marketplace that can assist consumers in managing if, how, and when they use telecommunication services.[24] Accordingly, customers now possess the ability to reduce significantly any negative externalities on their own.[25] Moreover, if the incremental cost of origination and termination is zero (or close to zero), even a regime that requires the calling party to bear all the costs of the call may be a very limited deterrent for unwanted calls.[26] Conversely, setting prices high enough to deter unwanted calls also would be expected to deter many calls that are mutually beneficial to both parties to a call.

Similarly, we are not convinced that a CPNP regime addresses positive call externalities any better than a bill-and-keep regime would. AT&T assumes that parties will take turns calling each other or follow other tacit conventions so that they bear costs in relation to the benefit they receive from calls. Despite the theoretical ability of callers under a CPNP regime to internalize positive call externalities in this way, it is not at all clear whether this occurs in practice to any significant extent. Indeed, it seems likely that one reason consumers have embraced flat-rated, bundled service offerings is because, for a consumer who subscribes to such an offering, there is no additional cost to being the calling party and therefore no need to worry about taking turns or otherwise shifting costs among parties. If the type of coordination described by AT&T is not actually used to redistribute the benefits of calls, and if the benefits of a call to the calling and called parties are relatively equal on average, then it is reasonable to expect that a greater proportion of socially efficient calls will be completed under a bill-and-keep regime than under a CPNP regime.

Some commenters contend that bill-and-keep assumes incorrectly that each party benefits equally from a call and therefore does not capture the relative benefits of a call to the calling and called parties.[27] Regulators cannot realistically institute a regime that perfectly reflects the division of benefits for each and every call. Thus, any approach that the Commission adopts must generalize the relative benefits to some degree. The relevant question is whether, judging from the overarching policy goals discussed in the *Further Notice*,[28] the simplifying assumptions underlying a bill-and-keep regime are preferable to the assumptions underlying a CPNP regime.[29] As one commenter points out, there is no evidence that the prevailing assumption that all the benefits flow to the calling party and none to the called party is more realistic than an assumption that the benefits flow to each party equally.[30] Indeed, because consumers have the incentive and the ability to avoid, or reduce the duration of, unwanted calls, we believe that the

[24]*Further Notice*, paras. 25-27.

[25]*See* Sprint Reply at 8.

[26]The immediate success of the Do Not Call list suggests that direct regulation of the problem of unwanted calls has provided a far greater deterrent effect than our intercarrier compensation rules ever did. *See* News Release, Statement of FTC Chairman Timothy J. Muris, Federal Trade Commission, 2004 WL 1217081 (June 3, 2004) (describing the overwhelming success of the National Do-Not-Call Registry).

[27]*See, e.g.,* Ad Hoc Comments at 5-8; Focal *et al*. Comments at 43-44; Allegiance Reply at 5; ALTS Reply at 7; AT&T Reply at 17; DC People's Counsel Reply at 15; Focal *et al*. Reply at 20, 24; NASUCA Reply at 18-19.

[28]*See Further Notice*, paras. 29-36.

[29]*See, e.g.,* Cable & Wireless Reply at 5-6; Qwest Reply at 14-15.

[30]*See* Cable & Wireless Reply at 5.

better assumption is one that reflects some benefit to both the calling party and the called party.[31]

Commenters opposing a bill-and-keep regime on efficiency grounds often cite the example of unwanted calls, such as telemarketing calls, to demonstrate a case where the called party receives no benefit and must cover some cost of the unwanted call.[32] Intercarrier compensation is neither the source of unwanted calls nor the solution to the unwanted call problem. The most direct and efficient response to the problem of unwanted calls is to empower consumers to manage their own telecommunications services. Consumers can avail themselves of a number of tools to manage if, how, and when they use telecommunication services.[33] Screening services such as caller ID and others give customers greater control over the calls they receive.[34] The development of "Do-Not-Call" registries also gives consumers greater control over unwanted calls. Moreover, called parties always have the ability immediately to terminate an unwanted call.[35] In light of these developments, we do not see any reason why the possibility of unwanted calls should preclude us from adopting a compensation regime that is premised on the assumption that both parties may benefit from any given call.

