

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<br>Exchange Carriers | ) | WC Docket No. 07-135 |
|   | ) |                      |
| High-Cost Universal Service Support                                   | ) | WC Docket No. 05-337 |
|   | ) |                      |
| Developing an Unified Intercarrier Compensation<br>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 |

**NOTICE OF PROPOSED RULEMAKING AND FURTHER NOTICE OF PROPOSED  
RULEMAKING**

**Adopted: February 8, 2011**

**Released: February 9, 2011**

**Comment Date on Section XV: [30 days after date of publication in the Federal Register]  
Reply Comment Date on Section XV: [45 days after date of publication in the Federal Register]  
Comment Date on the Remaining Sections: [45 days after date of publication in the Federal Register]  
Comment Date of State Members of the Federal-State Joint Board on Universal Service: [59 days  
after date of publication in the Federal Register]  
Reply Comment Date on Remaining Sections: [80 days after date of publication in the Federal  
Register]**

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker  
issuing separate statements.

**TABLE OF CONTENTS**

| Heading  | Paragraph # |
|--|-------------|
| I. INTRODUCTION.....   | 1           |
| II. EXECUTIVE SUMMARY .....  | 14          |
| A. Universal Service Fund.....   | 18          |
| 1. Immediate Reforms .....   | 19          |
| 2. Long-Term Vision.....   | 30          |
| B. Intercarrier Compensation.....  | 34          |
| 1. Immediate Reforms .....   | 35          |
| 2. Comprehensive Reform.....   | 40          |
| III. ROLE OF INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE<br>PROGRAMS ..... | 45          |
| IV. LEGAL AUTHORITY TO SUPPORT BROADBAND.....                                  | 55          |

|     |  |     |
|-----|--|-----|
| A.  | Additional Section 254(b) Principle.....   | 58  |
| B.  | Commission Authority to Support Broadband.....   | 60  |
| 1.  | Section 254.....   | 61  |
| 2.  | Section 706.....   | 66  |
| 3.  | Title I Ancillary Authority.....   | 68  |
| 4.  | Conditional Support.....   | 70  |
| 5.  | Other Approaches.....  | 72  |
| V.  | SETTING AMERICA ON A PATH OF REFORM.....   | 75  |
| A.  | National Goals and Priorities for Universal Service.....                                     | 76  |
| B.  | Encouraging State Action To Advance Universal Service.....                                   | 84  |
| C.  | Eligible Telecommunications Carrier Requirements.....  | 88  |
| D.  | Public Interest Obligations of Fund Recipients.....  | 90  |
| 1.  | Characteristics of Voice Service.....  | 95  |
| 2.  | Voice Obligations.....   | 98  |
| 3.  | Characteristics of Broadband Service.....  | 103 |
| 4.  | Broadband Obligations.....   | 121 |
| a.  | Service, Coverage, and Deployment.....   | 124 |
| b.  | Affordable and Reasonably Comparable Rates.....  | 137 |
| c.  | Additional Considerations.....   | 148 |
| VI. | NEAR-TERM REFORMS.....   | 157 |
| A.  | Rationalizing Loop Support, Local Switching Support, and Interstate Common Line Support..... | 162 |
| 1.  | Background.....  | 164 |
| 2.  | Modification of High-Cost Loop Support.....  | 175 |
| 3.  | Local Switching Support.....   | 186 |
| 4.  | Corporate Operations Expenses.....   | 194 |
| 5.  | Limits on Reimbursable Operating and Capital Costs.....                                      | 201 |
| 6.  | Limits on Total per Line High-cost Support.....  | 208 |
| B.  | Reducing Barriers to Operating Efficiencies.....   | 216 |
| 1.  | Study Area Waiver Process.....   | 218 |
| 2.  | Revising the “Parent Trap” Rule, Section 54.305.....   | 225 |
| C.  | Transitioning IAS to CAF.....  | 228 |
| 1.  | Background.....  | 229 |
| 2.  | Discussion.....  | 233 |
| D.  | Rationalizing Competitive ETC Support Through Elimination of the Identical Support Rule..... | 241 |
| 1.  | Background.....  | 243 |
| 2.  | Discussion.....  | 246 |
| E.  | The First Phase of the Connect America Fund.....   | 261 |
| 1.  | Legal Authority to Establish a Competitive Process for CAF.....                              | 262 |
| 2.  | Overall Design of Phase I CAF.....   | 266 |
| 3.  | Size of Phase I CAF.....   | 274 |
| 4.  | One CAF Provider Per Unserved Area.....  | 281 |
| 5.  | Auction to Determine Awards of Support.....  | 284 |
| 6.  | Identifying Unserved Areas Eligible for Support.....   | 289 |
| 7.  | Pre-existing Deployment Plans.....   | 308 |
| 8.  | Public Interest Obligations for Phase I CAF.....   | 309 |
| 9.  | Support Eligibility Requirements.....  | 316 |
| a.  | ETC Designation and Service Areas.....   | 318 |
| b.  | Authorization to Provide Required Services and Other Certifications.....                     | 320 |
| 10. | Competitive Award Process.....   | 324 |
| a.  | Short-Form Application.....  | 326 |
| b.  | Basic Auction Design.....  | 331 |

- c. Bidding Process ..... 332
    - d. Information and Competition..... 347
    - e. Auction Cancellation ..... 348
  - 11. Post-auction Process and Administration of Phase I CAF ..... 349
    - a. Post-auction Long-Form Application ..... 349
    - b. Disbursing Support ..... 361
      - (i) Support Payments..... 361
      - (ii) Support Liabilities ..... 365
    - c. Audits and Compliance..... 368
    - d. Delegation of Authority ..... 371
  - F. Targeting Support ..... 372
    - 1. Disaggregating Support..... 375
    - 2. Redrawing Study Areas..... 384
  - G. Pending Proceedings and Other Issues ..... 389
- VII. LONG-TERM VISION FOR THE CONNECT AMERICA FUND..... 398
  - A. Supported Providers..... 402
  - B. Sizing the Federal Commitment to Universal Service..... 412
  - C. Alternative Approaches for Targeting and Distribution of CAF funds..... 417
    - 1. Competitive Bidding Everywhere ..... 418
    - 2. Right of First Refusal Everywhere, Followed by Competitive Bidding Where Necessary..... 431
    - 3. Continued Rate-of-Return Reform for Certain Areas ..... 448
- VIII. INCREASING ACCOUNTABILITY AND MEASURING PROGRESS TO ENSURE INVESTMENTS DELIVER INTENDED RESULTS ..... 457
  - A. Increasing Transparency, Oversight and Accountability ..... 457
    - 1. Reporting Requirements..... 458
    - 2. Internal Controls..... 468
    - 3. Additional Monitoring Procedures ..... 477
    - 4. Record Retention Requirements..... 478
- IX. ESTABLISHING CLEAR PERFORMANCE GOALS AND MEASURES FOR UNIVERSAL SERVICE..... 479
- X. INTERCARRIER COMPENSATION FOR A BROADBAND AMERICA..... 490
  - A. Steps Necessary to Achieve Our Objectives ..... 490
  - B. Why Intercarrier Compensation Must Be Reformed ..... 494
- XI. LEGAL AUTHORITY TO ACCOMPLISH COMPREHENSIVE REFORM ..... 509
- XII. CONCEPTS TO GUIDE INTERCARRIER COMPENSATION REFORM ..... 523
  - A. Concepts to Guide Sustainable Reform ..... 524
  - B. Intercarrier Compensation Methodologies for All-IP Networks..... 529
- XIII. SELECTING THE PATH TO MODERNIZE EXISTING RULES AND ADVANCE IP NETWORKS..... 533
  - A. Reform Based on the Existing Jurisdictional Framework..... 537
    - 1. Reforms Undertaken by the Commission..... 538
    - 2. Reforms Undertaken by the States ..... 543
  - B. Reform Based on the 1996 Act Framework..... 550
  - C. Other Transition Issues ..... 556
- XIV. DEVELOPING A RECOVERY MECHANISM..... 559
  - A. Threshold Considerations ..... 560
  - B. Determining the Type and Amount of Recovery ..... 564
  - C. Evaluating Reasonable Recovery from End-Users ..... 573
    - 1. Residential Benchmark..... 573
    - 2. Interstate Subscriber Line Charges..... 579
  - D. Criteria for Recovery from the Connect America Fund..... 585
  - E. Specific Recovery Considerations for Rate-of-Return Carriers..... 595

XV. REDUCING INEFFICIENCIES AND WASTE BY CURBING ARBITRAGE OPPORTUNITIES ..... 603

    A. Intercarrier Compensation Obligations for VoIP Traffic..... 608

        1. Background..... 610

        2. Discussion..... 612

    B. Rules To Address Phantom Traffic..... 620

        1. Background..... 621

        2. Discussion..... 625

    C. Rules to Reduce Access Stimulation..... 635

        1. Background..... 639

            a. Access Rate Regulation ..... 640

            b. Interstate Access Tariffs and Interexchange Carriers ..... 652

            c. Prior Commission Action..... 655

        2. Discussion..... 658

            a. Proposed Access Stimulation Rules..... 658

            b. Other Proposals..... 667

XVI. INTERCONNECTION AND RELATED ISSUES ..... 678

XVII. PROCEDURAL MATTERS ..... 690

    A. Filing Requirements..... 690

    B. Initial Regulatory Flexibility Analysis..... 699

    C. Paperwork Reduction Act Analysis ..... 700

XVIII. ORDERING CLAUSES ..... 701

Appendix A: Proposed Universal Service Rules

Appendix B: Proposed Call Signaling Rules

Appendix C: Proposed Access Stimulation Rules

Appendix D: Incentive Regulation: A Framework for Calculating Intercarrier Compensation Replacement Payments for Rate-of-Return Carriers

Appendix E: Initial Regulatory Flexibility Analysis

**I. INTRODUCTION**

1. Bringing robust, affordable broadband to all Americans is the great infrastructure challenge of our time. The private sector is taking the lead in meeting this challenge, but in areas of the country where it is not economically viable to deploy and/or operate broadband networks, including many rural areas, public support is needed to spur private investment. Today, as the National Broadband Plan recommends, we propose to fundamentally modernize the Commission’s Universal Service Fund (USF or Fund) and intercarrier compensation (ICC) system. We propose to do so by eliminating waste and inefficiency and reorienting USF and ICC to meet the nation’s broadband availability challenge, transforming a 20th century program into an integrated program tailored for 21st century needs and opportunities.

2. The principle that all Americans should have access to communications services, a concept referred to as universal service, has been at the core of the Commission’s mandate since its founding. Congress created this Commission in 1934 for the purpose of making “available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>1</sup> In the decades since, federal and state policymakers developed a complex system of public-private partnerships that supports deployment and adoption of telephone service in costly-to-serve areas. A combination of payments from long distance to local phone companies (ICC) and explicit support from USF has helped local phone

---

<sup>1</sup> 47 U.S.C. § 151.

## XV. REDUCING INEFFICIENCIES AND WASTE BY CURBING ARBITRAGE OPPORTUNITIES

603. The comprehensive intercarrier compensation reforms on which we seek comment in this Notice would, if adopted, significantly reduce and eventually eliminate opportunities and incentives for arbitrage. We believe, nevertheless, consistent with the recommendations in the National Broadband Plan, that we should take action to address arbitrage until such reform is fully implemented.<sup>909</sup> In this section, we therefore seek comment on rules intended to curb arbitrage opportunities and thereby reduce inefficiencies and wasteful use of resources enabled by the current intercarrier compensation system.

604. First, the Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic. This uncertainty has led to numerous billing disputes and litigation and may be deterring innovation and the introduction of new services.<sup>910</sup> Thus, we seek comment on the appropriate intercarrier compensation framework for voice over Internet protocol (VoIP) traffic.

