive carriers' vulnerability to ILEC abuses of their interconnection dominance. In fact, the Accelerated Docket procedures, including pre-complaint mediation, would be a particularly effective method to ensure that ILECs negotiate in good faith. These procedures also will ensure that interconnection disputes are handled in a timely and efficient fashion, and will further the Commission's goal to transition to an IP interconnection regime.¹⁶

The Commission also should preclude ILECs from using affiliates to avoid IP interconnection obligations by providing that any limitation or restriction on ILEC POIs or interconnection options must cover an ILEC's affiliates. Failure to include ILEC affiliates in any

¹⁵ See 47 C.F.R. § 1.730.

¹⁶ Recently, the Commission determined that a complaint proceeding is a proper vehicle to resolve disputes arising out of the negotiations of data roaming arrangements, and noted that the accelerated docket procedures were available to data roaming complaints. See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, 5448-50 ¶¶ 74-77 (2011).

limitation on ILEC interconnection practices would allow ILECs to sidestep IP interconnection obligations and thus inhibit competition and slow the transition to an IP interconnection regime.

III. THE COMMISSION SHOULD SET TRANSITION RULES TO LIMIT ARBITRAGE AND ENSURE A SMOOTH TRANSITION TO B&K AND THE INTERNET-MODELED NETWORK

The FNPRM seeks comment on various aspects of the ICC rate-reduction transition to B&K established in the *Transformation Order*,¹⁷ including rate elements not addressed in the *Transformation Order* and interconnection issues that must be addressed to implement B&K.¹⁸ In some cases, such as the discussion of transit services in the FNPRM, the Commission seeks comment on the implications of proposed rules not only for the ICC rate-reduction transition, but also for “the appropriate end state.”¹⁹ The interconnection issues affecting the implementation of B&K are also closely related to the IP interconnection issues discussed above.²⁰ Transitional POI and network edge rules are necessary pending implementation of T-Mobile’s Internet-Modeled Network proposal or a similar IP interconnection regime.

A. All Terminating ICC Elements Should Be Transitioned To B&K

T-Mobile urges the Commission to reduce *all* tandem transport and tandem switching charges to B&K by July 1, 2017 for all price cap carriers and by July 1, 2020 for all rate-of-return (“RoR”) carriers.²¹ All end office termination charges will be reduced to B&K by those

¹⁷ *Transformation Order* at ¶¶ 798-808 (transition to B&K).

¹⁸ FNPRM at ¶¶ 1296-1325.

¹⁹ *Id.* at ¶ 1313.

²⁰ *See id.* at ¶ 1319.

²¹ Price cap carrier tandem transport and tandem switching charges appear to be covered by the ICC rate transition established in the *Transformation Order* and are to be reduced to B&K by July 1, 2018, at least where the price cap carrier owns the tandem. *See Transformation Order* at

dates for the two categories of LECs.²² As noted by the FNPRM, T-Mobile has pointed out that reduction of all other termination charges will generate tremendous incentives for ILECs to shift costs to related transport and tandem switching functions.²³ Accordingly, all carrier tandem transport and tandem switching rates should be reduced to B&K in parallel steps with all other termination charges. Otherwise, tandem transport and tandem switching rates will become an *ad hoc* ICC recovery fund to make up for reduced termination charges.

As T-Mobile has noted previously, NECA increased its transport rates last July, in anticipation of ICC rate reform, and LECs are attempting to shift costs to transport rates in their interconnection negotiations.²⁴ For example, T-Mobile has negotiated traffic exchanges with a particular LEC for many years. When the negotiations initially started years ago, the LEC claimed its costs justified charges of approximately \$0.003/minute of use (“MOU”) for transport, \$0.002/MOU for tandem switching and \$0.005/MOU for end-office switching, totaling \$0.01 per MOU. Recently, after the relevant state commission ruled that end-office switching generates no usage-based costs, the same LEC claimed its costs justified charges of \$0.005/MOU for transport, \$0.003/MOU for tandem switching, and \$0.002/MOU for end-office switching, for a total of \$0.01. Thus, the LEC shifted costs to those elements that were less constrained, and the LEC still claims some end-office switching costs notwithstanding the state PUC decision.

