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

REPLY COMMENTS OF VERIZON

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TABLE OF CONTENTS

I. INTRODUCTION. 1

II. THE COMMISSION SHOULD PRESS AHEAD WITH INTERCARRIER COMPENSATION REFORM. 3

A. Further Delay in Adopting a Framework to Transition Down Originating Access Charges Would Be Inconsistent with the Latest Commission Reforms and Policies. 4

B. The Commission Should Begin by Reforming 8YY Charges. 6

C. The Commission Has Authority to Reduce Both Interstate and Intrastate Originating Access Rates. 9

D. It Is Premature to Establish Detailed Bill-and-Keep Implementation Rules. 13

E. The Commission Should Take Action to Stop Arbitrage Associated with Centralized Equal Access Arrangements. 15

III. THE COMMISSION SHOULD START TO ELIMINATE OUTDATED REGULATIONS AS THE PSTN FADES AWAY. 19

IV. THE COMMISSION SHOULD NOT DEVIATE FROM ITS HANDS-OFF POLICY AND SHOULD LET THE MARKET CONTINUE TO LEAD THE TRANSITION TO IP INTERCONNECTION FOR VOICE SERVICES. 21

A. There are No Incumbent Providers of Broadband Networks. 21

B. VoIP is Flourishing, in Part Because All Carriers Must Accept IP-Originated Traffic. 23

C. The Vast Majority of VoIP Traffic Today Must be Converted from IP to TDM, and the Conversion Cannot be Avoided for VoIP-PSTN Traffic. 25

D. Companies Have Incentives to Interconnect in IP for Voice, and They Will Grow as VoIP Grows. 26

E. There is No Such thing as “Light Touch” Regulation for IP Interconnection. 28

F. IP Interconnection Could Lead to Backbone Regulation. 29

G. The Communications Act Does Not Require Interconnection in a Particular Format. 31

V. CONCLUSION. 43

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REPLY COMMENTS OF VERIZON[1]

I. INTRODUCTION.

The Commission should continue its market-based approach to intercarrier compensation, embodied in the *USF-ICC Transformation Order*, and it should continue to allow the market to lead the transition to IP networks for voice services, as it has wisely done to date. Consistent with that approach, the Commission should: establish a framework for transitioning down originating access rates, starting with 8YY traffic; recognize that, while bill-and-keep can work when traffic flows are relatively balanced, it can create significant distortions where there are imbalances; reject the calls to extend legacy PSTN regulations, written for a different time and a different communications marketplace, to IP networks; and allow the transition to IP networks to continue unimpeded by new regulatory requirements for IP voice interconnection.

[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc., and Verizon Wireless ("Verizon").

With respect to intercarrier compensation, while the *USF-ICC Transformation Order* focused, appropriately, on transitioning down terminating access rates, the Commission correctly recognized that remaining rate elements need to be harmonized, and the Commission now should begin addressing originating access rates by establishing a framework to transition them down, as well. As it does, it should focus on areas that present imminent, significant arbitrage issues, like toll-free 8YY traffic, which is more like terminating access traffic than originating. Furthermore, while the new intercarrier compensation framework calls for intercarrier compensation rates to transition eventually to zero, a zero default rate can create distortions and arbitrage opportunities if traffic exchanged between two companies is out of balance. The Commission should refrain from adopting new rules for the bill-and-keep transition now, but as it plans the transition, it should carefully consider how to prevent that abuse.

Meanwhile, the network evolution and transition of voice traffic away from the circuit-switched PSTN towards IP-based networks is already underway, and it promises innovative services and new benefits for consumers. The Commission should encourage that transition by eliminating legacy regulations that would otherwise impede it. Significantly, the Commission can – and must – eliminate obligations tied to legacy eligible telecommunications carrier (ETC) status in those areas where carriers do not receive high cost universal service support. The Commission also should not extend PSTN-style regulations to IP networks, which would impede the transition and harm consumers. Furthermore, a regulatory requirement for IP voice interconnection, even a seemingly innocuous one, could have perilous unintended consequences, including spillover to the Internet backbone, and it could encourage international regulators to regulate the Internet.

As VoIP grows more popular, business incentives to interconnect will only grow stronger, and negotiated commercial agreements will ensure that IP interconnection for voice continues to develop efficiently. The commenters that argue otherwise ignore, or misconstrue, key facts. For example, for new technologies like broadband networks, there are no incumbent providers and no category of providers has market power. Although some commenters would have the Commission regulate like it's 1996, the communications marketplace is extraordinarily different today. VoIP has flourished, in part because all carriers must accept IP-originated traffic. The conversion from IP to TDM format about which many commenters complain is a necessary aspect of a call that goes from a VoIP user on one end to a PSTN user on the other, and those calls still represent the vast majority of today's traffic. For calls with IP on only one end, the only relevant question about that conversion is not whether it's necessary, but rather who pays for it. Those commenters who complain about it and allege that it interjects inefficiencies seek only to shift the conversion costs to their competitors.

As VoIP grows even more popular, not only will the need for that conversion decrease, but at the same time all VoIP providers will have increased incentives to interconnect in IP for voice services. In the meantime, Verizon urges the Commission to refrain from imposing regulatory requirements for IP voice interconnection, for which it lacks authority in the first place, and to let the market continue to lead the transition through voluntary commercial agreements.

II. THE COMMISSION SHOULD PRESS AHEAD WITH INTERCARRIER COMPENSATION REFORM.

As Verizon noted in its initial comments, the Commission already has undertaken important reform and modernization of the intercarrier compensation system and now should take additional steps to complete the job. By transitioning down originating switched access rates and taking the other steps advocated in Verizon's comments, the Commission can achieve its goal of "an incentive-based, market-driven approach that can reduce arbitrage" and "enable carriers to invest in modern, IP networks."[2] Other commenting parties agree, and echo Verizon's call to reduce originating access rates in one manner or another.[3] A few parties attempt to throw up roadblocks to further intercarrier compensation reform, arguing that the Commission lacks the authority to reduce originating access rates, or that it otherwise should delay reducing such rates for years. But the Commission can and should begin to address originating access rates, as further delay is inconsistent with the *USF-ICC Transformation Order* and the Commission's new intercarrier compensation policies. And as a first step, the Commission should act immediately to reduce originating access charges on toll-free, 8YY-dialed traffic, where arbitrage schemes already are proliferating.

A. Further Delay in Adopting a Framework to Transition Down Originating Access Charges Would Be Inconsistent with the Latest Commission Reforms and Policies.

As Time Warner noted in its comments, "[t]he costs and functions associated with terminating and originating access are the same, and the policy rationales for reducing terminating rates apply equally to originating rates."[4] Other commenters agree, indicating that "[a]ll of the reasons that the Commission articulated for reducing and then eliminating terminating access charges in favor of a bill-and-keep regime … apply equally, if not more so, to

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[2] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 9 (2011) ("*USF-ICC Transformation Order*").

[3] *See, e.g.*, Comments of Bandwidth.com, at 12-13 ("Bandwidth.com Comments"); Comments of Comcast Corp., at 4 ("Comcast Comments"); Comments of iBasis Retail, Inc. and Cinco Telecom Corp., at 5-8 ("iBasis Comments"); Comments of Time Warner Cable, at 18-20 ("TWC Comments"); and Comments of AT&T, at 71-74 ("AT&T Comments").

[4] TWC Comments at 19.

originating access charges."[5] Consistent with that view, the Commission already has established that – for VoIP-PSTN traffic – originating access charges are to track interstate rates.[6] The Commission should now take the next steps and adopt a framework for reducing originating access generally.

Nevertheless, some carriers would have the Commission allow them to continue collecting current originating access revenue streams for as long as possible, despite the fact that those rates are too high in many cases and despite the Commission's express determination that "such charges should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime."[7] Some commenters have urged the Commission to postpone reform of originating access rates until after the transition for terminating access charges is complete or for a fixed period of months or – in the case of the Moss Adams Companies – for at least another *five years*.[8] These commenters ignore the Commission's conclusion that the new Section 251(b)(5) intercarrier compensation framework is ultimately inconsistent with originating access charges generally and the serious statutory questions regarding the Commission's authority to provide for any originating access charges on IP-originated calls.[9]

In seeking comments on the ultimate transition of originating access charges to a bill-and-keep framework, the Commission specifically recognized the risks inherent in pushing back reform of originating access rates and other remaining intercarrier compensation elements:

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[5] iBasis Comments at 5.

[6] *See USF-ICC Transformation Order*, ¶ 961; *see also id*. n.1976, ¶¶ 940, 944 & Appendix A, ¶ 31 (proposed revisions to 47 C.F.R. § 51.913).

[7] *USF-ICC Transformation Order* ¶ 1298.

[8] *See* Comments of Moss Adams LLP, *et al*., at 5-6.

[9] *See* Petition for Reconsideration of the United States Telecom Association, WC Docket No. 10-90, *et al*., at 39 (Dec. 29, 2011).

