

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of	
Connect America Fund	WC Docket No. 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109
Universal Service Reform – Mobility Fund	WT Docket No. 10-208

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services Inc. d/b/a SouthernLINC Wireless, by its attorneys, respectfully submits these reply comments on the issues raised by the Federal Communications Commission (“FCC” or “Commission”) in the Report and Order and Further Notice of Proposed Rulemaking released by the FCC on November 18, 2011.¹ SouthernLINC Wireless urges the Commission to revise its intercarrier compensation rules to limit the ability of carriers to shift the costs of their networks to other carriers. The Commission should also encourage all carriers to reach negotiated interconnection arrangements while providing a fast and efficient mechanism for resolving disputes between the carriers.

¹ *Connect America Fund*, WC Docket No. 10-90, Report & Order & FNPRM, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

I. THE COMMISSION’S INTERCARRIER COMPENSATION RULES SHOULD LIMIT THE ABILITY OF CARRIERS TO SHIFT THEIR COSTS TO OTHERS

SouthernLINC Wireless applauds the Commission’s decision to mandate a bill-and-keep regime. However, “as the Commission addresses the remaining implementation issues, [the agency must] guard against unintended opportunities for arbitrage and unintended consequences.”² In particular, the Commission must take steps to ensure that wireline carriers, used to recovering significant portions of their costs from other carriers, do not simply offset the ordered reductions in some areas of intercarrier compensation with increases in others. Therefore, SouthernLINC Wireless urges the Commission to take immediate action to address the remaining elements of intercarrier compensation not covered in the *USF/ICC Transformation Order*.

A) The Commission Should Transition All Terminating Intercarrier Compensation Rates to Bill-and-Keep

SouthernLINC Wireless urges the Commission to reduce all tandem switching and transport rates contemporaneously with other terminating ICC elements. Such changes are necessary to avoid permitting LECs to replace one form of intercarrier compensation with another. As T-Mobile explains, the “reduction of all other termination charges will generate tremendous incentives for ILECs to shift costs to related transport and tandem switching functions.”³ In effect, “tandem transport and tandem switching rates will become an *ad hoc* ICC recovery fund to make up for reduced termination charges.”⁴

The record is replete with examples of such abuses. For example, Sprint notes that “interstate access rates for transport are sizeable, are set at levels well above costs, and

² MetroPCS Comments at 2.

³ T-Mobile Comments at 10.

⁴ *Id.*

encourage traffic and mileage pumping,”⁵ and in support of those allegations, provides examples of tariffed transport charges assessed by three major carriers and NECA where the transport components of access charges are set near or above the rates for end office switching.⁶ Similarly, T-Mobile provides an example of similar cost shifting, both by NECA and by the individual LECs with whom it negotiates.⁷ The Commission should take action to prevent these abuses from occurring.

To prevent these types of abuses, the Commission should reduce all carrier tandem transport rates to bill-and-keep in parallel with all other termination changes.⁸ As Leap Wireless and Cricket explain, “a bill-and-keep framework for all carriers will offer greater simplicity, reduce or eliminate any remaining arbitrage opportunities, and promote the transition to IP networks.”⁹ As CTIA similarly explains, “[t]here 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.”¹⁰ Indeed, “[a]n extended transition would only prolong the harms associated with the current regime . . . and could provide opportunities for LECs to ‘make up’ for revenues lost due to reduced reciprocal compensation rates.”¹¹

There is also no statutory basis for excluding transport charges from the transition to bill-and-keep. As XO explains:

Since section 251(b)(5) provides no distinction between its treatment of transport and termination, the same pricing methodology and policy should apply to both rate elements. By excluding transport rates from the adopted transition timeline, the Commission has created an opportunity for larger ILECs to

⁵ Sprint Comments at 53.

⁶ *Id.* at 54.

⁷ T-Mobile Comments at 10.

⁸ T-Mobile Comments at 10; Sprint Comments at 56; CTIA Comments at 3-4.

⁹ Leap & Cricket Comments at 3.

¹⁰ CTIA Comments at 4.

