

**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

COMMENTS OF MINNESOTA INDEPENDENT EQUAL ACCESS CORP.

Minnesota Independent Equal Access Corporation (“MIEAC”) hereby files comments in response to the Commission’s Further Notice of Proposed Rulemaking (“*Notice*”)¹ in the above-captioned proceedings. For the reasons discussed herein, the Commission should allow providers of stand-alone tandem access service to continue to charge just and reasonable rates for originating and terminating tandem access service. Further, because the Commission lacks

¹ *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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, Report & Order & Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (respectively, “Order” and “Notice”).*

authority to regulate originating *intrastate* charges, any changes to originating intrastate access rates should be left to state commissions.

I. BACKGROUND.

MIEAC is a provider of tandem switched access and tandem transport (together, “tandem access”) service in Minnesota. MIEAC provides valuable functions to interexchange carriers (“IXCs”) and local exchange carriers (“LECs”) as part of both its originating and terminating tandem access service. MIEAC provides the following functions that yield increased efficiency for rural LECs and IXCs.

Efficient Interconnection and Call Transmission. MIEAC’s tandem creates a bridge between IXCs and the numerous rural LECs within Minnesota. This provides 46 IXCs with a single point of interconnection and associated tandem switching and transport to access more than 96 rural LECs’ end offices. MIEAC delivers its services over a broadband fiber facility that provides interconnection and transmission between IXC networks in major metro areas and LEC networks that serve rural communities. MIEAC’s network provides concentrated access between IXC networks and rural LEC networks in Minnesota; MIEAC also provides rural LECs access to advanced services provided via an SS7 network that MIEAC jointly owns and operates with Iowa Network Services, Inc. (“INS”).

Equal Access. MIEAC provides efficient equal access functionality to rural LECs. This is an important service in Minnesota, where 90 percent of all interstate interexchange minutes of use (“MOU”) and 60 percent of non-8YY-bound interstate interexchange MOU that traverse MIEAC’s tandem are originated by a customer whose presubscribed interexchange carrier (“PIC”) is different from his or her LEC.

CARE Records. MIEAC stores and transmits customer account record exchange (“CARE”) information. MIEAC provides CARE functions in support of IXC end user customers in the rural exchange areas. MIEAC in turn sends the information to rural LECs’ customers’ IXCs for billing purposes. MIEAC also accepts CARE letter of authorization data from IXCs when IXCs sign up new customers, and MIEAC propagates this information to the appropriate LEC.

SS7 Signaling. In support of its stand-alone tandem access service, and to provide accurate and complete call signaling parameters, MIEAC jointly owns and operates an SS7 network with INS that provides advanced call signaling and vertical services for rural LECs. This SS7 network is the baseline platform that enables MIEAC to isolate call termination problems and improve termination service between IXCs and rural carriers in Minnesota.

Caller Information Storage. MIEAC stores caller information at the individual number level, including storing a caller’s subscribed to LEC for local service and PIC for long distance service. MIEAC also stores the LEC’s customer’s name and other relevant customer information for Caller ID name purposes.

MIEAC’s tandem access service rates are regulated by the Commission pursuant to the rules governing rate-of-return carriers, and as such are just and reasonable. MIEAC’s only customers for its tandem access service are other carriers. MIEAC has no end user customers and never interfaces directly with the called or calling party. Further, MIEAC only owns tandems and does not own (nor is it affiliated with any company that owns) end offices that subtend MIEAC’s tandems.

II. THE COMMISSION SHOULD CONTINUE TO ENABLE PROVIDERS OF STAND-ALONE TANDEM ACCESS SERVICE TO DELIVER VALUE TO CARRIER CUSTOMERS.

A. Carriers Should Be Allowed To Charge Just And Reasonable Terminating Tandem Access Rates Where They Do Not Own The End Office Subtending The Tandem.