¶ 801; FNPRM at ¶ 1306 & n.2358. That rate reduction should be accelerated and broadened to cover all carriers’ tandem transport and tandem switching charges.

²² See *Transformation Order* at ¶ 801.

²³ FNPRM at ¶ 1307.

²⁴ Comments of T-Mobile USA, Inc. at 7-9, *Connect America Fund*, WC Docket No. 10-90 (Aug. 24, 2011).

Tandem switching and transport charges must be brought within the ICC transition to B&K to forestall such abuses.

B. Transit Service Is Necessary For Indirect Interconnection On The Legacy PSTN And Should Be Set At Cost-Based Rates Pursuant To Federal Law

Because today's PSTN is built around LEC networks, particularly LEC tandems, transit service is the only way to implement indirect interconnection between unrelated carriers. The FNPRM points out that, under a Section 251(b)(5) model, transit service is equivalent to the tandem switching and transport components of switched access where the end office switched access provider does not own the tandem switch.²⁵ Transit service is covered by the ILEC obligation under Section 251(c)(2) of the Act to provide interconnection. Because of competitive carriers' reliance on thousands of connections that go through ILECs for termination, various courts and state commissions have held that transit service must be provided by an ILEC at cost-based rates.²⁶

²⁵ FNPRM at ¶ 1311.

²⁶ See, e.g., *Southern New Eng. Tel. Co. v. Perlermino*, Memorandum of Decision, No. 3:09-cv-1787 (WWE), 2011 U.S. Distr. LEXIS 48773 (D. Conn. May 6, 2011) (upholding the Connecticut Department of Public Utility Control decision that interconnection obligations include the obligation to provide transit traffic service); *Qwest Corp. v. Cox Nebraska Telecom, LLC*, Memorandum Opinion, No. 4:08-cv-3035, 2008 U.S. Dist. LEXIS 102032 (D. Neb. Dec. 17, 2008) (finding that an ILEC must provide transit pursuant to its interconnection obligations under section 251); *Brandenburg Tel. Co. v. Windstream Kentucky East, Inc.*, Order, Case No. 2007-0004, 2010 WL 3283776 (Ky PUC Aug. 16, 2010) (cancelling a transit tariff and requiring the parties to negotiate an interconnection agreement for transit pursuant to sections 251 and 252); *Establishment of Carrier-to-Carrier Rules*, Opinion and Order, Case No. 06-1344-TP-ORD, 2007 Ohio PUC LEXIS 572, *92-93 (Ohio PUC Aug. 22, 2007) (noting that the Ohio Public Utility Commission had determined that transit services is governed by Section 251(c)(2)(A)); *Joint Petition of New South Communications Corp. for Arbitration with BellSouth Telecommunications, Inc.*, Recommended Arbitration Order, No. P-772, Sub 8 *et al.*, 2005 N.C. PUC LEXIS 888, *131 (N.C. PUC July 26, 2005) (finding that the tandem transit function is a Section 251 obligation, and that BellSouth must charge TELRIC rates for it); *Joint Petition for Arbitration of NewSouth Communications Corp. of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order, Case No. 2004-00044, 2005 Ky. PUC LEXIS 810, *22 (Ky PUC Sept. 26, 2005) (continuing to require third party transit at rates in interconnection

CMRS carriers also need access to cost-based ILEC transit service to implement the interim transport rule for non-access traffic exchanged with rural LECs (“RLECs”) as long as that rule is in effect.²⁷ Given that a CMRS provider is responsible for transporting interconnected calls all the way to the RLEC’s “meet point” if the interconnection point between the carriers is outside the RLEC’s service area, the CMRS provider will need to enlist the services of a third carrier – typically a Bell Operating Company or other non-rural ILEC – to transport the call to the meet point. The CMRS provider typically will not have facilities within the RLEC’s service territory to deliver interconnected traffic to the RLEC. Accordingly, the Commission should direct ILECs to provide transit service at cost-based rates to any requesting carrier, both during the ICC rate-reduction transition and after rates have been reduced to B&K.

