Before the
Federal Communications Commission
Washington, D.C. 20554

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

JOINT REPLY COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES; and the
WESTERN TELECOMMUNICATIONS ALLIANCE
ON SECTIONS XVII.L-R (INTERCARRER COMPENSATION ISSUES)

March 30, 2012

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The record in these proceedings reinforces the need to pause (at a minimum) before undertaking additional reforms with respect to intercarrier compensation ("ICC"), such as the mandated reduction or elimination of charges for originating access or transport and tandem switching services or the phase-out of recovery mechanisms. Beyond the substantial legal and jurisdictional concerns underpinning a bill-and-keep approach to reform and the concerns associated with regulating some rate elements (such as switched access and transport) but not other, functionally equivalent services (like transit or special access), it is essential that the Federal Communications Commission (the "Commission") gather data and evaluate the impacts of the reforms just adopted prior to taking further steps. Indeed, many of the recently enacted reforms are still in the process of being implemented, and substantial confusion and disputes already surround their interpretation and implementation.

Given the continuing importance of ICC revenues as a component of universal service, with many questions still swirling in connection with the reforms adopted a few months ago, and in light of the likely impacts of ICC reforms on consumers as those reforms are now being implemented, consumers, lenders, investors, service providers, and the Commission itself would all be better served by a "data-driven" reform process that examines the effects of recent changes before proceeding further. Nevertheless, if the Commission proceeds with further ICC reform, it can only serve the core objectives of universal service by providing an incremental, sufficient, predictable, and specific recovery mechanism that is fully compensatory and does not place yet more burdens on rural consumers who are required by law to have access to reasonably comparable services at reasonably comparable rates.

It is likewise essential that the consequences of migrating toward a bill-and-keep "end state" do not undermine existing interconnection rights and responsibilities and thereby foist significant and unrecoverable transport costs on smaller carriers and their rural consumers. Fortunately, the Commission's reliance upon section 251(b)(5) of the Communications Act, as amended, to achieve ICC reform necessarily dictates that interconnection for the exchange of all telecommunications traffic is likewise governed by sections 251 and 252. The Rural Associations concur with the wide variety of parties who note that this statutory framework applies to the exchange of all traffic with local exchange carriers, regardless of the technological platform employed. They also agree with those parties who note that the well-developed body of regulatory jurisprudence surrounding sections 251 and 252 provides a sound framework upon which to define interconnection rights and obligations even in the wake of any ICC rate transitions. This being said, in light of some indications that parties are already seeking discrete changes to this time-tested framework for purposes of securing new economic advantages and foisting costs on interconnecting carriers, the Commission should reaffirm that all of the provisions of this framework – including, but not limited to, the requirement to interconnect at technically feasible points on an incumbent's existing network – continue to apply. The Commission should also enable the flexible use of both tariffs and interconnection agreements pending further evaluation of any ICC rate transitions and their impacts on interconnection arrangements.

Finally, the Commission should apply its new call signaling rules with equal force to all entities that send traffic to carrier networks. If "one-way" VoIP providers are excluded from this requirement but still allowed to send their traffic to carrier networks, this "next loophole" threatens to all but gut the Commission's efforts to control and stamp out phantom traffic.

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WESTERN TELECOMMUNICATIONS ALLIANCE
ON SECTIONS XVII.L-R (INTERCARRER COMPENSATION ISSUES)

The Rural Associations listed above[1] hereby submit their reply comments on questions identified in sections XVII.L-R of the *Report and Order and Further Notice of Proposed*

[1] The National Exchange Carrier Association, Inc. ("NECA") is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally,* 47 C.F.R. §§ 69.600 *et seq*.; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and *Order*, 93 FCC 2d 241 (1983). The National Telecommunications Cooperative Association ("NTCA") is a national trade association

Rulemaking issued by the Federal Communications Commission (the "Commission") in the above-captioned proceedings.[2]

The record with respect to further intercarrier compensation ("ICC") reform confirms that the ICC-related questions and proposals presented in the *FNPRM* are inextricably linked with and implicate the fundamental mission of universal service. Methodical alignment between ICC reform and the core principles of universal service is thus critical to avoid massive disruption to rural consumers and carriers. Substantial reductions in ICC revenues that are driven by regulatory fiat and do not include a meaningful alternative for revenue replacement will leave consumers in rural areas with unaffordable and/or substandard services or, in some cases, with no services at all. Likewise, if interconnection obligations are not defined carefully in connection with ICC reform, rural rate-of-return regulated incumbent local exchange carriers ("RLECs") will face substantially increased transport costs and be left unable to provide reasonably comparable voice and broadband services at reasonably comparable rates in high-cost rural areas. Even in its desire to reach an "end state" in which regulated ICC is eliminated, the

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representing more than 580 rural rate-of-return ("RoR") regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") is a national trade association representing approximately 460 small incumbent local exchange carriers ("ILECs") serving rural areas of the United States. The Western Telecommunications Alliance ("WTA") is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River.

2 *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 – Mobility Fund,* WT Docket No. 10-208, Report and *Order* and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*" and/or "*FNPRM*").

Commission can ignore neither the costs of operating in rural areas nor the use of rural networks by carriers and other service providers who will make lesser and lesser contributions over time to those networks as ICC rates plummet. The Commission must therefore structure ICC reform in a manner that ensures sufficiency, predictability, and specificity in support mechanisms, and reinforce the statutory rights and obligations that govern the interconnection of carrier networks.

I. THE RECORD DEMONSTRATES A CLEAR NEED TO PAUSE (AT A MINIMUM) BEFORE UNDERTAKING REFORM OF ORIGINATING ACCESS CHARGES OR ANY REMAINING RATE ELEMENTS FOR TRANSPORT AND TERMINATION FUNCTIONS.

A. The Communications Act Does Not Provide the Commission with Jurisdiction to Reform Originating Intrastate Access Charges.

As the Rural Associations have argued time and again, the Commission lacks legal and jurisdictional authority to mandate bill-and-keep arrangements with respect to any ICC rates payable for the exchange of traffic.[3] The Rural Associations are pursuing their arguments generally with respect to compulsory bill-and-keep arrangements in the pending appeal of the *Order*,[4] and will therefore not reargue such issues at length in these Reply Comments. Nevertheless, the Rural Associations reassert here for the purpose of a complete record that there is <u>*no*</u> legal or statutory basis whatsoever that authorizes the Commission to mandate a bill-and-keep ICC arrangement (*i.e.*, a dictated default price of zero) for <u>*any*</u> switched service.

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3 *See, e.g.*, Comments of NECA, OPASTCO, NTCA, and WTA, WC Docket No. 10-90, *et al.*, at 22-27 (filed April 18, 2011) ("Rural Associations April 2011 Comments").

4 *In Re: FCC 11-161*, Case No. 11-9900, before the United States Court of Appeals for the Tenth Circuit.

Beyond these general legal and statutory concerns, however, it is even clearer that there is no legal basis by which the Commission can specifically justify invasive reductions in charges applicable to the origination of jurisdictionally intrastate traffic. The Commission relied upon section 251(b)(5) of the Communications Act of 1934, as amended (the "Act"), to justify the ICC reforms adopted in the *Order*.[5] Yet the Commission has acknowledged that "section 251(b)(5) does not explicitly address originating charges."[6] Nor does section 251(b) generally, section 251(g), section 252, or any other provision of the Act contain any language that can reasonably be read to confer authority of any type upon the Commission with respect to originating charges.

