CTIA supports a bill-and-keep approach to intercarrier compensation reform under which carriers would "have the flexibility to design their rate structures to recover a larger portion of costs from end-user customers – while ensuring that end-user rates remain affordable."[219] It explains that any rules should focus on the benefits to consumers and not guarantee revenue neutrality for incumbent carriers.[220] CTIA states that the new rules should encourage economic efficiency and promote competition through deregulation.[221] CTIA also supports rules that are technologically neutral through uniform application to all categories of services and carriers.[222] In terms of universal service reform, CTIA supports the creation of a single, unified universal service support mechanism that calculates support based on the forward-looking economic costs of serving customers.[223] Finally, CTIA observes that many of the reform proposals would increase the administrative complexity of the intercarrier compensation rules and universal service systems. Accordingly, CTIA urges the Commission to adopt rules that are simple to administer in order to avoid increased compliance costs than may result in additional charges to consumers.[224]

2. Discussion

60. We commend all the industry parties that have been involved in the process of developing these proposals for their substantial efforts to reach agreement on these complicated issues. It is apparent from these efforts that there is widespread agreement with our assessment that today's intercarrier compensation mechanisms no longer are sustainable. Although there are numerous paths the Commission may take as we begin to reform the current regime, we are encouraged by this acknowledgement of the need for fundamental change.

61. We also commend the work done by NARUC in developing a set of principles that can be used in evaluating these proposals. Many of the principles identified by NARUC are consistent with the policy goals we have identified above. For example, we share NARUC's view that any new plan should be simple to administer, competitively and technologically neutral, and should minimize arbitrage opportunities. We also share NARUC's desire to adopt an approach that ensures reasonable and affordable rates, especially for rural consumers, and that minimizes the impact on universal service support programs.

62. Given the extensive negotiations that formed the basis for some of these proposals, we ask parties to comment on whether it is preferable for the Commission to adopt a single proposal in its entirety, rather than adopting a modified version of any particular proposal or attempting to combine

[219] *Id.* at 2.

[220] *Id.* at 1-2. Specifically, CTIA appears concerned that, because some of the proposals make universal service funding unavailable to competitors, these proposals would deny the benefits of competition to rural consumers. *Id.* at 2.

[221] *Id.* at 2.

[222] *Id.*

[223] *Id.* at 3.

[224] *Id.*

different components from individual plans.[225] If we were to adopt one proposal or combine different components of the plans, we seek comment on implementation and transition issues for such an approach.

D. Legal Issues

63. As the Commission considers the record developed in response to the NPRM and the specific proposals recently filed in this proceeding, we are mindful of our obligation to comply with the statutory provisions governing intercarrier compensation, such as sections 251(b)(5) and 252(d)(2) of the Act.[226] In addition, we recognize that any unified regime requires reform of intrastate access charges, which are subject to state jurisdiction. We further recognize that reform of the access charge regime must take into account the Commission's rate averaging and rate integration requirements codified in section 254(g) of the Act.[227] In this section, we ask parties to consider these and other legal issues associated with comprehensive reform efforts. Specifically, we ask parties to comment on whether the various reform proposals adequately address the legal issues identified below. In addition, we discuss alternative approaches to intercarrier compensation reform that could be accomplished through changes to our interpretation of the statutory requirements, and ask parties to comment on whether such changes should be adopted, either as a transitional mechanism or as part of a more permanent solution.

1. Section 252(d)(2) "Additional Cost" Standard

64. Section 252(d)(2) sets forth an "additional cost" standard for reciprocal compensation under section 251(b)(5).[228] As discussed above, in the *Local Competition First Report and Order*, the Commission interpreted the "additional cost" standard of section 252(d)(2) to permit the use of the TELRIC cost standard that was established for interconnection and unbundled elements.[229] In this section, we solicit comment on whether this standard is, or could be, satisfied by the various reform proposals. We also solicit comment on a number of alternatives for modifying or replacing the current TELRIC cost standard that could be considered in conjunction with certain of the proposals or as independent alternatives.

a. Comprehensive Proposals

65. Many of the proposals include a specified rate or pricing methodology for the termination of traffic subject to section 251(b)(5). We ask parties to address whether these proposals

[225]We note that the ICF participants view their plan as a unified proposal that the Commission should adopt "without modification." ICF Proposal at 2. They also would oppose any attempt to adopt individual parts of the plan while "modifying, rejecting, or deferring others." *Id*.