¹¹ Leap & Cricket Comments at 3.

unfairly and unjustifiably increase their competitors' costs. Because of the differences in network configuration between ILEC and [competitive carriers'] networks, [competitive carriers] typically must pay for both transport and termination, whereas ILECs only pay termination charges. Thus, the transition plan creates an imbalance where rate elements assessed upon ILECs are being quickly phased out but the transport rates that [competitive carriers] typically must pay are not.¹²

Given the potential for abuse by incumbent carriers and the Commission's clear commitment to moving towards a system where all parties bear their own network costs, there is no reason for disparate treatment of tandem switching and transport rates and terminating access rates.

B) Transit Services Should Be Set at Cost-Based Rates

The Commission also needs to act to resolve issues relating to transit services. As MetroPCS comments, "the ability of the originating carrier to secure transiting services from connecting carriers is a critical element to ensuring interconnection."¹³ Specifically, incumbent carriers cannot be permitted to engage in monopoly pricing of these services. As T-Mobile notes, there are "thousands of [competitive carrier] connections that go through ILECs for termination" to another carrier.¹⁴ Therefore, SouthernLINC Wireless agrees with Leap and others that "it would be a hollow right for an originating carrier to be entitled to secure transiting services from a connecting carrier if there are no limits placed on the reasonableness of the charges to be imposed."¹⁵

However, as Sprint correctly notes, the bill-and-keep arrangement adopted for other types of traffic "will not work for transit service, because transit providers have no retail customers from which they can recover their transit costs."¹⁶ It is for this reason that "various courts and

¹² XO Comments at 5.

¹³ MetroPCS Comments at 8.

¹⁴ T-Mobile Comments at 26.

¹⁵ MetroPCS Comments at 9; see also T-Mobile Comments at 26; MetroPCS Comments at 8; Sprint Comments at 65.

¹⁶ Sprint Comments at 65.

state commissions have held that transit service must be provided by an ILEC at cost-based rates.”¹⁷ Therefore, SouthernLINC Wireless joins with T-Mobile, MetroPCS, Sprint, and others in urging the Commission to limit incumbent LECs to cost-based rates for transit services. “Because considerable amounts of traffic still are transported through indirect interconnection, without this proposed regulatory action, the costs for transit traffic could increase exponentially.”¹⁸ In contrast, Commission regulations requiring that that transit services be made available as a form of interconnection at cost-based rates would safeguard providers from certain LECs that might otherwise be tempted to exploit their large market power.

Unfortunately, because ILECs have incentive to inflate their costs in cost studies, arbitration regarding appropriate cost-based rates is often inevitable and is costly to all involved. For this reason, SouthernLINC Wireless urges the Commission to study Sprint’s proposal to adopt a rate cap for transit traffic similar to the \$0.0007/minute cap on ISP-bound traffic.¹⁹ As Sprint explains, this strategy has avoided litigation and arbitration in the past. However, as Sprint notes, the Commission should not use the ISP rate; instead, the rate needs to be revised downward to reflect the fewer functions an ILEC performs with transit as compared to the functions it performs in delivering calls to its own retail customers.²⁰

II. INCUMBENT LECS SHOULD BE REQUIRED TO OFFER EFFICIENT IP-TO-IP INTERCONNECTION AS AN ALTERNATIVE TO TRADITIONAL INTERCONNECTION

SouthernLINC Wireless urges the Commission to adopt regulations that will facilitate the transition of the nation’s telecommunications network to IP-to-IP interconnection, although wireless and competitive carriers should not be forced to migrate in the near future. To this end,

¹⁷ T-Mobile Comments at 26 (citing eight different examples of courts or public utility commissions determining that transit services must be provided by an ILEC at cost-based rates).

¹⁸ MetroPCS Comments at 9.

¹⁹ Sprint Comments at 66.