The Rural Associations therefore concur with CenturyLink, Cbeyond, EarthLink, Integra Telecom, TW Telecom, and the Nebraska Rural Independent Companies ("NRIC") that the Commission has no jurisdiction to mandate bill-and-keep arrangements for originating intrastate access charges.[7] It is well established that a federal agency may preempt state regulation only where it is acting within the scope of its congressionally delegated authority.[8] There is simply no such statutory delegation in section 251(b)(5), section 251(g), section 252, or anywhere else in the Act with respect to originating intrastate access charges.

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5 *Order and FNPRM* ¶¶ 771-772.

6 *Id*. ¶¶ 777 and 1298.

7 *See, e.g*., CenturyLink Comments at 2-5; Cbeyond, *et al*. Comments at 5-6; NRIC Comments at 4. All references to "Comments" herein are to those filed by the relevant party as of February 24, 2012 in the above-referenced proceedings unless otherwise noted.

8 *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 369 (1986); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984); *Fidelity Federal Savings & Loan Association v. De la Cuesta*, 458 U.S. 141 (1982).

B. The Commission Should Not Adopt a Final Transition For Remaining ICC Rate Elements Until It Develops a Record Evaluating the Impacts of the Reforms Already Adopted in the *Order* on Consumers and on Universal Service Objectives.

The record in this proceeding does not support the adoption or implementation of a final transition path for RoR carriers' originating access charges and remaining transport and termination rate elements at this time. To the contrary, commenters agree that it is necessary for the Commission to first evaluate the ability of consumers in RLEC service areas to obtain and retain access to "reasonably comparable" services and rates in the wake of the reforms adopted in the *Order*. By contrast, those few parties supporting the hasty reduction of ICC rates beyond measures adopted in the *Order* breeze past such concerns and fail to address at all the universal service implications of the Commission's reforms.

It will take time for both rural carriers and consumers to adjust to the reforms adopted in the *Order*.[9] Carriers need to adjust their business models to reflect reductions in high-cost support mechanisms, new public interest obligations, additional reporting requirements, and ICC rate caps and reductions. Equally important, end users in RLEC service areas now face annual rate increases for local voice service as a result of the new Access Recovery Charge ("ARC"),[10] and in some cases, the urban local rate floor.[11] As discussed in greater detail in subsection I.D,

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9 *See* ACS Comments at 4; Windstream Comments at 3.

10 As part of the ICC recovery mechanism, RoR carriers are permitted to assess a monthly ARC on residential and single-line business voice subscribers that begins at $0.50 and may potentially reach a maximum of $3.00 in six years. The monthly ARC for multi-line business customers may increase by $1.00 per line, per year, with a maximum subscriber line charge ("SLC") plus ARC fee of $12.20. *Order and FNPRM* ¶¶ 852 and 908-909.

11 Pursuant to this provision, a RoR carrier's high-cost loop support will be reduced to the extent that its end-user residential voice service rate plus state regulated fees do not meet a

infra, additional reductions in ICC rates in the absence of additional high-cost support for RoR carriers would place even greater upward pressure on rural end-user rates and threaten continued investment in broadband-capable, multi-use advanced networks. These outcomes conflict directly with the affordability and reasonable comparability mandates of section 254 of the Act, as well as the goals of the National Broadband Plan.[12]

As commenters propose, it is essential that the Commission evaluate the effects of the reforms adopted in the *Order* on the availability and affordability of voice and broadband services for rural consumers. The Commission has not demonstrated how its race toward a final transition path for remaining ICC rate elements can be coordinated with the Act's mandates regarding universal service.[13] By contrast, future data gatherings that measure the impact of the *Order*, as well as rate surveys to be conducted by the Commission staff, will provide the Commission with ample basis upon which to evaluate next steps and reach a reasoned decision.[14]

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specified urban local rate floor. This rate floor will increase in three steps, beginning at $10 for the period July 1, 2012 to June 30, 2013 and increasing to $14 for the period July 1, 2013 to June 30, 2014. After that, the rate floor will be updated annually based upon a voice rate survey conducted by the Wireline Competition Bureau. *Id.* ¶¶ 234-247. Rate increases for voice and/or broadband services may also likely be engendered by those cuts and caps to RLECs' existing high-cost support mechanisms as adopted in the *Order* and then coupled with the potential for additional support reductions as a result of proposals in the *FNPRM*. Such changes still under consideration include a represcription of the authorized interstate rate of return, the reduction of support for carriers with less than 100 percent unsubsidized competitive overlap, and the phase-out or accelerated reduction of ICC recovery mechanisms. *Id.* ¶¶ 1057, 1061-1078, and 1329.

[12] A primary goal of the National Broadband Plan is for every American to have affordable access to robust broadband service. *See also Connecting America: The National Broadband Plan*, FCC, at 10 (rel. Mar. 16, 2010) (the "NBP").

[13] GVNW Comments at 6; Independent Telephone & Telecommunications Alliance ("ITTA") Comments at 2; Frontier Comments at 3.

[14] For example, the *Order* requires high-cost and CAF ICC support recipients to report on their compliance with the broadband speed and latency metrics applicable to support recipients.

This outcome would be more consistent with the Commission's interest in a "data driven" reform process,[15] provide greater opportunity for the Commission to adopt rules that meet the mandates of the statute, and ultimately ensure that the consumers at the ostensible heart of the reforms are not inadvertently harmed by them.

Commenters that support immediate adoption of a final transition schedule for RoR carriers' originating access, transport, and tandem switching rates[16] fail to demonstrate any concern for the impacts on rural consumers and the implications for universal service. They also disregard altogether the Commission's stated commitment to a "data-driven" process, voicing their policy pleas with no attention at all to quantifying the effects of such reform on what end users pay in high-cost areas. These parties miss the fact that prominent among the requirements of the Act is ensuring that rural and high-cost consumers have access to services and rates that are "reasonably comparable" to those available in urban areas. Neither so-called USF budget

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Order and FNPRM ¶¶ 109-112. The *Order* also requires support recipients to provide pricing information for voice and broadband services. *Id*. ¶ 594. Furthermore, it delegates to the Wireline Competition and Wireless Telecommunications Bureaus the task of conducting a survey of urban broadband rates, if necessary, to determine whether the Commission is in compliance with its section 254(b) duty to ensure that consumers all across the nation, including those in rural areas, have access to reasonably comparable services and rates. *Id*. ¶¶ 113-114.

15 *Id*. ¶ 12.

16 A few commenters propose that originating access and/or transport and tandem switching rates should be reduced on the same timetable as reductions in terminating access rates. Time Warner Cable Comments at 19; XO Comments at 4; Leap Wireless & Cricket Wireless Comments at 3-6; T-Mobile USA Comments at 9-10; Bandwidth.com Comments at 14; CTIA Comments at 3-4. Other commenters propose more immediate reductions for these rates elements, such as "prompt" or immediate transitions to bill-and-keep. Coalition for Rational Universal Service and Intercarrier Reform ("CRUSIR") Comments at 3-6; MetroPCS Comments at 4-5; Google Comments at 3-4; iBasis & Cinco Telephone Comments at 5-7; VON Coalition Comments at 2.

management[17] nor the reduction of a given carrier's cost of using another carrier's network should be permitted to trump all other considerations – particularly the statutorily-mandated preservation and advancement of universal service. While these are certainly worthy goals, they cannot be pursued to the detriment of rural consumers and an explicit requirement of the Act. Put another way, in urging the Commission to race forward with further ICC reform in a "damn the torpedoes" manner, these parties effectively call for the Commission to sever the long-standing link between ICC and USF reform without any evaluation or critical thought whatsoever.