[226]*See* 47 U.S.C. §§ 251(b)(5), 252(d)(2).

[227]*See* 47 U.S.C. § 254(g).

[228]Specifically, section 252(d)(2)(A) states that, for the purpose of incumbent LEC compliance with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions: (i) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier;" and (ii) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. §252(d)(2)(A).

[229]*Local Competition First Report and Order*, 11 FCC Rcd at 16023, para. 1054.

satisfy the statutory pricing standard in section 252(d)(2). Except for the CBICC proposal, which supports a TELRIC cost standard, each proposal would require some departure from the Commission's implementation of the section 252(d)(2) "additional cost" standard. The ICF addresses this question in its *ex parte* brief filed in support of its proposal.[230] It contends that a unified bill-and-keep regime, such as that proposed by the ICF, is consistent with section 252(d)(2).[231] Similarly, ARIC maintains that its FACTS proposal would comply with the "additional cost" standard.[232] We ask parties supporting these proposals or others to comment on whether the specified rate or pricing methodology complies with these statutory provisions.

b. Limit recovery under existing rules

66. As noted above, the use of the TELRIC standard for reciprocal compensation has created some problems. If the Commission decides to retain the current TELRIC methodology for reciprocal compensation (*e.g.*, as part of the CBICC plan), we ask parties to address whether we should define more precisely what costs are traffic-sensitive, and thus recoverable through reciprocal compensation charges, and what costs are non-traffic-sensitive, and not recoverable through reciprocal compensation charges. As a first step in providing such guidance, we must be more specific about the meaning of the term "traffic-sensitive." If costs for a portion of the network vary with the number of customers on the network, would those costs be considered "traffic-sensitive"? Or must costs vary with usage of a particular customer to be "traffic-sensitive"?

67. We seek comment on what components of the wireline network should be considered traffic-sensitive. Should the Commission revisit its decision in the *Local Competition First Report and Order* that loop costs are not traffic-sensitive? Should we provide more detail as to which switching components, if any, are traffic-sensitive? In the Commission's pending TELRIC rulemaking,[233] a number of parties have argued that the substantial majority of switching costs do not vary with minutes of use (MOU) and that switching should be offered on a flat-rated basis rather than a per-minute basis.[234] These arguments are consistent with the decisions of a number of state commissions finding that end-office switching costs are not traffic-sensitive and therefore should be recovered on a flat, per-line basis, and not on a per-MOU basis.[235] We ask parties to comment on whether the Commission should reach a similar

[230] *See* ICF Oct. 5 *Ex Parte* Letter, Attach. at 38-42 (filed Oct. 5, 2004) (attaching Ex Parte Brief of the Intercarrier Compensation Forum in Support of the Intercarrier Compensation and Universal Service Reform Plan) (ICF Supporting Brief).

[231] *See id*. Similarly, Western Wireless maintains that the Commission and the states may require bill-and-keep under section 252(d)(d) of the Act. Western Wireless Proposal at 10. *But see* ARIC Proposal at 18-19 (claiming that a mandatory bill-and-keep approach is not permitted under the Act).

[232] ARIC Proposal at 41.

[233] *See TELRIC NPRM*, 18 FCC Rcd at 18953, para. 18.

[234] 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. MCI TELRIC Comments at 30. Similarly, AT&T argues that switches generally have substantial excess capacity so that increases in usage do not increase switching costs. AT&T TELRIC Comments at 73-76.

[235] *See Determination of the Cost of the Unbundled Loop of Qwest Corp*., Docket No. 01-049-85, Report and Order (Utah PSC May 5, 2003); *Re Ameritech Indiana*, Cause No. 40611-51 (Ind. URC Mar. 28 2002); *Investigation into Ameritech Wisconsin's Unbundled Network Elements*, Docket 6720-TI-161, Final Decision (Wisc. PSC Mar. 22, (continued….)

result with respect to recovery of switching costs for purposes of reciprocal compensation.