Additional arguments opposing bill-and-keep on economic grounds are based on the assumption that costs depend on the number or duration of calls on the network, rather than on connectivity to the network (*i.e.*, that costs are incurred on a per-minute or per-call basis, rather than a per-line basis). For instance, the Maryland Office of People's Counsel makes a number of arguments alleging subsidization, "free" service, and the potential misallocation of common costs under a bill-and-keep regime.[36] Similarly, the Ad Hoc Telecommunications Users Committee asserts that a fundamental flaw of a bill-and-keep approach is that it would essentially price traffic below cost, and that pricing below cost distorts the market as much as pricing above cost.[37]

We have two responses to these arguments. First, as explained above, we believe that a CPNP approach is problematic in a competitive marketplace because it allows networks to shift costs to other networks. Consequently, even if additional minutes or calls increase a carrier's costs, there is no reason why each carrier should not recover these costs from its subscribers, rather than from each other. Second, underlying all these arguments is a fundamental presumption that most network costs are incurred on a per-minute or per-call basis, *i.e.*, that a doubling of the number of calls or minutes would double total network costs, and that each call therefore imposes additional costs on recipients. As described by the Commission in the *Further Notice*, it does not appear that minutes-of-use are a significant determinant of

[31] *See, e.g.,* Qwest Comments at 20-21.

[32] *See, e.g.,* ALTS Reply at 7; AT&T Reply at 16; Focal *et al*. Reply at 21-22; MD-OPC Reply at 8-9, 20-21.

[33] *See Further Notice*, paras. 25-27.

[34] *See, e.g.*, AT&T Wireless Comments at 31; Qwest Comments at 39; Verizon Wireless Comments at 19; Qwest Reply at 18.

[35] *But see* MD-OPC Reply at 18-19 (arguing that most costs are incurred before the called party can terminate the unwanted call).

[36] *See* MD-OPC Reply at 6-8, 13-15, 21-22, 28-30. *See also* Focal *et al*. Reply at 17 (arguing that incumbent LECs would experience a windfall under bill-and-keep because termination costs are already built into local rates).

[37] Ad Hoc Comments at 2-3. *See also* NASUCA Reply at 14.

costs given developments in telecommunications technologies.[38] The Commission long ago recognized this with respect to loop costs, which are a function of subscriber density and choice of technology.[39] For similar reasons, it appears that switching costs are primarily a function of the number of subscribers, rather than the number of calls or MOU, because a reduction in call minutes per subscriber would not substantially reduce the investment and operating cost of the switch serving those customers, at least in the case of wireline networks.[40] In the *Further Notice*, the Commission seeks additional comment on the degree to which network costs vary with MOU for different types of networks and technologies, and whether to change its rules in order to reduce, if not eliminate, per-minute charges.[41]

2. Bill-and-Keep and Competitive Neutrality

As the Commission acknowledged in the *Intercarrier Compensation NPRM*, any discrepancy in regulatory treatment that is not based on differences in underlying economic costs is likely to raise regulatory arbitrage concerns.[42] In particular, the Commission observed that "parties will revise or rearrange transactions to exploit a more advantageous regulatory treatment, even though such actions, in the absence of regulation, would be viewed as costly or inefficient."[43] Under the existing regimes, different types of carriers are subject to different rules and pricing methodologies when they provide services with the same or similar costs. For example, according to the Intercarrier Compensation Forum, interexchange carriers pay average interstate access charges ranging from 0.6 cents per minute to 1.8 cents per minute to terminate traffic, depending on the LEC involved, whereas LECs pay average reciprocal compensation rates of 0.2 cents per minute to terminate traffic.[44] Moreover, CMRS carriers are

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[38] *See Further Notice*, paras. 23, 67-68. *See also* Qwest Comments at 13 (arguing that per-minute cost recovery fails to reflect the way costs actually are incurred).