Moreover, the immediate adoption of further ICC rate reductions is unnecessary to prevent RLECs from allegedly shifting costs improperly among rate elements[18] or to address arbitrage concerns.[19] First, the Commission has committed to work in partnership with state commissions to monitor RLECs' inter- and intrastate tariffs to ensure that carriers do not improperly shift costs among rate elements as a response to the rate reductions adopted in the *Order*.[20] In addition, the *Order* requires an automatic tariff re-filing if a revenue sharing

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17 T-Mobile USA states that "there also should be no CAF ICC replacement for reduced transport and tandem switching charges. Adding those elements to the category of charges for which LECs may receive CAF ICC replacement likely would break the CAF budget. Instead, LECs should be permitted to recover such reductions in their [ARCs]." T-Mobile USA Comments at 18. Time Warner Cable also states that the Commission should not provide any incremental funding to offset reductions in ILECs' originating access rates. Time Warner Cable Comments at 19.

18 Charter Comments at 15; CTIA Comments at 4.

19 MetroPCS Comments at 4-6.

20 *Order and FNPRM* ¶¶ 804 and 813.

agreement is in place and a traffic measurement condition is met.[21] These provisions will help to ensure that remaining access rates remain just and reasonable.

Simultaneous reduction of originating and terminating access rates would have been preferable to the staggered approach adopted in the *Order*. Although opposed to bill-and-keep as an end state for ICC reform, the Rural Associations initially proposed a synchronized reform of originating and terminating rates in the April 18, 2011 submission of the "RLEC Plan."[22] The measured rate reductions put forward in that plan would have transitioned RLECs from existing ICC mechanisms while at the same time utilizing "pause points" and a sufficient access restructure mechanism based on rate-of-return regulation to prevent harmful impacts on rural consumers. Unfortunately, the Commission has instead adopted an approach to both ICC and high-cost USF reform significantly different from that recommended by the Rural Associations. While that decision is not the subject of the current comment cycle and is instead being debated in other fora, it reinforces the need now for the Commission to proceed with caution and a careful review of rate and service quality impacts in high-cost areas *before* undertaking additional reforms to the ICC transition path. Racing forward to transition remaining ICC rates toward zero without an adequate evidentiary record that evaluates the impact on end users, and the objectives of universal service, more generally would jeopardize the provision of affordable and reasonably comparable voice and broadband services in RLEC territories.

Consequently, the Commission should refrain at this time from ordering a final transition for RoR carriers' originating access, transport, and tandem switching rates. Instead, it should

21 *Id*. ¶¶ 667-678.

22 Rural Associations April 2011 Comments at 13.

take the necessary time to observe and evaluate the effects of the USF and ICC reforms it has recently adopted on the provision of universal service in RLEC service areas and ensure that the mandates of section 254 and the goals of the NBP are being achieved. The Commission has previously deferred action on certain issues until it can review and study the impact of its initial reforms. By way of example, the Commission has staged consideration of significant Lifeline issues (including the overall budget for the Low-Income program) precisely so that it can evaluate the impact of initial actions.[23] In a similar vein, the Commission should defer further changes to ICC mechanisms until it can review: (a) the impact of the high-cost USF and ICC reforms adopted in the *Order* on the quality of basic and advanced services, further broadband deployment, and the high-cost support target budget; (b) the impact of these recent reforms on consumer rates for voice and broadband services; (c) accuracies or short-falls of assumptions and projections regarding such changes; (d) how changes in macroeconomic conditions and customer demands are affecting its universal service programs and various segments of the industry; (e) any confusion or concerns arising with respect to implementation of these recent reforms; and (f) the extent to which any new arbitrage concerns and/or disputes arise under the significant ICC reforms just adopted. A data-driven process requires such evaluations, at a minimum, prior to proceeding any further.

[23] *Lifeline and Link Up Reform and Modernization*, Report and *Order* and Further Notice of Proposed Rulemaking, WC Docket No. 11-42 *et al*., FCC 12-11, ¶ 359 (rel. Feb. 6, 2012).

C. The Commission Cannot Reasonably Transition Originating Access Charges and Transport and Tandem Switching Charges Toward Zero Default Rates While Leaving Functionally Equivalent Services Unregulated and Free from Comparable Pricing Constraints.

From the earliest days of its efforts to reform ICC mechanisms, the Commission has sought to reduce and minimize regulatory arbitrage.[24] Its goal has been to establish more economically rational rate structures to send more accurate price signals to consumers, carriers and potential competitors.[25] By the time of the Internet Service Provider-bound traffic controversy, the Commission had concluded the most important of the pressing issues regarding its ICC rules was "the opportunities for regulatory arbitrage created by the existing patchwork of intercarrier compensation rules."[26] The Commission noted that any discrepancy in regulatory treatment between similar types of traffic or similar categories of parties is likely to create opportunities for regulatory arbitrage.[27]

Given that the Commission has found that transit service is the functional equivalent of tandem switching and transport,[28] both of these service classes should therefore be regulated and

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24 *See Access Charge Reform*, CC Docket Nos. 96-262, 94-1, 91-213 and 96-262, Notice of Proposed Rulemaking, Third Report and *Order*, and Notice of Inquiry, FCC 96-488, ¶ 9 (rel. Dec. 24, 1996).

25 *See id*. ¶ 55.

26 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, ¶ 11 (rel. April 27, 2001) ("*April 2001 NPRM*"); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 99-98, *Order* on Remand and Report and *Order*, FCC 01-131, ¶ 2 (rel. April 27, 2001) ("the existing intercarrier compensation mechanism for the delivery of this traffic . . . has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets").

27 *April 2001 NPRM* ¶ 12.

28 *Order and FNPRM* ¶ 1311.

priced in the same manner as access and non-access services become increasingly unified. This equivalent treatment is necessary to minimize opportunities for arbitrage and discriminatory pricing. In this respect, the Rural Associations agree with the general conclusions of commenting parties such as Time Warner Cable and Bandwidth.com that functionally equivalent tandem switching/transport and transit services should be regulated and priced under the same rules.[29]

Windstream rightly observes that the transit services necessary for indirect interconnection are dominated by the Regional Bell Operating Companies – Verizon, AT&T and now CenturyLink – as sole or virtually sole providers in most areas, and that competitive transit services are not widely available.[30] However, there are some areas where competitive transit services are available and operating successfully, including centralized equal access networks in parts of South Dakota, Iowa and Minnesota. The Commission can and should distinguish between areas where transit is a non-competitive service and areas where transit is a competitive service, but this certainly requires more careful review than simply treating each and every market as homogenously competitive.

The Rural Associations re-emphasize that their position is that transit rates should be regulated in the same manner as tandem switching/transport rates, and *not* that transit (or any other switched service rate elements) should be transitioned to bill-and-keep. In rural areas particularly, transit facilities (like transport and special access facilities) involve higher costs because of the distances involved and the sparse nature of the population, and they therefore

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29 Time Warner Cable Comments at 20-21; Bandwidth.com Comments at 15.