605. Second, significantly different rates for terminating traffic create the incentive for service providers to disguise the nature, or conceal the source, of the traffic being sent to avoid or reduce payments to other service providers. This type of arbitrage is referred to as “phantom traffic.”<sup>911</sup> We seek comment below on revisions to the Commission’s call signaling rules to reduce phantom traffic.

606. Third, intercarrier rates above incremental cost are an incentive to increase revenues through arrangements such as “access stimulation,” in which carriers seek to inflate the amount of traffic they receive subject to intercarrier compensation payments. For example, a LEC with high switched access rates will agree to share its access revenues with a company that expects to receive large numbers of incoming calls, such as a company providing an adult chat line. Because these incentives exist, investment is directed to arbitrage activities, such as “free” conference calling services, the cost of which are ultimately spread among all customers whether they use any of these offerings or not. As USTelecom noted, “[s]ignificant levels of regulatory arbitrage are an indictment of a poorly constructed or enforced regulatory regime and an unproductive use of financial and intellectual capital. It results in a great deal of resources of both communications providers and state regulators and courts being devoted to brokering and litigating disputes stemming from this archaic system.”<sup>912</sup> We therefore seek comment on a proposal to amend the Commission’s access charge rules to address access stimulation and help ensure that rates remain just and reasonable as required by section 201(b) of the Act.

607. In addition to these proposals, we also invite comment on other arbitrage issues that we should consider. In particular, parties should provide information about other arbitrage schemes present in the market or that might arise in the future.

### A. Intercarrier Compensation Obligations for VoIP Traffic

608. In this section, we seek comment on the appropriate intercarrier compensation framework for voice over Internet protocol (VoIP) traffic. The Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such

---

<sup>909</sup> The National Broadband Plan recommends that as a part of comprehensive intercarrier compensation reform, the Commission should adopt interim rules to reduce arbitrage in the intercarrier compensation regime, including prohibiting carriers from eliminating information necessary for a terminating carrier to bill an originating carrier for a call. National Broadband Plan at 148.

<sup>910</sup> See *infra* para. 608.

<sup>911</sup> See *supra* para. 620.

<sup>912</sup> US Telecom Comments re NBP PN #19 at 7 (filed Dec. 7, 2009).

traffic. There is mounting evidence that this lack of clarity has not only led to billing disputes and litigation,<sup>913</sup> but may also be deterring innovation and introduction of new IP services to consumers.<sup>914</sup>

609. Consistent with the National Broadband Plan recommendation to specify the treatment of VoIP for purposes of intercarrier compensation, we seek comment on the appropriate treatment of interconnected VoIP traffic for purposes of intercarrier compensation. In particular, as we are undertaking intercarrier compensation and universal service reform and as the market is evolving toward broadband, all-IP networks, we need a framework for VoIP traffic that is consistent with those overarching changes. We therefore seek comment below on a range of approaches, including how to define the precise nature and timing of particular intercarrier compensation payment obligations.

### 1. Background

610. Since 2001, the Commission has sought comment in various proceedings on the appropriate intercarrier compensation obligations associated with telecommunications traffic that originate or terminate on IP networks.<sup>915</sup> Even so, the Commission has declined to explicitly address the intercarrier compensation obligations associated with VoIP traffic.<sup>916</sup> Given this lack of clear resolution,

---

<sup>913</sup> See, e.g., Letter from Stephen Brown, Counsel for 3 Rivers Telephone Cooperative, Inc., et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket Nos. 01-92, 99-68 at 1 (filed June 24, 2009) (citing *Three Rivers Tel. Coop., Inc. v. Commpartners, LLC*, Case No. 08-68-M-DWM (D. Mont.) (filed May 21, 2008)); Letter from Hank Hultquist, Vice President, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket Nos. 99-68, 07-135, 04-36, GN Docket No. 09-51 Attachment at 7 (filed Mar. 15, 2010) (describing a “litigation bonanza”); Letter from Colin Sandy, Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket No. 01-92 Attach. at 9-10 (filed Aug. 12, 2009) (describing pending cases). See also, e.g., CenturyLink, Inc., Form 10-Q (filed Nov. 5, 2010) (“subsidiaries of CenturyLink filed two lawsuits against subsidiaries of Sprint Nextel to recover terminating access charges for VoIP traffic owed under various interconnection agreements and tariffs which presently approximate \$32 million”); *Pleading Cycle Established for Comments on Global NAPS Petition for Declaratory Ruling and for Preemption of The Pennsylvania, New Hampshire and Maryland State Commissions*, WC Docket No. 10-60, Public Notice, 25 FCC Rcd 2692 (2010) (seeking comment on request for declaratory rulings regarding “controversies between Global and several local exchange carriers (‘LECs’) regarding the tariff treatment of Voice over Internet Protocol (‘VoIP’) traffic”).

<sup>914</sup> National Broadband Plan at 142. “Because providers’ rates are above cost, the current system creates disincentives to migrate to all IP-based networks. For example, to retain ICC revenues, carriers may require an interconnecting carrier to convert [VoIP] calls to time-division multiplexing in order to collect intercarrier compensation revenue. While this may be in the short-term interest of a carrier seeking to retain ICC revenues, it actually hinders the transformation of America’s networks to broadband.” *Id.* See also AT&T Comments in re NBP PN #25 at 12 (filed Dec. 22, 2009) (maintaining legacy regulatory structures diverts resources from the investments necessary to achieve broadband deployment); Global Crossing Comments in re NBP PN#19 at 5 (filed Dec. 7, 2009) (outdated regulations undermine incentives for carriers to transition to IP-based networks); *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6581-82, para. 189 (because carriers receive significant revenues from terminating telecommunications traffic they have reduced incentives to upgrade their networks or to negotiate to accept IP traffic because both will reduce their intercarrier compensation revenues); Qwest Aug. 30, 2010 *Ex Parte* Letter, Attach. at 3 (“Current ICC system crippled by inefficiencies and arbitrage. Current ICC system never designed to promote broadband deployment.”); Verizon Comments in re NBP PN #19 at 18 (filed Dec. 7, 2009) (it no longer makes sense to maintain a system that allows the application of different rates to different traffic types based on antiquated reasons).

<sup>915</sup> See, e.g., *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9629, para. 52; *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4903-05, paras. 61-62; *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4722, para. 80; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6618-20, paras. 269-75.

<sup>916</sup> See, e.g., *Feature Group IP Petition for Forbearance From Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission’s Rules*, WC Docket No. 07-256, Memorandum Opinion and Order, 24 FCC Rcd 1571 at 1575-76, paras. 7-10 (2009) *pet. for review denied*, 25 FCC Rcd 8867 (2010), *pet. for review pending*, *Feature Group IP et al., v. FCC*, No. 10-1257 (D.C. Cir. filed Aug. 23, 2010) (Order denying forbearance because the request would cause a regulatory void in contradiction of the plain language of the Communications Act since the Commission has not yet taken affirmative action to address intercarrier compensation (continued....))



particularly as consumer demand for VoIP services continues to increase,<sup>917</sup> disputes increasingly have arisen among carriers and VoIP providers regarding intercarrier compensation for VoIP traffic. As AT&T observes, for example, various parties have taken “extreme all-or-nothing positions” regarding the compensation obligations associated with VoIP traffic.<sup>918</sup> Thus, although some LECs contend that this traffic is subject to the same intercarrier compensation obligations as any other voice traffic, other carriers contend no compensation is required.<sup>919</sup> In addition, there is some evidence of asymmetrical revenue flows for traffic exchanged between a traditional wireline LEC and a VoIP provider, with the VoIP provider (or its LEC partner) collecting access charges, for example, but refusing to pay them.<sup>920</sup>

(Continued from previous page) \_\_\_\_\_

regulation for VoIP traffic). *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3513 at 3520-21, para. 15 (2007) (Order in which the Commission refused to classify VoIP service, finding that doing so was unnecessary to decide an interconnection dispute involving completing VoIP traffic). We note that the Commission has addressed the classification, and thus the intercarrier compensation obligations, associated with certain traffic that uses IP transport. See, e.g., *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 at 7457-58, para. 1 (2004) (Order finding that calls dialed on a 1+ basis, using IP technology in the middle and that meet three criteria are telecommunications service, not information service).

<sup>917</sup> See, e.g., Sept. 2010 Trends in Telephone Service at Table 8.3.

<sup>918</sup> Letter from Henry Hultquist, Vice President-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 99-68, 01-92, WC Docket Nos. 04-36, 05-337, 07-135 at 2 (filed July 17, 2008) (AT&T July 17, 2008 *Ex Parte* Letter). See also *id.*, Attach. 1 at 4, 8-9. See also NECA Comments in re NBP PN #19, at 28-30 (filed Dec. 7, 2009) (noting that many billing disputes arise from a refusal to pay when a carrier claims that traffic is “enhanced” because of the use of IP-based technology and the Commission has not decided the appropriate compensation for such traffic).

<sup>919</sup> See, e.g., Letter from Joseph A. Douglas, Vice President-Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 04-36, Attach. at 2 (filed May 23, 2008); Letter from Kristopher E. Twomey, Regulatory Counsel, CommPartners, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 1 (filed Dec. 12, 2007); Letter from Joseph A. Douglas, Vice President-Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 04-36, Attach. at 6 (filed May 2, 2007); Letter from Gregory J. Vogt, counsel for CenturyTel, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 96-98, 99-68, WC Docket No. 05-337 at 4-5 (filed Oct. 20, 2008); Windstream Comments, CC Docket Nos. 94-68, 96-45, 96-98, 99-68, WC Docket Nos. 04-36, 05-337, 06-122, 07-135, 08-152 at 14-15 (filed Aug. 21, 2008); Letter from Stuart Polikoff, Director of Government Relations, OPASTCO, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, WC Docket No. 05-337, Attach. at 3 (filed Oct. 16, 2008); AT&T July 17, 2008 *Ex Parte* Letter, Attach. 1 at 11; Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68, 01-92, WC Docket Nos. 05-337, 06-122, 07-135 at 9-10 (filed Oct. 23, 2008); Letter from Colin Sandy, Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket No. 01-92 at 1 (filed Sept. 23, 2009); Letter from Tom Karalis, Fred Williamson & Associates, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 09-47, 09-51, 09-137, 10-66, CC Docket Nos. 09-45, 01-92 Attach. at 11 (filed Apr. 7, 2010).

<sup>920</sup> See, e.g., AT&T July 17, 2008 *Ex Parte* Letter, Attach. 2 at 7-8, 18-19; Letter from James C. Smith, SBC, to Chairman Powell, FCC, WC Docket No. 03-266, Attach. at 16 (The possibility that access charges “may flow from PSTN carriers to VoIP providers and their CLEC partners but never in the opposite direction . . . could lead to the same type of economically irrational arbitrage opportunity the Commission thought it had stamped out when it reduced reciprocal compensation rates for dial-up ISP-bound traffic, for which compensation flows were similarly unidirectional. Where an opportunity for arbitrage exists, moreover, the industry tends not to tarry long before it finds a means to exploit it. The result, again, would be discriminatory, inimical to the interests of consumers, and at war with the public interest.”) cited in AT&T July 17, 2008 *Ex Parte* Letter, Attach. 2 at 8 n.20; Connected Planet, MagicJack Attacks, May 2, 2008, <http://connectedplanetonline.com/voip/news/magicjack-attacks-0502/> (“As a VoIP company, we don’t have to pay for access charges. . . . Telephone companies do have to pay access charges to terminate calls to our customers.”). See also Letter from Samuel L. Feder, counsel for Cox *et al.*, to Marlene H. (continued. . .)