[39] *See MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, Phase 1, 93 FCC 2d 241, 278, para. 121 (1983) (finding that a subscriber who does not use the subscriber line to place or receive interstate calls imposes the same non-traffic sensitive costs as a subscriber who does use the line) (subsequent history omitted).

[40] *See Further Notice*, paras. 67-68 (discussing the comments of MCI and AT&T in the TELRIC proceeding). The Bureau reached a similar conclusion in the Virginia Arbitration proceeding. *See In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-251, Memorandum Opinion and Order, 18 FCC Rcd 17722, 17903-10, paras. 463-483 (2003) (establishing flat-rated switching charges based on a finding that the substantial majority of switching costs are not traffic-sensitive), *app. for rev. pending*.

[41] *See Further Notice*, paras. 67-68. The proposition that switching costs generally are fixed and do not vary with call volume or MOU is important to our conclusions regarding a unified bill-and-keep regime. Should the record in response to the *Further Notice* prove otherwise, we would reassess these conclusions.

[42] *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9616, para. 12.

[43] *Id.*

[44] *See* Regulatory Reform Proposal of the Intercarrier Compensation Forum (ICF), October 5, 2004, attached to Letter from Gary M. Epstein and Richard R. Cameron, Counsel for the Intercarrier Compensation Forum, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Tab C, at 2 (filed Oct. 5, 2004).

subject to different compensation rules because they have larger local calling scopes than wireline carriers.[45] Thus, based on this evidence, the existing regimes are not technologically or competitively neutral.

A bill-and-keep approach may be more technologically and competitively neutral than the current regimes because it moves the intercarrier compensation system away from traditional regulatory and jurisdictional classifications that are not based on actual economic cost differences.[46] A bill-and-keep approach would free the Commission from the difficult task of making regulatory distinctions that are no longer sustainable. We acknowledge that, as compared to the current regimes, any unified approach would have these benefits.[47] A unified CPNP regime, however, would still afford carriers the opportunity to shift costs to competitors rather than recover these costs from their subscribers. Because this type of regime distorts the pricing signals received by consumers, it does not serve the Commission's goal of competitive neutrality.[48]

Some commenters contend that a bill-and-keep approach is not competitively neutral because it favors carriers with balanced traffic exchanged with interconnected carriers, such as incumbent LECs, and assumes that competitive LECs should have the network architecture, customer base, and customer calling patterns of incumbent LECs.[49] For instance, some commenters claim that, because incumbent LECs have a larger and more diverse customer base than competitive LECs, they will have more opportunities to recover costs across broad classes of customers.[50] We disagree that a bill-and-keep approach necessarily favors incumbent LECs or carriers with characteristics similar to them. As an initial matter, these commenters confuse average costs with incremental costs, and assume that a call actually imposes a measurable incremental cost on the terminating network. Further, concerns about the balance of traffic exchanged reflect the assumption, which we question, that the calling party's network should bear all the costs of a call. As discussed above, an important benefit of a bill-and-keep regime is that it puts all carriers in a position where they must recover their own costs from their own retail customers. Under this regime, success in the marketplace will reflect a carrier's ability to serve customers efficiently, rather than its ability to extract payments from other carriers.

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[45] *See Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036.

[46] *See* Level 3 Reply at 13-14.

[47] *See* Global NAPs Comments at 9-11. To the extent a unified CPNP regime retained some form of originating access charges for some calls, however, there still would be disputes as to whether, on a particular call, such charges apply or whether, instead, the originating carrier is obligated to compensate the terminating carrier. These disputes are common today in cases where the called party's telephone number does not reflect its geographic location. *See Further Notice*, para. 22. A bill-and-keep regime would eliminate such disputes.