> Commenters warn that failure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, and maintain opportunities for arbitrage. We agree, and ***seek to reach the end state for all rate elements as soon as practicable*** …[10]

The Commission's view is correct, and there is no reason to limit intercarrier compensation reform to the terminating side of the equation. Maintaining artificially high originating access rates and comparatively low terminating access rates would be inconsistent with the Commission's adoption of uniform rate structures. As Comcast noted in its comments, the *USF-ICC Transformation Order* "highlighted the importance of national uniformity in reforming terminating access rates, … concluding that '[p]roviding a uniform national transition and recovery framework, to be implemented in partnership with the states, will achieve the benefits of a uniform system and realize the goals of reducing arbitrage and promoting investment in IP networks as quickly as possible.'"[11] These policy decisions apply with equal force to originating access.[12]

B. The Commission Should Begin by Reforming 8YY Charges.

Just as it did with terminating rates, the Commission should focus its originating access reform first on areas that present significant arbitrage issues, such as toll-free, 8YY-dialed traffic.

As Verizon explained in its initial comments, it is already seeing inflated invoices for 8YY database dip charges, involving similar scenarios to terminating access charge traffic pumping.[13] These include CLEC autodialer schemes that inflate costs to carriers and their

[10] *USF-ICC Transformation Order* ¶ 1297 (footnote omitted) (emphasis added).

[11] Comcast Comments at 4 (quoting *USF-ICC Transformation Order* ¶ 792).

[12] *See id*. *See also* TWC Comments at 19 ("… having convincingly made the case for harmonized and coordinated intercarrier compensation rates under a federal framework, the Commission should now put originating access on a similar track as terminating access").

[13] See Verizon Comments, at 5.

customers, result in harassing hang-up calls at all hours to the carriers' 8YY customers, and violate section 227(b) of the Communications Act, which explicitly prohibits using an automatic dialing system to place calls to a service for which the called party is charged for the call.[14] These and other arbitrage schemes harm consumers and divert resources away from broadband deployment and other initiatives.

These arbitrage practices ultimately can be eliminated only by removing the incentive to engage in them – that is, by establishing a single, low default intercarrier compensation rate, which includes origination functions and other rate elements.[15] But the first step the Commission should take with respect to originating access charges is to reduce immediately the rates associated with 8YY calls, including the dip charges.

Indeed, 8YY traffic is more like terminating access traffic than originating, in any event. While consumers are able to choose all-distance services from the same provider for most originating calls, the same is not true of toll-free traffic, where the carrier that serves the toll-free customer on the other end (typically a business customer) pays originating access charges to the carrier that delivers the traffic to it. Since this 8YY traffic is more similar to terminating access than originating access charges on 1+ dialed traffic, and given the associated arbitrage concerns discussed above, it represents a good starting point to implement originating access reform. Other commenters agree, and echo Verizon's call to eliminate 8YY access charges.[16]

Nevertheless, certain others have suggested that the Commission refrain from transitioning down 8YY charges, claiming that the originating local exchange carrier should

[14] *See* 47 U.S.C. § 227(b).

[15] *See USF-ICC Transformation Order* ¶¶ 1306, 1311, 1314.

[16] *See, e.g.*, Bandwidth.com Comments at 12-13; iBasis Comments at 8-9.

continue to receive intercarrier compensation for this traffic because it otherwise would not receive compensation for calls and the use of its network.[17] These arguments are misguided.

There is no more reason for other carriers to subsidize local exchange carriers for use of their network for 8YY calls than there is for terminating traffic. To the contrary, continuing such intercarrier compensation payments in this context would be entirely at odds with the fundamental premise of the intercarrier compensation reforms in the *USF-ICC Transformation Order* and its overall transition to a bill-and-keep regime, in which "a carrier generally looks to its end-users … rather than looking to other carriers and their customers to pay for the cost of its network."[18]

As the Commission recognized, when local exchange carriers look to recover their network costs from other carriers, that generates an implicit subsidy that "shields subsidy recipients" – *i.e.*, the LECs – "and their customers from price signals associated with network deployment choices."[19] By contrast, reducing intercarrier compensation payments for 8YY traffic and transitioning down such 8YY charges has the same benefits that the Commission otherwise has recognized come from a bill-and-keep methodology: it is a market-based approach[20] that benefits consumers,[21] "imposes fewer regulatory burdens and reduces arbitrage and competitive distortions inherent in the current system, eliminating carriers' ability to shift

[17] *See, e.g.*, Comments of The Nebraska Rural Independent Companies, at 8-13 ("Nebraska Rural Comments"). *See also* Comments of NECA, *et al*., at 13-14.

[18] *USF-ICC Transformation Order* ¶ 737. *See also id*. ¶ 34 (indicating that, under a bill-and-keep framework, "carriers look first to their subscribers to cover the cost of the network").

[19] *Id*. ¶ 738.

[20] *See id*. ¶ 742.

[21] *See id*. ¶ 748.

network costs to competitors and their customers."[22] Accordingly, the Commission should phase down 8YY charges immediately.

C. The Commission Has Authority to Reduce Both Interstate and Intrastate Originating Access Rates.

In the *USF-ICC Transformation Order*, the Commission concluded that "section 251(b)(5) applies to traffic that traditionally has been classified as access traffic," and determined further that it should "regulate[ ] access traffic under section 251(b)(5)" so as to "bring all traffic within the section 251(b)(5) regime."[23] Moreover, the Commission specifically "reject[ed] arguments that section 251(b)(5) does not apply to intrastate access traffic," holding – among other things – that section 2(b) does not "limit[ ] the scope of section 251(b)(5)" and, therefore, does not prevent the Commission from regulating under section 251(b)(5) terminating charges for traffic that had historically been subject to legacy intrastate access tariffs.[24] At the same time, the Commission relied on section 251(g) to "continue[ ] to preserve originating access" – both interstate and intrastate – "until the Commission adopts rules to transition away from that system."[25] The Commission's reliance on section 251(g) to preserve the existing originating access regime for non-VoIP-PSTN traffic is consistent with its longstanding conclusion that, in enacting section 251(g), Congress preserved both interstate and intrastate access regimes, until the Commission prescribes regulations that "explicitly supersede[ ]" those regimes.[26]

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[22] *Id*. ¶ 738.

[23] *USF-ICC Transformation Order* ¶¶ 762-764.

[24] *Id.* ¶ 765.

[25] *Id.* ¶ 778. However, in adopting its prospective, transition rule for VoIP-PSTN traffic, the Commission did address originating charges, holding that "toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating interstate access rates." *Id*. at ¶ 961.

[26] 47 U.S.C. § 251(g); *see Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 732 (1996) ("*Local Competition Order*"); *Implementation of the Local Competition Provisions in the*

The Commission has authority to supersede the legacy access charge regimes that applied to interstate TDM traffic and to wireless traffic. Congress has explicitly given the Commission authority to ensure that rates for "interstate" communications services are "just and reasonable."[27] The D.C. Circuit has upheld the Commission's authority under section 201 to enact compensation rules regarding interstate traffic, regardless of whether that traffic is also encompassed within section 251(b)(5).[28] The Commission also has independent authority over intercarrier compensation charges imposed by wireless carriers.[29] Indeed, because Congress has expressly preempted state "regulat[ion] [of] . . . the rates charged by any commercial mobile service," the Commission can assert *exclusive* authority to regulate all intercarrier compensation charges imposed by wireless providers.[30]

Telecommunications Act of 1996; *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order,16 FCC Rcd 9151, ¶ 37 n.66 (2001) (*remanded on other grounds by Worldcom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

[27] 47 U.S.C. § 201.

[28] *See Core Commc'ns, Inc. v. FCC*, 592 F.3d 139, 143-46 (D.C. Cir.), *cert. denied*, 131 S. Ct. 597, 626 (2010). *See also Access Charge Reform*, Order,12 FCC Rcd 10175, ¶ 7 (1997) [noting that "no one has questioned (or plausibly could question)" that section 201(b) provides the Commission with "authority over interstate access charges"]; *Connect America Fund*, *et al*., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 510 (2011) ("*2011 NPRM* ") (noting that "reducing interstate access charges falls well within [the Commission's] general authority to regulate interstate access under sections 201 and 251(g)").

[29] *See* 47 U.S.C. § 332(c). *See also Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192, ¶¶ 8-12 (2002); *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, ¶ 179 (1994).

[30] *Iowa Utls. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997) (subsequent history omitted).