C. POI And Edge Rules Should Assist The Transition To B&K

The FNPRM recognizes that a B&K pricing scheme will require well-defined rules regarding POIs and network edges, both during and after the conclusion of the ICC rate-reduction transition.²⁸ As discussed above, a regional IP POI scheme is the preferable network structural end point. In the interim, however, strict POI and edge rules are necessary in the existing PSTN architecture to preclude ILECs from avoiding ICC reform by imposing new

agreements unless TIC additive could be justified) , *overruled on other grounds sub nom. Bellsouth Telecommunications, Inc. v. Cinergy Communications Co.*, No. 3:05-cv-16-JMH, 2006 U.S. Dist. LEXIS 11535 (E.D. Ky Mar. 20, 2006); *Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecom., Inc. and Intermedia Communications, Inc.*, Docket No. 99-00948, 2000 Ala. PUC LEXIS 1924, *122 (Ala. PUC July 11, 2000) (“We find that Section 251(c)(2) requires, not just permits, Bell Atlantic to make available to new entrants its network for the purpose of allowing new entrants to exchange traffic with other CLECs without having to interconnect with each and every CLEC.”).

²⁷ See *Transformation Order* at ¶ 998; 47 C.F.R. § 51.709(c). T-Mobile also requests below that the interim rural transport rule be terminated immediately.

²⁸ FNPRM at ¶¶ 1310, 1315-21.

transport obligations to replace reduced ICC rates, both during and after the conclusion of the ICC transition to B&K.

As discussed above, merely limiting each telecommunications corporate entity to one POI per state would retain to a large extent the ILEC-dominated model. As an interim measure, however, it could serve as a transition model to shift carriers away from multiple ILEC monopoly chokepoints. Pending the deployment of a regional IP POI regime, the Commission could require ILECs to offer a carrier the option of a single POI in each state where it could exchange traffic with the ILEC and all of the ILEC's affiliates.

At the very least, during the transition to a regional POI structure, the current single POI per LATA rule should be uniformly applied to all ILECs.²⁹ In order to limit the profusion of ILEC affiliate POIs in a LATA, the rule should limit an ILEC and all of its affiliates to one POI in each LATA where all parties equally share in the cost of connectivity. Forbearance from the Section 251(f) interconnection exemption for RLECs may be necessary in order to preclude multiple RLEC POIs in each LATA.³⁰ A single POI per LATA shared by all affiliates of a LEC will still retain too many POIs for an efficient network, but it is a necessary step in reforming the structure of the PSTN. During the transition to a regional POI regime, it might be necessary for the Commission to prescribe default POIs in the absence of an agreement – or at least POI rules – in addition to a strict single POI per LATA rule, if ILECs continue to use POIs as tollgates to impose inefficiencies on interconnecting carriers.

²⁹ See *Application of SBC Communications Inc.*, 15 FCC Rcd 18354, 18390 ¶ 78 n.174 (2000), cited in FNPRM at ¶ 1316.

³⁰ 47 U.S.C. § 251(f).

The FNPRM notes that “[a] critical aspect to bill-and-keep is defining the network ‘edge’ for purposes of delivering traffic. The ‘edge’ is the point where bill-and-keep applies. . . .”³¹ Strict edge rules are more important than ever, given the need to restrict ILEC incentives to avoid the effects of ICC rate reductions by redefining the transport and other service obligations for which the rates are charged. Edge rules should be framed to facilitate the deployment of broadband networks around a regional IP POI scheme. T-Mobile is analyzing the implications of its regional IP POI proposal for network edge issues and reserves the right to address them further in its reply comments.³²

One edge rule that T-Mobile urges the Commission to adopt immediately is the termination of the interim rural transport rule, which permits RLECs to construct “porous” edges, by which they can require other carriers to transport traffic well beyond any reasonable RLEC network edge deep into RLEC service territories. The rule is particularly anticompetitive and unbalanced in light of the six-month delay in the B&K pricing rule adopted by the Commission for non-access CMRS-RLEC traffic.³³ The imposition of B&K pricing was the sole justification for the interim rural transport rule.³⁴ Now that RLECs have the added benefit of the

³¹ FNPRM at ¶ 1320.