²⁰ *Id.*

SouthernLINC Wireless endorses proposals for a single set of national rules and arbitrations. Today, the questions surrounding IP interconnection is fundamentally the same the Commission faced in 1996 when first considering how to implement the interconnection requirement of Sections 251 and 252. Then, in the *Local Competitor Order*, the Commission found that national rules would "expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until after years of litigation, remedy significant imbalance in bargaining power, and establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish."²¹

The same logic applies now. Indeed, as Sprint notes, in many ways today the competitive situation is bleaker than in 1996:

There were in 1996 eight major ILECs: the seven RBOCs and GTE. Today, these eight ILECs are only three: 1) AT&T (having merged with Ameritech, BellSouth, Southwestern Bell, and Pacific Bell); 2) Verizon (formerly known as Bell Atlantic, having acquired GTE and NYNEX); and 3) Century Link (having acquired Qwest). Through these acquisitions, the two largest telecom firms have been able to extend their market power to far more markets - and in the process, obtain even more dominant market power relative to their rivals.²²

There is no basis, therefore, to suggest that market conditions today somehow mitigate the need for mandatory interconnection requirements.

The Commission also should reject claims by AT&T, CenturyLink and Comcast that Commission regulation of IP-to-IP interconnection among voice service providers would somehow contradict the federal government's long-standing policy of not regulating the

²¹ *Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, 15528, ¶ 56 (1996).

²² Sprint Comments at 11; *see also* Bandwidth.com Comments at 8 (noting uneven bargaining power between competitive carries and incumbents).

Internet.²³ As Time Warner Cable explains:

Some ILECs have argued that because “the Internet,” broadly understood, has thrived despite minimal regulation, IP interconnection agreements should be governed solely by market forces. But that is mere obfuscation. Although “Internet Protocol” has the word “Internet” in it, IP-to-IP interconnection under Section 251 does *not* involve “traffic exchanges on the Internet.” Rather, the only service at issue in this context is the facilities-based exchange of regulated PSTN traffic (either wholesale or retail, depending on the competitive LEC involved). Notably, a LEC’s use of Session Initiation Protocol to exchange voice traffic relies on entirely different network facilities than an Internet service provider’s exchange of Internet traffic. Voice call routing and transmission also involves a variety of complex procedures, such as queries to number portability, 911, and routing databases, that do not apply to Internet traffic.²⁴

Indeed, Commission precedent supports regulation of IP-to-IP interconnection, contrary to the assertions of AT&T and CenturyLink.²⁵ The Commission itself has previously found that “the 1996 Act is technologically neutral and designed to ensure competition in all telecommunications markets.”²⁶ As such, “[n]othing in section 251(a) or 251(c)(2) narrows the application of either interconnection requirement to circuit-switched TDM networks; therefore, CLECs are entitled to IP interconnection with incumbent LECs for the transmission and routing of these services under both section 251(a) and section 251(c)(2).”²⁷ Given (1) that the Act itself is technologically neutral and (2) the clear potential for incumbent LECs to engage in the kind of behavior Section 251 was intended to address, there is no basis for the Commission to refrain from adopting policies governing IP interconnection pursuant to its Section 251 authority.

In addition to requiring all incumbent LECs to offer IP-to-IP interconnection as an

²³ AT&T Comments at 13-14; CenturyLink Comments at 43; Comcast Comments at 51.

²⁴ Time Warner Comments at 12.

²⁵ See XO Comments at 13.

²⁶ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Remand, 15 FCC Rcd 385, ¶ 2 (1999) (“Advanced Services Order”), remanded on other grounds *WorldCom, Inc. v. FCC*, 246 F.3d 690 (D.C. Cir. 2001).

²⁷ XO Comments at 13.

alternative, the Commission should also take this opportunity to make such interconnection more efficient. For this reason, SouthernLINC Wireless joins with Verizon, Bandwith.com, Sprint, and T-Mobile (among others) in advocating for a mechanism whereby calls can be handed off to large incumbents at a single POI per state or even at single POI for multiple states.²⁸ As T-Mobile explains, under such a system “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.”²⁹ Further, this architecture would mimic the architecture of the Internet exchange points in use today, and would provide similar network efficiencies while reducing the costs that competitive carriers must bear to exchange traffic with incumbent LECs.