Some commenters, however, have claimed that the Commission lacks authority to supersede the legacy originating access charge regime for non-wireless TDM intrastate traffic.[31] Those claims are wrong. In the *USF-ICC Transformation Order*, the Commission brought that traffic – along with all other telecommunications traffic – within section 251(b)(5), and the Commission has long "held that origination charges are inconsistent with section 251(b)(5)."[32] Indeed, in the *Local Competition Order*, the Commission applied its understanding of section 251(b)(5) to require originating LECs to deliver section 251(b)(5) traffic "to the CMRS provider or other provider without charge."[33] The Commission therefore "prohibit[ed] charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic," which included charges that had previously been assessed pursuant to state tariffs.[34]

The Commission codified its interpretation of section 251(b)(5) in 47 C.F.R. § 51.703(b), which states broadly: "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic" – that is, for section 251(b)(5) traffic – "that originates on the LEC's network." Prior to the *USF-ICC Transformation Order*, the Commission had excluded access traffic from section 251(b)(5).[35] Therefore, section 51.703(b) did not apply to such traffic and LECs could apply origination charges – such as intrastate access charges – to traditional, TDM access traffic. Instead, prior to the *USF-ICC Transformation Order*, section 51.703(b) only

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[31] *See*, *e.g.*, Comments of Cbeyond, Inc., Earthlink, Inc., Integra Telecom, Inc. and tw telecom inc., at 5-8 ("Cbeyond *et al*. Comments").

[32] *USF-ICC Transformation Order* ¶ 961 n.1976.

[33] *Local Competition Order* ¶ 1042.

[34] *Id.*

[35] *See* 47 C.F.R. § 51.701(b).

"prohibit[ed] LECs from assessing charges on any other telecommunications carrier for *non-access traffic* that originates on the LEC's network."[36]

Now that the Commission has brought *all* telecommunications traffic within the scope of section 251(b)(5) – including traffic traditionally subject to intrastate originating (and terminating) access charges – all telecommunications traffic will be subject to section 51.703(b). That rule, therefore, will preclude a LEC from assessing originating access charges – intrastate or interstate – on traffic historically subject to access regime, just as the rule has long precluded both LECs from assessing either federal or state origination charges on local traffic. For this reason, the Commission was correct to state in the *USF-ICC Transformation Order* that it did "not believe that a permanent regime for section 251(b)(5) traffic could include origination charges."[37]

The Commission, however, can – and should – invoke its authority to adopt transition regimes to design a reasonable glide path that avoids the disruption of a flash cut to implementing section 51.703(b), which would eliminate all origination charges for telecommunications traffic. Indeed, the Commission relied on that same authority in adopting its transition regime for terminating charges for telecommunications traffic.[38] The same rationale the Commission invoked for that transition regime justifies creating a transition regime for originating traffic. Here, as well, "the gradual implementation of new rates" is "necessary to avoid excessively burdening carriers" and "to permit the affected carriers . . . to adjust to the new

[36] *USF-ICC Transformation Order* ¶ 1001 n.2117.

[37] *USF-ICC Transformation Order* ¶ 961 n.1976.

[38] *USF-ICC Transformation Order* ¶ 809.

pricing system, thus preserving the efficient operation of the interstate telephone network during the interim."[39]

Some commenters assert that section 2(b) deprives the Commission of jurisdiction over traffic traditionally subject to intrastate originating access charges.[40] But the Commission rejected this same claim in the *USF-ICC Transformation Order*. As the Commission noted, "if section 2(b) limited the scope of section 251(b)(5)," the Commission "could not apply the reciprocal compensation framework even to local traffic," which is "an absurd reading of the statute."[41] Moreover, these commenters ignore that Commission has long interpreted section 251(b)(5) to preclude origination charges – state or federal – for all traffic subject to section 251(b)(5).[42] The Commission's interpretation of section 251(b)(5) and its rule prohibiting origination charges for section 251(b)(5) traffic is not only reasonable, but also was upheld by the Eighth Circuit as applied to wireless traffic.[43]

D. It Is Premature to Establish Detailed Bill-and-Keep Implementation Rules.

While the Commission has authority to address originating access rates and – as discussed above – should proceed to consider certain issues, such as how to protect against gaming during the transition down those rates, it is too early to establish rules for many of the other bill-and-keep implementation issues raised in the *USF-ICC Transformation Order* and

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[39] *Id.* (quoting *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 737 F.2d 1095, 1135-36 (D.C. Cir. 1984)).

[40] *See, e.g.*, Cbeyond *et al*. Comments 5-6; Nebraska Rural Comments at 4-5.

[41] *USF-ICC Transformation Order* ¶ 765.

[42] *See* 47 C.F.R. § 51.703(b).

[43] *See Iowa Utils. Bd.*, *supra*, at 800 n.21. Although the Eighth Circuit vacated the rule as applied to local wireline traffic, it did so based on an interpretation of the Commission's authority to implement section 251 that, as the Commission noted, the Supreme Court reversed in *Iowa Utilities Board*. *See USF-ICC Transformation Order* ¶ 765.

initial comments. Indeed, the fact that the initial comments reflected such a wide range of views on topics such as how to address physical interconnection points, so-called network edge issues, and potential state regulatory roles in a bill-and-keep system reveal that conclusively deciding those issues now would be premature.

To be sure, these are important issues and the Commission was right to highlight them for future consideration in the *USF-ICC Transformation Order*.[44] But the Commission need not resolve them now. The industry and federal and state regulators are only working through the first steps of rate reductions now. The bill-and-keep regime will not be fully implemented for several more years. Accordingly, the Commission should refrain from establishing rules for how to implement that end state, when networks and technologies are rapidly evolving and there likely will be much to learn from what happens in the interim during the transition phase. The Commission should re-visit these questions down the road, on the basis of a fully developed record at that time. And refraining now from establishing those rules will leave parties with the freedom they need to enter into voluntary commercial agreements that will address these issues. That process, and resulting agreements, may provide valuable insight into how these issues work in the marketplace, and can help inform the Commission as to how best to approach these issues in the future.

However, when the time comes, it is clear that – whatever role state regulators will have in the new regime with respect to physical interconnection and network edge matters – the Commission must issue specific, clear guidance that is consistent with the uniform national intercarrier compensation structure established in the *USF-ICC Transformation Order*. The Commission must establish the governing rules, rather than leave it up to fifty different state

[44] *See id*. ¶¶ 1316, 1320.

commissions. Otherwise, all of the benefits of a rational, comprehensive, nationwide intercarrier compensation regime would be at risk.

Furthermore, as Verizon explained in its initial comments, while bill-and-keep can be economically efficient in some cases, where traffic flows are not balanced, there is a potential for significant distortions that would undermine the Commission's comprehensive intercarrier compensation reform efforts.[45] When the Commission does eventually adopt governing rules for bill-and-keep, it should carefully consider how to prevent inefficient practices, because without protections that ensure that traffic is not significantly out of balance, there is potential for abuse. For example, a regime that requires networks to exchange traffic at bill-and-keep, without regard to whether they send each other generally balanced traffic volumes and provide each other with an equivalent value exchange, could create incentives for some companies to dump their traffic onto other networks, avoiding the bulk of the costs associated with carrying that traffic. In essence, that regime would give some networks the right to insist on a free ride on other networks, which could undermine continued investment by those networks and lead to reduced capacity. Because bill-and-keep makes it free for companies to use other networks, without adequate protections, there would be no incentives for other companies to manage traffic flows efficiently.

E. The Commission Should Take Action to Stop Arbitrage Associated with Centralized Equal Access Arrangements.

The Commission should also take action to prevent abuses of Centralized Equal Access (CEA) arrangements that can lead to unjust and unreasonable charges. In their comments, two CEA providers – Iowa Network Services ("INS") and South Dakota Network ("SDN") – argue that the Commission should continue to allow them to charge tariffed rates even after other

[45] *See* Verizon Comments at 7-9.

carriers are transitioned to a bill-and-keep mechanism. They claim that CEA "provid[es] efficiencies and cost savings for all types of carriers that seek to compete in rural areas."[46] But INS and SDN tell only one side of the story. CEA arrangements also can be used – and, in fact, are being used – to extract unreasonable charges from IXCs (and, ultimately, from consumers).

CEA providers are intermediaries between IXCs and small LECs in predominantly rural states. Under the Commission's 1986 *Indiana Switch Order*[47] and later, similar Bureau and Division orders,[48] CEA providers are authorized to provide IXC customers with a single point of access to a high-capacity statewide network that connects with LEC customers at various points around the state. The LECs are often shareholders or owners of the CEA provider. The CEA provider charges IXCs a non-distance-sensitive fee to transport originating and terminating calls over the CEA provider's network.[49] Each smaller LEC then picks up traffic at its point of connection with the CEA provider. Because the CEA provider builds just one statewide network to serve a large number of small LECs, it can take advantage of economies of scale; in theory, therefore, CEA can be a cost-effective way of providing interconnection.[50]

In fact, CEA arrangements have created the potential for abuse. The ongoing case of *Alpine Communications v. AT&T Corp.*, recently referred to the Commission by a federal court

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[46] Comments of Iowa Network Services and South Dakota Network, LLC at 4.

[47] *See Application of Indiana Switch Access Division*, Memorandum Opinion and Order, 1 FCC Rcd 634 (1986) ("*Indiana Switch Order*").

[48] *See, e.g.*, *Application of Iowa Network Access Division*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (Com. Car. Bur. 1988); *Application of SDCEA*, Memorandum Opinion, Order and Certificate, 5 FCC Rcd 6978 (Domestic Facilities Div. 1988).

