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

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| Developing a Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |
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# JOINT REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION AND WTA – ADVOCATES FOR RURAL BROADBAND


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## EXECUTIVE SUMMARY

In these reply comments, NTCA–The Rural Broadband Association and WTA – Advocates for Rural Broadband (jointly, the Associations) distinguish their positions from those of other filings. As an overarching consideration, the Associations demonstrate why intercarrier compensation (ICC) reform cannot be effectuated while high-cost support mechanisms remain insufficient to enable fulfillment of universal service obligations. Current high-cost support budget constraints are visiting adverse impacts on carriers' ability to invest and maintain networks. The Associations also address alleged arbitrage, and urge the Commission to undertake a targeted response rather than wholesale reformation that would wreak disproportionate impacts upon parties who are not engaged in any of the alleged practices. In these regards, a tightly-focused response can address problematic practices while preserving necessary ICC measures for rural networks. Finally, the Associations urge the Commission to ensure that network edge and interconnection standards ensure the ability of rural carriers to connect (and to thereby connect their customers) broadly and affordably. The Associations explain why IP interconnection can be guided by standards set forth by the Communications Act without regard to the underlying technology that passes between the interconnecting carriers. The legal and policy bases described herein support the Associations' position that constraints caused by the high-cost budget must be resolved before ICC reform can be developed, and that in all events the development of ICC reform will depend upon data that is yet to be gathered and analyzed.

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**JOINT REPLY COMMENTS OF**
**NTCA–THE RURAL BROADBAND ASSOCIATION**
**AND WTA – ADVOCATES FOR RURAL BROADBAND**

TO THE COMMISSION:

## I. INTRODUCTION.

NTCA–The Rural Broadband Association (NTCA)[1] and WTA – Advocates for Rural Broadband (WTA)[2] (jointly, the Associations) hereby submit these reply comments in the above-captioned proceeding. In initial comments, the Associations urged the Commission to move cautiously before proceeding with further intercarrier compensation (ICC) reforms, noting that potential reductions to ICC revenues would have a debilitating impact on universal service goals at a time when high-cost support budget controls are constraining the ability of rural carriers to move forward with needed investments. In those regards, the Associations submitted that any further ICC reforms be suspended until greater certainty for sufficient high-cost support is

[1] NTCA represents nearly 850 rural local exchange carriers (RLECs). All NTCA's members are full service local exchange carriers and broadband providers, and many also provide wireless, video, satellite, and/or long-distance services.

[2] WTA - Advocates for Rural Broadband is a national trade association that represents more than 340 rural telecommunications providers offering voice, broadband, and video-related services in rural America. Its members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

confirmed. At that time, to the extent ICC reform is warranted, the Associations urged the Commission to also address network edge, IP interconnection, and sufficient ability to recover revenue requirements.

In these reply comments, the Associations respond to other parties to demonstrate why ICC reform cannot be effectuated while high-cost support mechanisms remain insufficient to enable fulfillment of universal service obligations; the Associations explain the impacts of current constraints on carrier operations. The Associations also address alleged arbitrage, and urge the Commission to undertake targeted responses as opposed to wholesale reformation that would wreak adverse impacts upon parties whose actions implicate no questions. Finally, the Associations urge the Commission to ensure that network edge and interconnection standards maintain the ability of rural carriers to connect (and to thereby connect their customers) broadly and affordably. The Associations explain why IP interconnection can be guided by standards set forth by the Communications Act without regard to the underlying technology that passes between the interconnecting carriers. The legal and policy bases described herein support the Associations' position that constraints caused by the high-cost budget must be resolved before ICC reform can be developed, and that in all events the development of ICC reform will depend upon data that is yet to be gathered and analyzed.

## II. FURTHER INTERCARRIER COMPENSATION REFORMS CANNOT BE EFFECTUATED WHILE HIGH-COST SUPPORT REMAINS INSUFFICIENT TO MEET EXISTING UNIVERSAL SERVICE GOALS AND OBLIGATIONS.

Some large national wireless and interexchange carriers (IXCs) such as Verizon and Sprint have reiterated their demands for an immediate, expeditious and complete transition of all remaining access rate elements to bill-and-keep.[3] It is understandable that these carriers would seek to bolster company profits by avoiding payments for their use of networks built and maintained by other carriers. And, yet, it is noteworthy that they make no attempt whatsoever to consider and address any of the impacts of their proposals upon other operators – or, more importantly, consumers. For example, Verizon and Sprint disregard the consequences of their proposed rapid transitions to bill-and-keep upon: (1) the operation, maintenance and upgrade of transport facilities (particularly longer routes in more sparsely populated rural areas); (2) the remaining ICC revenue streams upon which small rural carriers and their customers depend; and (3) the rural network deployment and affordable universal service made possible by these continuing revenue streams.