611. There is also evidence that the uncertainty may be affecting IP innovation and investment, in particular. For example, some commenters observe that “[b]oth new entrants and established incumbents seeking to offer VoIP products and services are hampered by continued regulatory uncertainty. As the VoIP industry has shown over the past few years, the impact of regulation affects whether consumers will have access to innovative features and functionalities offered by VoIP providers at the edge or if they will have access only to very limited VoIP products that merely mimic the circuit-switched offerings of the past.”<sup>921</sup> Likewise, Verizon notes “that the uncertainty and complexity endemic to the existing intercarrier compensation system may well deter providers from rolling out advanced services.”<sup>922</sup>

## 2. Discussion

612. *Scope of VoIP Traffic.* In addressing these compensation issues, we propose to focus specifically on the intercarrier compensation rules governing interconnected VoIP traffic. Interconnected VoIP services, among other things, allow customers to make real-time voice calls to, and receive calls from, the public switched telephone network (PSTN),<sup>923</sup> and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services.<sup>924</sup> We seek comment on whether the proposed focus on interconnected VoIP is too narrow or whether the Commission should consider intercarrier compensation obligations associated with other forms of VoIP traffic, as well. We also seek comment on whether the Commission should distinguish between facilities-based “fixed” and “nomadic” interconnected VoIP.<sup>925</sup>

613. *Defining the Appropriate Intercarrier Compensation Regime.* There is considerable dispute about whether, and to what extent, interconnected VoIP traffic is subject to existing intercarrier compensation rules. These disputes have been costly and resulted in uncertain or unexpectedly reduced revenue streams for some carriers that may rely on those revenues for network investments. We also note that the Commission has recognized the need to move away from today’s intercarrier compensation system. Balancing these concerns suggests a spectrum of possible outcomes. The alternative approaches

(Continued from previous page) \_\_\_\_\_  
Dortch, Secretary, FCC, CC Docket No. 01-92 at 1-2 (filed Feb. 1, 2011) (expressing concern about nonpayment of access charges for traffic exchanged in TDM where the traffic is alleged to be “IP-originated or IP-terminated,” including on the part of companies with competing local exchange carrier operations).

<sup>921</sup> High Tech Associations 2008 ICC/USF FNPRM Comments at 9-10.

<sup>922</sup> Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 04-36, 05-337 CC Docket Nos. 96-45, 01-92 at 1 (filed Dec. 11, 2009).

<sup>923</sup> Interconnected VoIP service “(1) [e]nables real-time, two-way voice communications; (2) [r]equires a broadband connection from the user’s location; (3) [r]equires IP-compatible customer premises equipment (CPE); and (4) [p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.” 47 C.F.R. § 9.3.

<sup>924</sup> See *IP-Enabled Services*, WC Docket No. 04-36, Report and Order, 24 FCC Rcd 6039 at 6045-46 n.36 (2009) (citing a House of Representatives survey that in 2007 over nine million consumers used VoIP service as a substitute for traditional telephone service); see also *Local Telephone Competition: Status as of December 31, 2009*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at 3 (Jan. 2011) (“Between December 2008 and December 2009 – the first full year of mandatory interconnected VoIP reporting – interconnected VoIP subscriptions increased by 22% (from 21 million to 26 million) and retail switched access lines decreased by 10% (from 141 million to 127 million). The combined effect was an annual decrease of 6% in wireline retail local telephone service connections (from 162 million to 153 million).”).

<sup>925</sup> See, e.g., *Petition of Qwest Corporation For Forbearance Pursuant To 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8650, para. 54 & n.163 (2010) (*Qwest Phoenix Order*) (distinguishing between, on the one hand, “facilities-based” VoIP services, such as those provided by cable operators, and, on the other hand, “over-the-top” or “nomadic” VoIP services).



discussed below vary along two main dimensions: (1) the appropriate timing for specifying the intercarrier compensation obligations applicable to interconnected VoIP traffic; and (2) the appropriate magnitude of intercarrier compensation charges that should apply to interconnected VoIP traffic. As noted in our discussions of each alternative below, we also seek comment on any aspects of existing law that would need to be addressed to define an appropriate intercarrier compensation regime for interconnected VoIP traffic. In addition, we seek comment on how the various options below would be administered. For example, could terminating carriers identify interconnected VoIP traffic – as distinct from other traffic – for purposes of intercarrier compensation? Are there technical issues that would need to be resolved to enable a terminating carrier to identify whether traffic originated as VoIP? We seek comment on these issues.

614. We recognize the need for the Commission to move forward expeditiously with reform and understand that disputes regarding compensation for interconnected VoIP traffic have increased during the time these issues have been pending. We recognize that such disputes could impede the industry's ability to make an orderly transition to a reformed intercarrier compensation system. Accordingly, nothing in the instant Notice should be read to encourage, during the pendency of this proceeding, unilateral action to disrupt existing commercial arrangements regarding compensation for interconnected VoIP traffic. Such actions could create additional uncertainty for investments in broadband-capable networks and fuel further disputes, which is counter to our goal of developing a predictable framework for reform, and we strongly discourage such actions. Given that some parties have negotiated different rates to resolve the treatment of VoIP traffic, we seek comment on how the different options we seek comment on here may impact these existing commercial arrangements. We also seek comment on whether particular reform options would have retroactive effect, and whether such retroactivity would be counterproductive.

615. *Immediate Adoption of Bill-and-Keep for VoIP.* Under one alternative, the Commission could adopt bill-and-keep for interconnected VoIP traffic. We note that section 251(b)(5) requires LECs “to establish reciprocal compensation arrangements for the transport and termination of telecommunications,”<sup>926</sup> and that interconnected VoIP traffic is “telecommunications” traffic, regardless of whether interconnected VoIP service were to be classified as a telecommunications service or information service.<sup>927</sup> Moreover, the Commission can specify that VoIP traffic is within the section 251(b)(5) framework even if one of the parties is not a LEC.<sup>928</sup> Could and should the Commission bring interconnected VoIP traffic within the section 251(b)(5) framework and immediately apply the bill-and-keep methodology? Is there other legal authority by which to adopt such an approach? What factual and policy basis would justify this approach for interconnected VoIP traffic? How would such a regime be administered? Are there technical issues associated with a bill-and-keep methodology that would need to be resolved to implement such an approach?

616. *Immediate Obligation to Pay VoIP-Specific Intercarrier Compensation Rates.* Alternatively, the Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation charges under a regime unique to interconnected VoIP traffic.<sup>929</sup> For example, should all

---

<sup>926</sup> 47 U.S.C. § 251(b)(5). Although section 251(g) preserved the pre-1996 Act regulatory regime that applies to access traffic, including rules governing “receipt of compensation,” 47 U.S.C. 251(g), section 251(g) “is worded simply as a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act.” *WorldCom*, 288 F.3d 429, 430.

<sup>927</sup> See, e.g., *Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-40, paras. 39-41 (2006).

<sup>928</sup> See, e.g., *Local Competition First Report and Order*, 11 FCC Rcd at 16005, para. 1023 (bringing LEC-CMRS traffic exchange within the section 251 framework as it relates to intraMTA (including interstate intraMTA) traffic).

<sup>929</sup> We understand that some commercial arrangements apply a specific rate for VoIP traffic. See Joan Engebretson, *Verizon, Bandwidth.com Interconnection Deal Could Be Precedent Setting*, ConnectedPlanet.com (Jan. 20, 2011), (continued....)

interconnected VoIP traffic be subject to intercarrier compensation rates equal to interstate access charges; reciprocal compensation rates; or some other defined rate, such as \$0.0007 per minute? If rates equal to interstate access charges are applied to VoIP traffic, would that create an incentive to originate all voice traffic as VoIP—or simply declare it to be originated as VoIP—such that little traffic ultimately would be billed at the higher rates?<sup>930</sup> What impact would a VoIP-specific intercarrier compensation rate have on investment in and deployment of broadband facilities? How should those interconnected VoIP-specific rates decline as intercarrier compensation rates decline more generally as part of comprehensive reform? Could the Commission rely on section 251(b)(5) for its legal authority in this context, given questions about the extent to which the Commission can set particular rates rather than a methodology under that legal framework?<sup>931</sup> We recognize that, even for traffic subject to section 251(b)(5), the Commission retains its authority to set rates for certain forms of traffic.<sup>932</sup> Are there other sources of legal authority to adopt such an approach for all interconnected VoIP traffic, consistent with relevant precedent? Alternatively, is there legal authority for the Commission to adopt such an approach for a subset of interconnected VoIP traffic? What factual and policy basis would justify any such approach specifically for interconnected VoIP traffic, and how would such a regime be administered?

617. *Obligation to Pay Intercarrier Compensation As Part of Future Glide Path.* The Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation—whether standard rates<sup>933</sup> or VoIP-specific rates—but only as of some future date. In particular, we note that, as discussed above, this Notice proposes a gradual transition away from the current intercarrier compensation system to help ensure predictability for providers and investors.<sup>934</sup> What flexibility, if any, does the Commission have to adopt the intercarrier compensation obligations for interconnected VoIP traffic specific to some future point in that glide path? What legal authority would enable the Commission to adopt this alternative?

618. *Immediate Obligation to Pay Existing Intercarrier Compensation Rates.* The Commission could determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges—intrastate access, interstate access, and reciprocal compensation—as other voice telephone service traffic both today, and during any intercarrier compensation reform transition. Although this outcome potentially could result if interconnected VoIP services were classified as telecommunications services, we recognize that the Commission thus far has not addressed the classification of interconnected VoIP services.<sup>935</sup> Given that, we seek comment on whether the

(Continued from previous page) \_\_\_\_\_

<http://connectedplanetonline.com/independent/news/verizon-bandwidthcom-interconnection-could-set-precedent-0120/#>.

<sup>930</sup> We note that some carriers have expressed concern about other providers making overstated claims about the portion of their traffic that is VoIP. See, e.g., D&E Communications 2008 ICC/USF FNPRM Comments at 4-6; USTelecom 2008 ICC/USF FNPRM Comments at 8 n.11.

<sup>931</sup> See *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) (*Iowa Utils. I*), *rev'd in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (rejecting proxy rates established by the Commission for use until states completed pricing proceedings because “the Act clearly grants the states the authority to set the rates for interconnection, unbundled access, resale, and transport and termination of traffic,” and thus “the FCC has no valid pricing authority over these areas of new localized competition”).

<sup>932</sup> See *Core Communications Inc. v. FCC*, 592 F.3d 139, 143-45 (D.C. Cir. 2010); *Iowa Utils. I*, 120 F.3d at 800 n.21.

<sup>933</sup> See *infra* para. 618.

<sup>934</sup> See *supra* Section XIII.

<sup>935</sup> The Commission has only addressed the statutory classification of two forms of VoIP, neither of which are interconnected VoIP. For one, the Commission classified as an “information service” Pulver.com’s free service that did not provide transmission and offers a number of computing capabilities. *Petition for Declaratory Ruling that Pulver.com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Order and Opinion, 19 FCC Rcd 3307 (2004) (*Pulver.com Order*). The Commission also (continued....)

Commission could achieve this outcome without classifying interconnected VoIP. For example, would this alternative result if the Commission held that the “ESP exemption”<sup>936</sup> did not encompass interconnected VoIP traffic? Could the Commission rely on section 251(b)(5), or some other legal authority, to adopt such an approach? Depending upon the approach used by the Commission, would it need to clarify jurisdictional issues associated with interconnected VoIP traffic?<sup>937</sup>

619. *Alternative Approaches.* We also seek comment on other approaches that have been proposed for addressing the intercarrier compensation obligations associated with VoIP traffic. For example, AT&T has proposed that, in the absence of comprehensive intercarrier compensation reform, the Commission should adopt a regime under which terminating LECs charge interstate access and reciprocal compensation for VoIP traffic, as well as intrastate access for such traffic if those charges are at or below the level of the carrier’s interstate access rates.<sup>938</sup> By comparison, PAETEC has proposed that, if a carrier adopts a unified intercarrier compensation rate, it should have the clear right to charge that rate for all traffic it terminates, including IP-originated traffic.<sup>939</sup> XO has proposed that all carriers be required to transition to IP-based interconnection within five years, with a unified default compensation rate for all

(Continued from previous page) \_\_\_\_\_

has found that certain “IP-in-the-middle” services are “telecommunications services” where they: (1) use ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originate and terminate on the public switched telephone network (PSTN); and (3) undergo no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology. *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*); *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7297, para. 18 (2006) (*Prepaid Calling Card Order*). Even though the Commission has not addressed the classification of VoIP traffic, we note that some states have made their own determinations regarding the statutory classification of VoIP. See, e.g., *Investigation into Whether Providers of Time Warner ‘Digital Phone’ Service and Comcast ‘Digital Voice’ Service Must Obtain Certificate of Public Convenience and Necessity to Offer Telephone Service*, Docket No. 2008-421, Order (ME PUC rel. Oct. 27, 2010).