30 Windstream Comments at 9.

require substantial investments and recurring expenditures to construct, operate and maintain. Carriers will have little or no incentive to deploy and upgrade facilities and services if they must bear the full cost while other carriers and service providers can use them free of charge. Moreover, because transit and transport facilities do not generally originate or terminate at end-user locations, it is not clear how and how much of such transit and transport costs can be allocated and assessed equitably to specific customers.

At the same time, as parties such as Time Warner Cable have noted,[31] there is a risk that non-competitive transit providers may seek to make up reduced per-minute terminating access revenues by increasing transit service rates. The solution, however, is not to peg transit rates at an artificial and arbitrary price.[32] Rather, the Commission can address this risk by establishing default transit rates[33] for non-competitive transit providers that are initially capped at their existing levels as of an appropriate date certain. The Commission can subsequently review and approve future default transit rates according to the price cap or rate-of-return tariff review procedures applicable to these carriers. Such carrier-specific rates are far more likely to be just and reasonable, and to promote investment in the quality transit and transport facilities necessary to support the converging 21st Century network. If, however, the Commission insists upon migrating tandem switching and transport rates to bill-and-keep – again, a step that the Rural Associations oppose – the Commission should transition transit rates as well to minimize regulatory arbitrage and discriminatory pricing issues.

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[31] Time Warner Cable Comments at 20.

[32] *Contra* Windstream Comments at 11.

[33] Carriers should be permitted to negotiate and implement contractual transit rates, terms and conditions if they wish.

D. If The Commission Moves Forward With a Final Transition for the Remaining ICC Rate Elements at This Time, It Must Provide RoR Carriers with Sufficient Additional CAF ICC Support that is Incremental to Existing Support Levels.

Commenters, like the Rural Associations, recognize that a final transition for RoR carriers' originating access, transport, and tandem switching rates should not proceed if the annual high-cost support budget for these carriers remains at approximately $2 billion.[34] In the *Order*, the Commission "shoehorned" the RoR carrier CAF ICC support mechanism into the pre-existing high-cost USF support levels for these carriers by cutting and capping then-current USF mechanisms. A budget-driven approach to reforming per-minute ICC rates ignores that the existing ICC regime has been an essential component of promoting universal service in high-cost areas by helping to keep end-user rates affordable and enabling network investment and maintenance.[35] If ICC revenues are substantially reduced (or driven to zero) by regulatory fiat without a meaningful alternative for revenue replacement (beyond merely raising rates on rural consumers even further), RLECs cannot sustain the previous progress they have made in deploying high-quality advanced networks. It is essential therefore that the Commission methodically align ICC reform with high-cost USF reform and the core principles of universal service to avoid massive disruption to rural consumers and carriers.[36]

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34 Moss Adams Comments at 9-10; ITTA Comments at 2.

35 *See, e.g., Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1. *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and *Order*, 12 FCC Rcd 15982 (1997), ¶ 35.

36 In this regard, this Commission would be well advised to hearken back to the sensible reform objective it first established in the 1990s, when the more surgical aim was to extract implicit support from ICC charges in cooperation with state commissions. *See, e.g., id*. ¶¶ 9-10 (indicating the express congressional goal for ICC reform is that the Commission "should"

Were the Commission to adopt a final transition for the remaining ICC rate elements while still maintaining the same $2 billion budget target, it would only exacerbate the squeeze created by the recent *Order*, either by requiring further support reductions in other areas – regardless of whether or not they were justified – or simply by not providing any additional CAF ICC support. Either way, absent an increase in RoR carriers' annual support targets, there would be *no* incremental support to assist RLECs with the much-needed cost recovery for providing originating, transport, and tandem switching services and providing end users in high-cost areas with affordable services.

Indeed, further reductions in RoR carriers' ICC rates, without sufficient CAF ICC support that is incremental to existing support levels, would have serious implications for the provision of universal service in RLEC territories. In the first instance, many rural end users would likely experience further rate increases, for both voice and broadband services. This would risk making rates for rural consumers not reasonably comparable to those charged in urban areas of the nation and, in some cases, unaffordable. In addition, many RoR carriers would be forced to scale back on further network maintenance and upgrades, beyond what they are forced to do just as a result of the reforms adopted in the *Order*. This could lead to serious declines in service quality and create further, major disparities between the level of broadband services being offered in rural and urban areas. Among other goals, the *Order* states that it seeks to ensure that the transition to a reformed ICC and universal service system does not undermine

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remove implicit support from intercarrier charges "[t]o the extent possible," and that the process for doing so should be coordinated with states to avoid "enormously disruptive effects on both ratepayers as well as the affected LECs").

continued network investment and thus harm consumers.[37] Yet, this is precisely what would occur if a final rate transition path for RoR carriers' remaining access rate elements is adopted absent sufficient additional CAF ICC support.

The Rural Associations do not assert that per-minute ICC rates must be continued in perpetuity.[38] It is essential, however, that the Commission recognize that (a) the provision of switched services imposes costs on carriers and (b) the revenue streams that RLECs have historically received from the per-minute ICC regime have played a critical role in enabling these carriers to serve as carriers of last resort ("COLRs") as well as offer varying levels of broadband service to the large majority of consumers in their territories. Therefore, should the Commission decide to move forward with a final transition for the remaining access rate elements at this time, it must provide sufficient additional support that is *incremental* to the combined CAF ICC support and current high-cost support already received by these carriers. Otherwise, rural consumers will suffer service losses, degradations, and further rate increases.

Finally, commenters agree that if the Commission begins to reduce originating access charges, such reductions should not be treated differently in the calculation of CAF ICC support where the retail interexchange carrier ("IXC") is an affiliate of the RLEC.[39] The costs that a RoR carrier incurs in providing origination services to an underlying facilities-based long distance provider cannot be shared across regulated and non-regulated lines of business in light of the Commission's Part 64 rules that prohibit cross-subsidization. As a result, eliminating

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37 *Order and FNPRM* ¶ 858.

38 *See* footnote 74, *infra*.

39 NRIC Comments at 7; Moss Adams Comments at 7-9.

these costs from eligibility for recovery from CAF ICC support in cases where the retail IXC is an affiliate of the RLEC would only result in RoR carriers being forced to recover these costs through their local end users yet again. At a time when end-user rate increases are already taking effect in some cases and are on the horizon in many others due to various provisions in the *Order*, any rules and policies that lead to further increases threaten service affordability and quality.

E. The Record Does Not Support a Premature Phase-Out or Accelerated Reduction of the ARC or CAF ICC Support for RLECs.

Commenters agree with the Rural Associations that the Commission should not establish a defined phase-out of the ARC or CAF ICC support mechanism for RoR carriers, nor should it accelerate the annual decrease in Rate-of-Return Eligible Recovery.[40] Here again, it would be highly premature to consider further reforms such as a phase-out or accelerated reduction of either of these components of the ICC recovery mechanism before the Commission has had an opportunity to observe the functioning of the mechanism for several years, after all of the other outstanding issues regarding high-cost support and ICC rate reform have been addressed. This sequential approach will enable the Commission to determine whether RoR carriers continue to have a reasonable opportunity to recover their costs, make necessary investments in IP and broadband-capable networks, and provide reasonably comparable voice and broadband services to rural consumers at reasonably comparable rates.