Like the Associations, parties such as CenturyLink and the Nebraska Rural Independent Companies (NRIC) are familiar with the conditions and difficulties of serving rural areas and understand that rural network facilities generally entail lengthy routes through often rugged and sparsely populated terrain. These networks are expensive to construct, maintain and operate. As CenturyLink indicates, "unlike more downstream end office functionality, this [transport and, in some cases, tandem switching] functionality does not solely serve a carrier's own end users."[4] Hence, if the wireless and long distance affiliates of Verizon, Sprint and others do not pay for

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[3] Comments of Verizon, at 1; Comments of Sprint, at 1.

[4] Comments of CenturyLink, at 5.

their use of the transport networks of RLECs and other carriers serving rural markets, the substantial costs of such networks cannot actually or equitably be recovered from end user customers, many of whom will not be able to afford the resulting rate increases. Indeed, as CenturyLink points out, investment in the transport and related intermediate network services essential for both the existing and future public networks will only occur if carriers are assured of their ability to obtain fair compensation for use of such services and networks.[5]

As detailed by the Associations in their initial comments, the Commission has long recognized that intercarrier compensation rates and revenues are not only necessary to recover the investment, maintenance and operating costs of the expensive and lengthy transport and loop facilities required for RLECs to reach and serve rural customers, but also that those ICC rates "include an implicit subsidy because they are set to recover the cost of the entire local network, rather than the actual incremental cost of terminating or originating another call."[6] Consequently, the Commission has consistently employed explicit revenue replacement mechanisms as an integral and essential element of its previous intercarrier compensation reforms. These mechanisms have been designed to enable RLECs to recover rural network facilities costs that would otherwise require rural customers to pay local service rates well above the levels that they could afford. The Commission has determined that such revenue replacement mechanisms allow RLECs to continue the investment, maintenance and operating activities necessary to provide

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5 Comments of CenturyLink, at 6.

6 *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Fund – Mobility Fund: Report and Order and Further Notice of Proposed Rulemaking,* Docket Nos. 10-90; 09-51; 07-135; 05-337; 01-92; 96-45; 03-109; 10-208, FCC 11-161, at para. 870 (2011) (Transformation Order).

their high-cost service areas with quality telecommunications services at rates that are affordable and reasonably comparable to those in urban areas.

The critical problem today, however, is that there is no room whatsoever in the current High Cost Program budget to accommodate an additional replacement mechanism of the nature and size that would be needed to support a transition of transport, access tandem or any other access rate elements to bill-and-keep. As the Commission is well aware, the current High Cost universal service fund (USF) budget is $4.5 billion per year, including a $2 billion annual budget for RLECs carriers.[7] At these levels, the current funding of the Alternative Connect America Cost Model (ACAM) is well below the $200 per location benchmark initially estimated to be optimal for model-based support. This ACAM funding is insufficient to meet the growing broadband needs of rural customers, which have long superseded the current primary 10 Mbps/1 Mbps level and are rapidly reaching and exceeding the upper 25 Mbps/3 Mbps milestone.

Meanwhile, the RLECs that continue to receive support based upon the actual costs of rural investments and operations are subject to more and more crippling budget constraints. Starting from an already insufficient residual budget based upon 2010-2011 legacy support into which prior CAF-ICC replacement support was effectively wedged, many RLECs are suffering further large and unpredictable reductions in High Cost Loop Support (HCLS) and Connect America Fund – Broadband Loop Service (CAF-BLS) support due to the budget control mechanisms of Sections 54.901(f) and 54.1310(d) of the Rules.[8] Rather than the HCLS and CAF-BLS distributions to which they would otherwise be entitled if the Commission's existing

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[7] Certain RLECs receive an additional $200 million per year for model-based support, but those sums are not part of the annual budget and are instead drawn from Connect America Fund (CAF) reserve dollars.

[8] 47 C.F.R. §§ 54.901(f) and 54.1310(d).

USF support calculation rules and procedures were applied as written post-reform, "actual cost" carriers are experiencing rapidly increasing budget control mechanism "haircuts" (currently 12.35 percent for CAF-BLS support for the 2017-2018 period, and 14.9 percent for HCLS for the Fourth Quarter 2017) that are slashing their USF support well below levels that were insufficient six and seven years ago when most rural households were content with dial-up or very low-speed broadband services. If current trajectories are any indication, these budget control mechanism "haircuts" could reach the 19-to-20 percent level during 2018, and continue growing rapidly and unpredictably – like a "Quantile Reduction Analysis 2."