[49] *See, e.g.*, Iowa Network Access Division Tariff F.C.C. No. 1, § 6.8.1(A) (setting forth an $0.00819 / minute rate for "Switched Transport").

[50] *See, e.g.*, *Indiana Switch Order*, ¶ 5 (quoting the Bureau's finding that CEA would "efficiently render desirable access service to the public and offer a variety of modern, competitive, alternatives to a class of subscribers that perhaps would otherwise be denied them").

in Iowa,[51] shows how. According to AT&T's filings in that lawsuit,[52] INS and several of its LEC shareholders and customers have inflated the LECs' access charges to IXCs by entering into sham "lease" arrangements. Each LEC purported to "interconnect" with INS in Des Moines – where INS's tandem switch is located, and where the IXC delivers the traffic to INS.[53] The LEC then purported to "lease" INS's facilities in order to deliver the traffic from Des Moines to the actual, physical point of interconnection between INS and the LEC.[54] In other words, the traffic continued on INS's facilities even after the purported "interconnection" with the LEC – just now with additional charges from the LEC for the distance between the purported interconnection/lease point and the actual, physical point of interconnection.

Under these circumstances, the purported lease does not decrease the amount that INS bills the IXCs, because INS's own charges are not distance-sensitive. But the LEC dramatically increases its charges to the IXC under its distance-sensitive transport rate, by combining transport charges for the "leased" INS mileage from Des Moines with charges for transport over its own network.[55]

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[51] *See* FCC Letter Ruling, *Primary Jurisdiction Referral from the United States District Court, Northern District of Iowa, Involving Alpine Communications, LLC et al.*, Joint Status Report, Attachment #1, *.Alpine Commc'ns, LLC et al. v. AT&T Corp.*, No. 2:08-cv-01042 (Jan. 30, 2012).

[52] *See* Expert Report of Scott C. Chandler, *attached to* Mot. for Summ. J. *et al.*, *.Alpine Commc'ns, supra*, at 62-94 (Apr. 12, 2010) ("Chandler Report").

[53] *See id.* ¶¶ 8, 32.

[54] *See id.* ¶¶ 17, 35-42.

[55] *See id.* ¶ 34. For example, Alpine Communications ("Alpine") is a rural ILEC serving Elkader, Iowa. From Elkader the actual nearest point of interconnection with the INS network is Cedar Rapids, Iowa (about 65 airline miles). Elkader is more than twice as far from Des Moines (about 144 airline miles). Alpine physically interconnects with INS at Cedar Rapids, and before it entered into a sham lease with INS, it charged its IXC customers for only those 65 miles. But after it purported to change its point of interconnection to Des Moines, Alpine charged its IXC customers for 144 miles. *See* Def.'s Statement of Undisputed Material Facts, *attached to* Mot. for Summ. J. *et al.*, *Alpine Commc'ns, supra*, ¶ 30.

AT&T presented evidence to the district court that the purported leases were shams: nothing changed about the way the calls were routed, INS continued to do all the work of running the network, and the leases had various characteristics distinguishing them from ordinary, arms'-length business arrangements.[56] It is plainly unreasonable and abusive for INS and the LEC to charge IXCs a distance-insensitive fee for the cost of using INS's statewide network, while interconnecting in a way that prevents IXCs from getting any real benefit from that network.

In the *Indiana Switch Order*, the Commission recognized that CEA arrangements had the potential for abuse of this very kind. It therefore cautioned that the Commission was not granting "unbounded authority on the part of ITCs, or their affiliates, to determine points of interconnection with IXCs," and that the Commission would take action "[i]f in some future case an IXC demonstrates that a[ ] [CEA] proposal significantly increases IXCs' operating costs without significant increases in service choices or benefits to subscribers, or unreasonably designates ITC ['independent telephone company'] points of interconnection with IXCs."[57] That future case is now here. And, unfortunately, enforcement actions such as the pending proceeding between AT&T and Alpine are currently the only way to deal with situations in which CEAs and LECs collude to impose unreasonable charges on IXCs. In the present proceeding, the Commission should reiterate that CEA providers and LECs are prohibited from adopting practices – including unreasonable points of interconnection – that lead to inflated charges, and should consider adopting rules to streamline future enforcement actions.

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[56] *See* Chandler Report ¶¶ 35-42 (describing "numerous items related to these so-called 'lease' arrangements [which were] questionable and not industry standard," including the absence in two cases of missing agreements, the absence of charges one would ordinarily expect to see in a lease of telecommunications facilities, the absence of any price negotiation, and INS's failure to bill one of the LECs *at all* for a period of three years).

[57] *Indiana Switch Order* ¶ 5.

III. THE COMMISSION SHOULD START TO ELIMINATE OUTDATED REGULATIONS AS THE PSTN FADES AWAY.

As Verizon explained in its initial comments, the network evolution and transition of voice traffic away from the circuit-switched PSTN towards IP-based networks is already underway, and it promises innovative services and new benefits for consumers.[58] Broadband and the Internet are revolutionizing the way we communicate, and with the increased demand for broadband and the wealth of services it supports, IP-based networks are displacing the PSTN. The Commission should encourage and facilitate this transition by eliminating legacy regulations that would otherwise impede it. Legacy regulations are as much a part of the PSTN as the legacy network.

The Commission can and should start eliminating outdated regulations now. As the United States Telephone Association noted in a recently-filed Petition for Forbearance, "many of the Commission's rules were adopted in a different era, long before the advent of broadband networks or the creation of the public Internet."[59] Among those are the Part 32 rules, which the Commission should eliminate. [60] The Part 32 continuing property record rules in particular warrant elimination, as the Commission concluded nearly a decade ago that it should eliminate them – yet they remain on the books and still serve no purpose.[61]

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[58] *See* Verizon Comments at 9-10.

[59] United States Telecom Association Petition, *Petition of US Telecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, at i (Feb. 16, 2012).

[60] *See* Comments of the Alaska Communications Systems Group, at 9-10.

[61] *See* Comments of Verizon and Verizon Wireless, *2010 Biennial Review of Telecommunications Regulations*, CG Docket No. 10-266, *et al.*, at 5 (Jan 31, 2011) (citing *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19911, ¶ 212 (2001)).

Verizon has urged the Commission to eliminate any remaining ETC voice service obligations and related requirements in areas that do not receive high cost universal service support.[62] These obligations ossify old technology and deter investment in newer, more efficient technologies that consumers increasingly prefer. Consumers cannot fully realize the benefits of an eventual all-IP infrastructure if a few competitors continue to be saddled with legacy voice service obligations, like the federal ETC requirements. Such regulatory mandates (unfunded mandates in an increasing number of places) require incumbent providers to offer legacy voice service, with or without support, throughout large territories. Even with the flexibility to use any technology in satisfying these requirements, which carriers have, the obligations divert resources away from broadband deployment and do not make sense in an environment where consumers have access to voice services from multiple providers over different platforms.

To achieve its broadband goals and to effectively implement the CAF, the Commission must, at a minimum, eliminate federal ETC obligations in areas where companies do not receive either legacy USF high cost support or new CAF support. ETC service obligations in areas where carriers receive no support must be eliminated consistent with Section 254 and other statutory requirements.[63] Moreover, it is fundamentally unfair and inconsistent with the Act to simply extend broadband and other ETC obligations to carriers designated as ETCs for the sole purpose of providing local voice service – in some cases without any new (or old) support whatsoever.

In its comments here, AT&T identified two charges that also continue to distort the market and should be eliminated. In particular, AT&T notes that the so-called "equal access obligation" contained in 47 U.S.C. § 251(g) and the geographic rate averaging provision of

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[62] *See* Comments of Verizon, *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, at 9-12 (Jan. 18, 2012).

[63] *Id*.

section 254(g) continue to "perpetuate an outdated business model in which a carrier arbitrarily and inefficiently segregates its service offerings into 'local' and 'long-distance' components" that no longer are necessary and, indeed, are counterproductive in today's "all distance" market.[64] As AT&T correctly points out, both provisions are vestiges of a communications environment that no longer exists today and place a regulatory burden on certain carriers, but not others. For example, the "equal access obligation" applies only to ILECs and significantly increases their costs, which hampers their ability to compete effectively with other all-distance providers that are not subject to the same obligation – including wireless and VoIP providers. Accordingly, the Commission should eliminate these requirements to reflect today's marketplace and level the playing field. The Commission should also, consistent with AT&T's comments, permit carriers to exit the retail standalone long-distance business without complying with burdensome section 214 requirements.[65] AT&T is correct that in today's market "there is no risk that the exit of standalone IXCs from the *retail* market would somehow harm consumer choice," as consumers would still benefit from the fierce competition for all-distance service from many providers across many platforms.[66]

IV. THE COMMISSION SHOULD NOT DEVIATE FROM ITS HANDS-OFF POLICY AND SHOULD LET THE MARKET CONTINUE TO LEAD THE TRANSITION TO IP INTERCONNECTION FOR VOICE SERVICES.

