

b. Developments in Service Offerings

18. The telecommunications marketplace has changed dramatically since the Commission adopted the existing intercarrier compensation regimes. For instance, most wireless services were not widely available in the 1980s, when the Commission adopted the access charge regime, and wireless services were only beginning to gain a foothold in the market in 1996. Today, there are at least 160 million wireless subscribers and the numbers continue to increase.⁵⁰ Due in part to the Commission's deregulatory approach to these services, wireless providers were able to offer bundled local and long-distance packages, and the availability of these bundled packages contributed to the astounding growth of wireless services.

19. Prior to 1996, most wireline carriers were limited to providing a single type of service, such as local or long-distance. The 1996 Act fundamentally changed the telecommunications marketplace by opening all market segments to competition and by lifting existing restrictions on the provision of specific services by some classes of carriers.⁵¹ It is undisputed that carriers are taking advantage of the competitive opportunities presented by the 1996 Act.⁵² These legal and regulatory changes enable carriers to offer a broad range of services to their customers, including flat-rated "bundles" of two or more services.⁵³ Carriers such as Verizon, MCI, and AT&T now offer unlimited

⁵⁰See *Telephone Trends Report* at Table 11.1 (showing 160 million wireless subscribers as of December 2003). Nationwide, mobile wireless telephone subscribers increased six percent during the first six months of 2003, from 138.9 million to 147.6 million. *Federal Communications Commission Releases Data on Local Telephone Competition*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 1 (rel. Dec. 22, 2003) (*Local Competition Report*). For the full twelve-month period ending June 30, 2003, the number of mobile wireless subscribers increased 13 percent. *Id.* See also Cellular Telecommunications Industry Association, Survey (visited April 22, 2004) <http://www.wocom.com/pdf/CTIA_Semiannual_Survey_YE2003.pdf> (indicating that as of December 2003, the number of national subscribers was approximately 158,721,981).

⁵¹See generally *Local Competition First Report and Order*, 11 FCC Rcd at 15505-07, paras. 1-5 (1996) (discussing the competitive changes contemplated by the 1996 Act).

⁵²For instance, as of June 2003, competitive local exchange carriers (LECs) provided 14.7 percent of the nationwide local telephone lines that were in service to end users. See *Telephone Trends Report* at 1. Moreover, the Bell Operating Companies (BOCs) are now able to provide in-region long-distance services in all 50 states and the District of Columbia. *Federal Communications Commission Authorizes Qwest To Provide Long Distance Service in Arizona – Bell Operating Companies Long Distance Application Process Concludes, Entire Country Authorized for "All Distance" Service*, WC Docket No. 03-194, FCC News, at 2 (rel. Dec. 3, 2003). The BOCs did not require such authorization in Alaska and Hawaii.

⁵³See *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of the Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3808-09, para. 133 (2002) (observing that carriers increasingly bundle telecommunications services, such as flat-rate packages that include both local and long distance services) (*Universal Service et al. Further Notice*).

local, long-distance, and other services in one flat-rated service package.⁵⁴ These offerings, which from the customer's perspective do not distinguish between local and long-distance service, are dramatically different than the retail offerings that existed prior to the 1996 Act.

20. In addition to competitive developments within the wireless and wireline sectors, the advent of voice-over-internet protocol (VoIP) technology has introduced another mass market alternative to traditional fixed telephone service. New entrants, such as Vonage, have initiated VoIP services in recent years, and a number of other service providers, including Qwest, Verizon, and a number of cable operators, have begun to use or will soon use Internet protocol to provide voice services.⁵⁵ These developments have raised a number of regulatory issues for the Commission to resolve.⁵⁶

21. These bundled offerings and novel services blur traditional industry and regulatory distinctions among various types of services and service providers, making it increasingly difficult to enforce the existing compensation regimes. Moreover, in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications. For instance, if one type of carrier primarily recovers costs from other carriers, rather than its retail customers, it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers.⁵⁷