[48] Furthermore, a unified CPNP approach may require the Commission to apply regulated charges to services and service providers currently subject to an exemption under the rules, while a bill-and-keep approach would avoid this problem. For instance, service providers currently subject to the ESP exemption may be subject to regulated intercarrier charges. Moreover, under a unified CPNP approach, the Commission may be required to permit and regulate charges that are not subject to Commission regulation at this time, such as CMRS access charges.

[49] *See, e.g.,* Allegiance Comments at 3-4, 16-18. Allegiance goes on to state that bill-and-keep would favor incumbent LECs because it would allow them to shift their costs to competitive LECs. *Id.* at 3-4. *See also* ALTS Reply at 4-6.

[50] *See, e.g.*, Allegiance Comments at 16-17; KMC Comments at 4.

3. Bill-and-Keep and the Deployment of Efficient Technologies

In the *Intercarrier Compensation NPRM*, the Commission observed that an intercarrier compensation regime that involves termination payments, such as a CPNP regime, may create the opportunity for the terminating carrier to exploit undesirable pricing power.[51] The terminating carrier has a monopoly of sorts over the facilities serving the end user who receives calls because any interconnecting carrier attempting to reach that customer must use the terminating carrier's network.[52] If the originating carrier is prohibited from blocking or declining traffic based on the identity of the terminating carrier, and the terminating carrier may unilaterally impose charges (*e.g.*, by filing a tariff), the originating carrier cannot avoid unreasonable termination charges. Moreover, in many cases, the originating carrier is unable to pass these charges on to the end-user customer.[53] Because the end-user customer receives no market signals to avoid these costs, the unreasonable termination charges may persist.[54] There is no market pressure to moderate these rates.

In contrast, under an approach where terminating carriers cannot impose payment obligations unilaterally, such as bill-and-keep, the terminating carrier must recover its costs from its own end-user customers, thereby allowing that customer to compare the prices charged for termination and choose the most efficient carrier.[55] The end user thus controls the decision whether to purchase from the lowest cost provider and may select providers based on considerations of cost and functionality.[56] Bill-and-keep therefore encourages the development of competition by rewarding carriers based on their ability to serve customers efficiently rather than their ability to shift costs to other carriers.

Some commenters contend that a bill-and-keep approach is not technologically neutral because it would uniquely affect specific services or service providers.[57] For instance, they contend that a bill-and-

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[51]*See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9625, para. 38.

[52]*Id.; In the Matter of Access Charge Reform*, *Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9934-35, para. 28 (2001) (*CLEC Access Reform Order*). *See also* Qwest Comments at 9-11 (describing the terminating access monopoly problem).

[53]*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9625, para. 38. For example, IXCs are subject to the rate averaging requirements of section 254(g) and therefore cannot charge rates that impose on the calling party the specific costs of originating that particular party's calls; nor can IXCs charge the calling party different rates to terminate calls to different called parties. *See* 47 U.S.C. 254(g) (requiring that the rates charged by IXCs to subscribers in rural and high cost areas be no higher than the rates charged to subscribers in urban areas, and that the rates charged by IXCs to subscribers in each state be no higher than those charged to subscribers in any other state); *see also* 47 C.F.R. § 64.1801.

[54]*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9625, para. 38.

[55]*See, e.g.*, Qwest Comments at 9-11; SBC Comments at 50; USTA Comments at 21.

[56]*See* Level 3 Reply at 17.