Rate-of-Return Eligible Recovery is already subject to a five percent annual reduction, which will drive the ARC and CAF ICC support for RoR carriers toward zero over time,

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40 Alaska Rural Coalition Comments at 12; Moss Adams Comments at 11-15; GVNW Comments at 15; ACS Comments at 7-8; AT&T Comments at 78-79; NRIC Comments at 13; USTelecom Comments at 6.

regardless of the switching costs actually incurred by individual carriers. Even if this is characterized as a "glide path," its destination is still a place where costs will by definition become unrecoverable except through increased prices for end users in high-cost areas. Moreover, this migration to a form of "incentive regulation" is likely to have the same deleterious effect that such regulation has had in other rural areas to date – discouraging network investment. Indeed, the primary "incentive" created by such regulation is to minimize costs, which will deter RLECs from making timely investments in IP switching facilities because there is no opportunity to recover a temporary increase in switching costs. Moreover, rather than provide RoR carriers with a CAF mechanism sufficient to meet the *Order*'s broadband public interest obligations, the Commission has enacted cuts to the existing support mechanisms and additional limits on cost recovery, and has proposed more of the same in the *FNPRM*. In light of the substantial uncertainty this has created,[41] coupled with the lack of observable data on whether the ICC recovery mechanism adopted in the *Order* provides sufficient revenue replacement and cost recovery even in the short run, it makes little sense to consider a defined phase-out or an accelerated reduction of the ARC and/or CAF ICC mechanism at this time.

The few commenters that support a phase-out or accelerated reduction of the ARC and/or CAF ICC mechanism for RoR carriers advance a number of oft-repeated arguments regarding the alleged inefficiencies in the current ICC system or RoR carriers' supposed above-cost access rates.[42] What none of these commenters consider, however, is the critical role these revenues –

[41] This runs counter to the repeated assertions in the *Order* that the enacted reforms will provide RoR carriers with greater regulatory certainty and predictability. *Order and FNPRM* ¶¶ 125, 221, 286, and 291.

[42] CTIA Comments at 11; NCTA Comments at 9; T-Mobile USA Comments at 18.

which are derived from providing other carriers and their customers with access to ubiquitous and highly reliable COLR networks – have had on the deployment and affordability of basic and advanced services to rural consumers. Here again, such parties rely upon overly broad and self-serving policy pronouncements without pausing for even a moment to consider the potential quantitative impacts of their proposals (other than the quantitative impact to their own budgets and profit margins). The Commission, however, must of course consider a broader set of impacts, and it is essential above all else that reform be coordinated with and considered in light of the fundamental statutory backdrop of universal service. In addition, as noted above, it is unclear at this early stage how the numerous reforms adopted in the *Order* will impact the availability, affordability, and reasonable comparability of these services. Thus, any suggestion for a phase-out or accelerated reduction of either component of the ICC recovery mechanism,[43] prior to a thorough evaluation of how existing reforms have impacted the provision of universal service to rural consumers, should be summarily dismissed.[44]

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[43] Ad Hoc Comments at 14-15; Comcast Comments at 13.

[44] Also, it is unnecessary to require RLECs to include the amount of the SLC (including the ARC) in their advertised prices for services subject to the SLC. *Order and FNPRM* at ¶1334. To the extent that an RLEC does not include the SLC in its advertised prices, it has every incentive to make clear that those prices exclude taxes and additional fees and that they are not misleading. As providers based in the communities they serve, RLECs also have every incentive to ensure that consumers, at the point of sale, are fully aware that charges such as the SLC and other fees will appear on their monthly bills. To do otherwise would only serve to harm an RLEC's reputation with customers and potentially drive them to competing providers of voice services, such as VoIP and mobile wireless carriers, where such services are available. In addition, as even one proponent of the proposed requirement implicitly acknowledges, voluntary consumer codes (such as CTIA's Consumer Code for Wireless Service) can be far more effective than regulatory mandates. CTIA Comments at 12.

II. THE COMMISSION SHOULD REAFFIRM THE APPLICATION OF SECTIONS 251 AND 252 OF THE ACT TO ALL INTERCONNECTION – REGARDLESS OF TECHNOLOGY – BETWEEN LOCAL EXCHANGE CARRIERS AND OTHER CARRIERS, WHILE PERMITTING THE USE OF BOTH INTERCONNECTION AGREEMENTS AND TARIFFS TO ENABLE INTERCONNECTION AND TRAFFIC EXCHANGE.

A. The Statutory Framework for Interconnection is Technology-Agnostic and Governs All Interconnection with Local Exchange Carriers.

In their initial comments in response to the instant *FNPRM* and again above, the Rural Associations emphasized the importance of ensuring that the consequences of an ICC bill-and-keep "end state" do not undermine the ability of rural consumers to obtain reasonably comparable services at affordable rates and thereby frustrate the universal service objectives of the Act.[45] The Rural Associations further noted that, even if many other concerns remain, the Commission's decision in the *Order* to bring all telecommunications traffic under section 251(b)(5) at least provides a relatively straightforward answer to concerns about interconnection and financial responsibilities. Specifically, the Rural Associations urged the Commission to confirm that, as a follow-on consequence of having brought all telecommunications traffic within the scope of section 251(b)(5) under the *Order*, interconnection for the exchange of all such traffic is necessarily also governed by sections 251 and 252 and related provisions of law and orders.[46]

Initial comments in this proceeding confirm this analysis. Diverse parties, including RLECs, cable companies, large ILECs, competitive local exchange carriers ("LECs"), and state

45 Rural Associations Comments at 4-9.

46 *Id*. at 19-27.

commissions,[47] all concur that sections 251 and 252 provide no basis to conclude – or even opportunity to argue – that the technological means of interconnection is relevant to a determination of whether the statutory framework applies. Nowhere on the face of section 251 does the statute distinguish between IP networks and other networks, nor does anything in section 252 indicate that the "just and reasonable rate" for interconnection of facilities and equipment should not or cannot be determined in instances where the equipment happens to be IP-enabled. Rather, section 251(a) plainly deals with interconnection between the "facilities and equipment of . . . telecommunications carriers" generally, and section 251(c) refers generically to interconnection of "facilities and equipment" and a "network."[48] Section 252(d)(2) contains similar language. Thus, all that is required for purposes of the statute is that the interconnecting parties be "telecommunications carriers" (in the case of section 251(a)) or an ILEC (in the case of section 251(c)).[49]

The Commission should not proceed down the path urged by a handful of commenters who have sought to benefit from the inclusion of ICC rates within sections 251 and 252 for purposes of rate reductions but who then seek to avoid the burdens of being required to

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[47] Windstream Comments at 14; Frontier Comments at 12-14; ITTA Comments at 8-9; CompTel Comments at 13-33; XO Comments at 12; Regulatory Commission of Alaska Comments at 11; California Public Utilities Commission Comments at 9; Public Service Commission of Wisconsin Comments at 8-10; Indiana Utility Regulatory Commission Comments at 7-8.

[48] 47 U.S.C. § 251(a) and (c)(2).

[49] While AT&T desires apparently to leave all questions relating to interconnection to "commercial" agreements, it at least acknowledges that only telecommunications carriers are entitled to obtain interconnection between networks pursuant to sections 251 and 252. AT&T Comments at 35. It is of course unclear why the statute would limit the kinds of parties to which such agreements would apply but not otherwise apply to those agreements.

interconnect pursuant to those same sections.[50] The statute provides no latitude to "pick and choose" between ICC and interconnection obligations in determining which will apply and which will not. Having brought all telecommunications traffic under section 251(b)(5) for purposes of mandating the ICC rate reductions contained in the *Order*, a statutory path has been chosen that logically and necessarily leads to interconnection for the exchange of all such traffic coming within sections 251 and 252 as well.