A. There are No Incumbent Providers of Broadband Networks.

Just as the Commission should eliminate unnecessary regulations that are vestiges of the circuit-switched PSTN, it should avoid the temptation to carry over legacy interconnection obligations designed for a different time, a different network, and a different business model to

[64] AT&T Comments at 72.

[65] *See* AT&T Comments at 73.

[66] AT&T Comments at 73.

the new world of IP interconnection for voice service. Most importantly, as Verizon described in its comments, there are no incumbent broadband providers or incumbent broadband networks.[67] Everyone is a new entrant to broadband, and no provider has market power. Because there are no incumbent networks or providers, there is no good policy reason to regulate one set of companies differently than others.

The commenters who seek to impose the full panoply of the Communications Act's interconnection obligations on incumbent LECs that interconnect for voice in IP ignore the state of the industry. Sprint, for example, declares, "National interconnection rules were necessary in 1996, and they are even more necessary today" and, as support for this contention, observes that in 1996 there were eight major ILECs and that today there are only three.[68]

Perhaps Sprint believes that it is still 1996, or maybe 1982, but in the real world, in 2012, there is no support for the notion that the incumbent LECs or any other company has market power when it comes to IP interconnection for voice. In 1996, neither the cable companies nor VoIP providers provided meaningful competition to the incumbent LECs, and few households had "cut the cord" to rely exclusively on wireless phones. Nor had email, text messaging, and other forms of communications begun to take share away from voice services.

In reality, there is no basis to claim that incumbent LECs or their affiliates are dominant providers or somehow have market power for providing VoIP or IP-enabled services. The cable companies, CenturyLink correctly notes, have extensive IP networks.[69] Looking only at fixed VoIP services, as AT&T notes, the cable companies have substantially more VoIP subscribers

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[67] *See* Verizon Comments at 10, 25-26.

[68] Comments of Sprint Nextel, at 18 ("Sprint Comments"). *See also* Cbeyond *et al.* Comments at 27.

[69] *See* Comments of CenturyLink, at 50 ("CenturyLink Comments").

today than there are ILEC and other CLEC VoIP customers.[70] And wireless services have made great inroads, competing fiercely with other providers on other platforms to provide all-distance services to consumers. By mid-2011, nearly a third of American households had "cut the cord" relying exclusively on wireless voice service, and there are far more wireless connections than wireline connections in the United States.[71] As a result of this intense competition across many new platforms and technologies, the incumbent LECs have lost approximately half of their access lines since 2000.[72] Sprint's simplistic argument that incumbent LECs should be regulated in 2012 because they were regulated in 1996 ignores all of these developments.

B. VoIP is Flourishing, in Part Because All Carriers Must Accept IP-Originated Traffic.

In fact, there is no need for regulatory intervention, and no reason to deviate from the Commission's longstanding hands-off policy towards regulating the Internet. As Verizon explained in its comments, carriers have an obligation today to accept IP-originated traffic.[73] Time Warner Cable makes clear in its comments that under the Commission's orders, "a competitive LEC may obtain interconnection for the specific purpose of routing IP-originated and IP-terminated telephone exchange and exchange access traffic."[74] That is absolutely clear, and carriers' existing obligations to accept IP-originated traffic is not at issue in this proceeding.

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[70] *See* AT&T Comments at 41.

[71] Blumberg & Luke, *Wireless Substitution: Early Release Estimates From the National Health Interview Survey, January to June 2011*, Center for Disease Control National Center for Health Statistics, http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201112.pdf (Dec. 2011). The Commission routinely relies upon the CDC's studies of wireless substitution in its market analysis. *See, e.g.*, *USF-ICC Transformation Order* ¶ 164 (citing a 2010 CDC study).

[72] *See* CenturyLink Comments at 50.

[73] *See* Verizon Comments at 3, 18-19.

[74] TWC Comments at 8.

Time Warner Cable complains that some rural ILECs continue to refuse to interconnect when a requesting carrier seeks to exchange telecommunications traffic that originates or terminates in IP format, and that one ILEC has even asserted that the Commission's orders constitute only non-binding guidance.[75] Those LECs are wrong; they do have an obligation to interconnect to exchange that traffic. But, if Time Warner Cable has been wronged, it should seek enforcement of the Commission's existing orders and rules already on the books, rather than seeking new obligations that go well beyond that harm.

Because carriers have existing duties to accept IP-originated traffic, current TDM-based interconnection arrangements have not impeded VoIP's development in the least. To the contrary, VoIP has flourished. One year ago, in December 2010, there were 32 million interconnected VoIP subscriptions nationwide, growing at a rate of 22 percent, whereas traditional retail switched access lines continued their rapid decline. Nearly one-third of wireline residential connections were interconnected VoIP subscriptions, most of which were non-ILEC interconnected VoIP subscriptions.[76] Comcast, correctly opposing regulations on IP interconnection for voice, notes, "The marketplace for VoIP services is clearly flourishing," despite the current need to interconnect with the PSTN.[77]

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[75] *See* TWC Comments at 13-15.

[76] *See Local Telephone Competition: Status as of December 31, 2010*, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310264A1.pdf(WCB Oct. 7, 2011). *See also* Verizon Comments at 17-18.

[77] Comcast Comments at 21.

C. The Vast Majority of VoIP Traffic Today Must be Converted from IP to TDM, and the Conversion Cannot be Avoided for VoIP-PSTN Traffic.

Comcast is correct that most VoIP traffic today is exchanged through PSTN interconnections.[78] This is because the vast majority of VoIP-PSTN traffic today is exchanged between an IP end point and a PSTN end point. Under these circumstances, as Verizon explained, the traffic must be converted from IP format to TDM. The conversion cannot be avoided.

Some of the commenters argue that the incumbent LECs are forcing the competitive LECs to convert VoIP traffic from IP to TDM just to make the process inefficient.[79] But for a call between an IP end point and a PSTN end point, there is no way to avoid the conversion. Incumbent LECs aren't requiring a conversion. The networks require a conversion. Until both endpoints of a call are in IP format, those conversions are entirely necessary.

The only relevant question, then, is which party should pay for the conversion. As Verizon explained in its comments, the current system of exchanging VoIP-PSTN traffic, under which the VoIP provider performs the conversion, is the most efficient interconnection method for that traffic.[80] The gateways that perform the protocol conversions are already in place, and because the VoIP provider, not the local exchange carrier (or other provider with whom it may request interconnection) knows the traffic volumes it expects to generate, the VoIP provider knows if and when it will need additional conversion capacity, and it can size and build out

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[78] *See id*.

[79] *See, e.g.*, Comments of MetroPCS Communications, at 7; Comments of U.S. TelePacific Corp. and Mpower Communications, at 11 ("U.S. TelePacific Comments").

[80] *See* Verizon Comments at 17.

gateways as needed. And as local exchange carriers develop their own VoIP services, they, too will have to size, build out, and pay for gateways to exchange traffic with the PSTN.[81]

In the Further Notice of Proposed Rulemaking portion of the *USF-ICC Transformation Order* ("*FNPRM*"), the Commission asked whether the party "electing" to interconnect in TDM should pay for the conversion costs.[82] This proposal was widely opposed in the comments, even by some of the most vocal supporters of a regulatory obligation to interconnect in IP. Cbeyond, Earthlink, Integra, and tw telecom jointly opposed the proposal, noting that it "raises numerous, highly complex implementation challenges."[83] COMPTEL, which like Cbeyond, *et al*., forcefully advocates for an IP interconnection obligation, states, "Importantly, the approach suggested in the *FNPRM* would create an administrative quagmire. How would the costs of conversion be calculated and by whom? Where would disputes about these costs be resolved? Would the costs include the space and power requirements needed to house whatever equipment is used for the conversion?"[84]

On this point, Cbeyond, *et al*., and COMPTEL are correct. Especially as the Commission is transitioning towards a bill-and-keep regime for intercarrier compensation, it should not consider this complex and confusing proposal, which is premised on the false supposition that a carrier that interconnects in TDM simply "elects" not to interconnect in IP.

D. Companies Have Incentives to Interconnect in IP for Voice, and They Will Grow as VoIP Grows.

CenturyLink, in one sentence, succinctly explains why, as a policy matter, the Commission need not consider regulating IP interconnection for voice: "Once [PSTN] customers

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[81] *See id*.

[82] *See USF-ICC Transformation Order* ¶ 1361.

[83] Cbeyond *et al*. Comments at 25.

[84] Comments of COMPTEL, at 31 ("COMPTEL Comments").

are migrated to IP, the terminating provider will have the same incentive as the originating provider to utilize IP-to-IP interconnection."[85]

Over time, as Verizon explained, more and more customers will move to VoIP, and, as a result, more and more voice traffic will have IP on both ends of a call, instead of just one end. As the number of VoIP subscribers grows, so will VoIP providers' incentives to interconnect in IP.[86]

Several commenters doubt that carriers have real incentives to interconnect in IP. In their joint comments, Cbeyond, Earthlink, Integra, and tw telecom, for example, jointly allege that "incumbent LECs have no rational incentive to interconnect with competitors."[87]

As a threshold matter, Verizon has received very few requests to interconnect in IP format to exchange voice traffic, and the commenters that question Verizon's interconnection incentives generally have not asked Verizon for IP interconnection. Others have, and Verizon has negotiated with them, because, contrary to their conclusions about Verizon's incentives, Verizon does have business-driven reasons to interconnect in IP format, and its incentives are growing over time. Curiously, Sprint, too, singles out Verizon by name, questioning Verizon's incentive to negotiate IP voice interconnection agreements.[88] But Verizon and Sprint discussed IP interconnection for voice as recently as last year.