Piling further transitions of some or all of the remaining access rate elements to bill-and-keep on top of the current budget shortages and disruptions would entail severe hardships for the many RLECs, whether ACAM electors or those that receive support based upon actual costs, that are already struggling to maintain and operate their existing networks while trying to meet the Commission's broadband build-out requirements and the broadband capacity demands of their customers. Likewise, inclusion of a revenue replacement mechanism for some or all remaining access charges within the existing budget for USF support would wreak further havoc upon "actual cost" carriers by increasing further the already debilitating and unpredictable Section 54.901(f) and 54.1310(d) "haircuts." And, more importantly, this budget crisis not only undermines the capability to keep investing in rural networks, but as described in more detail in Section II below, this makes it difficult, if not impossible, to offer services to consumers at reasonably comparable rates; those costs not recovered due to the budget control will necessarily fall back to the small, rural customer bases that can least afford to pay them. Exacerbating that now by piling more cost recovery atop an already strained mechanism is unsustainable and unfair to rural consumers.

Broadband deployment and upgrades require most RLECs to obtain substantial loans with relatively long repayment periods (often 15-to-30 year terms). The willingness of lenders to make such loans depends in major part upon their analyses and predictions of the size and stability of critical RLEC revenue streams such as federal USF support. The current insufficiency of such support, taken together with the burgeoning size and unpredictability of the budget control mechanism reductions, is already undermining and reducing RLEC broadband deployment and adversely affecting the rates paid by consumers. If further reforms either eliminate substantial transport or other ICC revenues without a recovery mechanism or jam additional replacement mechanisms into an already inadequate USF budget, the proposed transitions of some or all remaining access rate elements to bill-and-keep threaten to be the "straw that broke the camel's back" that can wholly disrupt RLEC broadband deployment and even further undermine the already imperiled goal of preserving and advancing universal service at affordable rates as mandated by Congress.

## III. THE COMMISSION LACKS A SUFFICIENT RECORD TO DETERMINE WHETHER AND HOW TO TRANSITION THE REMAINING RATE ELEMENTS TO BILL-AND-KEEP AT THIS TIME.

In initial comments, the Associations cautioned against blindly pushing forward to bill-and-keep treatment for all traffic and rate elements without first evaluating the impact of previous reforms and collecting and analyzing data on current ILEC minutes, rates, and revenues. As the Associations explained, such review is necessary to ensure that the Commission's prior reforms have actually resulted in the consumer and other benefits on which they were predicated—*e.g.*, lower long distance rates, increased service quality, and an accelerated transition to all-IP networks—rather than merely shifting the costs of subsidizing local access networks from *all* consumers to only rural consumers in plain violation of the universal service statutory mandate. Failure to consider the impact of its prior reforms would

deprive the Commission of the data it needs to make an informed decision about whether and how to proceed with further reforms and would epitomize arbitrary and capricious agency action.[9]

The Commission must resist the urging of patently self-interested IXCs and wireless operators to "flash cut" to bill-and-keep without any meaningful analysis of the impact of the Commission's 2011 reforms on consumers. Indeed, although six years have passed since those reforms were enacted, not one of the major IXCs—*i.e.*, Verizon, AT&T, or Sprint—offers any evidence or data to verify that the reforms have yielded lower long distance rates for end users, improved call and service quality, or enabled new and innovative service offerings.[10] Nor do these parties offer any evidence to validate the Commission's prediction that the 2011 ICC reforms would promote IP-to-IP interconnection or accelerate the IP transition.[11] Finally, and

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[9] Comments of NTCA and WTA, at 12-14, citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (holding that "the agency must examine the relevant data" and explain how its decision is rationally related to the facts found).

[10] Verizon claims that the Commission's 2011 reforms were largely successful in addressing unlawful access stimulation schemes and reducing the number of interconnection disputes. However, it offers no proof whatsoever that any resulting costs savings have been passed through to consumers in the form of lower long-distance rates, increased service quality, or innovative new services. *See* Comments of Verizon, at 5. Moreover, if anything, such claims would indicate that surgical measures to address specific arbitrage concerns are far more effective than far-reaching reform that inflicts collateral damage on legitimate recovery of authorized and approved regulated costs.