The Commission should also not be misled by Verizon's effort to conflate Internet "peering" and IP interconnection between carriers.[51] As an initial matter, the traffic exchanged between Internet backbones via "peering" and "transit" arrangements is not today subject to sections 251 or 252, so the analogy is simply inapposite and intended at doing nothing more than muddying relatively clear waters.[52] Rather, what is before the Commission is a simple and straightforward question: when carriers interconnect for the exchange of telecommunications traffic that is subject to section 251(b)(5), what interconnection obligations apply? As noted above, the answer to that question is just as simple and straightforward – the provisions of

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50 *Id.*; Verizon Comments at 3, 9; MetroPCS Comments at 14. For example, having been handed a victory in the form of substantially reduced access costs without any obligation to flow those benefits through to consumers in rural or urban areas, AT&T now seeks to find an "escape hatch" from the same statutory provisions that provided the basis for its ICC victory. In its comments, AT&T looks at every turn to argue that interconnection should fall outside of sections 251 and 252, *see* AT&T Comments at 34-46, and also to rewrite the rules that apply to traffic that happens to fall within sections 251 and 252. *See id*. at Appendix A. Such efforts are precisely why the Commission must reaffirm that, having used section 251(b)(5) to reform ICC rates, it will faithfully apply sections 251 and 252 to all interconnection for the exchange of telecommunications traffic as well – and that it will decline to reinterpret those statutory provisions and related rules on interconnection until a better record is developed that justifies such changes.

51 Verizon Comments at 8.

52 CRUSIR Comments at 10.

sections 251 and 252 apply with equal force to the ICC obligations *and* interconnection for the exchange of such traffic.

The Rural Associations also noted in their most recent comments that the Commission should develop a more complete record before issuing rules specific to IP interconnection. This is entirely consistent with the analysis above, and is likewise supported by a wide swath of commenters.[53] This does not mean, however, that the Commission should consider the field of IP interconnection devoid of any structure or entirely "unregulated" pending further review as AT&T and some others urge;[54] all this means is that the existing statutory framework and the associated time-tested rules[55] should (and indeed, must) continue to apply to *all forms of interconnection between carriers* (IP or otherwise) until such time as the Commission can more meaningfully evaluate whether additional, different, or special rules may be required for IP interconnection.[56] The Commission should therefore reject equally those who call for a rush to judgment on new, special rules that will govern IP interconnection under sections 251 and 252[57] and those who urge the Commission to treat IP interconnection as altogether outside of the governing statutory framework.[58]

53 Windstream Comments at 16; ITTA Comments at 7.

54 AT&T Comments at 16, 35, 41; ACS Comments at 6.

55 Such rules include but are not limited to, provisions relating to how and where points of interconnection are established, relative responsibilities for transport, and recognition of the special nature of interconnection with RLECs (as discussed further below).

56 NRIC Comments at 25.

57 XO Comments at 8-10, 12-13; Hypercube Telecom Comments at 9-10; T-Mobile USA Comments at 6-7, 12-13.

58 AT&T Comments at 16, 35, 41; Verizon Comments at 3, 9.

It is also important that the Commission expressly reaffirm certain aspects of this existing statutory and regulatory framework as it initiates a transition to bill-and-keep. Indeed, the initial comments reveal certain carriers and other service providers are already "champing at the bit" to leverage changes in ICC obligations to deconstruct existing interconnection arrangements that provide for efficient traffic exchange between carriers based upon traffic volumes they send to one another and otherwise override statutory protections available to RLECs serving high-cost areas.[59] Although it should be unmistakably clear pursuant to sections 251 and 252 that these provisions apply even in a "bill-and-keep" environment, clear reaffirmation by the Commission may be essential to avoid future disputes and the foisting of additional costs (particularly transport burdens) on the backs of rural consumers in high-cost areas.

This reaffirmation is grounded primarily in section 251(f) of the Act. As noted in the Rural Associations' initial comments, Congress was careful in the Telecommunications Act of 1996 to exempt, modify, or suspend certain interconnection obligations as they otherwise might have applied to RLECs, recognizing that even as the basic framework was intended to strike a balance between interconnecting carriers and incumbents, smaller rural carriers faced special challenges that warranted unique treatment.[60] Accordingly, section 251(f)(1) of the Act exempts

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[59] *See, e.g.*, Sprint Nextel Comments at 39-40 (describing how Sprint Nextel apparently plans to leverage current and future ICC changes to decommission end office trunking facilities devoted to the exchange of traffic to and from Sprint Nextel customers and instead effectively dump such traffic onto common tandem facilities, precisely because there would no longer be any economic consequence associated with failing to set up dedicated facilities even where massive amounts of traffic are exchanged).

[60] *See, e.g.*, Sen. Rep. 104-23 at 22 ("The Committee intends that the FCC or a State shall, consistent with the protection of consumers and allowing for competition, use this authority to provide a level playing field, particularly when a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide

RLECs from interconnection and other obligations under section 251(c) until a bona fide request for such interconnection has been received and the state commission can confirm that such request "is not unduly economically burdensome, is technically feasible, and is consistent with section 254…".[61] Similarly, section 251(f)(2) of the Act permits an RLEC or any other smaller incumbent to seek suspension or modification of obligations under subsections (b) and (c) of section 251 where it can be shown that such request is necessary to avoid, among other things, "a significant adverse impact on users of telecommunications services generally; [or] a requirement that is unduly economically burdensome."[62]

In fact, having brought all telecommunications traffic under section 251(b)(5) pursuant to the *Order*, the Commission has acknowledged that it must squarely enlist the state commissions to assist with implementing the interconnection arrangements for such traffic.[63] Sections 251 and 252 give the states broad and express jurisdiction over interconnection negotiations, arbitrations, terms, conditions and rates. Such cooperative oversight is necessary to ensure that universal service is maintained and the public interest is served even as the interconnection and

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entity that has financial or technological resources that are significantly greater than the resources that are significantly greater than the resources of the company or the carrier."); 142 Cong. Rec. S 709 (Feb. 1, 1996) (Comments of Senator Daschle of South Dakota) ("The bill before us also recognizes the important role that must be played by Public Utilities Commissions [PUC's] in rural States. PUC's are the best entities to judge whether a given market within their State can support competition. That's not a judgment we should make from Washington. Nor is it something we can or should leave to the unbridled, unsupervised judgment of the private sector. Those who have taken the risks and made the investments to extend cable or phone services to smaller rural communities should not be placed at risk of being overwhelmed by larger, better-financed companies.").

[61] 47 U.S.C. § 251(f)(1).

[62] *Id*. § 251(f)(2).

[63] *Order and FNPRM* ¶ 776.

ICC landscape shifts dramatically. But to this end, and to ensure that interconnection gamesmanship cannot become a new form of arbitrage used by IXCs and other carriers to shift unreasonable and unmanageable transport costs to rural consumers, the Commission should reaffirm in four specific ways how the section 251 and 252 framework will continue to apply in this new bill-and-keep environment:

(1) RLECs and other ILECs should be entitled to initiate interconnection negotiations and arbitrations with any other carrier pursuant to sections 251 and 252;
(2) State commissions should re-examine all section 251(f)(1) exemptions that may have previously been lifted in light of changed circumstances;
(3) State commissions remain free, and are in fact obligated, to consider fully any request by an RLEC for a suspension or modification of obligations pursuant to section 251(f)(2) to ensure proper definition of "network edges"; and
(4) Consistent with the requirement that interconnection occur on the RLEC network, the "rural transport rule" limits an RLEC's financial responsibility for transport of telecommunications traffic to the relevant exchange boundary.