68. We invite comment on the proposition that digital switching costs no longer vary with minutes of use due to increased processor capacity. Is this proposition correct for both end office switches and tandem switches? What about competitive LEC switches that have characteristics of both tandems and end offices? To what extent do any capacity constraints become obsolete as carriers migrate to Internet-protocol switching?[236] Parties taking the position that switching costs do vary with minutes of use should identify the specific portions of the switch for which costs increase when minutes of use increase. Similarly, those parties should explain how costs decrease as minutes on the switch decrease. We ask parties to provide objective evidence demonstrating that their switching costs have increased or decreased with MOU.

69. We also solicit comment on which components of a wireless network (*e.g.*, spectrum, cell sites, backhaul links, base station controllers, mobile switching centers) should be considered traffic-sensitive. Would the classification of switching costs on wireline networks as traffic-sensitive or non-traffic-sensitive apply equally to wireless networks? If we retain the rule limiting wireline LECs to recovery of traffic-sensitive switching costs, should we establish a similar limitation on the costs that wireless carriers may recover through reciprocal compensation charges? What are the competitive implications of a finding that wireless networks have more traffic-sensitive costs than wireline networks?[237] Should competitive neutrality play a role in this determination? Should we limit reciprocal compensation recovery to ensure that one type of network is not advantaged by a greater ability to shift costs to other carriers?

70. Once we identify the traffic-sensitive costs, we must determine whether they should be recovered on a per-minute or flat-rated capacity basis.[238] The Commission's UNE rules specify that rate structures reflect the manner in which the costs are incurred.[239] Our rules require that the costs of shared facilities be recovered in a manner that efficiently apportions them among users, either through usage-sensitive charges or capacity-based flat-rated charges.[240] We solicit comment on whether state

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2002); *Commission Review and Investigation of Qwest's Unbundled Network Elements Prices*, Docket No. P-421/CI-01-1375, Order Setting Prices and Establishing Procedural Schedule (Minn. PUC Oct. 2, 2002*); Investigation Into the Compliance of Illinois Bell Telephone Company with the Order in Docket No. 96-0486/0569 Consolidated*, Docket No. 98-0396, Order (Ill. CC Oct. 16, 2001).

[236]For example, we note that Cisco Systems, Inc. has introduced a new router with so much capacity that it can transfer the entire collection of the U.S. Library of Congress in 4.6 seconds. *See* Charles Waltner, *A New Era for Communications Begins with CRS-1* (visited February 11, 2005) http://newsroom.cisco.com/dlls/2004/hd_052504c.html.

[237]*CMRS Termination Compensation Order*, 18 FCC Rcd at 18444-47, paras. 6-16.

[238]State public utility commissions, in applying the Commission's rules governing reciprocal compensation, have generally adopted average per-minute rates.

[239]47 C.F.R. § 51.507(a); *Local Competition First Report and Order*, 11 FCC Rcd at 15874, para. 743.

[240]47 C.F.R. § 51.507(c); *Local Competition First Report and Order*, 11 FCC Rcd at 15878, para. 755. The Commission's rate structure rule for the local switching UNE requires that costs for this element be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-MOU charges for the switching matrix and trunk ports, but it does not specify a particular combination or means for determining the (continued….)

commissions should retain discretion to establish per-minute reciprocal compensation rates, or whether, in light of the harmful consequences of per-minute reciprocal compensation charges,[241] we should require flat-rated recovery of costs, regardless of whether they are traffic-sensitive. If the latter, we solicit comment on how to structure these charges. For example, is a port charge feasible? If so, would a port charge be related to capacity (*e.g.*, DS1 trunk port, DS3 trunk port)? Alternatively, would it be feasible for carriers to provide other carriers with "buckets" of minutes as wireless carriers offer their retail customers?

c. Replace current rules with an incremental cost standard

71. The statutory pricing standard for reciprocal compensation ("additional cost") is not the same as the statutory pricing standard for UNEs (cost plus a reasonable profit) set forth in the Act.[242] Although the Commission decided in the *Local Competition First Report and Order* that the TELRIC pricing methodology satisfied both standards,[243] our subsequent experience suggests that TELRIC is not necessarily consistent with the "additional cost" standard. Specifically, TELRIC measures the *average* cost of providing a function,[244] which is not necessarily the same as the *additional* cost of providing that function.