<sup>936</sup> In developing the access charge regime, the Commission recognized that certain companies, such as enhanced service providers (ESPs), had “been paying the generally much lower business service rates” and “would experience severe rate impacts were we immediately to assess carrier access charges up on them.” *First Reconsideration of 1983 Access Charge Reform Order*, 97 FCC 2d 682, 715, para. 83. Thus, the Commission established the so-called “ESP exemption,” which permits enhanced service providers to purchase local business access lines from intrastate tariffs as end-users, or to purchase special access connections, and thus avoid paying carrier-to-carrier access charges. See, e.g., *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC Docket 87-215, Order, 3 FCC Rcd 2631, 2632-33, para. 13 (1988) (*ESP Exemption Order*); *Access Charge Reform: Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16133, para. 345 (1997) (*Access Charge Reform Order*).

<sup>937</sup> *Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, Declaratory Ruling, FCC 10-185, paras. 5-10, 12-16, 22 (rel. Nov. 5, 2010).

<sup>938</sup> See generally *Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption,”* WC Docket No. 08-152 (filed July 17, 2008) (AT&T VoIP Petition) (see also Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. 2 (filed July 17, 2008) (attaching Petition for inclusion in open dockets)). AT&T proposed that revenues lost from reductions in intrastate access charges be recovered through increases in the interstate SLC or interstate originating access charges. AT&T VoIP Petition at 8-10.

<sup>939</sup> See Letter from Tamar E. Finn, Counsel to PAETEC, to Marlene H. Dortch, Secretary, FCC, CC Docket 01-92, WC Docket 07-135 at 1 (filed Mar. 26, 2010).

carriers and all traffic.<sup>940</sup> We seek comment on these and other alternatives for addressing intercarrier compensation for interconnected VoIP traffic.

## B. Rules To Address Phantom Traffic

620. The current disparity of intercarrier compensation rates gives service providers an incentive to misidentify or otherwise conceal the source of traffic to avoid or reduce payments to the terminating service provider.<sup>941</sup> In this section, we propose amending the Commission's rules to help ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the originating provider for the call. Our proposal, including the specific rules contained in Appendix B, balances a desire to facilitate resolution of billing disputes with a reluctance to regulate in areas where industry resolution has, in many cases, proven effective. The requirements proposed here are intended to facilitate the transfer of information to terminating service providers, and to improve their ability to identify providers from whom they receive traffic, without imposing unduly burdensome costs. Our proposal is similar, in many respects, to the proposal on which comment was sought in November 2008, which had support from many stakeholders.<sup>942</sup> The industry, however, has changed dramatically even in the last two years. Indeed, interconnected VoIP subscriptions increased by 22 percent from 2008 to 2009.<sup>943</sup> Yet, the proposal we sought comment on in 2008 did not explicitly contemplate applying rules to Internet Protocol signaling for VoIP traffic. As a result, we believe it is necessary to seek comment on the proposed rules, which build upon the 2008 proposal but also apply to Internet Protocol signaling.<sup>944</sup> This will best ensure that our rules will be an effective, technologically neutral, and forward-looking solution to the problem and will not introduce unintended consequences.

### 1. Background

621. A service provider needs certain information to bill and receive intercarrier payments for traffic that terminates on its network. In particular, a terminating service provider must be able to identify the appropriate upstream service provider, and the geographic location of the caller (or a proxy for the caller's location), which is necessary to determine the appropriate charge under existing intercarrier compensation rules to bill the appropriate upstream provider for the call.<sup>945</sup> Service providers get this

<sup>940</sup> See XO Sept. 10, 2010 *Ex Parte* Letter, Attach. at 4-8.

<sup>941</sup> We use the term "service providers" in this section to refer both to traditional telecommunications carriers, as well as providers of interconnected VoIP service (for which the Commission has not yet clarified the statutory classification).

<sup>942</sup> 2008 Order and ICC/USF FNPRM, 24 FCC Rcd at 6641-49, App. A, paras. 326-342; *id.* at 6841-48, App. C, paras. 322-338; see also, e.g. Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 9 ("the Joint Commenters endorse the rule modifications intended to end the so-called "Phantom Traffic" problem outlined in the Chairman's Draft Proposal."); Verizon 2008 ICC/USF FNPRM Comments at 63 ("The draft orders represent a reasonable approach to addressing phantom traffic that could be adopted as part of a broader order or on a standalone basis"); Windstream 2008 ICC/USF FNPRM Comments at 24 ("Windstream largely supports the phantom traffic reform measures proposed by the Commission."); *but see* AT&T 2008 ICC/USF FNPRM Comments at 35-39 (suggesting modifications to the proposal); ITTA 2008 ICC/USF FNPRM Comments at 14 n.27 (urging that terminating providers should not be allowed to charge their highest rate where traffic lacks required information); RNK 2008 ICC/USF FNPRM Reply at 12-19 (suggesting that carriers should be allowed to block phantom traffic in limited circumstances).

<sup>943</sup> See Jan. 2011 Local Competition Report at 6 (showing interconnected VoIP subscriptions from 2008 to 2009).

<sup>944</sup> Though our proposed rule revisions would apply to service providers originating or transmitting interconnected VoIP traffic, they do not specify what, if any, intercarrier compensation obligations apply to any interconnected VoIP call. We seek comment in this Notice about the appropriate intercarrier compensation obligations for interconnected VoIP traffic. See *supra* section XV.A.

<sup>945</sup> Although this Notice seeks comment on the elimination of per-minute intercarrier compensation charges, it anticipates a multi-year transition, during which these issues remain relevant.



information from one of several sources: signaling used to set up calls, industry standard billing records sent by tandem switch operators to terminating service providers, and session initiation protocol (SIP) messages for VoIP calls.<sup>946</sup> A pathway across the PSTN is typically set up for PSTN calls using the Signaling System 7 (SS7) call signaling system, which is a separate, or “out of band,” network that runs parallel to the PSTN. The SS7 system performs the function of identifying a path across the PSTN a dialed call can take after the caller dials the called party’s telephone number. Once the SS7 system identifies a path across the PSTN, it signals the originating caller’s network to notify it that a call path is available, and the call is established over the path.<sup>947</sup> Technical content and format of SS7 signaling is governed by industry standards rather than by Commission rules, although Commission rules require carriers using SS7 to transmit the calling party number (CPN) to subsequent carriers on interstate calls where it is technically feasible to do so.<sup>948</sup> SS7 was designed to facilitate call routing and was not designed to provide billing information to terminating service providers.<sup>949</sup> Industry standard billing records are the other common source of information that terminating service providers not directly connected to originating service providers receive about calls sent to their networks for termination.

622. Billing records are typically created by a tandem switch that receives a call for delivery to a terminating network.<sup>950</sup> Service providers delivering billing records typically use the Exchange Message Interface (EMI) format created and maintained by the Alliance for Telecommunications Industry Solutions Ordering and Billing Forum (ATIS/OBF), an industry standards-setting group.<sup>951</sup> Billing records are also transmitted to terminating service providers for traffic delivered using IP protocols.<sup>952</sup> When the originating and terminating networks are not directly connected, as is the case when calls are delivered via tandem transit service, complications with transmitting and receiving billing information

---

<sup>946</sup> See RFC 3261, SIP: Session Initiation Protocol (2002) at [www.ietf.org/rfc/rfc3261.txt](http://www.ietf.org/rfc/rfc3261.txt).

<sup>947</sup> The following steps typically occur when SS7 sets up a call path for a wireline LEC to wireline LEC call originating and terminating on the PSTN. When a wireline LEC customer dials a call destined for an end user served by a different wireline LEC, the calling party’s LEC determines, based on the dialed digits, that it cannot terminate the call. The SS7 call signaling system then begins the process of identifying a path that the call will take to reach the called party’s network. SS7 identifies each service provider in the call path and provides each with the called party’s telephone number and other information related to the call, including message type and nature of connection indicators, forward call indicators, calling party’s category, and user service information if that information was correctly populated and not altered during the signaling process.

<sup>948</sup> 47 C.F.R. § 64.1601.

<sup>949</sup> See Letter from L. Charles Keller, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Sept. 13, 2005) (Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter).

<sup>950</sup> Tandem switches transmitting traffic in TDM format create billing records by combining CPN or Charge Number (CN) information from the SS7 signaling stream with information identifying the originating service provider to provide terminating service providers with information necessary for billing. See Verizon, *Verizon’s Proposed Regulatory Action to Address Phantom Traffic* at 5–7 (Verizon Phantom Traffic White Paper), attached to Letter from Donna Epps, Vice President, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Dec. 20, 2005). The tandem switch creating the billing record identifies service providers from whom it receives traffic using the trunk group number (TGN) of the trunk on which a call arrives. Cf. Verizon Phantom Traffic White Paper at 4. The tandem switch translates the TGN into one of two codes identifying the originating service provider: Carrier Identification Code (CIC) if the originating service provider is an IXC, or Operating Company Number (OCN) for non-IXC calls. The appropriate CIC or OCN is then added, by the tandem switch if it is equipped to record such information, to the billing record for the call, which is then forwarded to the terminating service provider. See Verizon Phantom Traffic White Paper at 4; see also Verizon *ICC FNPRM* Reply at 16.

<sup>951</sup> See ATIS Exchange Message Interface 22 Revision 2, ATIS Document number 0406000-02200 (July 2005).

<sup>952</sup> See RFC 3398, Integrated Services Digital Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping (2002) at <http://www.rfc-editor.org/rfc/rfc3398.txt>.



related to a call can arise.<sup>953</sup> In some instances, the operation of these systems can—intentionally or unintentionally—result in traffic arriving for termination with insufficient identification information, which makes it difficult or impossible for the terminating provider to identify and bill the originating provider.

623. Numerous parties have described receiving traffic with insufficient information to ensure proper billing.<sup>954</sup> A cross section of the communications industry has called for Commission action to address this problem of unidentifiable traffic<sup>955</sup> and the National Broadband Plan recommended that the Commission adopt rules to address these concerns.<sup>956</sup> One significant source of billing problems is traffic routed through an intermediate provider that does not include calling party number or other information identifying the calling party.<sup>957</sup> In addition, commenters describe several examples of other situations where traffic arrives for termination with insufficient information to identify the originating service provider.<sup>958</sup> Several commenters also allege that they receive traffic in which the billing information intentionally has been altered or stripped before the call reaches the terminating service provider.<sup>959</sup> One

---

<sup>953</sup> See, e.g., Letter from Patrick J. Donovan, Counsel for PacWest Telecomm, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 3–4 (filed Oct. 14, 2005).