[11] Although Verizon and Sprint allege that the continued tandem switching and transport revenues are causing ILECs to refuse to negotiate IP interconnection agreements, neither cites any examples to substantiate these allegations. *See* Comments of Verizon, at 4; Comments of Sprint, at 1-2. Yet some IP interconnection arrangements are available today to the IXCs – an IXC could seek to order such service now if desired. *See, e.g.,* NECA Tariff F.C.C. No. 5, Sec. 16.4.1 (defining terms and conditions for Internet Protocol Gateway Access Service, available since 2009) and Sec. 6.1.1(A) (defining terms and conditions for Ethernet Switched Access Local Transport (ESALT) optional service, available since 2013). It would seem, however, that the IXCs simply refuse to pursue such an option where available because of an apparent view

perhaps most importantly, the IXCs fail altogether to take stock of how prior reforms affected the mission of universal service – what they meant for rural network investments and the quality and affordability of services provided atop those networks for the benefit of rural consumers and communities. Indeed, it is quite telling that in all the discussion of ICC reforms, the impacts upon universal service are an afterthought, at best, to the carriers seeking nothing more than to reduce their financial responsibility.[12]

Absent proof of actual consumer benefits – including an analysis of the impacts of proposed changes on rural consumers and universal service – any claims that further reforms are necessary or warranted at this time, should be taken for what they are: self-serving statements of industry participants who stand to reap additional profits from the further shifting of transport costs onto small rural carriers and rural American consumers and businesses. In contrast to the general lack of data offered by commenters to support their calls for further reforms, the Associations have cited concrete evidence showing that the Commission's 2011 intercarrier compensation reforms, combined with ongoing cuts to High-Cost USF support as described in Section 1, have forced RLECs to forgo plans to deploy networks in rural areas and to consider raising prices for rural consumers. For example, in the case of RLECs receiving model-based support:

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that the price of that option is not right for them (*i.e.*, it is not "free" of cost to the IXC using the local carrier's transport network).

[12] Revealing how far afield discussions of ICC reform have strayed from understanding the actual purposes of the mechanisms, neither AT&T, nor Verizon, nor Sprint even deigns it necessary to utter the phrase "universal service" in their most immediate comments in this proceeding. T-Mobile at least references the potential need for USF support to offset costs of interconnecting at distant network edges (Comments of T-Mobile, at 18), although this suggestion runs headfirst into the reality described in Section I, *supra*, in that there is already insufficient USF budget even just to recover the costs of what current rules indicate should be supported.

- Over 35,000 locations will not receive 25/3 Mbps broadband due to the insufficient budget, while another 36,000 locations that would have received 10/1 Mbps broadband will not due to the shortfall;

- Nearly 25,000 more locations will receive 4/1 broadband than under the original model offer that would have provided them with higher speeds; and

- Another 47,000 locations will now only see any broadband at all if their request for service turns out to be "reasonable" in light of USF support received and the revenues that might be anticipated from the customer.[13]

And, for RLECs receiving support via actual cost recovery mechanisms, the numbers are even worse. Indeed, a recent NTCA survey found that out of 183 responding firms:

- Nearly two-thirds intend to scale back network investments over the next 12 months in the face of the ever-escalating budget control and will now have their USF support reduced by $536,000, on average, over the next year;

- While many continue to evaluate specific impacts of the 12.3 percent budget control factor, those respondents that provided financial impact estimates indicated they would reduce their broadband investments over the next 12 months by $943,000, on average, due to the budget control;

- The total estimated investment impact for respondents equals over $44 million in delayed or cancelled broadband investments over the next 12 months. Extrapolated across NTCA members subject to the budget control, this would equate to as much as $300 million in delayed or cancelled broadband investments; and

- Even in the wake of USF reforms intended to achieve reasonably comparable standalone broadband service rates for rural and urban consumers, the average respondent that is not currently offering standalone broadband estimates it would need to charge a customer $126 per month for such service due to the budget control—a rate that is more than twice the urban average.[14]

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[13] *A-CAM Public Notice*; *see also Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More than $51 Million Annually in Alternative Connect America Cost Model Support and Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 16-422, 31 FCC Rcd 13,328 (2016); *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 17-99, 32 FCC Rcd 842 (2017).

[14] *Ex Parte* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 1090 (filed Aug. 15, 2017), at Appendix; *see also Wireline Competition Bureau Announces*

Thus, if anything, the record suggests that the Commission's universal service mechanisms, including the 2011 reforms that essentially wedged ICC cost recovery within an already insufficient and overburdened USF budget, are undermining investment incentives and may actually be impeding the IP transition by depriving rural carriers of the resources they require to deploy advanced networks in high-cost rural areas. Such results counsel against rushing to adopt any further reforms that would only exacerbate existing universal service funding shortfalls and budget controls.