⁵⁴For instance, Verizon offers "Verizon Freedom Packages," which include unlimited local and regional calls, unlimited long-distance calls across the U.S. and Canada, five call features (such as Caller ID and Voice Mail), and DSL service and wireless. See Verizon, Verizon Freedom Packages (visited Dec. 21, 2004) <<http://www22.verizon.com/foryourhome/sas/FreedomLongDesc.asp?ID=10008&state=DC&NPA=&NXX=&TracKID=VF>>. Verizon states that, as of year-end 2003, 48 percent of Verizon residential customers purchased local services in combination with either Verizon long-distance or Verizon DSL, or both. Verizon, Verizon Reports Solid Overall Fourth-Quarter and Year-End Results, Based on Strong Fundamentals, News Release dated Jan. 29, 2004. (visited Dec. 21, 2004) <http://newscenter.verizon.com/proactive/newsroom/release.vtml?id=83519&PROACTIVE_ID=cecdc9cecbcbcac8c6c5cecfcfcf5cecec9c9c8cbc9ccc8cbc5cf>. In addition, an MCI offering entitled The Neighborhood gives customers unlimited local, long-distance and high speed Internet service for one monthly fee. See MCI, MCI The Neighborhood – Home Page (visited Dec. 21, 2004) <http://consumer.mci.com/TheNeighborhood/res_local_service/jsps/default.jsp>. AT&T's One Rate USA and Unlimited Plus plans offer unlimited local and long-distance. See AT&T, Compare AT&T Calling Plans (visited Dec. 21, 2004) <<http://www.shop.att.com/plancomparison/#datatable>>.

⁵⁵See *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4871-73, para. 10 & n.39 (2004) (*IP-Enabled Services NPRM*).

⁵⁶For instance, the Commission recently initiated a rulemaking proceeding to consider the appropriate regulatory treatment of VoIP services. See generally *id.* See also, e.g., *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267, para. 14 (rel. Nov. 12, 2004) (preempting an order of the Minnesota Public Utilities Commission on the basis that the IP-based service at issue could not be separated into interstate and intrastate communications for purposes of effectuating a dual federal/state regulatory scheme and that permitting state regulation would thwart federal law and policy); *Pleading Cycle Established for Petition of Level 3 for Forbearance from Assessment of Access Charges on Voice-Embedded IP Communications*, WC Docket No. 03-266, Public Notice, DA 04-1 (rel. Jan. 2, 2004) (seeking forbearance from the application of access charges to IP-PSTN traffic).

⁵⁷See *ISP Remand Order*, 16 FCC Rcd at 9154-55, para. 5.

22. Even if there were economic or technical differences among the different types of services that warranted different termination rates, the increased use of alternative services makes it difficult to sustain current regulatory distinctions. Technological alternatives to POTS service that are not tied to a geographic location, such as wireless services and some IP-based services, make regulatory distinctions based on jurisdiction difficult to enforce. Combined with other developments, such as our recent decision requiring wireline-wireless (intermodal) local number portability,⁵⁸ the availability of these alternatives makes it difficult to identify the geographic end points of a call using telephone numbers.⁵⁹ Further, as one commenter notes, services provided via the Internet “neither respect nor reflect most of the traditional boundaries and classifications of service used to define regulatory status.”⁶⁰ As the demand for these new services and offerings continues to grow, so will the challenges associated with determining the appropriate intercarrier compensation for this traffic under our current rules.

c. Developments in Telecommunications Infrastructure

23. Another consideration is how the telecommunications infrastructure has developed, which affects the way carrier costs are incurred and recovered under the intercarrier compensation regimes. Our existing compensation regimes are based largely on the recovery of switching costs through per-minute charges.⁶¹ In a separate rulemaking before the Commission,⁶² however, a number of carriers argue that a substantial majority of switching costs do not vary with minutes-of-use (MOU). MCI argues, for example, that vendor contracts for switches establish per-line prices, rather than per-minute prices, and thus LECs do not incur switching costs on a per-minute basis.⁶³ Similarly, AT&T argues that switches generally have excess capacity so that increases in usage do not increase the cost of a switch.⁶⁴ In addition, the overall capacity of telecommunications networks has increased dramatically due to the increased deployment of fiber optic facilities.⁶⁵ It appears, therefore, that most network costs, including

⁵⁸See *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd at 23698, para. 1(2003) (*CTIA Number Portability Order*).