<sup>954</sup> See, e.g., Letter from Glenn T. Reynolds, Vice President, Policy, USTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008) (USTA Feb. 12, 2008 *Ex Parte* Letter). See also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, NECA Petition for Interim Order (filed Jan. 22, 2008) (NECA Petition); Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 6 (“the current disparity in intercarrier compensation rates creates both an opportunity and an incentive to misidentify or conceal the source of traffic in order to avoid or reduce payments to other service providers”); NCTA 2008 ICC/USF FNPRM Comments at 5 (“additional requirements . . . needed are signaling rules to facilitate the ability of a terminating carrier to determine who is responsible for paying any termination charges”); Verizon 2008 ICC/USF FNPRM Comments at 64 (“some carriers . . . engage in deliberate misconduct to disguise jurisdictional information in an attempt to pay a lower rate or to get paid a higher rate than properly applies to the traffic”); Windstream 2008 ICC/USF FNPRM Comments at 25 (“reforms would help ensure the proper labeling of traffic so carriers can appropriately bill for carrying it”).

<sup>955</sup> See, e.g., Letter from Michael R. Romano, Senior Vice President – Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 10-90, 05-337, 01-92 at 1 (filed Sept. 30, 2010); AT&T 2008 ICC/USF FNPRM Reply at 35; Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 2, 6-9; ITTA 2008 ICC/USF FNPRM Reply at 13-14; NCTA 2008 ICC/USF FNPRM Comments at 5; OhioComm’n 2008 ICC/USF FNPRM Comments at 55-57; USTelecom 2008 ICC/USF FNPRM Comments at 9-10; Verizon 2008 ICC/USF FNPRM Comments at 63-67.

<sup>956</sup> See National Broadband Plan at 145.

<sup>957</sup> The Commission recognized that the ability of service providers to identify the provider to bill appropriate intercarrier compensation payments depends, in part, on billing records generated by intermediate service providers. Thus, the Commission sought comment on whether current rules and industry standards create billing records that are sufficiently detailed to permit determinations of the appropriate compensation due. See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4743, para. 133.

<sup>958</sup> For example, when a call bound for a number that has been ported to a different service provider is delivered without the responsible service provider performing a local number portability (LNP) query, the call may be delivered to the wrong end office and then may be re-routed to a tandem switch for delivery to the correct end office. See Verizon Phantom Traffic White Paper at 18–19. According to Verizon, neither the end office that re-routes the call nor the tandem switch receiving the rerouted call are able to route the call over an access trunk; the call must be sent over a local interconnection trunk. See *id.* In this scenario, the terminating service provider may have difficulty billing the appropriate charges to the service provider responsible for payment.

<sup>959</sup> See, e.g., Balhoff and Rowe 2008 ICC/USF FNPRM Reply at 10; California Small LECs 2008 ICC/USF FNPRM Comments at 9; Montana Independent Telecommunications Systems (MITS) *et al.* 2008 ICC/USF FNPRM Comments at 14, 20; NECA 2008 ICC/USF FNPRM Comments at 16; Rural Alliance 2008 ICC/USF FNPRM Comments at 108; SureWest 2008 ICC/USF FNPRM Comments at 7; TDS 2008 ICC/USF FNPRM Comments at 10.

provider recently estimated that five to eight percent of the traffic terminating on its network is “phantom” or disguised traffic.<sup>960</sup> Some commenters also contend that there is a particular need to encompass VoIP traffic in any call information rules, although others argue that such rules should be tailored to reflect unique aspects of VoIP services.<sup>961</sup>

624. For the reasons detailed below, we agree that traffic lacking sufficient information to enable proper billing of intercarrier compensation charges is not consistent with the public interest, and rules are needed to address this problem. In 2008, the Commission sought comment on possible steps to help ensure proper billing of all traffic.<sup>962</sup> The record in that proceeding demonstrated more widespread support for certain signaling rules than for other measures described in the *2008 ICC/USF FNPRM*.<sup>963</sup> Consequently, our proposal below focuses specifically on rules governing signaling. But, given the increased number of interconnected VoIP lines and minutes,<sup>964</sup> our rules need to be forward-looking and avoid inadvertently creating another arbitrage opportunity by limiting applicability to signaling for circuit-switched calls. We also seek comment on whether our proposed rules will be flexible enough to address current and future network technologies, and on whether additional measures are necessary to help ensure proper functioning of the intercarrier compensation system during a transition to all-IP networks.

## 2. Discussion

625. We propose to amend the Commission’s rules as described below to facilitate the transfer of necessary information to terminating service providers, particularly in cases where traffic is delivered through indirect interconnection arrangements. If adopted, these rules would assist in determining the appropriate service provider to bill for any call. We intend for these proposed rules to reflect standard industry practice and for them to remain applicable as providers migrate toward IP networks, and we seek comment on whether they do so.

626. We propose modifying the Commission’s rules to require that the calling party’s telephone number be provided by the originating service provider and to prohibit stripping or altering call signaling information.<sup>965</sup> The proposed rules reflect the recommendations of commenters that the best way to ensure that complete and accurate information about a call gets to the terminating service provider for that call is to require all providers involved in transmitting a call from the originating to the

---

<sup>960</sup> See Letter from Michael D. Saperstein, Jr., Director of Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket Nos. 07-135, 05-337, 04-36, CC Docket Nos. 01-92, 99-68, at 1 (filed Dec. 21, 2010).

<sup>961</sup> See NTCA Comments in re NBP PN #25 at 9 (filed Dec. 21, 2009); Voice on the Net Coalition Comments in re NBP PN #25 at 7 (filed Dec. 22, 2009).

<sup>962</sup> *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6641-49 App. A paras. 326-342; *id.* at 6841-48 App. C paras. 322-338.

<sup>963</sup> See, e.g., AT&T 2008 ICC/USF FNPRM Comments at 35 (“By requiring the transmission of specified signaling information to the terminating carrier, the *Draft Order* takes a number of the steps needed to fix the problem”); Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 7-9; Embarq 2008 ICC/USF FNPRM Reply at 40 (offering support for signaling rules); NRIC 2008 ICC/USF FNPRM Reply at 22 (“The Nebraska Companies agree that incorporating . . . [signaling] rules will facilitate resolution of billing disputes and provide incentive for service providers to ensure that traffic traversing their networks is properly labeled and identified”).

<sup>964</sup> See, e.g., *Local Telephone Competition: Status as of June 30, 2009*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at 3 (Sept. 2010) (noting that VoIP subscriptions increased by 10 percent and switched access lines decreased by 5 percent during the first six months of 2009).

<sup>965</sup> Call signaling information subject to our proposed rule includes, but is not limited to SS7 signaling information, MF signaling, such as ANI, and IP signaling such as signaling within SIP sessions.

terminating provider to transmit the calling parties' telephone number to the next provider in the call path. This transmission will vary with the technology used by providers.

627. For example, to comply with this provision, providers transmitting traffic using Internet protocols would be subject to the rule amendments we propose, and would likely transmit the required information in the Internet protocol signaling messages that set up and terminate calls.<sup>966</sup> We seek comment on whether our proposed rules will ensure complete and accurate passing of call signaling information as voice traffic migrates increasingly to interconnected VoIP.<sup>967</sup> We take a cautious approach in considering any new or revised signaling requirements. IP transmission standards and practices are evolving rapidly as service providers migrate to IP networks. Accordingly, although we make clear that our proposed rules apply to traffic originated or transferred using IP protocols, we do not specify how, technologically, providers using IP protocols must comply. In particular we seek comment on ways to ensure that our proposed rules are forward rather than backward-looking, and will remain relevant as technology evolves.

628. For service providers using SS7 to pass information about traffic, the proposed rules require originating providers to populate the SS7 calling party number (CPN) field. When CPN is populated in the SS7 stream for a call by an originating service provider and passed, unaltered, along a call path potentially involving numerous service providers to a terminating service provider, the terminating provider can use the CPN information to help determine the applicable intercarrier compensation. We do not, however, propose making any changes to the designation of particular SS7 fields as mandatory or optional, nor do we otherwise propose changes to industry standards that govern population of the SS7 signaling stream. With regard to SS7 signaling, we note that SS7 was designed to facilitate call setup and routing, and proposals we make in this Notice are not in any way intended to interfere with the ability of calls to reach their intended recipient.<sup>968</sup>

629. Although our existing rules impose obligations to pass CPN,<sup>969</sup> they currently apply only to service providers using SS7 and only to interstate traffic. Commenters contend that expanding the application of those rules would help to address problems associated with unidentified traffic.<sup>970</sup> We therefore propose extending these requirements to all traffic originating or terminating on the PSTN, including, but not limited to jurisdictionally intrastate traffic and traffic transmitted using Internet protocols. We seek comment on our authority to apply our proposed rules to all forms of traffic originating or terminating traffic on the PSTN. Specifically, we seek comment on whether our proposed rule revision is sufficient to require service providers originating or transferring traffic using Internet

---

<sup>966</sup> These signaling messages would include the SIP From header (RFC 3261), and possibly the P-Asserted-Identity (RFC 3325) and Authenticated Identity Management (RFC 4474) headers.

<sup>967</sup> *Local Telephone Competition: Status as of June 30, 2009*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at 3 (Sept. 2010) (noting that VoIP subscriptions increased by 10 percent and switched access lines decreased by 5 percent during the first six months of 2009).

<sup>968</sup> As Verizon Wireless explains, certain SS7 fields are considered mandatory, while others (including CPN, CN, and JIP) are considered optional. See Verizon Wireless Sept. 13, 2005 *Ex Parte* Letter at 2. The distinction is significant because a call will not be completed if a mandatory field has not been populated. See Letter from Thomas Goode, Associate General Counsel, ATIS, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. (filed Feb. 10, 2006).

<sup>969</sup> See 47 C.F.R. § 64.1601. Although CPN is considered optional in the industry standard, the Commission's rules require service providers to pass CPN in specified circumstances, and our proposal would not alter this requirement. *Id.*

<sup>970</sup> See Verizon and Verizon Wireless 2008 ICC/USF FNPRM Comments at 64-65; see also Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 7-8; Missoula Plan for Intercarrier Compensation Reform at 56 (Missoula Plan), attached to Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed July 24, 2006).

protocols to include or transmit information identifying the originating service provider. We seek comment on whether intrastate calls fall within the Commission's jurisdiction for these purposes.<sup>971</sup> Similarly, we seek comment on USTelecom's assertion that the Commission has jurisdiction under Title I of the Act "to apply fundamental obligations to non-carriers that deliver traffic to the PSTN."<sup>972</sup>

630. We also recognize that some service providers do not use SS7 signaling, and instead rely on MF signaling. To the extent that we propose expanding our rules beyond SS7, we likewise propose amending our rules to require service providers using MF signaling to pass CPN information, or the charge number (CN) if it differs from the CPN, in the Multi Frequency Automatic Number Identification (MF ANI) field. This proposal is intended to ensure that information identifying the calling party is included in call signaling information for all calls. We seek comment on whether this proposal is a necessary and effective measure to address a problem requiring resolution.

631. In addition to CPN, our proposed call signaling rules also address CN, as recommended by a number of commenters.<sup>973</sup> As Verizon has explained, in accordance with industry practice, the CN parameter is not populated in the SS7 stream when it is the same as CPN.<sup>974</sup> But when the CN parameter is populated, CN is included in billing records in place of CPN. The proposed rules would clarify, consistent with industry practice, that populating the SS7 CN field with information other than the charge number to be billed for a call is prohibited. In addition, the proposed rules would prohibit altering or stripping signaling information in the CN as well as CPN field.

632. The proposed call signaling rules are intended to help ensure that signaling information is passed completely and accurately to terminating service providers. These proposed rules are not intended to affect existing agreements between service providers regarding how to "jurisdictionalize" traffic in the event that traditional call identifying parameters are missing, as long as such agreements are consistent with Commission rules or other legal requirements. We seek comment on whether the proposed rules will achieve our goal of helping to ensure complete and accurate passing of call signaling information while not inappropriately disrupting industry practices or existing carrier agreements. Finally, we seek comment on whether we should consider adopting any specific enforcement mechanism to ensure compliance with our proposed rules.