[57]AT&T, for instance, argues that a bill-and-keep regime would not permit long-distance carriers to continue to offer toll-free service because, under a bill-and-keep regime, the service would no longer cover the costs associated with originating and terminating access. *See* AT&T Comments, Declaration of Janusz A. Ordover and Robert D. Willig, para. 30 & n.7. We question this conclusion. Under both the current access charge regime and a bill-and-keep regime, the calling party must pay for the local connection to the telecommunications network in order to make (continued….)

keep approach would disadvantage paging carriers because there is no mutuality of benefit as between the carriers.[58] Paging carriers argue that, due to the one-way nature of paging traffic, the originating carrier always receives a greater benefit than the terminating paging carrier.[59] The rationale underlying bill-and-keep is not premised on the mutuality of benefits as between the *carriers*, but rather the mutuality of benefit as between the *customers* of the carriers involved. The principle that both the calling and called party benefit from any given call is even more compelling in the case where the calling party is attempting to contact the called party and the called party has supplied a paging number to the calling party for that very purpose. Further, we see no reason why paging carrier customers should not pay for the costs of calls terminated to their paging devices, especially considering the benefit to the customers of the paging service received. Indeed, the very purpose of a paging service is the benefit of notification when a party is attempting to contact the paging subscriber. Given the mutual benefit received by customers in the paging context, we do not believe that a bill-and-keep approach would somehow disadvantage paging carriers.

4. Bill-and-Keep and Regulatory Oversight

In the *Intercarrier Compensation NPRM*, the Commission discussed several potential advantages of a bill-and-keep approach, including the claim that it eliminates the need for regulators to set the level and structure of termination rates.[60] Under a CPNP approach, because of the "terminating monopoly" issue, there is an obvious need to regulate the termination rates that carriers charge each other. Commenters contend that, absent a truly competitive marketplace, ratesetting requires considerable resources from carriers and regulators, leads to litigation, and results in considerable uncertainty in the marketplace.[61] As Qwest observes, the development of competition, combined with various carriers deploying different network technologies and services, makes it extremely difficult for regulators to establish a single CPNP regulatory scheme for intercarrier cost recovery.[62] Similarly, Level 3 observes that, due to the differing efficiencies associated with individual network architectures, each carrier incurs distinct costs of termination, and that regulators would need to account accurately for individual costs associated with different services, features, and technologies.[63] Considering all these factors and variables, they argue that regulators are unlikely to establish rates that accurately reflect costs and thereby

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a toll-free call, and the business that subscribes to the toll-free number covers the IXC's costs. AT&T may be correct that toll-free services are less valuable to business and consumers as toll charges decline, which we would expect under a bill-and-keep regime, but that is not a valid reason to retain a CPNP regime.

[58] *See, e.g.*, Arch Wireless Reply at 3-6.

[59] *Id.*

[60] *See Intercarrier Compensation NPRM*, 16 FCC Rcd at 9630, para. 56. The Commission also discussed claims that a bill-and-keep approach enables regulators to avoid the allocation of common costs among services, and gives end users direct control over their access arrangements. *Id.* at 9626, paras. 39-40.

[61] *See, e.g.*, Level 3 Reply at 11; Qwest Reply at 3.

[62] *See, e.g.*, Qwest Comments at 14 (arguing that the pragmatic obstacles associated with ratesetting may be insurmountable); Verizon Wireless Comments at 25 (stating that the primary benefit of bill-and-keep is its ability to minimize the need to regulate rates); Qwest Reply at 8-11 (discussing the reason why regulation is incapable of getting the rates "right"). *See also* Qwest Comments at 13 (emphasizing that a carrier incurs the costs associated with transport and termination when it purchases the network capacity necessary to handle peak load call volume).