⁵⁹Telecommunications carriers typically compare the telephone numbers of the calling and called party to determine the geographic end points of a call, which may be relevant for jurisdiction and compensation purposes. See *Starpower Communications, LLC v. Verizon South Inc.*, EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625, 23633, para. 17 (2003).

⁶⁰ALLTEL Comments at 6.

⁶¹See *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9618, para. 17 (discussing rate structure issues raised by the existing intercarrier compensation regulations).

⁶²See *TELRIC NPRM*, 18 FCC Rcd at 18945.

⁶³*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, Comments of MCI, at 30 (filed Dec. 16, 2003) (MCI TELRIC Comments).

⁶⁴*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, Comments of AT&T, at 73-76 (filed Dec. 16, 2003) (AT&T TELRIC Comments).

⁶⁵See Fred Donovan, *Carrier Fiber-Optic Spending to Top \$24B in 2004*, Vol. 21, Issue 4, Fiber Optic News (2001) (noting the findings of a study done by the Telecommunications Industry Association (TIA) concluding that (continued....)

switching costs, result from connections to the network rather than usage of the network itself.⁶⁶ This development in infrastructure calls into question whether intercarrier compensation mechanisms based on per-minute charges remain appropriate or necessary.⁶⁷

24. Exacerbating the issue of inefficient rates is the problem of terminating access monopolies. Even when an end user takes service from two providers, *e.g.*, wireless and wireline, the originating carrier must deliver the call to the terminating carrier with the telephone number dialed by the calling party. Other carriers seeking to deliver calls to that end user have no choice but to purchase terminating access from the called party's LEC. Originating carriers generally have little practical means of affecting the called party's choice of access provider, and the called party's LEC may take advantage of the situation by charging excessive terminating rates to a competing LEC. To address the terminating access monopoly problem, the Commission generally has determined that carriers should not be permitted unilaterally to impose termination charges that are not subject to regulation.⁶⁸

d. Developments in Consumer Control Over Telecommunications Services

25. Finally, there have been major developments in the ability of customers to manage their telecommunications services. Carriers now offer a number of call screening services that permit customers to block unwanted calls, such as telemarketing calls. Screening services such as caller ID, privacy messages, and non-solicitation messages give customers greater control over the calls they receive.⁶⁹ The fact that recipients of calls can and do pay for these services indicates that these customers

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fiber-optic deployment by incumbent LECs doubled in 2000 and that deployment by competitive LECs rose 23.2 percent); *Despite Fears, fiber-optic deployment continues to increase (Industry Trend or Event)*, Vol. 18, Issue 6, Lightwave (2001) (citing the TIA report findings that fiber miles deployed by carriers grew 168.7 percent in 2000, compared to 55.7 percent in 1999).

⁶⁶See *infra* para. 67.

⁶⁷For instance, reciprocal compensation rates often substantially exceed the per-minute incremental cost of terminating a call and therefore create a potential windfall for carriers that serve customers that primarily or exclusively receive traffic. *ISP Remand Order*, 16 FCC Rcd at 9182-83, paras. 68-71; see also *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9616, para. 11. Because of these inefficient termination charges, the Commission found that some competitive LECs were targeting such customers, particularly ISPs, in order to profit from the one-way flow of traffic. *ISP Remand Order*, 16 FCC Rcd at 9182-83, paras. 68-70; see also *Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9625, para. 38. This reciprocal compensation asymmetry created artificial incentives for entry by LECs intent on serving ISPs. It distorted competition because ISPs were charged rates well below the cost of providing them with service. *ISP Remand Order*, 16 FCC Rcd at 9162, para. 21.