The proof is in the pudding. Verizon has received relatively few requests to interconnect in IP for voice, but Verizon recently completed a voluntary commercial agreement for IP interconnection that covers its FiOS Digital Voice VoIP traffic, and we are negotiating others. And, as Verizon explained in its comments, companies today already are connecting with one

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[85] CenturyLink Comments at 38.

[86] *See, e.g.,* Verizon Comments at 12-14.

[87] Cbeyond *et al*. Comments at 27.

[88] *See* Sprint Comments at 10.

another and sending each other IP voice traffic over IP connections.[89] As a logical matter, the place to start this transition to IP interconnection for voice was with interexchange traffic, because many companies transport interexchange traffic in their own networks today using IP format and have natural incentives to exchange that traffic with others in IP. While companies understandably started by exchanging interexchange traffic in IP format, as more and customers switch to VoIP services, companies will have natural incentives to explore interconnecting in IP to exchange IP-originated traffic. Verizon is acting on these incentives, because they are real. To the extent anyone's incentives are at issue in this proceeding, one might start with the companies that seek regulatory intervention without even trying to reach establish a commercial arrangement.

E. There is No Such thing as "Light Touch" Regulation for IP Interconnection.

Many of the commenters that support a regulatory obligation to interconnect in IP argue that the Commission should regulate but should apply only a "light touch." Google, for example, argues that the Commission should "avoid an overly prescriptive approach to IP-to-IP interconnection" and that a "backstop mechanism, rather than sole reliance upon voluntary commercial agreements, is the most logical approach to promoting seamless interconnection."[90] As innocuous as a "regulatory backstop" may sound, or a good-faith negotiation obligation, in and of themselves, they are harmful. A "regulatory backstop," whatever it is, necessarily means that if two companies cannot agree on interconnection terms, the regulator will intervene. By injecting the regulator into negotiations, a regulatory backstop would lead ultimately to the regulator setting the terms and conditions of IP interconnection for voice. As a result, there really

[89] *See* Verizon Comments at 12-14.

[90] Comments of Google, at 5-6 ("Google Comments"). *See also* Bandwidth.com Comments at 6; Comments of Windstream Communications, at 15; Comments of ITTA, at 9.

is no such thing as a light touch regulatory backstop, because inevitably, a regulatory backstop leads down a slippery slope to full regulation, disrupting and harming the market-led transition to IP interconnection for voice services.

F. IP Interconnection Could Lead to Backbone Regulation.

The threat that any IP interconnection obligation could spill over to the Internet backbone is real. Google, for example, argues that, "While it is reasonable now for the FCC to address the IP-to-IP interconnection obligation only for IP voice traffic, the FCC should also be alert to discriminatory or unreasonable practices that may arise for other types of non-Internet-based traffic that may be carried on carrier managed IP networks"[91] – precisely the kind of regulatory slippery slope that the Commission should be wary to avoid.

"[R]egulation of IP-to-IP voice traffic," Comcast explains, "unhelpful in itself, could easily slip into broader regulation of the Internet backbone."[92] Comcast further states, "This proposal is cause for profound concern. Congress and the Commission have maintained a consistent policy of promoting growth and innovation by maintaining an Internet unfettered by federal or state regulation. The proposals on which the Further Notice solicits comment would represent a precipitous and ill-advised reversal of this remarkably successful policy."[93]

On this point, Comcast is exactly right. Others, like Time Warner Cable, seek to have it both ways and ask the Commission to regulate IP-to-IP interconnection for voice but "refrain from pursuing any proposals that would seek to engraft interconnection duties designed for telecommunications carriers and intended to promote competition for telephone exchange and

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[91] Google Comments at 7.

[92] Comcast Comments at 3.

[93] *Id*. at 20.

exchange access services onto Internet backbone or peering relationships."[94] But an IP interconnection for voice requirement could lead to that very result.

Further, as Verizon explained, a regulatory mandate for IP voice interconnection would jeopardize Internet freedom by encouraging current international efforts to regulate the Internet.[95] Several commenters cited to recent comments by NTIA Administrator Lawrence Strickling and Commissioner McDowell, both warning of the harms that would ensue if foreign authorities, acting through the International Telecommunications Union, began regulating Internet peering, as some are threatening to do.[96] More recently, Chairman Genachowski strongly opposed those efforts, stating:

> Some have proposed creating a new international regulatory body to govern the Internet, replacing the longstanding multi-stakeholder governance model that has enabled the Internet to flourish as an open platform for communication and innovation.
>
> If adopted, these proposals would be devastating to the future of the Internet, including the mobile Internet, and the U.S. government has consistently and strongly opposed such proposals.[97]

With the potential of such "devastating" consequences, the Commission should not take any steps that could encourage this activity internationally, and the push to IP interconnection for voice is just such a step.

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[94] TWC Comments at 17.

[95] *See* Verizon Comments at 21.

[96] *See, e.g.*, AT&T Comments at 3, Comcast Comments at 51-52.

[97] FCC Chairman Julius Genachowski, Remarks as Prepared for Delivery, GSMA Mobile World Congress, Barcelona, at 8 http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0227/DOC-312667A1.pdf (Feb. 27, 2012).

G. The Communications Act Does Not Require Interconnection in a Particular Format.

IP networks and technology are growing and proliferating despite the fact that "there historically have not been Commission rules governing IP interconnection."[98] This result should come as no surprise because in the new landscape of IP networks, there are no incumbents.[99] Various commenters disregard the lack of any "first mover advantage"[100] and contend that, absent a regulatory mandate to interconnect in the format of a requesting carrier's choosing, the development of IP networks will be slowed or "delay[ed] . . . *indefinitely*."[101] COMPTEL even argues that without a mandate to connect in IP, interconnection rights themselves will "disappear."[102] These arguments stand at odds with marketplace facts – all providers, ILECs included, have substantial incentives to enter into freely negotiated agreements through which they interconnect with other providers and exchange traffic in IP format.[103]

Existing statutory obligations to interconnect and exchange traffic do *not* authorize the Commission to mandate a specific format of interconnection, or to grant a particular class of providers the right to dictate that format. As Verizon explained in its opening comments, none of the statutory provisions identified in the *FNPRM* and advocated by commenters in this

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[98] *USF-ICC Transformation Order* ¶ 679.

[99] *See* Verizon Comments at 26-27.

[100] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 275 (2003).

[101] Comments of Leap Wireless Int'l, Inc. & Cricket Communications, at 13 (emphasis added) ("Leap Comments"); *see* Comments of T-Mobile USA, at 6 ("T-Mobile Comments").

[102] COMPTEL Comments at 24.

[103] *See* Verizon Comments at 12-14.

proceeding permit the Commission to adopt a requirement to interconnect in a particular format.[104]

1. *Section 251(a)*

A. Various commenters suggest that the Commission may adopt a mandate to interconnect in a particular format pursuant to section 251(a),[105] but the text of the statute does not support such a reading. At the outset, section 251(a) cannot serve as a basis for a mandate to interconnect in a particular format because the only duty it imposes on telecommunications carriers is "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[106] As the Commission has held, the carrier providing interconnection pursuant to this section is "permitted" to satisfy this obligation "based on [its] most efficient *technical* and economic *choice[ ]*."[107] Accordingly, a carrier may satisfy this obligation by choosing to interconnect only in TDM format.[108]

Several commenters note that the text of section 251 is "technology neutral," and argue that requesting carriers may dictate the technological format of interconnection.[109] These commenters misunderstand the nature and purpose of this section. Section 251(a) imposes a limited duty: a carrier violates the terms of the statute if it refuses to become interconnected with other carriers. But section 251(a) affords no rights to telecommunications carriers: they cannot

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[104] *See* Verizon Comments at 25-39.

[105] *See, e.g.*, Comments of HyperCube Telecom, at 9; COMPTEL Comments at 17.

[106] 47 U.S.C. § 251(a).

[107] *Local Competition Order*, ¶ 997 (emphasis added).

[108] *See* AT&T Comments at 36-37 ("That language [of section 251(a)], written in the disjunctive, empower the *carrier against whom section 251(a) is invoked* to decide how to fulfill that duty.").

[109] *See* Comments of Charter Communications, at 4 ("Charter Comments"); Cbeyond *et al*. Comments at 23; TWC Comments at 7-10; COMPTEL Comments at 16; U.S. TelePacific Comments at 10.

dictate the method, much less the format, in which interconnection occurs. The statute's "technological neutrality" provides *flexibility* to decide how to fulfill the obligation to interconnect.