In the *Order*, the Commission adopted rules that transition terminating tandem access rates to bill-and-keep when the terminating price cap carrier owns both the tandem switch and the end office that subtends the tandem in the serving area.² This decision comports with the Commission's over-arching policy objective of replacing intercarrier compensation charges with end user charges.³ When a carrier that owns a tandem switch also owns the terminating end office, that carrier has end user customers from which it can recover its tandem access service costs. The *Order* did not, however, address whether or how to transition tandem access rates where *different carriers* own the tandem switch and the terminating end office switch that subtends the tandem, and now seeks comment on this issue.⁴

As discussed above, MIEAC only owns tandem switches. It does not own end office switches. Rural LECs own the terminating end office switches that subtend MIEAC's tandem

² See *Order* ¶ 801, Intercarrier Compensation Reform Timeline (showing that, by July 1, 2018, “[t]erminating switched end office and transport are reduced to bill-and-keep for all terminating traffic within the tandem serving area *when the terminating carrier owns the serving tandem switch*” (emphasis added)); see also *Notice* ¶ 1306 (“For price cap carriers, where the terminating carrier owns the tandem in the serving area, [tandem access] charges are subject to the transition established in the Order but we do not address the transition for tandem switching and transport charges if the price cap carrier does not own the tandem in the serving area.”).

³ See *Order* ¶¶ 736-739; *id.* ¶ 742 (“Bill-and-keep brings market discipline to intercarrier compensation because it ensures that the customer who chooses a network pays the network for the services the subscriber receives. Specifically, a bill-and-keep methodology requires carriers to recover the cost of their network through end-user charges, which are potentially subject to competition.”); *id.* ¶ 746 (“[B]ill-and-keep merely shifts the responsibility for recovery from other carrier’s customers to the customers that chose to purchase service from that network[.]”).

⁴ See *Notice* ¶ 1306.

switches. Unlike a tandem owner that also owns end office switches in the serving area, MIEAC has no end user customers whose traffic traverses its tandem switches and from whom MIEAC could recover its terminating tandem access service costs. If the rates charged by stand-alone providers of tandem access service were transitioned to bill-and-keep, MIEAC, and companies like it, would have *no customers* from whom it would be appropriate to recover the costs of providing tandem access service. MIEAC would therefore be unable to continue providing the valuable services it provides today.

Accordingly, the Commission should continue to enable providers of stand-alone tandem access service like MIEAC to charge for terminating tandem access service. The Commission should do so by clarifying that it is preserving, and not applying bill-and-keep to, terminating access charges for terminating traffic traversing a tandem switch that is not owned by the terminating carrier. In this way, terminating access charges will be preserved for all terminating traffic carried by a provider of stand-alone tandem access service, even if the provider might not qualify as a provider of stand-alone tandem access service in other circumstances.

B. Carriers Should Be Allowed To Charge Just And Reasonable Originating Tandem Access Rates.

The *Order* likewise did not address whether or how rates for *originating* tandem access service should transition to bill-and-keep.⁵ The *Notice* specifically seeks comment on this issue.⁶ As with terminating tandem access service, the Commission should continue to allow providers of stand-alone tandem access service like MIEAC to charge just and reasonable rates for their origination service.

⁵ See *id.* ¶ 1298 (“Other than capping interstate originating access rates and bringing dedicated switched access transport to interstate levels, the Order does not fully address the complete transition for originating access charges.”).

⁶ See *id.* ¶¶ 1298-1305.

First, as part of its originating tandem access service, MIEAC offers valuable functions to rural LECs and IXCs that increase their efficiency. MIEAC's originating tandem access service includes equal access, CARE, transport and switching, and advanced signaling service provided to LECs and IXCs in Minnesota. At a minimum, MIEAC must be able to assess charges for these services. *Second*, as explained above, MIEAC has no end user customers from which to recover its costs. It serves, charges, and recovers costs from the carriers that use MIEAC's originating tandem access service and the functions provided as part of that service. If MIEAC were required to charge a rate of zero, it would be forced to stop providing originating tandem access service because it would have no way to recoup the service costs.

The Commission thus should continue to allow MIEAC and other providers of stand-alone tandem access service to charge just and reasonable rates for originating tandem access service. Again, as with terminating access, the Commission should do so by clarifying that it is preserving, and not applying bill-and-keep to, originating access charges for originating traffic traversing a tandem switch that is not owned by the originating carrier. In this way, originating access charges will be preserved for all originating traffic carried by a provider of stand-alone tandem access service, even if the provider might not qualify as a provider of stand-alone tandem access service in other circumstances.