⁶⁸See *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd 9923 (2001) ("CLEC Access Charge Order") (establishing benchmark rates for CLEC access charges), *recon.*, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262 and CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108 (2004) (*CLEC Access Charge Recon. Order*); see also *Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192 (2002) (allowing CMRS access charges only pursuant to contracts with IXC).

⁶⁹Qwest Comments at 39.

benefit from receiving calls, and indeed benefit more from receiving some types of calls than others. Moreover, federal agencies and state lawmakers have established “do not call” options for consumers. The Commission recently established a nationwide Do-Not-Call Registry for consumers who wish to avoid telemarketing calls.⁷⁰ The Do-Not-Call-Registry, which is being implemented in conjunction with the Federal Trade Commission, gives consumers the choice of whether or not to receive telemarketing calls in their homes.

26. This general increase in the ability of customers to manage their telecommunications services has been accelerated by the introduction of IP-enabled services, which provide consumers far greater control over if, how, and when they receive calls.⁷¹ Some IP-enabled telephone services include automated voicemail attendants, call pre-screening, and call forwarding of pre-screened calls.⁷² Other services include unified messaging or a unified mailbox that may be accessed by any IP-enabled device. Services such as these permit users to determine the media by which they would like to respond to a given message.⁷³ As the Commission recently observed, with IP-enabled services, “[e]nd users are likely to enjoy greater and greater flexibility in designing or selecting communications packages that suit their individual needs, and can be expected to access those packages over networks of their choosing, on devices of their choosing.”⁷⁴ Thus, IP-enabled services provide many more options for consumers seeking to control how and when they receive telephone calls.

27. This increased ability of consumers to avoid calls for which they may not perceive a benefit (e.g., telemarketing calls) means that they generally will benefit from calls they choose to accept. As a result, we question the assumption underlying our current rules that the calling party is the primary beneficiary of any given call and therefore should bear all the costs of the call.⁷⁵ As the Commission observed in the *Intercarrier Compensation NPRM*, it may be more rational to assume that both the calling and called party benefit from any given call.⁷⁶ Indeed, for customer choice in a competitive marketplace to be economically meaningful, customers should bear the cost of the network of their choosing and avoid the cost of the networks rejected. Similarly, networks should make investment decisions based on whether they can recover costs from the customers that investment will attract.⁷⁷

⁷⁰See Federal Communications Commission, *FCC Authorizes Nationwide Do-Not-Call Registry*, News, at 1 (rel. June 26, 2003). The rules establishing the nationwide Do-Not-Call Registry were recently upheld on appeal. See *Mainstream Marketing v. FTC*, 358 F.3d 1228 (10th Cir. 2004).

⁷¹See *IP-Enabled Services NPRM*, 19 FCC Rcd at 4877, 4879, paras. 18, 22.

⁷²See *id.* at 4877, para. 18.

⁷³*Id.*

⁷⁴*Id.* at 4879, para. 22.

⁷⁵*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9624-25, para. 37. We note, however, with respect to CMRS calls, that the Calling-Party’s-Network-Pays (CPNP) regime typically does not assign the full cost to the originating carrier and caller because CMRS providers typically charge their own subscribers for incoming calls. *Id.* at 9624, n.54.

⁷⁶*Id.* at 9624-25, para. 37.

⁷⁷Further, if discrete calls are a *de minimis* source of costs, then the occurrence of such calls should not transfer significant costs between networks. That is, even if it makes sense as a policy matter for carriers to recover costs (continued....)