³² The Commission requests comment on CTIA’s Mutually Efficient Traffic Exchange (“METE”) plan, among other proposals to define network edges. FNPRM at ¶ 1321. That scheme represented a significant step forward when it was proposed, and although T-Mobile supported its most significant provisions, it may be necessary to update previous proposals to address current broadband goals. *See* Comments of T-Mobile USA, Inc. at 18-20, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (May 23, 2005).

³³ *See Connect America Fund*, Order on Reconsideration, WC Docket No. 10-90, FCC 11-189 (Dec. 23, 2011).

³⁴ *Transformation Order* at ¶¶ 998-99.

rural transport rule without B&K pricing, it should be possible to wean them from the rule well in advance of the conclusion of the ICC rate-reduction transition.

D. The Commission Should Confirm That Interconnection Facilities Are To Be Provided At Cost

Under the Commission’s *Triennial Review Orders*, entrance facilities are subject to Section 251(c)(2) interconnection requirements and the pricing standards of Section 252(d)(1).³⁵ In the *Triennial Review Order*, although the Commission specified that Section 251(c)(3) did not require any unbundled leasing of entrance facilities, it emphasized that the unbundling ruling did not change an ILEC’s obligation under Section 251(c)(2) to provide “facilities in order to interconnect with the incumbent LEC’s network.”³⁶ Finding the Commission’s interpretation in the *Triennial Review Remand Order* neither plainly erroneous nor inconsistent with the regulatory text, this interconnection obligation ruling was upheld by the Supreme Court in *Talk America*.³⁷

Under the *Local Competition Order*, the Section 252(d)(1) interconnection pricing standard is similar to the Section 252(d)(2) reciprocal compensation pricing standard and requires a total element long run incremental cost (“TELRIC”) methodology.³⁸ Thus,

³⁵ *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533, 2611 ¶ 140 (2005) (“*Triennial Review Remand Order*”); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17203-04 ¶ 366 (2003) (“*Triennial Review Order*”) (collectively “*Triennial Review Orders*”).

³⁶ *Triennial Review Order*, 18 FCC Rcd at 17204 ¶ 366 (brackets and internal quotations omitted). Likewise, in the *Triennial Review Remand Order*, the Commission emphasized that the right of CLECs to obtain interconnection facilities pursuant to Section 251(c)(2) was unaltered. *Triennial Review Remand Order*, 20 FCC Rcd at 2661 ¶ 140.

³⁷ *Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254 (2011) (“*Talk America*”).

³⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15844-56, 16023 ¶¶ 672-703, 1054 (1996) (“*Local*

interconnection facilities must be offered by ILECs at TELRIC rates. The Commission should reaffirm that ILECs must provide entrance and other interconnection facilities at TELRIC rates and specify that such rates must be set in negotiated carrier agreements under the Section 251/252 process. To the extent that these facilities are not covered by the ICC rate transition to B&K, these principles will remain important after the conclusion of the transition, at least until a final IP network structure is in place. As ICC rates imposed by carriers for the transport and switching services provided within their networks decline, it will become more important to regulate interconnection rates for the transport of traffic *between* carriers strictly.

E. LECs Should Not Be Permitted To Establish Interconnection Terms And Conditions Through Tariffs

The FNPRM proposes to generally rely on access tariffs while also allowing carriers to negotiate interconnection agreements in transitioning from the existing access charge scheme to the Section 251(b)(5) B&K framework.³⁹ Following the approach established in the *T-Mobile Order*, the Commission should prohibit LECs from establishing interconnection rates, terms and conditions via tariffs and should require them to negotiate such terms under the Section 251/252 process.⁴⁰ This requirement would implement the Commission’s preference for negotiated

Competition Order”), *aff’d in part and vacated in part sub nom. Competitive Tel. Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff’d in part and remanded, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *on remand Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *reversed in part sub nom. Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002). *See also Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed Rulemaking, 18 FCC Rcd 18945, 18952-53 ¶ 16 & n.29 (2003).