III. THE COMMISSION LACKS AUTHORITY TO REGULATE ORIGINATING INTRASTATE TANDEM ACCESS SERVICE.

While there is a strong policy basis for permitting providers of stand-alone tandem access service to assess both interstate and intrastate originating access charges, it is also important to emphasize that the Commission does not even have the authority to regulate, let alone eliminate, *intrastate* originating access charges. Section 2(b) of the Communications Act provides that “nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with

respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with *intrastate* communication service[.]”⁷ Even assuming that Section 251(b)(5) of the Act overrides this provision with respect to intrastate *transport and termination*, it nowhere addresses *origination*, and thus cannot override Section 2(b) with respect to originating intrastate services.⁸ No other provision of the Act grants the Commission authority to regulate originating intrastate access service.

In the *Notice*, the Commission recognizes that “[S]ection 251(b)(5) does not explicitly address originating charges.”⁹ Despite this, the Commission suggests that Section 251(b)(5) somehow provides a basis for preempting the states’ authority to impose originating intrastate access charges.¹⁰ It suggests that, because Section 251(b)(5) does not expressly address origination, Congress intended to prohibit such charges and, as such, the Commission must eliminate origination charges,¹¹ including originating intrastate access charges. This is incorrect. Congress’ silence in Section 251(b)(5) with respect to origination cannot be interpreted as a grant of legal authority over intrastate origination. If the Commission wants to override Section 2(b)

⁷ 47 U.S.C. § 152(b)(1) (emphasis added).

⁸ *See id.* § 251(b)(5) (imposing on telecommunications carriers “[t]he duty to establish reciprocal compensation arrangements for the *transport and termination* of telecommunications” (emphasis added)).

⁹ *Notice* ¶ 1298.

¹⁰ *See id.*

¹¹ *See id.* n.2346 (“[Section 251(b)(5)] does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits [such] charges . . .” (quoting *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd. 15499, ¶ 1042 (1996)); *id.* ¶ 1298 (“As we acknowledge in the Order, section 251(b)(5) does not explicitly address originating charges. We determine, therefore, that such charges should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.”)).

and regulate originating intrastate access service, it must identify a provision that affirmatively grants it the authority to do so. Section 251(b)(5) does not do so.

Alternatively, the Commission suggests that Section 251(g) of the Act allows it to regulate all forms of “exchange access,” including originating intrastate access service.¹² But the Supreme Court has recognized that Section 251(g) “[is] not [a] grant[] of authority at all.”¹³ In order to adopt rules governing originating intrastate access service, the Commission cannot rely on Section 251(g) alone.

If the Commission cannot identify a provision of the Act that grants it the authority to regulate originating intrastate access service, Section 2(b) makes clear that the states retain jurisdiction over originating intrastate access service.¹⁴ The treatment of originating intrastate access charges therefore should be left to the states.

¹² See *Order* ¶ 778 (“[S]ection 251(g) provides for the continued enforcement of certain pre-1996 Act obligations pertaining to ‘exchange access’ until ‘such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission.’ Exchange access is defined to mean ‘the offering of access to telephone exchange services or facilities for the purpose of the *origination* or termination of telephone toll services.’ Thus, section 251(g) continues to preserve originating access until the Commission adopts rules to transition away from that system.” (internal citation omitted) (emphasis in original)).

¹³ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 383 n.9 (1999); see also *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Cir. 2002) (striking down the Commission’s attempt to rely on Section 251(g) as a source of authority to regulate ISP-bound traffic). Even when the Commission interpreted Section 251(g) as a source of authority to regulate ISP-bound traffic, it did not attempt to use this provision to expand its authority over intrastate communications.

¹⁴ The Commission may also preempt state regulation where the interstate and intrastate components of a service cannot be separated and where state regulation would render federal regulation a nullity (the so-called “inseverability” doctrine). See *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 373-76 & n.4 (1986). Given that states and carriers have, for decades, identified intrastate toll traffic and applied access charges to such traffic without affecting federal regulation of interstate toll traffic, there is no basis for Commission preemption under the inseverability doctrine in this situation.

IV. CONCLUSION.

For the reasons discussed above, the Commission should continue to allow providers of stand-alone tandem access service to charge just and reasonable rates for originating and terminating interstate tandem access service. Further, because the Commission lacks authority to regulate originating *intrastate* access charges, treatment of such rates should be left to state commissions.

Respectfully submitted,

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February 24, 2012