28. All of these developments warrant a re-evaluation of the existing regimes, and the record confirms the need for comprehensive reform efforts. In addition to the extensive record received in response to the *Intercarrier Compensation NPRM*, industry groups have been negotiating and developing comprehensive reform proposals for consideration in this proceeding.⁷⁸ Recognizing that the marketplace has changed significantly since these regimes were established, all of the proposals advocate replacing the existing rules with a more unified approach to intercarrier compensation.⁷⁹

B. Goals of Intercarrier Compensation Reform

29. Acknowledging that significant reform might be needed, the Commission requested comment in the *Intercarrier Compensation NPRM* on the appropriate goals of intercarrier compensation regulation in a competitive market and discussed specific goals that should be considered in evaluating a new regime.⁸⁰ In particular, the Commission asked about the role efficiency should play in developing intercarrier compensation regulations and whether a new regime should be technologically and competitively neutral.⁸¹ The Commission also sought comment on whether, in evaluating a new regime, it should consider the degree of regulatory intervention required to implement the new rules, and on the weight to be given to these considerations.⁸² Further, the Commission found it reasonable to consider the (Continued from previous page) _____

from competing carriers with whom they exchange traffic, rather than their own customers, a compensation approach based on average costs (rather than actual costs) would overcompensate the receiving carrier, thereby creating an arbitrage opportunity.

⁷⁸See *infra* Section II.C.1 (discussing the specific proposals in the record).

⁷⁹See generally Regulatory Reform Proposal of the Intercarrier Compensation Forum, October 5, 2004 (ICF Proposal), 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 A (filed Oct. 5, 2004) (ICF Oct. 5 *Ex Parte* Letter); EPG Comprehensive Plan For Intercarrier Compensation Reform, Nov. 2, 2004, (EPG Proposal), attached to Letter from Glenn H. Brown, EPG Facilitator, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004); Alliance for Rational Intercarrier Compensation (ARIC) -- Fair Affordable Comprehensive Telecommunications Solution (FACTS), attached to Letter from Wendy Thompson Fast, President, Consolidated Companies and Ken Pfister, Great Plains Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, 96-45, 04-36, 99-68, and 96-98 (filed Oct. 25, 2004); Cost-Based Intercarrier Coalition, Sept. 2, 2004 (CBICC Proposal), attached to Letter from Richard Rindler, Counsel for the Cost-Based Intercarrier Compensation Coalition, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 2, 2004); Updated Ex Parte of Home Telephone Company, Inc. and PBT Telecom, Nov. 2, 2004 (Home/PBT Proposal), attached to Letter from Keith Oliver, Vice-President, Finance, Home Telephone Company, Inc. and Ben Spearman Vice President, Chief Regulatory Officer, PBT Telecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Nov. 2, 2004); NASUCA Intercarrier Compensation Proposal, December 14, 2004, at 1 (NASUCA Proposal), attached to Letter from Philip F. McClelland, Senior Assistant Consumer Advocate, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. (filed Dec. 14, 2004); Western Wireless Intercarrier Compensation Reform Plan, December 1, 2004, at 6 (Western Wireless Proposal), attached to Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. (filed Dec. 1, 2004).

⁸⁰*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9623-24, paras. 31-36.

⁸¹*Id.* at 9923-24, para. 33.

⁸²*Id.* at 9924, para. 34.

extent to which a new regime would resolve the problems identified with the current intercarrier compensation regimes.⁸³ Finally, the Commission sought comment on the possible advantages and disadvantages of moving to a single, unified approach to intercarrier compensation.⁸⁴

30. Commenters identify a number of important goals for consideration in adopting a new intercarrier compensation system. Many commenters either explicitly support the goal of promoting competition,⁸⁵ or suggest that competition is a critical goal of this proceeding.⁸⁶ Other commenters focus on the need to promote efficiency.⁸⁷ State commissions also suggest that any compensation scheme should maintain and promote universal service.⁸⁸ Other parties urge us to adopt a regime that minimizes the need for regulatory intervention and reduces transaction costs.⁸⁹ A number of commenters also ask the Commission to consider the goal of regulatory certainty,⁹⁰ and to adopt an approach that is legally supportable,⁹¹ will result in reasonable and affordable end-user rates,⁹² and will avoid rate shock.⁹³

31. Although the commenters differ somewhat on the specific goals of an intercarrier compensation regime, some common themes emerge. Based on the record, we agree with commenters that any new approach should promote economic efficiency. As the Commission noted in the *Inter-carrier Compensation NPRM*, any new approach should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition.⁹⁴ Indeed, one of the

⁸³*Id.* at 9924, para. 35.