633. The proposed rules contain a few very limited exceptions to accommodate situations, identified in the record, where industry standards permit, or even require, some alteration in signaling information by an intermediate service provider.<sup>975</sup> As noted above, our proposal is not intended to change industry practice with respect to the content of the signaling stream. Service providers that follow

---

<sup>971</sup> We note, for example, that the Commission found intrastate call signaling to be within its jurisdiction on the Caller ID context. In particular, when it first adopted rules governing caller ID, the Commission's primary objective was to remove uncertainties impeding the development of valuable interstate services related to caller ID. *See Rules and Policies Regarding Calling Number Identification Service – Caller ID*, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11728, para. 79 (1995) (*Caller ID Order*). The Commission found that certain state regulations related to end-user blocking of call signaling information would impede attainment of that objective by creating separate federal and state call signaling policies that would be unfeasible to maintain. *See id.* at 11729-30, paras. 84-85. The Commission preempted these state regulations. *See id.* at 11703, para. 5.

<sup>972</sup> *See* USTelecom Feb. 12, 2008 *Ex Parte* Letter, Attach. at 7.

<sup>973</sup> *See, e.g.*, NECA Petition; Letter from Cheryl A. Tritt, Counsel for T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, Attach. at 6 (filed Feb. 2, 2006); Verizon Phantom Traffic White Paper at 8-10.

<sup>974</sup> *See* Verizon Phantom Traffic White Paper at 21.

<sup>975</sup> For example, Verizon states that on a call to a party that has forwarded its number, the called party's service provider will replace the caller's CN with the called party's CN before sending the call to the forward location. *See* Verizon Phantom Traffic White Paper at 9-10.



industry practice in this way would not, under the proposed rules, be in violation of the prohibition on altering signaling information. We also note that the exemptions from the existing call signaling requirements described in section 64.1601(d) remain necessary for their limited purposes, and will continue to apply.<sup>976</sup> We seek comment on whether the limited exceptions in the proposed rules are necessary and appropriate. And, we seek comment on any other changes the Commission should make to update our rules concerning the delivery of CPN and association information.<sup>977</sup>

634. Although the proposed rules focus on call signaling, USTelecom's proposal also seeks Commission action related to routing traffic, local number portability queries, and providing incumbent LECs with certain rights with regard to the section 251 and 252 negotiation and arbitration processes as additional measures to address phantom traffic.<sup>978</sup> We invite comment on these proposals to add to or update existing information in the record on these issues.<sup>979</sup> Specifically, we invite comment on any other actions that the Commission should take or proposals in the record related to unbillable traffic and signaling requirements.<sup>980</sup>

### C. Rules to Reduce Access Stimulation

635. In this section, we seek comment on specific revisions to our interstate access rules to address access stimulation, a form of arbitrage that, by some estimates, is impacting hundreds of millions of dollars in intercarrier compensation.<sup>981</sup> The ability to engage in this arbitrage arises from the current access charge regulatory structure as it applies to LEC origination and termination of interstate and intrastate calls.<sup>982</sup> The Commission has addressed similar arbitrage in the past—including access

<sup>976</sup> 47 C.F.R. § 64.1601(d).

<sup>977</sup> In addition to the exceptions described in this section, section 64.1601(b) contains rules regarding the *Privacy* of CPN, section 64.1601(c) contains rules prohibiting *Charges* for providing CPN blocking or delivering CPN to connecting carriers, and section 64.1601(e) contains signaling rules for *Telemarketing*. We ask whether any of these sections should be revised to conform to the changes proposed above to section 64.1601(a).

<sup>978</sup> See USTA Feb. 12, 2008 *Ex Parte* Letter, Attach. at 10-12.

<sup>979</sup> See, e.g., Broadview, *et al.*, 2008 ICC/USF FNPRM Comments at 8; Windstream 2008 ICC/USF FNPRM Comments at 25; Letter from Henry T. Kelly, Counsel to Peerless Networks to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92 et al. (filed Sept. 16, 2008); Letter from Charles W. McKee, Director—Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Apr. 16, 2008); Letter from Thomas Cohen and Edward A. Yorkgitis, Jr., Counsel to NuVox Communications, *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2-3 (filed Mar. 8, 2008); Letter from Daniel L. Brenner, Senior Vice President, Law and Regulatory Policy, NCTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Feb. 29, 2008); Letter from Paul Garnett, CTIA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Feb. 25, 2008).

<sup>980</sup> See, e.g., North Carolina Telephone Cooperative Coalition 2008 ICC/USF FNPRM Reply at 5 (“[T]he Commission should grant State Commission’s the authority to settle [phantom traffic payment] disputes between carriers.”); RNK 2008 ICC/USF FNPRM Reply at 12-19 (proposing that carriers be allowed to block phantom traffic under certain circumstances); Letter from W. Scott McCollough, General Counsel, Feature Group IP, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 1-2 & Attach. (filed Mar. 28, 2007) (proposing a Universal Tele-traffic Exchange specification as “a much better way to answer the demand for information about the identity of the party initiating a call session involving the PSTN at one or more endpoints”).

<sup>981</sup> See *infra* para. 637.

<sup>982</sup> We also note that there have been allegations of traffic stimulation associated with intra-MTA CMRS telecommunications traffic. See *infra* para. 672. We seek comment below on the nature of these allegations and whether the Commission should take action to reduce such concerns. In the *Local Competition First Report and Order*, the Commission stated that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. See *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; see also 47 C.F.R. § 24.202(a) (defining the term “Major Trading Area”).



agreement with that same customer, but not other similarly situated customers, would such an arrangement violate section 203(c) or any other provision of the Act?<sup>1072</sup> We note that the prohibition on rebates has long been an important guard against rate discrimination,<sup>1073</sup> and that the Commission has been vigilant in its review under section 203(c).<sup>1074</sup> We also note that section 203(c) claims have been asserted by carriers in the context of access stimulation disputes.<sup>1075</sup> We seek comment on whether the refund prohibition in section 203(c) of the Act has a prohibitive effect on revenue sharing arrangements between LECs and access stimulating entities, or, if there are aspects of these relationships that fall outside the scope of this statutory provision.

## XVI. INTERCONNECTION AND RELATED ISSUES

678. In this section, we seek comment on several issues related to intercarrier compensation reform, including other steps we can take to promote IP-to-IP interconnection, network edges and points of interconnection (POIs), transiting, and disputes that have arisen over other technical issues in intercarrier compensation rules and carrier practices.<sup>1076</sup> For each of these issues, we ask whether the Commission should address the issue as part of comprehensive intercarrier compensation reform, and if so, at what stage of reform it should be addressed, and what actions the Commission should take. We also seek comment on whether there are any other outstanding technical issues related to intercarrier compensation reform that the Commission should address, and, if so, when and how the Commission should address them.

679. *Additional Steps to Encourage IP-to-IP Interconnection.* As discussed above, we seek to encourage the deployment of more efficient technologies and interconnection. In addition to intercarrier compensation reforms considered above, are there other ways to address disincentives to move to IP-to-IP interconnection or any other specific actions that the Commission should take to encourage transitions to IP-to-IP interconnection? For example, we note that interconnection for circuit-switched voice traffic is governed by section 251 of the Act. At the same time, there historically have not been Commission rules governing IP interconnection for the exchange of Internet traffic. As networks evolve, however, it may make little sense for providers to maintain different interconnection arrangements for the exchange of VoIP and other forms of Internet traffic. We therefore seek comment on how IP-to-IP interconnection arrangements for the exchange of VoIP traffic fit within existing legal and technical interconnection

---

<sup>1072</sup> 47 U.S.C. § 203(c).

<sup>1073</sup> *AT&T Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 222-223 (1998).

<sup>1074</sup> See, e.g., *Revisions to AT&T Communications Tariff F.C.C. No. 1, Hospitality Network Service*, Transmittal No. 1046, 3 FCC Rcd 975, 976, para. 10 (CCB 1988) (suspending tariff revisions pending investigation of tentative conclusion that payment plan represented an illegal rebate), *terminated as moot*, Order, 3 FCC Rcd 3961 (CCB 1988) (investigation terminated due to withdrawal of tariff transmittal).

<sup>1075</sup> See, e.g., *N. Valley Commc'ns, LLC v. Qwest Commc'ns Corp.*, 711 F. Supp. 2d 1018, 1026 (D. S.D. 2010) (rejecting motion to dismiss claim alleging that payment of marketing fees to conference calling companies may represent an illegal rebate under § 203(c)(2)), *case stayed pending referral*, No. 09-1004, slip op. at 6-7 (D. S.D. Sept. 29, 2010).

<sup>1076</sup> See, e.g., *Inter-carrier Compensation FNPRM*, 20 FCC Rcd at 4737-48, paras. 120-43; *Pleading Cycle Established for Petition of Blue Casa Communications, Inc. for Declaratory Ruling Concerning Intercarrier Compensation for ISP-Bound VNXX Traffic*, WC Docket No. 09-8, Public Notice, 24 FCC Rcd 2436 (2009) (*Blue Casa VNXX Petition Public Notice*); *Pleading Cycle Established for Petition of ASAP Paging, Inc. for Preemption of the Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers*, WC Docket No. 04-6, Public Notice, 19 FCC Rcd 936 (2004) (*ASAP Paging Petition Public Notice*); *Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs*, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 13859 (2002) (*Sprint Rating and Routing Petition Public Notice*).

frameworks.<sup>1077</sup> Does this present any challenges or otherwise have any implications for the actions the Commission should consider in the context of this proceeding?<sup>1078</sup>

680. *Points of Interconnection and Network Edges.* In past intercarrier compensation rulemaking items, the Commission sought comment on requirements and methods for establishing POIs and on proposed rules for network “edges.”<sup>1079</sup> With regard to network edges, proposals to treat traffic under a bill-and-keep methodology typically assume the existence of a network edge, beyond which terminating carriers cannot charge other carriers to transport and terminate their traffic. This approach requires that the calling party’s service provider transmit, route and otherwise perform all the network functions necessary to deliver traffic to the network edge of the called party’s service provider. Both the ICF<sup>1080</sup> and Missoula<sup>1081</sup> plans generally proposed that the edge be set at the tandem switch for incumbent LECs with hierarchical networks, and at the local switch for CMRS, competitive LEC, and rural LEC networks. In the *2008 ICC/USF FNPRM*, the proposed network edge was the location of the called party’s end office, mobile switching center (MSC), point of presence, media gateway, or trunking media gateway unless that location subtended a tandem switch owned or controlled by that service provider, in which case the tandem was the network edge.<sup>1082</sup>

---

<sup>1077</sup> See, e.g., Letter from Mary C. Albert, Assistant General Counsel, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51, WC Docket No. 10-143 at Attach. (filed Nov. 1, 2010); Letter from Kathleen Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 at 3-4 (filed Jan. 13, 2010).

<sup>1078</sup> The National Broadband Plan recommended that the “FCC should carefully monitor compensation arrangements for IP traffic as the industry transitions away from per-minute rates, particularly in areas where there is little or no competition, to ensure that such arrangements do not harm the public interest.” National Broadband Plan at 150.

<sup>1079</sup> See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4728-29, paras. 92-94 & nn.303-05; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6493, para. 40; *id.* at 6619-20, App. A, para. 275; *id.* at 6818-19, App. C, para. 270.

<sup>1080</sup> Regulatory Reform Proposal of the Intercarrier Compensation Forum (ICF Proposal), attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, App. A, at 4-9 (filed Oct. 5, 2004).

<sup>1081</sup> Missoula Plan for Intercarrier Compensation Reform at 42-46 (Missoula Plan), attached to Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed July 24, 2006).