For these reasons, the Commission should refrain from transitioning the remaining tandem switching and transport rate elements *at least* until such time as it has thoroughly assessed the impact of its previous reforms on consumers and other public policy goals and found, based on such data-driven review, that further reforms are in the public interest.

## IV. TO THE EXTENT THE COMMISSION CONCLUDES THAT SOME CARRIERS ARE ENGAGED IN UNREASONABLE ARBITRAGE, IT SHOULD CONSIDER ADOPTING TARGETED MEASURES TO ADDRESS SUCH BEHAVIOR.

Notwithstanding the lack of evidence of consumer benefits flowing from the Commission's 2011 ICC reforms, Verizon and AT&T claim that there is at least anecdotal evidence to suggest that the current rate structure may be causing some carriers to maximize the assessment of rate elements and engage in other forms of regulatory arbitrage. Verizon, for example, points to a CLEC that uses a 192-mile transport route, allegedly to generate additional, per-mile transport revenues.[15] In light of such practices, Verizon, along with AT&T, urge the

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*Results Of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, WC Docket No. 10-90, Public Notice, DA 16-362, 31 FCC Rcd 3393 (2016).

[15] Comments of Verizon at 7.

Commission to adopt measures to address immediately the most prevalent forms or transport arbitrage.[16]

The Associations agree that, if such practices exist – and to the extent they are patently designed to inflate transport revenues and not to accomplish other legitimate purposes such as efficiently aggregating traffic or responding to consumer demand – they can distort the market, undermine the integrity of the ICC system, and ultimately harm consumers. As both Verizon and AT&T acknowledge, however, such unreasonable arbitrage is largely confined at most to a handful of CLECs and is not endemic to the industry as a whole.[17] Thus, rather than imposing a flash cut on all carriers (virtually all of whom are innocent), which would disrupt settled expectations, further strain the budgets of many rural carriers, and undermine the Commission's universal service goals, the Commission can and should, as the IXCs themselves propose, consider taking targeted measures to address so-called "mileage pumping" by the handful of "bad actors" that Verizon and AT&T claim exist.[18]

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[16] Comments of Verizon, at 5; Comments of AT&T, at 22-24.

[17] Comments of Verizon, at 8 (noting that "[t]hese carriers"—*i.e.*, carriers engaged in access stimulation—"are typically CLECs, and they are relatively few in number"); Comments of AT&T at 13 (noting that "*one* transport provider is responsible for over *12 percent* of AT&T's *total, nationwide* billed terminating switched access expense—even though AT&T is billed by over 1,300 different LECs") (emphasis in original).

[18] For example, a broad cross-section of industry representatives from the RLEC, larger local exchange carrier, IXC, wireless, and cable sectors recently submitted a proposal that should eliminate incentives for terminating access stimulation through abuse of the ICC system. *See Ex Parte* Letter from NTCA, WTA, *et al*., CC Docket No. 01-92, WC Docket No. 16-363 (filed Nov. 16, 2017). These sorts of surgical approaches can be employed to ensure the integrity of an ICC system that still plays an essential role in promoting universal service in rural America, thereby avoiding the need to apply blunt instruments to the ICC system as a whole that will impose collateral damage upon the notion of universal service in the process.

## V. IF THE COMMISSION PROVIDES GUIDANCE TO STATES ON DEFINING THE NETWORK EDGE, IT MUST ACCOUNT FOR THE UNIQUE CHALLENGES FACED BY RURAL CARRIERS.

As a threshold matter, the Associations reiterate their view that the states must be left to define the network "edge" for purposes of delivering traffic, but that the Commission should provide guidance for the states to follow in making such determinations by adopting a default rule to apply where states decline to act.[19] The Associations oppose, however, any network edge proposals that would further shift the cost of transporting access traffic to the network edge from large IXCs to small carriers and their rural customers. For example, under Sprint's proposed network edge rules, rural carriers would be required to bear the cost of transporting calls hundreds, if not thousands, of miles to and from the nearest Internet exchange point (IXP).[20] The same or similar goes for T-Mobile's edge proposal, under which rural carriers would be obligated to transport traffic to a single, safe harbor point of interconnection (POI) in the carrier's state.[21] While such frameworks may work for larger carriers who have the national network infrastructure in place to accommodate such arrangements or perhaps in smaller states where distances are not so great, requiring rural carriers to bear financial responsibility for transporting traffic many miles to a network edge are completely untenable and plainly inconsistent with the principles of universal service.[22]

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19 Comments of NTCA and WTA, at 20 (observing that the Tenth Circuit upheld the Commission's decision to adopt bill-and-keep, in significant part, because the Commission's decision left network edge determinations to the states).