⁸⁴*Id.* at 9924, para. 36.

⁸⁵*See, e.g.*, Allegiance Comments at 6; Texas Counsel Comments at 51; WorldCom Comments at 4-6, 20; Taylor Reply at 4; Texas Counsel Reply at 8-9.

⁸⁶*See, e.g.*, AT&T Comments at 1-2; AT&T Wireless Comments at 6-14; CompTel Comments at 2, 9-10, 16-21, 25-29; Florida Commission Comments at 2-3; Taylor Reply at 4.

⁸⁷*See, e.g.*, Cable & Wireless Comments at 2; AT&T Reply at 2; Texas Counsel Reply at 8-9. *See also* ALLTEL Comments at 3 (supporting increased efficiency based on deregulation); AOL Comments at 8 (supporting the deployment of efficient network infrastructure).

⁸⁸*See, e.g.*, California Commission Comments at 3; Texas Commission Comments at 6; Texas Counsel Reply at 8-9.

⁸⁹*See, e.g.*, USTA Comments at 19; Level 3 Reply at 11.

⁹⁰*See, e.g.*, Allegiance Comments at 6; Focal *et al.* Comments at 1-4; Texas Counsel Comments at 43, 50; Taylor Reply at 3.

⁹¹*See, e.g.*, Texas Counsel Comments at 51.

⁹²*See, e.g.*, California Commission Comments at 3-4; Florida Commission Comments at 3; New York Commission Comments at 2; Texas Counsel Comments at 51; Texas Commission Comments at 6; Wisconsin Commission Comments at 4-5.

⁹³*See, e.g.*, Alaska Commission Comments at 2-3; California Commission Comments at 3-4; CenturyTel Comments at 6-7; Florida Commission Comments at 3-4; Sprint Comments at 24-25; Taylor Reply at 4.

⁹⁴*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9612, para. 2.

Commission's most important policies is to promote facilities-based competition in the marketplace.⁹⁵ An approach that encourages the development of efficient competition is consistent with the goals of the 1996 Act, which was intended to both open markets to competitive entry and promote increased competition in telecommunications markets.⁹⁶

32. Preservation of universal service is another priority under the Act and we recognize that fulfillment of this mandate must be a consideration in the development of any intercarrier compensation regime.⁹⁷ This Commission remains committed to universal service, and we are particularly sensitive to the interests of rural and high-cost communities. Given the relationship between intercarrier compensation and universal service support, we recognize that reforms to the intercarrier compensation regime may warrant changes to universal service support mechanisms. Any proposal that would result in significant reductions in intercarrier payments should include a proposal to address the universal service implications, if any, of such reductions. In particular, many rural LECs collect a significant percentage of their revenue from interstate and intrastate access charges.⁹⁸ Because of the high costs associated with serving rural areas, we must be certain that any reform of compensation mechanisms does not jeopardize the ability of rural consumers to receive service at reasonable rates. Indeed, the Commission would be particularly receptive to any plan that offers expanded choices and lower rates to rural consumers. For this reason, we seek comment in this item on universal service related issues raised by commenters, including the need to maintain reasonable and affordable end-user rates and the avoidance of rate shock.