[63] Level 3 Reply at 12. *See also* Nextel Comments at 28.

eliminate inefficient, market-distorting behavior.[64]

Other commenters, however, maintain that a bill-and-keep approach would require more regulatory intervention than a CPNP approach. For instance, some commenters contend that converting intercarrier charges to end-user charges would create additional means for incumbent LECs to engage in anticompetitive conduct.[65] They further argue that a bill-and-keep regime would result in new arbitrage issues requiring regulatory intervention, including disputes over interconnection costs and demarcation requirements.[66] Similarly, ALTS argues that bill-and-keep would create even more regulatory uncertainty.[67] Other commenters express general concern over the many implementation issues arising under a bill-and-keep regime, including the potential need to adjust and regulate end-user rates and safeguard against cross-subsidization.[68]

While a bill-and-keep regime would undoubtedly require regulatory oversight, we do not believe it can be reasonably argued that bill-and-keep is somehow "more regulatory" than a CPNP regime. Given that a CPNP regime requires regulation of both retail and wholesale rates, while bill-and-keep requires only retail rate regulation, bill-and-keep would appear to require substantially less regulatory intervention. Indeed, our experience with CPNP regimes demonstrates the need for substantial regulation of terminating charges because of the terminating access monopoly. Because the terminating carrier controls the only line and local switch connecting the called party to the network, that carrier has strong incentives to extract as high a payment as possible from the calling party's carrier.[69] Competition at the retail level has not diminished the terminating access monopoly of the carrier selected by the called party.[70] Even if the called party takes service from two different networks (*e.g.*, a LEC network and a CMRS network), it will have a different telephone number for each service and the originating network has no choice but to terminate the call on the network to which the called number is assigned.

As a result, under a CPNP approach, regulators must ensure that terminating rates are cost-based,

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[64]Level 3 Reply at 12; s*ee also* Qwest Comments at 12-15 (providing numerous reasons why regulators are unlikely to set termination rates at truly efficient levels).

[65]*See, e.g*., AT&T Reply at 21 (explaining that, because state commissions typically adopt UNE switching rates when determining reciprocal compensation rates and because incumbent LECs could be net payors of reciprocal compensation, the current system provides some incentive to seek reasonable, cost-based UNE switching rates in order to lower potential reciprocal compensation payments); ALTS Reply at 5-6 (discussing the relationship between UNE, collocation, and reciprocal compensation rates); e.spire and KMC Reply at 8-9 (arguing that bill-and-keep would create incentives for higher UNE rates).

[66]*See, e.g.*, Allegiance Reply at 8; AT&T Reply at 22; NASUCA Reply at 12-13.

[67]ALTS Reply at 3-4.

[68]*See* Allegiance Reply at 8; ALTS Reply at 3; AT&T Reply at 22; MD-OPC Reply at 22; NASUCA Reply at 12-13; Taylor Reply at 6; Time Warner Reply at 3.

[69]*See* Qwest Reply at 4 (discussing the terminating access monopoly problem).

[70]*See CLEC Access Reform Order*, 16 FCC Rcd at 9934-35, paras. 10, 28 (discussing why terminating access providers may be insulated from the effects of competition); *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Notice of Proposed Rulemaking, 11 FCC Rcd 21354, 21476, para. 279 (1996) (explaining why all access providers may possess market power over IXCs needing to terminate calls) (subsequent history omitted).

and the need for regulation continues indefinitely. If regulators had perfect information at their disposal and easily could set cost-based prices, this constant need for rate regulation might be tolerable. In practice, however, regulators rarely have sufficient information or sufficient resources to establish rates that accurately reflect the cost of providing service. For example, notwithstanding the Commission's extensive experience with circuit switching technology, the issue of what portion of switching costs are traffic-sensitive is highly controversial.[71]

Furthermore, as new technologies and network architectures develop, the challenges associated with setting cost-based rates will only increase. The ratemaking experience of state and federal regulators generally has been limited to incumbent LEC wireline networks. Regulators are far less familiar with the costing of other types of networks, such as wireless networks, that have not previously been subject to cost-based rate regulation. The Commission then would be faced with the choice of examining the costs of these other types of networks, which would be an overwhelming task, or establishing rates based on incumbent LEC networks, which could lead to significant arbitrage issues if the costs of the networks differ. In either case, the inevitable result of maintaining a CPNP regime in the face of these new technologies would be increased litigation and regulatory uncertainty. As one commenter observed, "opponents [of bill-and-keep] both overestimate the ability of regulators to 'get the price right' and underestimate the social and economic costs of getting the price wrong."[72]