20 Comments of Sprint, at 2-4.

21 Comments of T-Mobile, at ii-iii, 8-12 (Oct. 26, 2017).

22 It must be noted that this discussion of "edge" has nothing to do with points of physical interconnection. Rather, the sole question in this context is where financial responsibility for transport lies in the interest of ensuring rural consumers can enjoy the benefit of rates for services that are reasonably comparable to those in urban areas. If a small rural customer base is

Instead, any default rule or related guidance must take account for the unique challenges many rural carriers face. As the Associations have previously explained, many of their carrier members operate in rural areas with few customers spread across large geographic territories. As a result, the cost of providing local exchange service to these areas is extremely high. Moreover, as noted above, many of their member carriers are located far from the nearest ILEC tandem and could be hundreds of miles from the nearest IXP that Sprint identifies.

Accordingly, the Associations urge the Commission to adopt a default rule modeled on the rural transport rule in place since 2011 for traffic exchanged between rural LECs and CMRS providers, but made applicable to all forms of interexchange and CMRS traffic.[23] As the Associations explained in their opening comments, the rural transport rule – which required continuing interconnection at existing points within the RLEC serving area – has provided some degree of certainty regarding transport obligations with respect to traffic exchanged between rural LECs and CMRS providers, while at the same time helping to at least partially protect rural consumers from cost increases.[24] Moreover, extending the rural transport rule to cover all forms of traffic does not preclude the Commission from adopting a different network edge for price cap ILECs and CLECs, who may be better equipped to bear additional transport costs due to location, network scope, and/or status with respect to universal service mandates. For RLECs, however, keeping the IXC's financial responsibility for transport of access traffic at its existing location – the RLEC end office – is essential to avoid even greater economic disruption to the

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forced to bear the costs of such transport when they do not do so today, then this will necessarily drive their service rates higher and undermine the ability of their carriers to continue investing in their networks and services.

[23] *Transformation Order* at paras. 997-999.

[24] Comments of NTCA and WTA, at 20-21.

detriment of rural American consumers and communities in the event of a further reduction in ICC revenues.

## VI. THE COMMISSION SHOULD NOT DIFFERENTIATE INTERCONNECTION RULES BASED UPON UNDERLYING TECHNOLOGY.

The Associations suggested in initial comments that the Commission should take this opportunity to make clear sections 251 and 252 of the Act govern *all* interconnection arrangements, including IP-to-IP interconnection, and that different interconnection rules should not apply based simply on network technology underlying interconnection arrangements.[25]

AT&T, in contrast, continues to argue that IP interconnection arrangements should get special treatment solely by virtue of the technology used in provider networks.[26] In AT&T's view, the Commission cannot assert regulatory control over IP-to-IP interconnection because sections 251 (a), (b) and (c) of the Act apply only to "telecommunications carriers" (i.e., common carriers). Providers of IP-based services cannot be considered common carriers, however, because the application of IP technology in their networks automatically (and magically) transforms their communications services, no matter how vital to the nation or consumers, into "information services" that by definition, are beyond the Commission's reach.[27] This approach is inapposite to prior Commission pronouncements.

As noted by a U.S. House Energy and Commerce Committee paper, "the interconnection of networks has been at the heart of communications policy since the Kingsbury Commitment in

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[25] *See,* Comments of NTCA and WTA, at 22.

[26] Comments of AT&T, at 24-26.

[27] *Id.* at 25. *See, e.g.,* Comments of AT&T, WC Docket Nos. 10-90, 09-51, *et al.,* at 34-39 (filed Feb. 24, 2012); *see, also, TW Telecom, Inc., Petition for Declaratory Ruling Regarding Direct IP-to-IP Interconnection Pursuant to Section 251(c)(2) of the Communications Act: Opposition of AT&T,* WC Docket No. 11-119, at 3-5 (filed Aug. 15, 2011).

1913 when AT&T guaranteed interconnection with independent companies in exchange for a government-sanctioned monopoly on long-distance service."[28] In the current discussion of IP interconnection, it would be easy, yet imprecise, to view IP interconnection through lenses different than those ground in the 1996 Act or even the core principles captured by the Kingsbury Commitment. This is not surprising: IP-based services rely upon a different technological protocol than the TDM services that reigned in the days of the 1996 legislation and certainly the technologies that underpinned early telephone service; indeed, this approach appears to be a basis of the AT&T position. And, yet, the basic principles requiring reasonable and transparent interconnection terms have as much applicability in today's markets of emerging IP interconnection issues as they did historically to ensure universal access at affordable rates.