COMPTEL argues that "to give meaning to the technology-neutral nature of the Act," the Commission must update the statute to "accommodate the factual circumstances of new technologies."[110] To the contrary, this provision was designed to regulate the *legacy* PSTN. To the extent carriers of all stripes are deploying IP technology in their networks, they are entering a new space where the advantages of incumbency no longer raise concerns of certain carriers usurping monopoly power.

Commenters including Time Warner Cable would single out only the local exchange carriers for regulation. As a threshold matter, however, Time Warner Cable completely misreads Section 251, which it claims "by its terms requires *local exchange carriers* to interconnect and exchange telecommunications traffic."[111] While Sections 251(b) and(c) apply only to local exchange carriers, Section 251 applies to all telecommunications carriers. There is simply no way to read Section 251(a), which Time Warner Cable cites as a source of a legal obligation to interconnect in IP, to apply only to local exchange carriers.

B. Moreover, section 251(a) does not apply to VoIP providers because the statute applies only to "telecommunications carriers."[112] The Commission has not ruled on VoIP's regulatory classification, but as Verizon has explained, the Act's text and Commission precedent establish that VoIP is an information service, not a telecommunications service.[113] Various

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[110] COMPTEL Comments at 16.

[111] TWC Comments at 16 (emphasis in the original).

[112] 47 U.S.C. § 251(a); *see* AT&T Comments at 36.

[113] *See, e.g.*, Verizon Comments at 27-29.

commenters assert that the Commission need not rule on the regulatory classification of VoIP traffic to impose an obligation on ILECs to interconnect in IP format.[114] However, VoIP providers may not *benefit* from a 251(a) duty imposed on telecommunications carriers to interconnect in IP format until the Commission rules that they too are telecommunications carriers.[115]

Contrary to COMPTEL's suggestion, VoIP services are not mere "replacements for traditional phone service" whose innovations go largely unnoticed by the consumer.[116] The Commission has recognized that "an inherent feature[ ] of most, if not all, IP-based services" is that they "offer[ ] customers a suite of integrated capabilities and features that allow[ ] the user to manage personal communications dynamically."[117] VoIP therefore offers consumers a suite of integrated capabilities and features allowing them to "generate, acquire, store, transform, process, retrieve, utilize, or make available information via telecommunications."[118] The fact that VoIP may replace some "common calling scenario[s]" does not warrant classifying VoIP as a telecommunications service.[119] Indeed, the statute defines an "information service" on the basis of "capabilit[ies]" that are "offer[ed]," not on the basis of basic functions that might be *used*.[120]

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[114] *See* Comments of XO Communications, at 14-15 ("XO Comments").

[115] *See* ITTA Comments at 14 ("The duty to interconnect under § 251(a)(1), for example, is limited to *telecommunications carriers*, and the language in § 252(c) concerning the duty to interconnect and negotiate in good faith refers to *telecommunications carriers*."); NECA Comments at 38.

[116] COMPTEL Comments at 21.

[117] *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶¶ 7, 25 n.93 (2004) ("*Vonage Order*").

[118] 47 U.S.C. § 153(24).

[119] COMPTEL Comments at 23.

[120] 47 U.S.C. § 153(24).

Accordingly, multiple federal district courts have reached the conclusion that VoIP services are information services.[121]

COMPTEL's argument that VoIP is a telecommunications service because "the form and content of the information sent by the caller, in a voice call, is the same as that received by the called party" also lacks support in the statutory text.[122] The Act defines "telecommunications" to involve traffic transmitted between or among points "*without change in the form or content* of the information as sent and received."[123] For traffic originating in IP and terminating in TDM format (or vice versa), a net protocol conversion takes place, so VoIP traffic does not meet the definition of telecommunications service. The fact that the Commission previously has ruled that "IP-in-the-middle" traffic – that is, traffic that originates and terminates in TDM format, but is converted to IP format between those TDM end points – is a telecommunications service does not support various commenters' arguments that VoIP is a telecommunications service.[124] The Commission emphasized that its ruling was "limited" to IP traffic that, unlike most VoIP traffic, does not "change in form or content . . . as sent and received."[125]

C. Time Warner Cable suggests that a mandate to interconnect in IP format may be grounded in "Sections 251(a)(1) and 251(b)(5) combined," and that the Commission's "sole

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[121] *See PAETEC Commc'ns Inc. v. CommPartners*, 2010 U.S. Dist. Lexis 51926, *2 (D.D.C. 2010); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055, 1081-83 (E.D. Mo. 2006), *aff'd*, 530 F.3d 676 (8th Cir. 2008), *cert. denied*, 129 S.Ct. 971 (2009); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003), *aff'd*, 394 F.3d 568 (8th Cir. 2004).

[122] COMPTEL Comments at 20.

[123] 47 U.S.C. § 153(43).

[124] *See, e.g.*, COMPTEL Comments at 18-20; TWC Comments at 7, 11; Cbeyond *et al*. Comments at 22.

[125] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 , ¶¶ 1, 12 (2004) (quoting 24 U.S.C. § 153(43)).

focus" should be on interconnection requests "involving retail or wholesale local exchange or exchange access."[126] To the extent Time Warner Cable argues that any obligations imposed under section 251(a) would apply only to LECs, it is incorrect. The interconnection duty in section 251(a) applies to *all* telecommunications carriers, whereas section 251(b) applies only to LECs. Section 251(b) also contains no duty to interconnect, but rather a duty to exchange traffic under an existing interconnection agreement.[127] As the Commission has explained, "the term interconnection, as used in section 251(a), cannot reasonably be interpreted to encompass a general requirement" to exchange traffic, or else "section 251(b)(5) would cease to have independent meaning."[128] The fact that section 251(b) applies only to LECs does not mean that non-LEC telecommunications carriers have any lesser duty to become interconnected under section 251(a); therefore, any duty under section 251(a) cannot be limited to LECs.

2. Section 251(c)

A. Many commenters advocate Section 251(c)(2) as a basis for a mandate for ILECs to interconnect in IP format,[129] but the statutory text contains no such provision. Section 251(c)(2) requires ILECs to permit interconnection at "any technically feasible point within the ILEC's] network," "for the transmission and routing of telephone exchange service and exchange access," in a manner "equal in quality" to that provided by the [ILEC] to itself."[130] These interconnection requirements do not grant carriers a right to insist on a particular *format* in which traffic should

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[126] TWC Comments at 6, 9 & n.19.

[127] *See AT&T Corp. v. FCC*, 317 F.3d 227, 234 (D.C. Cir. 2003) (confirming that "to 'interconnect' and to exchange traffic have distinct meanings" under section 251).

[128] *Total Telecommunications Service, Inc.*, 16 FCC Rcd 5726, ¶ 26 (2001), *aff'd in relevant part*, *AT&T Corp. v. FCC*, 317 F.3d at 234.

[129] *See* Charter Comments at 4-7; XO Comments at 12-14; TWC Comments at 6, 8-9; Cbeyond *et al*. Comments at 21-23.

[130] 47 U.S.C. § 251(c)(2)(A).

be exchanged. While it may be technology neutral, the text of section 251(c)(2) is plainly limited to telecommunications services, and as Verizon has explained, VoIP services are not telecommunications services. Given the clear language of section 251(c)(2), the Commission has never read this section to permit the requesting carrier to dictate the format of interconnection.

Likewise, the fact that some ILECs have begun implementing IP facilities in their networks, and that receiving traffic in IP format may be feasible at certain points, does not mean that IP *interconnection* is "technically feasible" at those points, much less everywhere within the ILECs' networks. Charter argues that "Congress intended that ILECs 'must accept the novel use of, and modification to, its network facilities to accommodate the interconnector,'" but the Commission order on which Charter relies involved requirements to open up networks that were "not designed to accommodate third-party interconnection . . . at all."[131] In implementing this duty, the Commission has recognized that the "point[s]" or "technically feasible method[s]" of interconnection are only physical facilities where ILECs must permit CLECs to interconnect.[132] The Commission has never interpreted these obligations to let a CLEC dictate the format in which traffic is exchanged. And in all events, Charter's position is inconsistent with the Eighth Circuit's ruling that "the Act does not require incumbent LECs to provide its competitors with superior quality interconnection" and that section 251(c)(2)'s "equal in quality" requirement requires access "only to an incumbent LEC's *existing* network – not a yet unbuilt superior one."[133]

[131] Charter Comments at 5, quoting *Local Competition Order* ¶ 202.

[132] 47 C.F.R. § 51.321(a)-(b); *Talk America, Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2261, 2265 (2011).

[133] *Iowa Utils. Bd.*, *supra*, at 812-13; *see* ITTA Comments at 8.