33. We also agree that any new intercarrier compensation approach must be competitively and technologically neutral. Given the rapid changes in telecommunications technology, it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers. In addition, we favor an approach that provides regulatory certainty where possible and limits both the need for regulatory intervention and arbitrage concerns arising from regulatory distinctions unrelated to cost differences. Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms. We are interested in not only similar rates for similar functions, but also in a regime that would apply these rates in a uniform manner for all traffic.⁹⁹ To the extent a proposed regime would preserve distinctions between types of carrier or types of traffic, such distinctions should be based on legitimate economic or technical differences, not artificial regulatory distinctions. An approach requiring minimal regulatory intervention and enforcement is consistent with the pro-competitive de-regulatory environment envisioned by the 1996 Act.¹⁰⁰ Consequently, proposals that rely on negotiated agreements between carriers might be preferable to regimes requiring detailed rules and

⁹⁵See, e.g. *TELRIC NPRM*, 18 FCC Rcd at 19947, para. 3 (stating that facilities-based competition is "one of the central purposes of the Act").

⁹⁶See *Local Competition First Report and Order*, 11 FCC Rcd at 15505, para. 3.

⁹⁷See 47 U.S.C. § 254(b).

⁹⁸See *infra* para. 107 (according to NTCA, rural LECs receive on average 10 percent of their revenue from interstate access charges and 16 percent from intrastate access charges).

⁹⁹For instance, it is possible to have a uniform rate for all types of traffic, but have that rate apply differently depending on the traffic type.

¹⁰⁰See *Local Competition First Report and Order*, 11 FCC Rcd at 15505, 15512, paras. 3, 21.

regulations.

34. There are a number of additional criteria we must consider in assessing whether a particular proposal will help achieve the Commission's policy goals. For example, any proposal for reform of compensation mechanisms should address the impact of such changes on network interconnection rules. As the Commission made clear in the *Intercarrier Compensation NPRM* it is important to have clear rules regarding how and where carriers interconnect and the allocation of responsibilities for any facilities needed to connect two networks.¹⁰¹

35. In addition, any reform proposal should explain the Commission's legal authority to adopt it. The Commission clearly has authority under section 201 to adopt or modify compensation mechanisms that apply to jurisdictionally interstate traffic, and it clearly has authority to modify the pricing methodology that applies to reciprocal compensation under section 252(d)(2). Any proposal that contemplates reform of intrastate mechanisms, however, must include an explanation of the Commission's legal authority to implement the proposal.

36. Finally, there will be numerous implementation issues associated with any significant reform of intercarrier compensation mechanisms. As just one example, adoption of a unified regime will require the Commission to decide whether compensation, if any, should be pursuant to tariffs (as in the access charge regime) or agreements (as in the reciprocal compensation regime). Moreover, to the extent a proposal includes significant changes in the level of compensation carriers might receive, we would expect to see a detailed transition plan that will give carriers time to adjust their business plans.

C. Specific Proposals for Intercarrier Compensation Reform

37. Having concluded that there is an urgent need to reform the existing intercarrier compensation rules, we now turn to the question of what reforms best serve the goals we have identified. Many parties advocate a unified regime, but there is little consensus as to what type of unified regime we should adopt.¹⁰² In the *Intercarrier Compensation NPRM*, the Commission re-evaluated the rationale for the traditional CPNP regimes and identified new approaches to intercarrier compensation, including a bill-and-keep approach.¹⁰³ Under a bill-and-keep approach, neither of the interconnecting networks charges the other network for terminating traffic that originates on the other carrier's network.¹⁰⁴ Rather, "each network recovers from its own end users the cost of both originating traffic delivered to the other network, and terminating traffic received from the other network."¹⁰⁵

¹⁰¹See *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9650-52, paras. 112-14 (seeking comment on the interplay between the network interconnection rules and the reciprocal compensation rules).

¹⁰²See, e.g., ALLTEL Comments at iii; AOL Comments at 3; AT&T Comments at 1, 12; BellSouth Comments at 2; Cable & Wireless Comments at 8; Cbeyond Comments at 7; CompTel Comments at 5; Global NAPs Comments at ii, 20; GSA Comments at 6; Illinois Commission Comments at 1, 3; Level 3 Comments at 3-4; Mid Missouri Cellular Comments at ii; Qwest Comments at 3; Texas Counsel Comments at 10; Time Warner Comments at 4; Wisconsin Commission Comments at 3; WorldCom Comments at 2.