72. We solicit comment on whether a true incremental cost methodology is more appropriate for establishing "additional costs" under section 252(d)(2).[245] How should we determine what costs are "incremental"? How would we apply an incremental cost methodology to the various components of the network, either wireline or wireless? Is it clear that the incremental cost of loop plant is zero? With respect to switching costs, should we assume that carriers purchase digital switches that are equipped with the capacity to originate and terminate all of the traffic of a carrier's retail customers? If so, are there any switching costs that would be considered incremental? We ask parties to comment on whether the Commission should interpret the "additional cost" standard to be the difference between the long-run forward-looking total cost of a network and that of a network with the same number of subscribers in the same locations that differs only in that it was designed assuming each subscriber makes additional calls.

73. Alternatively, what are the merits of using short-run incremental costs when determining the "additional costs" incurred to terminate calls that originate on another carrier's network? Is there a difference between short-run incremental costs and traffic-sensitive costs? What are the merits of a long-run approach? Would the "additional" costs of terminating traffic under a long-run incremental cost methodology differ significantly from the average costs calculated under TELRIC? Once we identify the relevant incremental costs, how should they be recovered? Should we allow recovery through usage

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appropriate combination. 47 C.F.R. § 51.509(b). *Local Competition First Report and Order*, 11 FCC Rcd at 15878, para. 757.

[241] *See supra* para. 23 n.67

[242] *Compare* 47 U.S.C. § 252(d)(2) *and* 47 U.S.C. § 252(d)(1).

[243] *See Local Competition First Report and Order*, 11 FCC Rcd at 15844-56, 16023, paras. 672-703, 1054.

[244] *See TELRIC NPRM*, 18 FCC Rcd at 18953, para. 18.

[245] We note that the term "additional cost" is found only in one other place in the Act. *See* 47 U.S.C. § 224(d)(1). In that context, the statutory language makes clear that this is an incremental cost standard. *Id*.

sensitive, per-minute charges, or non-traffic-sensitive, flat-rated (per-trunk port) charges?

d. Forbear from section 251(b)(5) compensation requirement

74. We seek comment on whether the Commission could use its authority under section 10 of the Act to forbear from certain aspects of the compensation requirement of section 251(b)(5) as part of any intercarrier compensation reform effort.[246] Section 10 establishes a three-part test to determine whether forbearance is appropriate.[247] In the *Intercarrier Compensation NPRM*, the Commission sought comment on whether the imposition of a bill-and-keep regime would require that it forbear from section 252(d)(2)'s "additional cost" pricing standard and whether the prohibition on forbearance from section 271 makes imposition of bill-and-keep legally problematic.[248] Commenters differ as to whether the Commission can impose a bill-and-keep regime under section 252(d)(2), absent forbearance.[249] They also differ on whether the Commission could exercise its forbearance authority in order to impose a bill-and-keep regime.[250] In this section, we explore further whether our statutory forbearance authority permits us to consider proposed bill-and-keep regimes for traffic subject to section 251(b)(5), regardless of the appropriate construction of sections 251(b)(5) and 252(d)(2). We ask parties to comment on whether the forbearance criteria would be satisfied with respect to the section 251(b)(5) compensation requirement.

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[246]The Commission previously concluded in the *Local Competition First Report and Order* that bill-and-keep is a permissible reciprocal compensation arrangement provided that the traffic exchanged between interconnecting carriers is relatively balanced. *See Local Competition First Report and Order*, 11 FCC Rcd at 16054-55, paras. 111-12. In the *Intercarrier Compensation NPRM,* the Commission sought comment on whether the statute can be read to permit bill-and-keep for all traffic subject to section 251(b)(5), even if it is not balanced. *See Intercarrier Compensation NPRM,* 16 FCC Rcd at 9635-37, 9644-45, paras. 73-77, 97.