Charter further contends that a requesting carrier "otherwise entitled to interconnect" may use that right "to support other services" to which they are not entitled.[134] But the right to send "other services" over an existing interconnection *presumes* an existing interconnection – it does not permit a CLEC to dictate the format of that existing interconnection. Charter claims that "the fact that a telecommunications carrier is also providing a non-telecommunications services is *not dispositive* of its rights," but the fact that a carrier provides these services does not *expand* a requesting carrier's rights.[135]

B. VoIP traffic is neither "telephone exchange access" nor "exchange access." Because, as explained above, VoIP is an information service, and not a telecommunications service, VoIP cannot meet the statutory definition of a telephone exchange service, which is a service "by which a subscriber can originate and terminate a *telecommunications service*."[136] VoIP likewise is not "exchange access," which is defined as the offering of either "access to telephone exchange services" or "facilities for the purpose of the origination or termination of telephone toll services."[137] VoIP does not meet this definition because it does not offer "access to telephone exchange service," and because it does not offer "facilities for the purpose of . . . termination of telephone toll services." A "telephone toll service" is a communication between two different purchasers of telephone exchange service, who have stations "in different exchange areas," and one of whom pays a charge not part of a contract "for exchange service." VoIP providers do not provide telephone exchange service – their customers therefore are not in an "exchange area," nor do they contract with VoIP providers for "exchange service."

[134] Charter Comments at 7.

[135] *Id*. (emphasis added).

[136] 47 U.S.C. §153(54) (emphasis added).

[137] 47 U.S.C. § 153(20).

COMPTEL argues that VoIP is a "telephone exchange service" so long as it "provide[s] subscribers with the capability of communicating with other subscribers in that same exchange,"[138] but that is not the definition in the statute. Moreover, Congress defined information services as a category that is separate and distinct from telecommunications services, and the Commission has recognized that VoIP services typically offer consumers an integrated product containing an advanced suite of user capabilities.[139] Charter likewise argues that the terms "telephone exchange service" and "exchange access" do not depend on the specific technology used,[140] but the text of each statutory term contains an implicit limitation by applying only apply to "telecommunications service."

C. Section 251(c)(2) imposes duties only on ILECs. Although, as the Commission recognizes, some entities currently offering IP services are affiliated with ILECs, section 251(c)(2) does not apply to those affiliates, which are not ILECs. Contrary to various commenters' suggestions,[141] these affiliates are also not "successor[s] or assign[s]" of the ILEC within the meaning of section 251(h)(1),[142] and their purpose is not "to avoid § 251(c) obligations."[143] Simply because these entities offering new IP services are affiliated with an ILEC does not permit the Commission to treat these affiliates as ILECs.[144]

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[138] COMPTEL Comments at 25.

[139] *See* AT&T Comments at 35 ("As the Commission has long observed, moreover, the statutory categories 'telecommunications service[s]' and 'information service[s]' are mutually exclusive.").

[140] Charter Comments at 6.

[141] *See* TWC Comments at 13; T-Mobile Comments at 8-9.

[142] 47 U.S.C. § 251(h)(1).

[143] *USF-ICC Transformation Order* ¶ 1388.

[144] *See* AT&T Comments at 39-40.

When evaluating whether an entity constitutes an ILEC under Section 251(h)(1)(ii) of the Communications Act, the Commission has only found affiliates to be "successor[s] or assign[s]" of an ILEC upon finding a "substantial continuity" between the operations of the affiliate and the ILEC.[145] The Commission has evaluated whether:

> (1) there is identifiable physical separation between the entities; (2) the incumbent LEC has not transferred to its affiliate substantial assets or assets that are necessary for the continuation of the incumbent's traditional business operations; (3) transactions between the incumbent and affiliate are conducted at arms-length and are transparent; and (4) the affiliate does not derive unfair advantage from the incumbent.[146]

The ILEC affiliates offering IP services satisfy none of the four factors. IP services are new, innovative products that require providers to invest in and build out new, physically separate infrastructure. Offering these novel services does not involve "continu[ing], without interruption or substantial change, the predecessor's business operations."[147] These affiliates do not derive an unfair advantage, because the IP services marketplace is rife with competition. Affiliates offering IP services have not "stepped into the shoes" of a "previously existing entity" in order to continue its "core lines of business" uninterrupted.[148]

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[145] *See Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent To Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶¶ 457-458 (1999), *rev'd on other grounds, Ass'n of Commc'ns Enters. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) ("*Ameritech Order*"); *see also Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and Its Subsidiaries To FairPoint Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 514, ¶¶ 33-35 (2008) (applying "substantial continuity" analysis to determine whether affiliate is a "successor or assign" of a Bell Operating Company under section 3(4) of the Act).

[146] *Ameritech Order* ¶ 457.

[147] *Id.*

[148] *Id.* ¶ 453.

Similarly, section 251(h)(2) provides no basis for the Commission to treat ILEC affiliates offering IP service as ILECs themselves. Under section 251(h)(2), the Commission must make specific findings "by rule" that the section's criteria apply to a carrier,[149] it cannot re-classify a swath of carriers based on the fact that they are affiliates of ILECs that offer IP services. Moreover, affiliates that do not offer VoIP services as alternatives to legacy ILEC services cannot be found to have "substantially replaced an incumbent local exchange carrier" in any specific market.[150]

In any event, the Commission offers no basis for unleashing the full panoply of section 251(c) duties on affiliates offering IP services, including unbundling, reselling at regulated wholesale rates, collocation, and entry into interconnection agreements that could be arbitrated before fifty or more public utility commissions.[151] Treating affiliates as ILECs would shatter the Act's "three-tiered hierarchy of escalating obligations based on the type of carrier," in which "the most extensive duties" are reserved for those "LECs that are incumbent LECs."[152] Subjecting a company "that is not an incumbent LEC" to section 251(c) duties "would contravene the carefully-calibrated regulatory regime crafted by Congress."[153]

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[149] *See, e.g.*, *Petition of Channel Islands Telephone Company for Order Declaring It an Incumbent Local Exchange Carrier in the Channel Islands, CA Pursuant to Section 251(h)(2) of the Communications Act of 1934, as Amended and Section 51.223(b) of the Commission's Rules*, Order, 26 FCC Rcd 17024, ¶¶ 8-9 (2011); *Petition of South Slope Cooperative Telephone Company, Inc. for an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act*, Notice of Proposed Rulemaking, 23 FCC Rcd 15046, ¶¶ 6-9 (2008).

[150] 47 U.S.C. § 251(h)(2).

[151] *See* 47 U.S.C. § 251(c).

[152] *Guam Public Utilities Commission Petition for Declaratory Ruling Concerning Sections 3(37) and 251(h) of the Communications Act*, Declaratory Ruling and Notice of Proposed Rulemaking,12 FCC Rcd 6925, ¶ 19 (1997).

[153] *Id.*

D. As Verizon has explained, grounding a right to interconnect in IP format under section 251(c)(2) would require any disputes arising between interconnecting parties to be resolved in state commissions pursuant to Section 252.[154] Multiple commenters advocate this approach,[155] but subjecting carriers to the state regulatory process would substantially impede the development of IP networks, thereby undermining one of the chief goals of this proceeding. The Commission has noted on several occasions that the "imposition of 50 or more additional sets of different . . . regulations" on VoIP service would "risk eliminating or hampering this innovative advanced service."[156] Requiring carriers to abide by the preferences of fifty different state public utility commissions, each applying its own view of appropriate IP interconnection arrangements, would harm consumers by "discourag[ing] the . . . building [of] next generation networks in the first place."[157]

3. Other Alleged Sources of Authority

Some commenters suggest that the Commission may adopt a mandate to interconnect in a particular format pursuant to the Commission's Title I ancillary authority or on the basis of Section 706 of the Act.[158] The D.C. Circuit rejected similar arguments in *Comcast*, holding that ancillary authority cannot be invoked where "express delegations of regulatory are lacking."[159]

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[154] *See* Verizon Comments at 34.

[155] *See* Cbeyond *et al*. Comments at 24; Leap Comments at 13; TWC Comments at 9-10.

[156] *Vonage Order*, ¶¶ 32, 37.

[157] *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶ 27 (2004), *aff'd*, *EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006); *see also USF-ICC Transformation Order* ¶ 502 (emphasizing that the current "patchwork of rates and regulations is inefficient, wasteful, and slowing the evolution to IP networks").

[158] *See* Sprint Comments at 6-7; T-Mobile Comments at 6.

[159] *Comcast v. FCC*, 600 F.3d 642, 642 (D.C. Cir. 2010).

Neither the Commission nor commenters point to an express statutory provision requiring interconnection in a particular format, and Title I cannot fill the void where no authority to regulate exists.

Comcast also held that Section 706 is not an open-ended grant of authority, and it cannot serve as a basis to mandate interconnection in a particular format.[160] Rather, Section 706 is a deregulatory provision that speaks generally of "incentives" for developing advanced telecommunications services – not adopting mandates to require adoption of particular technologies required for interconnection in a given format.[161]

V. CONCLUSION.

The Commission should proceed with transitioning down originating access charges; should protect against distortions and arbitrage that result from bill-and-keep when the traffic exchanged between two carriers is out of balance; and should not create an IP interconnection regulatory requirement, consistent with the recommendations in these reply comments and in Verizon's initial comments.

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[160] *See id.*

[161] *See* 47 U.S.C. § 1302.

Respectfully submitted,

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