There is statutory basis, as well, to find that Sections 251 and 252 are applicable to IP interconnection. In the 2011 *Transformation Order,*[29] the Commission unveiled a new regime for exchange of VoIP-PSTN traffic. The Commission acknowledged, "although classification questions remain regarding retail VoIP services, commenters observe that the exchange of VoIP-PSTN traffic that is relevant to our intercarrier compensation regulations *typically occurs between two telecommunications carriers*. . . "[30] This statement encapsulates a key element of this discussion - that apart from the retail offering, the governing statute addresses

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28 "Network Interconnection," Energy and Commerce Committee, U.S. House of Representatives, at 1 (available at http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/20140715WhitePaper-Interconnection.pdf) (last viewed Aug. 4, 2014, 15:13) (E&C Paper).

29 *Supra* note 6.

30 *Transformation Order* at para. 954.

interconnection among carriers without regard to the technology underpinning the offered services.

By way of explanation, *all* telecommunications carriers are subject to section 251(a); LECs (a subset of "telecommunications carriers") are subject to the general requirements of section 251(a) *and* the specific requirements of section 251(b), and; incumbent LECs (a subset of "LECs") are subject to (i) the general requirements of section 251(a), (ii) the specific requirements of section 251(b), and (iii) additional obligations of section 251(c). When the Commission affirmed its authority over interconnection compensation among telecommunications carriers *without regard to the legal classification of the service offering* (as the Commission noted, it has "not classified interconnected VoIP services"[31]) by invoking a *specific* sub-section of the interconnection statute (251(b)(5)), the Commission indicated that the *full* umbrella of Section 251 can govern telecommunications carriers' *general* interconnection obligations.

Section 251(a) imposes a "general duty of telecommunications carriers" to "interconnect directly with the facilities and equipment of other telecommunications carriers." The statute does not distinguish or even indicate that any different treatment may arise based upon the *type* of traffic that is exchanged. Rather, section 251 (and the following section 252, which addresses the task of negotiating agreements to govern traffic exchanged by telecommunications carriers) simply ascribes the duty to interconnect (and all components of that obligation) upon telecommunications carriers. There is no mention that any duty is subordinate or otherwise affected by the *type* of technology underlying the traffic that is to be exchanged. Indeed, the Commission could not have expressly included VoIP traffic within the Section 251(b)(5)

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31 *Transformation Order* at para. 954 (internal citation omitted).

framework had the statute been technology-specific. This indicates a clear statutory path leading to the conclusion that all such traffic is necessarily subject to the overarching requirements affecting interconnection.

AT&T correctly recognizes that voice and other communications services are increasingly migrating to IP networks, but incorrectly assumes the transition to IP technology will somehow automatically resolve all industry interconnection disputes, to the point that the all-IP world will not require regulatory intervention "any more than Internet peering and transit does today . . . ."[32] This is obviously wishful thinking. Far from avoiding harm, as AT&T claims, abandonment of clear regulatory frameworks for IP interconnection will undermine and impede, rather than assist and promote, the transition to IP interconnection. Worse, this approach will make it impossible for the Commission to accomplish its basic statutory missions of protecting consumers, promoting competition and assuring universal service throughout the country.

In marked contrast, the Associations have previously suggested and continue to urge the Commission to follow a more sensible and rational course in adapting today's TDM-based regulatory framework to an all-IP world. In 2012, for example, NTCA filed a Petition for Rulemaking suggesting that, in lieu of taking a "sledgehammer" approach to deregulation, as seemingly advocated by AT&T and others, the Commission should follow a "smart regulatory" course that seeks to identify outdated rules and to eliminate or adapt them to the developing IP environment in a careful and thoughtful manner.[33] Such a balanced, "smart" approach to regulation of IP-based interconnection, would examine and improve upon what has worked (or

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[32] Comments of AT&T, at 25.