<sup>1082</sup> See *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6619-20, App. A, para. 275; *id.* at 6818-19, App. C, para. 270. The primary difference between the two edge interconnection proposals contained in the appendices to the *2008 Order and ICC/USF FNPRM* was consideration of a “rural transport rule” that would have limited the transport and provisioning obligations of a rural rate-of-return regulated incumbent LEC to its meet point when the non-rural terminating carrier’s point of presence is located outside of the rural rate-of-return incumbent LEC’s service area. Compare *id.* at 6619-20, App. A, para. 275 with *id.* at 6818-19, para. 270. Support for these proposed network edge rules varied greatly in the record. See, e.g., Verizon and Verizon Wireless 2008 ICC/USF FNPRM Comments at 53-58 (supporting the proposed edge rules but not the rural transport rule); CTIA 2008 ICC/USF FNPRM Comments at 29-33 (also supporting the proposed edge rules but not the rural transport rule); AT&T 2008 ICC/USF FNPRM Reply at 17-18 (defending the proposed network edge rules); Comcast 2008 ICC/USF FNPRM Reply at 7-8 (arguing that the proposed network edge rules “fail to account for the complexity of existing interconnection arrangements and ignore current network configurations designed to achieve network efficiencies”); NTCA 2008 ICC/USF FNPRM Reply at 29 (asking the Commission to dismiss the AT&T Edge proposal and seek further comment); Paetec Communications, Inc., et al. 2008 ICC/USF FNPRM Reply Comments at ii (urging the Commission to reject the proposed network edge rules).

681. Several parties maintain that the edge proposals currently in the record do not acknowledge or contemplate IP-based interconnection.<sup>1083</sup> We invite comment on whether the Commission should address POI and network edge issues as part of comprehensive intercarrier reform, and, if so, when they should be addressed and what actions the Commission should take to address them.<sup>1084</sup> If commenters believe we should address the edge as part of comprehensive reform, we seek comment on how we should define the edge for purposes of the reform proposals described herein. If we ultimately adopt bill-and-keep, we ask parties to identify the specific network facilities, functions and services that would be subject to that methodology. With regard to access charges, parties should identify what access rate elements would be subject to bill-and-keep and whether such definitions should change depending on the reform approach adopted by the Commission. We also seek comment on how an edge definition may need to be adjusted as IP technology replaces circuit-switched technology, and as networks evolve.

682. In prior proceedings, the issue of mandatory POIs has been raised,<sup>1085</sup> and certain parties, including incumbent LECs, have argued that carriers should be required to establish a minimum number of physical POIs, or at least establish a physical POI in a geographic area they intend to serve.<sup>1086</sup> Under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point.<sup>1087</sup> The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single POI per LATA.<sup>1088</sup> We seek comment

---

<sup>1083</sup> See, e.g., Comcast 2008 ICC/USF FNPRM Comments at 21 (maintaining that these proposals are based on “an already outdated circuit-switched network hierarchy” and that such an approach “would likely have a significant negative effect on provider investment and deployment decisions”); COMPTTEL 2008 ICC/USF FNPRM Comments at 23 (noting that, given the conversion from circuit-switched to IP-based networks, the default edge rules may be irrelevant by the time they take effect); NCTA 2008 ICC/USF FNPRM Comments at 20-21 (explaining that the 2008 edge proposals do not seem to contemplate the interconnection of IP networks or the exchange of traffic in IP format).

<sup>1084</sup> The record suggests that there is disagreement as to whether the Commission must address edge and related interconnection issues concurrent with implementation of rate reform. Compare, e.g., COMPTTEL 2008 ICC/USF FNPRM Comments at 20 (stating that the Commission need not adopt network architecture rules to implement reform) with AT&T 2008 ICC/USF FNPRM Reply at 19 (contending that default interconnection rules are a critical component of any reform plan).

<sup>1085</sup> See *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9650-52, paras. 112-14; *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4725-30, paras. 87-97; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6619-20, App. A, para. 275; *id.* at 6818-19, App. C, para. 270. See also *infra* note 1092 (discussing competitive carrier concerns that the certain edge proposals would affect statutory interconnection rights and obligations).

<sup>1086</sup> See, e.g., Michigan Exchange Carriers Association Intercarrier Compensation NPRM Comments at 44; SBC Intercarrier Compensation NPRM Comments at 18-19; Letter from Daniel Mitchell, Vice President, Legal and Industry, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 3 (filed Nov. 21, 2008); Verizon Sept. 12, 2008 *Ex Parte* Letter, Attach. at 2.

<sup>1087</sup> See 47 U.S.C. § 251(c)(2)(B). We note that rural telephone companies are exempt from 251(c) obligations by virtue of what is termed the “rural exemption.” See 47 U.S.C. § 251(f)(1)(A) (stating that “[s]ubsection (c) of this section [251] shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof”).

<sup>1088</sup> See *Application by SBC Communications Inc., Southwestern Bell Tel. Co. And Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18390, para. 78 n.174 (2000).

on whether the transition from circuit-switched to IP networks may affect our rules concerning POIs.<sup>1089</sup> We also seek comment on whether information in the record concerning POIs and “edges” is still relevant or useful, or if the underlying issues have changed.<sup>1090</sup> If the issues have changed, we invite parties to provide current information to identify issues that the Commission should consider. In this regard, we note that under the existing interconnection system, situations arise where carriers are financially responsible for network design or interconnection decisions that they do not control.<sup>1091</sup> We invite parties to address the extent to which the definition of the edge or POI should align the payment responsibility with the control of the design, provisioning, and cost incurrence. Recognizing that interconnection and network architecture may change over time, we also ask parties to comment on the extent to which the location of a POI should be defined in a competitively neutral location for all networks. Parties supporting such an approach should address the appropriate definition of a “competitively neutral location.” One approach may be to locate the POI where interconnecting carriers have competitive alternatives—other than services or facilities provided by the terminating carrier—to transport traffic to the terminating carrier’s network. We seek comment on these questions.

683. *Transiting.* Transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier’s network. The Commission has previously sought comment on issues that arise under the intercarrier compensation rules when calls involve a transit service provider.<sup>1092</sup> Specifically, the Commission sought comment on whether there is a statutory obligation to provide transit service under the Act and if so, what rules the Commission should adopt to advance the goals of the Act.<sup>1093</sup> Numerous parties commented on transit issues in response to the 2005 FNPRM<sup>1094</sup> and 2008 ICC/USF FNPRM.<sup>1095</sup> More recently, the record in

---

<sup>1089</sup> For example, two parties suggest that the Commission establish default interconnection and intercarrier compensation rules applicable to packetized voice traffic. See Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc. and Charles W. McKee, Vice President, Government Affairs, Federal and State Regulatory, Sprint Nextel Corp., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, at 2-3 (filed Jan. 21, 2011) (urging the Commission to adopt initial interconnection rules regarding the establishment of POIs for the exchange of traffic using Session Initiated Protocol (SIP), with long term interconnection rules based on recommendations from a Technical Advisory Committee, and to establish default rules establishing providers’ respective financial obligations for transporting and terminating packetized voice traffic).

<sup>1090</sup> For instance, in 2008, some competitive carriers voiced concern that the proposed edge rules would alter the statutory interconnection rights of carriers or displace voluntary interconnection arrangements. See, e.g., Broadview Networks, Inc., et al. 2008 ICC/USF FNPRM Comments at 46-47; Citynet, LLC, et al. 2008 ICC/USF FNPRM Comments at 13-14; COMPTTEL 2008 ICC/USF FNPRM Comments at 20-21; Embarq 2008 ICC/USF FNPRM Comments at 51; NCTA 2008 ICC/USF FNPRM Comments at 18-19. But see AT&T 2008 ICC/USF FNPRM Reply Comments at 17-18 (discussing these positions and refuting these claims).

<sup>1091</sup> For example, one party alleges that competitive LECs are being unnecessarily inserted into the traffic flow between CMRS carriers and incumbent LEC tandem transit providers to collect access fees from interexchange carriers. See Level 3 Declaratory Ruling Petition at 1-7.

<sup>1092</sup> See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4737-44, paras. 120-33; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6650, App. A, para. 347; *id.* at 6849, App. C para. 344.

<sup>1093</sup> See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4737-44, paras. 120-33.

<sup>1094</sup> See, e.g., Allied National Paging Association Comments Intercarrier Compensation FNPRM Comments at 6; BellSouth Intercarrier Compensation FNPRM Comments at 32-38; Cincinnati Bell Intercarrier Compensation FNPRM Comments at 15-16; Coalition for Capacity-Based Access Pricing Intercarrier Compensation FNPRM Comments at 28-29.

<sup>1095</sup> See, e.g., Coalition for Rational Universal Service and Intercarrier Reform 2008 ICC/USF FNPRM Comments at 6 (seeking a definition of transit obligations); Comcast 2008 ICC/USF FNPRM Comments at 28-30 (asking the Commission to affirm that transit arrangements are subject to the section 251/252 negotiation and arbitration process); Embarq 2008 ICC/USF FNPRM Comments at 64-65 (arguing that transit service should be subject to negotiation); Integra Telecom 2008 ICC/USF FNPRM Comments at 4 (seeking regulation of transit rates using a (continued....))



this proceeding indicates that a competitive market for transit services exists.<sup>1096</sup> In light of these changes in the transit market, we invite parties to refresh the record with regard to the need for the Commission to regulate transiting service, and the Commission's authority to do so.<sup>1097</sup> We also ask parties to comment on whether the proposed reforms under consideration here would impact the provision of transit service and if so, how.

684. *Other Pending Issues.* Below, we seek comment on other pending items and ask whether any of these issues may be rendered moot by proposed reforms under consideration here. If pending issues need resolution, parties should explain how such proposals may be implicated by the reforms proposed today, and parties may refresh the record in this proceeding regarding: (1) interpretation of the intraMTA rule;<sup>1098</sup> (2) disputes regarding rating and routing of traffic;<sup>1099</sup> and (3) the appropriate intercarrier compensation regime applicable to virtual central office code calls to distant ISPs.<sup>1100</sup> We also invite comment on any other outstanding technical or policy issues related to intercarrier compensation reform that the Commission should address.<sup>1101</sup> Parties commenting on other outstanding

(Continued from previous page)

forward-looking methodology); T-Mobile 2008 ICC/USF FNPRM Comments at 3, 14-15 (stating that incumbent LECs should be required to provide tandem transit services upon request and that rates should be reduced to cost-based levels); AT&T 2008 ICC/USF FNPRM Reply at 20-22 (urging the Commission to refrain from regulating transit service or rates); TW Telecom, Inc., et al. 2008 ICC/USF FNPRM Reply at 14 (seeking regulation of tandem transit rates).

<sup>1096</sup> See, e.g., Letter from Russell M. Blau, Counsel for Neutral Tandem, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135, Attach. A at 3 (filed Sept. 23, 2010); AT&T 2008 ICC/USF FNPRM Reply Comments at 21-22 (stating that transit has become a competitive service).

<sup>1097</sup> In 2008, we sought comment on a proposal related to call signaling information that would have, among other things, obligated transit service providers, in certain circumstances, to take financial responsibility for traffic they receive for delivery via transit service. See *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6647-48, App. A, para. 337; *id.* at 6846-47, App. C, para. 333.

<sup>1098</sup> 47 C.F.R. 51.701(b)(2). In the *Local Competition First Report and Order*, the Commission stated that traffic to or from a CMRS network that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges. See *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; see also 47 C.F.R. § 24.202(a) (defining the term "Major Trading Area").

<sup>1099</sup> Under the current system, wireline carriers often determine whether a phone call is local or toll by comparing the rating points associated with the originating and terminating NXX codes. To give wireless customers the same inbound local calling area that these customers have with their wireline phones, CMRS providers obtain NXX codes that are rated in the customer's wireline rate center. In some cases, however, the routing point for the wireless number, which indicates the geographic point to which calls to the wireless number should be routed, is located outside of the customer's rate center. Specifically, because CMRS providers will generally connect with small LECs indirectly through a BOC's tandem, the routing point specified for these NXXs often is a BOC tandem. In these situations, CMRS providers obtain NXX codes with different rating and routing points. See, e.g., Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed May 9, 2002) (Sprint Petition).