Each of the above-listed items should be (and is) self-evident on the face of section 251 and 252 and in light of the 16 years of "interconnection jurisprudence" that has developed since the Telecommunications Act of 1996 became law. Nevertheless, given the substantial gamesmanship over the past decade in the area of ICC, the unrelenting efforts by parties to seek out "the next loophole" (as evidenced even in the comments filed in this proceeding), and the fundamental shifts in the regulatory landscape under the *Order*, clarification and reaffirmation of each point is warranted and would help to minimize future disputes.

B. The Commission Should Maintain a Flexible Approach to the Use of Tariffs and Interconnection Agreements During any ICC Transition And Beyond.

In their initial comments, the Rural Associations urged the Commission to allow carriers the flexibility to continue offering interconnection arrangements under tariff or pursuant to negotiated agreements.[64] Furthermore, the Rural Associations recommend the Commission proceed with caution before attempting to forbear from the tariffing requirements in section 203 of the Act or in Part 61 of its rules. Changes to the marketplace, many anticipated and some unexpected, should be allowed to unfold before the Commission makes decisions pertaining to such fundamental provisions of the Act and related rules.

RLECs, price cap carriers, competitive LECs and cable companies all agree that carriers should be permitted to continue using tariffs during the transition to a new bill-and-keep ICC regime.[65] NRIC, for example, point out that tariffs for terminating access services will remain in place for quite a few more years based upon the Commission's ICC transition timeline,[66] and will "remain an efficient and readily understandable industry mechanism for the ordering of services and facilities."[67] In addition, it is not clear when originating access or remaining transport and termination elements will be transitioned. Pending resolution of such issues, it makes sense to leave existing tariff mechanisms in place while allowing carriers to implement individual interconnection agreements ("ICAs") where feasible.

Other commenters explain that tariffs eliminate administrative burdens associated with individually-negotiated ICAs, especially for small companies attempting to negotiate with

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[64] Rural Associations Comments at 28.

[65] CenturyLink Comments at 25; Windstream Comments at 12; Comcast Comments at 11-13; TelePacific and MPower Comments at 5; Cbeyond, *et al*. Comments at 17-18; XO Comments at 6; NRIC Comments at 24.

[66] NRIC Comments at 24 (*citing Order and FNPRM* ¶¶ 800-801, Figure 9).

[67] *Id*.

numerous service providers.[68] TelePacific and MPower observe in this regard that requiring all carriers to immediately negotiate ICAs is simply not practical.[69] Windstream similarly observes it would not be in the public interest to force carriers into costly and time-intensive negotiations when traffic volume does not justify the expenses associated with ICAs.[70]

A small number of commenters nevertheless urge the Commission to quickly eliminate tariffs.[71] CTIA, for example, urges rapid migration to negotiated agreements because such agreements are the mechanism contemplated by sections 251 and 252 of the Act, which now form the basis for the Commission's oversight of the new ICC bill-and-keep regime.[72] CTIA

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68 Comcast Comments at 12-13; Cbeyond Comments at 17; TelePacific & MPower Comments at 5; NRIC Comments at 24. Comcast similarly urges the Commission to allow carriers to continue filing state and federal tariffs, or their functional equivalents, after the transition since tariffs present the lowest cost and least administratively onerous option. Comcast Comments at 13.

69 TelePacific & MPower Comments at 5.

70 Windstream Comments at 12. As the Commission is well aware, many RLECs have had problems resolving billing issues with carriers that begin sending small but increasingly significant amounts of traffic without providing notice or agreeing to negotiate ICAs. To deal with these situations, some commenters suggest the Commission permit carriers to implement default tariffs. CenturyLink Comments at 25; XO Comments at 6; Bandwidth.com Comments at 11-12. Bandwidth.com also suggests the Commission permit carriers to publish Statements of Generally Available Terms as a default mechanism. Bandwidth.com Comments at 8, 11. Alternative approaches that would help carriers resolve billing disputes over such "unexpected" traffic in a reasonable manner should be given consideration by the Commission during the transition.

71 CTIA Comments at 9-10; T-Mobile USA Comments at 17. Similarly, Leap and Cricket agree the Commission should forbear from tariffing requirements to encourage carriers to shift from the existing ICC system to the Commission's new bill-and-keep methodology. Leap & Cricket Comments at 14-15.

72 CTIA Comments at 9.

also contends continued reliance on tariffs will simply repeat the flaws of the existing regime, as well as promote gaming and inefficiency.[73]

Most commenters recognize, however, that tariffing mechanisms have been in place for decades, are well understood within the industry, and are substantially more efficient than individually negotiated ICAs for many providers. Thus, the proper course for the Commission is to evaluate the many changes taking place as USF and ICC reforms are implemented and to allow carriers flexibility to offer services under tariff or individual agreements as the marketplace evolves.

Commenters also agree with the Rural Associations that the Commission should give carriers latitude to employ alternative tariff and non-tariff pricing mechanisms that reflect underlying network economics.[74] Once IP/broadband networks are fully deployed in RLEC study areas, tariff structures that include rates for both connections and bandwidth may become appropriate, as well as tariff provisions for service enhancements, such as "managed services" and quality-of-service (QoS) pricing arrangements. Such unique and innovative arrangements

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[73] *Id*. at 10.

[74] *See, e.g*., GVNW Comments at 5 ("If the Commission stays on its present course, there will be a need to implement some form of port and link pricing in order to maintain the backbone network that the entire system utilizes."). In prior comments the Rural Associations have suggested replacing today's minutes-based ICC charges with a "port and link" structure more suitable for IP interconnection. *See, e.g*., Rural Associations Comments at 30, n.51; Rural Associations April 2011 Comments at 36, n. 74. The basic assumption underlying this concept is that all services will eventually be carried over broadband connections, with capacity-based connection and transport charges similar to today's special access pricing model. Under this type of framework, the link would be the outside plant cable and wiring needed to reach a carrier's wire center and the port would provide access to an intercity transport network. The port will have added capabilities to provide for traffic differentiation e.g., voice, data or video at different quality-of-service levels, and permit customers to add features such as on-demand provisioning of service, special billing arrangements and other ways to customize services.

could be captured in tariffs or, alternatively, in ICAs that would be negotiated pursuant to sections 251 and 252.[75]

Transitional ICC pricing structures for RLECs will need to address the declining demand for current switched access services, and could introduce various types of flat rate, packet-based consumption tariff structures and pricing to reflect increased use of IP and other types of packet switching in the network core. As the Coalition for Responsible Universal Service and Intercarrier Reform explains, capacity-based billing "can apply equally to IP as to TDM" and specifically suggests the "starting point for IP-based voice interconnection between PSTN carriers should be the rate for TDM-based interconnection, adjusted to take into account the difference in cost between their respective interfaces."[76]

As suggested in the Rural Associations' initial comments, the Commission may accordingly wish to consider reopening discussion of such flat-rate pricing structures as a possible end state for interconnection and pricing arrangements, inasmuch as such mechanisms may permit carriers to provide high-quality bundled services to customers on mutually-agreeable terms.[77] Finally, as suggested in comments, the Commission should continue to permit RLECs

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[75] To facilitate the development of such arrangements, the Commission should permit (but not compel) RLECs and other incumbent carriers to initiate interconnection negotiations and arbitrations with any carrier – IXC, mobile wireless provider, competitive local exchange carrier, etc. – to whom they send or from whom they receive section 251(b)(5) traffic. This would in effect be a modified extension of the Commission's decision in *Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and *Order,* FCC 05-42, ¶ 16 (rel. Feb. 24, 2005).