[33] *See Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution*, GN Docket No. 12-353 (filed Nov. 19, 2012).

not) in protecting consumers, promoting competition and ensuring universal service, while discarding regulations that have clearly become outdated.[34] In following this course the Commission would both promote regulatory certainty and preserve its authority to pursue the core statutory responsibilities assigned to it under the Act. The Commission would also send a clear signal to lenders, investors and operators that existing regulatory foundations will be subject to thoughtful examination and targeted changes, not wholesale abandonment.[35]

WTA, likewise, urged the Commission to fully consider the implications of proposals for wholesale abandonment of existing regulatory frameworks in response to technological change. WTA agreed that IP networks and the internet certainly should not be subject to the extensive pricing, operating, and reporting regulations traditionally imposed upon former monopoly telephone networks.[36] In fact, citing increasingly unpredictable revenue streams, limited universal service support, and disappearing intercarrier compensation, WTA supported the need for federal and state regulators to reduce regulatory cost burdens as much as feasible so that available financial resources can be focused more efficiently upon the upgrade of networks and the improvement of services.[37] At the same time, WTA pointed out that regulators need to make sure small carriers and service providers, as well as application and equipment vendors, have reasonable and affordable access to the network for their customers, and that all facilities-based carriers have adequate and appropriate incentives and financial resources to deploy, operate and maintain the infrastructure necessary to support IP networks. Accordingly, WTA supported the

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[34] *Id.* at 9-10.

[35] *Id.* at 12.

[36] Comments of WTA, GN Docket No. 12-353, at 15 (filed Jan. 28, 2013).

[37] *Id.*

need for careful consideration of interconnection rules, intercarrier compensation matters, impact on "Carrier of Last Resort" (COLR) obligations, universal service support, and continuing regulatory and reporting obligations in the context of IP regulation.[38]

The Associations therefore continue to urge the Commission to clarify that all interconnection arrangements are subject to the framework specified under section 251 of the Act, regardless of technology used for such interconnection. This is not a change in direction; to the contrary, this would merely reinforce a fundamental conclusion of the 2011 order that initiated the ICC transitions underway:

> [W]e observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral—they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks.[39]

The Associations further continue to recommend the Commission clarify that entities seeking the benefits of 251/252 interconnection rights must themselves offer telecommunications service on a common carriage basis, and that that such interconnection arrangements are subject to the same limitations under section 251 as other forms of interconnection. For example, IP interconnection should only be required where both parties have the necessary trunking capabilities in place.[40] The Commission should also actively monitor the status of IP

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[38] *Id.* at 3. *See also id.* at 15-25. Although the Commission has not yet chosen to initiate specific regulatory review proceedings as suggested by NTCA and WTA, it has made preliminary efforts to eliminate outdated or redundant regulation, and should continue to do so. *See, e.g., Modernizing Common Carrier Rules*: *Report and Order*, Docket No. 15-33, FCC 17-112, 32 FCC Rcd. 7132 (2017).

[39] *Transformation Order* at para.1342.

[40] Comments of NTCA and WTA, at 23.

interconnection arrangements as ICC reform proceeds in order to ensure that IP migration occurs without abuse of market power. As explained in our initial comments, RLECs and other small wireline and wireless carriers increasingly need to establish IP-to-IP interconnection arrangements for access to regional, national and international networks, but are potentially at a significant disadvantage with respect to larger backbone providers, who have typically negotiated specialized terms with each other but not with smaller operators.[41] Critical interconnection functions, such as reasonable interconnection points, middle mile capacity, and middle mile and transit prices are often provided on "take-it-or-leave-it" terms. Review of these factual circumstances should be part of the overall data gathering effort recommended in the Associations initial comments and further discussed above.

Finally, as discussed in our initial comments as well as prior comments on ICC reform, the Commission should continue to permit RLECs to rely on tariffs (and associated NECA pooling arrangements) for establishing terms and conditions for interconnection arrangements and for managing revenue distributions, while at the same time providing these carriers with the ability to negotiate individualized agreements where individual circumstances permit and where parties have roughly equal bargaining power.[42] This approach has worked well during the initial stages of ICC reform and should be continued as the IP transition proceeds.

## VII. CONCLUSION.

WHEREFORE the reasons set forth herein and above, the Associations urge the Commission to defer any reform of ICC rules to such time as a comprehensive analysis of their impact on carriers has been completed. Moreover, such analysis must contemplate the impact of

41 *Id.*

42 *Id.* at 24.

current high-cost budget constraints on rural carriers. A replacement for ICC revenues that would be necessary if ICC reform eliminated current revenues streams must be a supplement to existing resources, rather than a mechanism "wedged in" to the existing budget.

To the extent the Commission identifies arbitrage relating to current ICC regulations, such activity should be addressed in a targeted manner. Allegations of inappropriate activity, such as may exist, have been ascribed to only a subset of carriers. Regulatory reform intended to address outliers should affect those outliers, only, and not wreak adverse consequences upon carriers that are not engaged in questionable activity.

Finally, the Commission must ensure that the statutory mandate of universal service is sustained in ICC actions. The resolution of network edge definitions and IP interconnection must assure reasonable and affordable access to networks by all carriers.

Respectfully submitted,

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