<sup>1100</sup> Virtual central office codes, sometimes referred to as virtual NXX codes, are central office codes that correspond to a particular geographic area, but are assigned to a customer physically located in a different geographic area. See *Inter-carrier Compensation NPRM*, 16 FCC Rcd 9610, 9652 n.188. Competitive LECs typically assign virtual NXX codes to business customers that receive significant amounts of traffic, including Internet service providers. When a virtual NXX number is assigned, the NPA/NXX is no longer associated with the specific geographic location, i.e., rate center, in which the customer is located. As a result, a call from one rate center or local calling area to another may appear to be within the same rate center or local calling area based on a simple comparison of the NPA/NXX codes. Previously, the Commission sought comment on whether the LEC using the virtual NXX code should be required to provide transport from the central offices associated with those NXX codes. See *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9652, para. 115.



technical issues should also identify what action the Commission should take, and when during the comprehensive reform process the action should be taken.

685. With regard to the intraMTA rule, the Commission previously sought comment on a number of issues related to this rule, including whether it should be eliminated, particularly in light of intercarrier compensation reform proposals that would eliminate distinctions between wireline and CMRS traffic.<sup>1102</sup> We invite comment on whether the Commission should prioritize addressing this issue as it addresses comprehensive reform that would remove the underlying distinctions that contribute to disputes arising from this rule. If so, when and how should the Commission address this issue?

686. In addition, there are pending disputes regarding the assignment of telephone numbers with separate, and geographically distant, rating and routing points.<sup>1103</sup> The Commission has sought comment on these disputes and related issues over the course of this proceeding.<sup>1104</sup> We invite parties to refresh the record on these issues, and, in particular seek comment on whether the issues raised in the Sprint, ASAP and @ Communications petitions still require resolution through Commission action, and if so, what actions the Commission should take and when.

687. We also seek comment on whether Commission attention is still required to resolve issues regarding intercarrier charges applicable to calls to Internet service providers located outside of the originating caller's local calling area. Specifically, carriers do not agree on the appropriate intercarrier compensation regime applicable to ISP traffic delivered to an ISP located in a distant exchange outside the originating local calling area.<sup>1105</sup> We ask parties to comment on whether the Commission's 2008 order addressing the intercarrier compensation rate for ISP-bound traffic has any impact on, or moots any of the underlying issues.<sup>1106</sup> Furthermore, we seek comment on whether market developments, including the decline in dial-up Internet service usage and commercial agreements regarding compensation, have changed the need for Commission action.

688. *Effect of Intercarrier Compensation Reform on Existing Agreements.* Finally, we seek comment on the effect of our intercarrier compensation reforms on certain types of existing agreements. With respect to interconnection agreements, we do not intend for our proposed reform to disturb the processes established by section 252 of the Act.<sup>1107</sup> We seek comment on whether the reforms we propose would constitute a change in law, recognizing that interconnection agreements may contain

(Continued from previous page)

<sup>1101</sup> For example, Arizona Dialtone and IDT filed petitions for reconsideration of the Commission's 2006 *Prepaid Calling Card Order*. Arizona Dialtone, Inc., Petition for Reconsideration, WC Docket No. 05-68 (filed Aug. 31, 2006); IDT Corp., Petition for Reconsideration, WC Docket No. 05-68 (filed Aug. 31, 2006). See *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006), *vacated in part sub nom. Qwest Services Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007). See also, e.g., Letter from Tamar E. Finn, counsel for IDT *et al.*, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket No. 05-68; GN Docket No. 09-51 (filed Jan. 14, 2011) (asking the Commission to clarify that the 2006 *Prepaid Calling Card Order* does not require the application of access charges to prepaid calling card calls placed using a locally-dialed number).

<sup>1102</sup> See *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4744-46, paras. 134-38.

<sup>1103</sup> See generally Sprint Petition; ASAP Paging, Inc., Petition for Preemption of Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers, WC Docket No. 04-6 (filed Dec. 22, 2003).

<sup>1104</sup> See *Sprint Rating and Routing Petition Public Notice*, 17 FCC Rcd at 13859 (2002); *Pleading Cycle Established for Comments on @Communications Petition for Declaratory Ruling*, CC Docket No. 02-4, Public Notice, 17 FCC Rcd 1010 (2002); *ASAP Paging Petition Public Notice*, 19 FCC Rcd at 936; *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4747-48, paras. 141-43.

<sup>1105</sup> See, e.g., *Blue Casa VNXX Petition Public Notice*, 24 FCC Rcd 2436 (2009).

<sup>1106</sup> *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6478-89 paras. 6-29.

<sup>1107</sup> See 47 U.S.C. § 252.

change of law provisions that allow for renegotiation and/or may contain some mechanism to resolve disputes about new agreement language implementing new rules.<sup>1108</sup> We also seek comment regarding the impact our proposed reforms may have on contracts in “evergreen” status, which Verizon describes as “contracts that have reached the end of their terms but remain in effect pending entry into new contracts.”<sup>1109</sup>

689. As discussed above, the intercarrier compensation reforms we propose may require carriers to make certain changes to their tariffs relating to carrier-to-carrier charges, and potentially also SLCs. We seek comment on whether these proposed reforms should abrogate existing contracts or otherwise allow for a “fresh look” with regard to existing commercial agreements.<sup>1110</sup> As the Commission has recognized, for example, early termination provisions can be mutually beneficial by giving providers greater assurance of revenue recovery, and giving customers (whether wholesale or end-users) discounted and stable prices over the relevant term.<sup>1111</sup> Indeed, allowing for a fresh look could result in a windfall for customers that entered long-term arrangements, in exchange for lower prices, as compared to other customers that avoided early termination fees by electing shorter contract periods at higher prices.<sup>1112</sup> We seek comment on whether such issues should be left to any change of law provisions in these commercial arrangements, or to commercial negotiations among the parties, or, alternatively, if we should provide an opportunity for re-negotiation of affected commercial agreements in light of comprehensive intercarrier compensation reform.<sup>1113</sup>

---

<sup>1108</sup> See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 at 17403-04, para. 700 (2003) (*Triennial Review Order*). Although section 252(a)(1) and section 252(b)(1) refer to requests that are made to incumbent LECs, we have interpreted that in the interconnection agreement context to mean that either the incumbent or the competitive LEC may make such a request, consistent with the parties’ duty to negotiate in good faith pursuant to section 251(c)(1). See *Triennial Review Order*, 18 FCC Rcd at 17405, para. 703 n.2087; see also 47 U.S.C. §§ 251(c)(1), 252(a)(1), (b)(1). We believe that this adequately addresses concerns about existing interconnection agreements that do not include express change of law provisions.

<sup>1109</sup> See, e.g., Verizon Sept. 12, 2008 *Ex Parte* Letter, Attach. at 5–6 (urging that any new intercarrier compensation regime displace such contracts).

<sup>1110</sup> In the past, commenters requested that the Commission give them a fresh look at existing contracts. See, e.g., Letter from Richard R. Cameron and Teresa D. Baer, Counsel for Global Crossing, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-152; CC Docket Nos. 01-92, 99-68, 96-45 at 2 (filed Sept. 18, 2008) (asking that the Commission “provide an 18-month window within which carriers can reconfigure their interconnection facilities without incurring reconfiguration charges or early termination liabilities under existing transport contracts”); Ad Hoc 2008 ICC/USF FNPRM Comments at 22–24 (arguing that customers should be allowed to opt out of existing contracts); Earthlink 2008 ICC/USF FNPRM Reply at 7 (arguing that end-users should have the opportunity to negotiate different terms and, if renegotiation is not possible, be permitted to terminate existing contracts without liability).

<sup>1111</sup> See, e.g., *Triennial Review Order*, 18 FCC Rcd at 17400, 17402–03, paras. 692, 697–99; see also, e.g., AT&T 2008 ICC/USF FNPRM Reply at 17–19 (arguing against giving end-users a fresh look at existing contracts). To the extent that there is evidence that particular termination penalties are inappropriate, the Commission can resolve such a matter through an enforcement proceeding. See *Triennial Review Order*, 18 FCC Rcd at 17403, para. 698.

<sup>1112</sup> See *Triennial Review Order*, 18 FCC Rcd at 17403, para. 699.

<sup>1113</sup> This situation is thus different than cases where the Commission found that certain contract provisions might adversely affect competition or where end-user customers would be denied the benefits of new Commission policy absent a fresh look opportunity. See, e.g., *Local Competition First Report and Order*, 11 FCC Rcd at 16044-45, para. 1094; *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341, 7350, para. 21 (1993) (allowing a fresh look at agreements in “situations where excessive termination liabilities would affect competition for a significant period of time”); *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, Report and (continued....)

## XVII. PROCEDURAL MATTERS

### A. Filing Requirements

690. *Ex Parte Rules.* This Notice will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under section 1.1206(b) of the Commission’s rules.<sup>1114</sup> *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.<sup>1115</sup> Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

691. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings should refer to CC Docket No 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.<sup>1116</sup>

692. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

693. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

694. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

695. All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

696. *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

697. In addition, parties shall also serve one copy with the Commission’s copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300 or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

(Continued from previous page) \_\_\_\_\_  
Order, 6 FCC Rcd 5880, 5907, para. 151 (1991) (giving customers of AT&T 90 days to terminate their contracts without penalty to let them “tak[e] advantage of 800 number portability when it arrives”).

<sup>1114</sup> See 47 C.F.R. § 1.1206(b).

<sup>1115</sup> *Id.*

<sup>1116</sup> 47 C.F.R. §§ 1.415, 1.419. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

## APPENDIX B

## Proposed Call Signaling Rules

Part 64, Subpart P of Title 47 of the Code of Federal Regulations would be amended as follows:

**AMENDMENT TO THE CODE OF FEDERAL REGULATIONS**

1. The authority citation for Part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b) (2) (B),(c), Pub. L. 104–104, 110 Stat. 56.  
Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

2. Section 64.1601 is amended to read as follows:

**§ 64.1601 Delivery requirements and privacy restrictions.**

(a) *Delivery.* Except as provided in paragraphs (d) and (e) of this section:

(1) Telecommunications providers and entities providing interconnected voice over Internet protocol services who originate interstate or intrastate traffic on the public switched telephone network, or originate interstate or intrastate traffic that is destined for the public switched telephone network, are required to transmit the telephone number received from, or assigned to or otherwise associated with the calling party to the next provider in the path from the originating provider to the terminating provider, where such transmission is feasible with network technology deployed at the time a call is originated. The scope of this provision includes, but is not limited to, circuit-switched and packetized transmission, such as Internet protocol and any successor technologies. Entities subject to this provision who use Signaling System 7 are required to transmit the calling party number (CPN) associated with every interstate or intrastate call in the SS7 CPN field to interconnecting providers, and are required to transmit the calling party's charge number (CN) in the SS7 CN field to interconnecting providers for any call where CN differs from CPN. Entities subject to this provision who are not capable of using SS7 but who use multifrequency (MF) signaling are required to transmit CPN, or CN if it differs from CPN, associated with every interstate or intrastate call, in the MF signaling automatic numbering information (ANI) field.

(2) Telecommunications providers and entities providing interconnected voice over Internet protocol services who are intermediate providers in an interstate or intrastate call path must pass, unaltered, to subsequent carriers in the call path, all signaling information identifying the telephone number of the calling party, and, if different, of the financially responsible party that is received with a call, unless published industry standards permit or require altering signaling information. This requirement applies to all SS7 information including, but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to Internet protocol signaling messages, such as calling party identifiers contained in Session Initiation Protocol (SIP) header fields, and to equivalent identifying information as used in successor technologies.

\* \* \* \* \*