III. THE COMMISSION SHOULD ADOPT RULES TO PROTECT COMPETITIVE CARRIERS’ RIGHT TO INTERCONNECTION

A) The Commission Should Adopt Mechanisms To Permit Wireless and Competitive Carriers To Enforce Their Interconnection Rights In A Timely And Cost Effective Manner

SouthernLINC Wireless shares the concerns of many competitive carriers in this docket that incumbent LECs have incentives to delay the implementation of new interconnection rules, including rules governing interconnecting in an IP format.³⁰ For this reason, SouthernLINC Wireless urges the Commission to consider implementing T-Mobile’s proposal to handle all IP-to-IP interconnection disputes at the federal level in an expedited manner for all interconnection disputes.³¹ In addition to providing an efficient means of resolving individual disputes between carriers, the creation of a public, federal forum for these disputes will provide other advantages.

²⁸ Verizon Comments at 23; Bandwidth Comments at 9; Sprint Comments at 21-23; T-Mobile Comments at 5.

²⁹ *Id.* at 4-5.

³⁰ Ad Hoc Group Comments at 8-11; Charter Communications Comments at 4-8; Cbeyond Comments at 20; Leap & Cricket Comments at 13; MetroPCS Comments at 16-18; NCTA Comments at 5-7; Hypercube Comments at 10-11.

³¹ *See* T-Mobile Comments at 8 (proposing federal mechanisms for resolving interconnection disputes).

For instance, it will prevent carriers from having to litigate the same issues repeatedly in front of different state commissions, and eliminate the possibility of conflicting results. Further, the need for such enforcement actions will be reduced as a single, nationwide body of applicable law is developed, limiting the burden on the Enforcement Bureau.

Another means by which the Commission can foster efficient interconnection is by requiring ILECs to negotiate on behalf of all their affiliates in a single negotiation. Today, some LECs have taken the position that a competitive carrier must separately negotiate interconnection with each affiliate within a state. This increases the costs associated with negotiating interconnection agreements, while providing no corresponding benefit. For this reason, SouthernLINC Wireless urges the Commission to adopt rules establishing that there should only be one interconnection agreement per state, per carrier (carrier defined at the holding company level).³²

B) LECs Should Be Prohibited From Tariffing Interconnection Terms

The Commission should require all carriers to transition away from using tariffs and towards negotiated interconnection agreements to establish the rates and terms for interconnection.³³ The Commission has previously found that “negotiated agreements between carriers are more consistent with the pro-competitive process and policies reflected in the 1996 Act.”³⁴ There is no reason for the Commission not apply that finding here.

Indeed, permitting carriers to tariff the terms of interconnection provides LECs with an unfair negotiating advantage. As T-Mobile explains:

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

³² Leap Wireless & Cricket Comments at 15.

³³ *Accord* AT&T Comments at 74-76; T-Mobile Comments at 16-17.

³⁴ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 20 FCC Rcd 4855, 4683 ¶ 14 (2005).

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.³⁵

Given the relative bargaining positions of the parties, the Commission should instead permit the parties to negotiate in good faith, with the possibility of resort to arbitration should the parties not reach an agreement. There is no basis for allowing one party to dictate the terms of interconnection via a unilaterally filed tariff.

CONCLUSION

SouthernLINC Wireless urges the Commission to revise the intercarrier compensation rules to limit the ability of carriers to recover unfairly the costs of their networks from other carriers. Further, the Commission should put into place mechanisms that will encourage the deployment of IP networks and efficient interconnection arrangements between carriers, in order to encourage the continued growth of the competitive market that will benefit all consumers.

Respectfully submitted,



Todd D. Daubert
J. Isaac Himowitz
Aaron M. Gregory
SNR DENTON US LLP
1301 K Street, N.W.
East Tower, Suite 600
Washington, DC 20005
todd.daubert@snr Denton.com

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*Counsel for Southern Communications Services
d/b/a SouthernLINC Wireless*

³⁵ T-Mobile Comments at 17.