¹⁰³*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9619-24, paras. 19-36.

¹⁰⁴*Local Competition First Report and Order*, 11 FCC Rcd at 16045, para. 1096.

¹⁰⁵*Id.*

38. The *Intercarrier Compensation NPRM* generated considerable discussion of bill-and-keep.¹⁰⁶ Many commenters, including rural LECs, have substantial concerns about moving to a bill-and-keep approach and support retaining a CPNP regime.¹⁰⁷ Other commenters urge the Commission to maintain but reform the existing CPNP approach to intercarrier compensation.¹⁰⁸ These commenters contend that a reformed CPNP regime is economically efficient and easier to implement than a bill-and-keep approach.¹⁰⁹ Some argue that the Commission has failed to identify a systemic failure in the CPNP system¹¹⁰ or that any failures of the CPNP approach are attributable to departures from cost-based rates rather than to the approach itself.¹¹¹ Other commenters claim that the record fails to support a departure from the Commission's previous conclusions concerning bill-and-keep.¹¹²

39. In parallel with the Commission's consideration of the record developed in response to the *Intercarrier Compensation NPRM*, various industry groups have been negotiating proposals for comprehensive reform of federal and state intercarrier compensation mechanisms. These negotiations have resulted in proposals from a number of groups – the Intercarrier Compensation Forum (ICF), the Expanded Portland Group (EPG), the Alliance for Rational Intercarrier Compensation (ARIC), the Cost-Based Intercarrier Compensation Coalition (CBICC), and two rural LECs, Home Telephone Company and PBT Telecom (Home/PBT).¹¹³ In addition, we discuss a statement of principles submitted by CTIA as well as a specific reform proposal filed by Western Wireless.¹¹⁴ We also discuss a proposal by NASUCA that would reduce certain intercarrier compensation rates.¹¹⁵ Moreover, NARUC has developed a set of principles that it believes should guide any consideration of intercarrier compensation

¹⁰⁶ Attached as Appendix C is a staff analysis of the record on bill-and-keep. The views expressed in this staff analysis do not represent the views of, and are not endorsed by, the Commission.

¹⁰⁷ See, e.g., GVNW Comments at 3-13; ICORE Comments at 6-8; Minnesota Independent Coalition Comments at 2-10; MSTG Comments at 9-12; NTCA Comments at 5-13; Oklahoma Rural Telephone Coalition Comments at 15-45; RICA Comments at 4-10; United Utilities Comments at 4; Western Alliance Comments 23-27; ALLTEL Reply at 2-3; NECA Reply at 3-4, 6-8; TCA Reply at 3-4.

¹⁰⁸ See, e.g., Ad Hoc Comments at 1, 10; Allegiance Comments at 10-13; AT&T Comments at 21-29; CompTel Comments at 18-21; Focal *et al.* Comments at 46; MD-OPC Comments at 20-21; MECA Comments at 38.

¹⁰⁹ See AT&T Comments at 21-29.

¹¹⁰ See CompTel Comments at 9.

¹¹¹ See, e.g., Ad Hoc Comments at 2; AT&T Comments at 13-14; CompTel Comments at 9; AT&T Reply at 11.

¹¹² See, e.g., Allegiance Comments at 13-16; Focal *et al.* Reply at 4-8; NASUCA Reply at 10-11. In the *Local Competition First Report and Order*, the Commission concluded that, as long as the costs of terminating traffic are positive, bill-and-keep arrangements are not economically efficient. *Local Competition First Report and Order*, 11 FCC Red at 16055, para. 112.

¹¹³ See *supra* note 79.

¹¹⁴ See Letter from Steve Largent, President/CEO, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 1 (filed Nov. 29, 2004) (CTIA Nov. 29 *Ex Parte* Letter); Western Wireless Proposal at 6.

¹¹⁵ See NASUCA Proposal at 1.