AT&T suggests that a bill-and-keep approach would have no effect on the need to regulate termination rates. It contends that bill-and-keep would change only the identities of the parties that pay such rates because dominant carriers may still have the ability and incentive to charge their end users more than the economic cost of the services provided.[73] AT&T's argument assumes that dominant carriers will retain their position in the marketplace.[74] One of the fundamental goals of the 1996 Act and the Commission's rules is to encourage competition in the marketplace, and, as discussed in the *Further Notice*, such competition is developing.[75] Competitive LECs already terminate a significant amount of traffic and hold a terminating monopoly over access to these end users.[76] Moreover, there is increased intermodal competition from cable and CMRS providers.[77] We believe a bill-and-keep approach is more

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[71] *See Further Notice*, paras. 67-68.

[72] Qwest Reply at 8. Some commenters are concerned about consistent pricing policies and the opportunity to raise UNE rates. *See, e.g.,* Texas Counsel Comments at 14; Allegiance Reply at 6. We note that the Commission has a separate proceeding to consider UNE pricing and the relationship, if any, that should be maintained between UNE pricing and intercarrier compensation rules. *See generally Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Notice of Proposed Rulemaking, 18 FCC Rcd 18945 (2003).

[73] *See* AT&T Comments at 17.

[74] *See* Qwest Reply at 7.

[75] *See Further Notice*, paras. 18-21.

[76] *See* Qwest Reply at 5.

[77] *See, e.g.*, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 04-111, Ninth Report, 19 FCC Rcd 20597, 20684, para. 213 (2004) (finding that consumers are substituting wireless service for traditional wireline communications).
(continued….)

likely to be sustainable in a competitive marketplace and that the marketplace, rather than regulatory intervention, is the best mechanism for constraining end-user rates. In markets where competition has not taken hold at the retail level, states historically have regulated end-user rates and we have no reason to believe that they will not continue to do so.

Further, we are not convinced that a cost-based CPNP regime would provide more regulatory certainty for carriers and investors than a bill-and-keep regime.[78] Some commenters suggest that changing the current rules will upset carrier expectations and investments.[79] We question the wisdom of retaining the current approach based on these considerations. As an initial matter, carriers have been on notice for almost four years that the Commission was considering significant reform of intercarrier compensation regimes, and many commenters support such reform.[80] In addition, some of these carrier expectations arose from regulatory arbitrage incentives that the Commission is seeking to eliminate in this proceeding.[81] These incentives give rise to many of the problems and intercarrier compensation disputes that currently plague the industry. Thus, we do not believe that carrier and investor expectations based on these arbitrage incentives justify retention of a CPNP approach. We do, however, recognize that there are significant implementation issues that will be associated with any such change and that transitional mechanisms may be necessary.

Finally, we address claims that a bill-and-keep regime is not deregulatory because implementation of such a regime would require Commission oversight.[82] For instance, ALTS observes that a move to a bill-and-keep regime would require the Commission to transform the access charge regime into a program of federal end-user charges and to address the political issues associated with such changes.[83] ALTS argues that a bill-and-keep approach would simply toss the existing intercarrier compensation issues "back on the table and create more uncertainty in the market."[84] Because a bill-and-keep approach, once implemented, would eliminate intercarrier compensation payments between carriers, it should dispose of most, if not all, of the existing compensation disputes between carriers. Further, although a bill-and-keep regime would call for Commission oversight during its implementation, the need for regulation after implementation would be greatly reduced as compared to the regulatory oversight required by a cost-based CPNP regime. ALTS is correct that any additional end-user charges initially would require Commission oversight, but we anticipate that these charges increasingly will be constrained by competitive forces. In contrast, a cost-based CPNP regime would necessitate ratesetting indefinitely, and on the basis of a number of factors and variables that will continue to change over time. Thus, although bill-and-keep may require additional regulatory oversight in the near term, we believe that such an approach is ultimately more deregulatory than the other alternatives proposed.