³⁹ FNPRM at ¶¶ 1322-23.

⁴⁰ *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4855 (2005) (“*T-Mobile Order*”), discussed in *Transformation Order* at ¶ 830.

intercarrier agreements over the use of unilateral tariffs for traffic subject to the Section 251/252 model.⁴¹

The tariffing process enables LECs to take advantage of their interconnection dominance, obtained from building the legacy PSTN around the ILECs' networks, plus the leverage that unilateral tariffing provides, to set terms and conditions favorable to themselves. Carriers have little choice but to pay the tariffed charges or spend endless resources litigating interconnection issues. Tariffs provide unilateral terms for the benefit of the LEC, with no reciprocity or similar protections for carriers using the tariffed services.

Any and all rates, terms and conditions for services and facilities not covered by the ICC transition thus should be established by the Section 251/252 process. The Commission should establish interconnection rules, including the cost-based rate requirement that must be applied in negotiating interconnection agreements in order to prohibit the kinds of onerous conditions that LECs impose via tariffs. By eliminating the subsidies in ILEC tariffed interconnection rates, Commission rules also would facilitate the transition to broadband networks.

F. CAF ICC Recovery Support Should Be Minimized

Connect America Fund ("CAF") ICC replacement support should be phased out as soon as possible, especially for RoR ILECs. RoR carriers are not subject to a defined phase-out of CAF replacement support under the *Transformation Order*.⁴² A long period of subsidization for reduced ICC revenues would harm competition and impose unnecessary costs on consumers, both in their service rates and universal service fund contribution fees.

⁴¹ See *T-Mobile Order*, 20 FCC Rcd at 4863-64 ¶ 14.

⁴² *Transformation Order* at ¶ 920.

Moreover, whether CAF ICC replacement support is generally phased out quickly, the pace of the reduction in “eligible recovery” for RoR carriers should be accelerated, at least for CAF ICC replacement purposes. RoR carriers are losing subscribers so quickly that the measure of eligible recovery for RoR carriers should be reduced at a rate that keeps pace with the revenue loss from declining demand. Otherwise, RoR carriers will receive CAF ICC replacement support for ICC revenue losses resulting from consumers’ rejection of RoR ILEC services, rather than from the effects of mandatory ICC rate reductions.⁴³

The FNPRM seeks comment as to whether CAF ICC replacement should be available for reduced originating access revenues if originating access rates become subject to mandatory reductions.⁴⁴ ILECs that provide long distance services through affiliates should receive no CAF ICC replacement because, there, the originating access charge is solely an internal bookkeeping charge, rather than a real reduction in ICC revenues to the ILEC corporate entity. Competitors should not be forced to subsidize ICC rate reductions that have no impact on net ILEC revenues. There also should be no CAF ICC replacement for reduced transport and tandem switching charges.⁴⁵ Adding those elements to the category of charges for which LECs may receive CAF ICC replacement likely would break the CAF budget. Instead, LECs should be permitted to recover such reductions in their Access Recovery Charges (“ARCs”).

Finally, given the ICC reform goal of carrier recovery of all costs from the carrier’s own customers, there is no need to eliminate or restrict subscriber line charges (“SLCs”) at this

⁴³ See FNPRM at ¶ 1329.

⁴⁴ *Id.* at ¶¶ 1300-05.

⁴⁵ See *id.* at ¶ 1309.

time.⁴⁶ Competition, as well as the Residential Rate Ceiling limiting the ARC that a LEC may assess,⁴⁷ should be sufficient to prevent excessive subscriber retail rates.

IV. CONCLUSION

The ICC-related reforms addressed in the FNPRM should be implemented in the manner outlined above to facilitate the deployment of an IP infrastructure more suited for broadband services than today's inefficient PSTN and to ensure the success of the ICC rate-reduction transition to B&K for the benefit of all consumers.

Respectfully submitted,

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⁴⁶ See *id.* at ¶¶ 1330-33.

⁴⁷ See *Transformation Order* at ¶¶ 913-15.