[76] CRUSIR Comments at 14.

[77] Rural Associations Comments at 30, n. 51. The Rural Associations pointed out in this regard that current IP-based pricing arrangements commonly include comparable flat-rated charges and are not "cost free" for most interconnecting entities, except in cases where traffic

to have the option of participating in voluntary tariff and revenue pooling arrangements regardless of whether ICC rates, terms and conditions are set by tariff, contract or some combination of the two.[78]

III. IF CALL SIGNALING RULES ARE NOT APPLIED WITH EQUAL FORCE TO ALL ENTITIES THAT SEND TRAFFIC TO CARRIER NETWORKS, THE RULES WILL BE MEANINGLESS.

The Rural Associations noted that since the Commission has now firmly established the ICC obligations of VoIP providers, there is an obvious need to require all providers of such services, including "one-way" VoIP, to transmit the necessary call signaling information to allow proper billing.[79] Otherwise, the Commission's attempts to minimize arbitrage between providers of comparable services will fail. The Commission's phantom traffic rules can only be effective if the Commission acts to shut down the "next loopholes" that entities are already seeking to use.

Other commenters concur. CenturyLink, for example, similarly favors a level playing field, stating that one-way VoIP providers "should be obligated to populate call data in the signaling stream for such calls just as other carriers must."[80] The Indiana Utility Regulatory

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scope and balances are roughly equivalent. *Id*. If IP-based services are the model to which the Commission is looking, by seemingly denying carriers the ability to impose flat-rated charges for such services, it has in fact artificially, arbitrarily, and inappropriately ***undercut*** one of the key economic tenets of IP-based interconnection and traffic exchange. *See, e.g.*, "Peering" (available at: http://en.wikipedia.org/wiki/Peering) ("in order for a network to reach any specific other network on the Internet, must either: [1] Sell *transit* (or Internet access) service to that network (making them a 'customer'), [2] Peer directly with that network, or with a network who sells transit service to that network, or [3] Pay another network for transit service, where that other network must in turn also sell, peer, or pay for access.")

78 Rural Associations Comments at 30.

79 *Id*. at 43-44.

80 CenturyLink Comments at 55.

Commission also "advocates applying consistent signaling rules to all VoIP traffic and to all traffic terminating to the PSTN to close a potential loophole in the new call signaling rules."[81]

Some parties suggest the Commission defer ruling on this topic until some later date. For example, Hypercube Telecom suggests it would be premature for the Commission to adopt call signaling rules for one-way VoIP services until industry groups, such as the Alliance for Telecommunications Industry Solutions, complete standards-setting work.[82] This argument, however, appears to fly in the face of established practices and customer expectations regarding Caller ID. A number of IP-based signaling standards already exist that allow for the transmission of calling party number. The Commission need not, and indeed should not, refer to any particular standard when adopting rules for call signaling. It should continue to merely require the transmission and delivery of such information in the call signaling stream, regardless of the signaling technology and the architecture of any provider's network.

In situations where the originating VoIP customer does not have a North American Numbering Plan ("NANP") telephone number, the Commission should continue to make clear that the point at which a "call" begins is at the originating caller's location and not at any intermediate point, as some commenters continue to suggest.[83]

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81 Indiana Utility Regulatory Commission Comments at 9.

82 Hypercube Telecom at 16; *see also* Google Comments at 8.

83 The Commission should explicitly reject arguments to the effect that rates charged by a PSTN carrier for a call "should not depend upon the origin of the call, but only upon the POI where the call is handed off, as that is where the cost is incurred." CRUSIR Comments at 16. The Commission determined in its *Order* that IP "gateways" are not to be treated as the originating points of calls, *see Order and FNPRM* ¶ 714; any such finding would flatly contradict the Commission's unequivocal finding only months ago.

Shutting down potential loopholes – such as having the application of the rules tied to whether a service provider purports to only originate traffic – is essential for the phantom traffic rules to be effective. In addition to the need for terminating carriers to receive proper billing information in call signaling, there is a growing problem with consumers and businesses in rural areas receiving false caller ID information. This growing problem demonstrates the need for the Commission to enforce both its call signaling rules as well as the rules recently adopted to implement the Truth in Caller ID Act.[84] These problems are a direct result of carriers as well as VoIP providers failing to provide proper call signaling information or intentionally altering the data.[85] The Commission should strictly enforce its call signaling and Caller ID rules, carefully limit the scope of any waivers granted, and require the companies receiving waivers to provide a list of all affected switch locations as well as reports of when it will bring its network into compliance, including for trunks carrying local and extended area service traffic.[86]

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84 Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e).

85 Canby Telephone explained in a recent ex parte the growing Caller ID spoofing problem it is experiencing. It emphasized the need for accurate call signaling information on local EAS trunks, saying 32.1% of all incoming EAS traffic was actually from non-local NPA/NXX combinations, and either the CPN or CN, or both, had been changed or were missing. *See Ex Parte* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 07-135, *et al*. (filed Mar. 22, 2012).

86 *See, e.g.*, Comments of NTCA, OPASTCO, WTA, and NECA, WC Docket No. 10-90, *et al*., at 8, 11 (filed Mar. 19, 2012).

IV. CONCLUSION

Both the long-standing record in these proceedings as well as the most recent round of comments filed reinforce the need to proceed with substantial caution before enacting additional ICC reforms that would foist yet greater costs onto the backs of rural rate-payers while threatening achievement of the universal service mandates of the Act and the goals of the NBP. If the Commission moves forward nonetheless with ultimate elimination of all ICC rates, it must do so in accordance with its professed commitment to a "no flash cuts" policy, and only after making an incremental robust, sustainable, and fully compensatory recovery mechanism available. This is essential to avoid rural consumer price shock and to promote the availability of reasonably comparable basic and advanced services at reasonably comparable rates. Furthermore, the Commission should proceed only after addressing a variety of other technical, practical, and legal complexities such as the fact that certain services (such as transit and special access transport) would retain positive rates even while functionally equivalent switched services would be regulated and sold ultimately for a mandated price of zero.

The record is also clear that interconnection for the exchange of all telecommunications traffic is necessarily governed by sections 251 and 252 given the Commission's invocation of section 251(b)(5) to achieve ICC reform in the *Order*. Still, the Commission should reaffirm that interconnection is limited to technically feasible points on the incumbent's existing network and subject to the applicable exemptions, suspensions, and modifications that apply under section 251. This is necessary in light of the substantial gamesmanship over the past decade in the area of ICC, the clear intent by parties even in their comments to transfer network costs to rural consumers, and the fundamental shifts in the regulatory landscape under the *Order*. The record also supports allowing carriers to continue to rely upon tariffs and voluntary pooling arrangements in lieu of interconnection agreements during the continuing ICC reform transition.

Finally, the Commission should require providers of one-way VoIP services to transmit the necessary call signaling information to allow proper billing of traffic they send toward carrier networks, so that arbitrage between providers of comparable services is minimized.

Respectfully submitted,

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March 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments were served this 30th day of March, 2012 by electronic filing and e-mail to the persons listed below.

By: /s/ Rita H.Bolden
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The following parties were served:

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