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[78] *See, e.g.*, Allegiance Comments at 6-10.

[79] *See, e.g.*, *id*. at 2-3, 8-10; Focal *et al*. Comments at 3; GVNW Comments at 8; ALTS Reply at 3-4.

[80] *See Further Notice*, paras. 37-39.

[81] *Id.*, para. 33.

[82] *See, e.g.*, ALTS Reply at 3-4.

[83] *Id.* at 3.

[84] *Id.* at 3-4.

5. Bill-and-Keep and Universal Service

Many commenters, including carriers, state commissions, and consumer groups, express concern about the potential impact of bill-and-keep on end-user charges.[85] They contend that a bill-and-keep regime is not in the public interest because it would affect the affordability of telecommunications services in rural and remote areas.[86] Several commenters also argue that a bill-and-keep approach would have significant implications for universal service and may necessitate changes to the existing universal service support mechanisms.[87]

We recognize the need to address the universal service consequences of a bill-and-keep regime. As the Commission made clear in the *Further Notice*, it is committed to ensuring the availability of telecommunications services in rural and high-cost areas at rates that are affordable and reasonably comparable to rates in urban areas, consistent with section 254 of the Act.[88] We acknowledge the many commenters, including carriers, state commissions, and consumer groups, that express concerns that bill-and-keep will raise end-user charges and may affect the affordability of telecommunications services, particularly in rural and high-cost areas.[89] We recognize that addressing these affordability concerns will require further adjustments to the Commission's existing explicit universal service mechanisms and may require additional commitments of universal service funds.

[85] *See, e.g.,* ALTS Reply at 6-7; DC People's Counsel Reply at 4-5, 10-1, 17-21; e.spire and KMC Reply at 9; MD-OPC Reply at 3-4; NASUCA Reply at 3, 5-8; NECA Reply at 3-4; Ronan Advisory Reply at 1, 8; Texas Counsel Reply at 4, 6.

[86] *See, e.g.*, MITG Reply at 4; NASUCA Reply at 3, 5-8; NECA Reply at 2-4; Ronan Advisory Reply at 1-8; RICA Reply at 2. *See also* Letter from Scott Reiter, Sr. Telecom Specialist, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at Attach. (filed Mar. 10, 2004) (attaching a paper entitled "Bill and Keep: Is It Right for Rural America?" prepared by the NTCA Intercarrier Compensation Work Group).

[87] *See* NECA Reply at 6-7; NRTA/OPASTCO Reply at 3, 10-15; SBA Reply at 10-11; Taylor Reply at 41-42; TCA Reply at 3-4; Texas Counsel Reply at 3-4, 6, 11. *See also* BellSouth Reply at 2-3 (stating that the Commission must address legacy issues, particularly implicit subsidies, and outstanding universal service issues).

[88] *See Further Notice*, para. 32; 47 U.S.C. § 254.

[89] *See, e.g.*, Alaska Commission Comments at 2; Alaska Telephone Association Comments at 3-4; Century Tel Comments at 21; Home Telephone Comments at 1; ICORE Companies Comments at 8; Iowa Commission Comments at 3; ITCs Comments at 2; Level 3 Comments at 30-31; MECA Comments at 49; Minnesota Independent Coalition Comments at 2; MSTG Comments at 2; NASUCA Comments at 31; NECA Comments at 4-6; NRTA/OPASTCO Comments at 15-19; Texas Counsel Comments at 17-18; Oklahoma Rural Telephone Coalition Comments at 43-45; Ronan Advisory Comments at 2,7; Sprint Comments at 24-25; USTA Comments at 22-23; United Utilities Comments at 4; Western Alliance Comments at 6-17; Wisconsin Commission Comments at 5.