[247]Specifically, section 10(a) states that the Commission shall forbear from applying any regulation or provision of the Act to a telecommunications carrier or telecommunications service, or class of carriers or services, in any or some of its or their geographic markets, if it determines that (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest. 47 U.S.C. § 160(a).

[248]*Intercarrier Compensation NPRM,* 16 FCC Rcd at 9637, para. 77. Section 10(d) states that, except as provided in section 251(f), the Commission may not forbear from applying the requirements of sections 251(c) or 271 until it determines that those requirements have been fully implemented. 47 U.S.C. § 160(d).

[249]*Compare* AT&T Reply at 29 (rejecting the notion that bill-and-keep provides for the mutual and reciprocal recovery of costs as required by section 252(d)(2) of the Act) *with* SBC Comments at 44 (arguing that bill-and-keep appears to satisfy section 252(d)(2) of the Act if there is an end user recovery mechanism).

[250]*Compare* AT&T Comments at 39-40 (arguing that the Commission cannot satisfy the forbearance criteria and that forbearance from certain sections of the Act is not possible until it finds that those requirements have been fully implemented) *and* Time Warner Comments at 27-30 (stating that the Commission appears to lack the authority to forbear from certain sections of the Act) *with* Sprint Comments at 21-22 (maintaining that the statutory criteria for forbearance may be satisfied). In addition, NASUCA states that the Commission cannot forbear from applying sections 251 and 252, but it provides no analysis or further explanation to support this position. NASUCA Comments at 29. *See also* Cable & Wireless Reply at 20-21; e.spire and KMC Telecom Reply at 11; Focal *et al*. Reply at 36-37; Taylor Communications Reply at 26.

75. We assume that, if any forbearance were needed to support a bill-and-keep regime, such forbearance would apply only with respect to the compensation requirement of section 251(b)(5) and not to the requirement to enter into reciprocal arrangements for the transport and termination of traffic. Under this approach, state commissions would continue to review interconnection agreements to determine if they meet the requirements of section 251(b)(5), but states no longer would consider, as part of that review, whether the rates for transport and termination of traffic are consistent with the pricing requirements of section 252(d)(2) and our rules. We ask parties to comment on this approach and to identify any new rules or requirements that would be needed to implement such an approach.

76. We seek comment on whether the bar to forbearance contained in section 10(d) precludes exercise of forbearance in this case.[251] On its face, section 10(d) precludes forbearance only until section 251(c) is implemented and is silent with respect to obligations imposed under section 251(b). We note, however, that the predecessor to the Wireline Competition Bureau previously held that section 251(b) obligations are incorporated by reference into section 251(c).[252] Was this holding correct and, if not, should the Commission take this opportunity to reverse it?

77. Assuming that we can forbear from imposing section 251(b) obligations, we solicit comment on whether the Commission also should forbear from enforcing the compensation requirement contained in section 271(c)(2)(B)(xiii). If we forbear from section 251(b)(5), is there any reason not to forbear from section 271(c)(2)(B)(xiii) as well?[253] We seek comment on whether forbearance from section 271(c)(2)(B)(xiii) satisfies the requirements of section 10(a).

2. State Jurisdiction and Joint Board Issues

78. As discussed above, the Commission 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).[254] Because access charges for intrastate traffic historically have been an area within the exclusive jurisdiction of state commissions, however, any proposal that includes reform of intrastate mechanisms

[251] 47 U.S.C. § 160(d).

[252] *See Application of GTE Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Letter from Carol Mattey, Deputy Chief, Common Carrier Bureau, to Michael L. Shor, Swidler Berlin Shereff Friedman, 16 FCC Rcd 22, 23 (Comm. Car. Bur. 2000).

[253] Section 10(d) precludes forbearance from the requirements of section 271 until they have been fully implemented. Based on the Commission's previous determination that all of the BOCs have fully implemented section 271, *see* Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c), Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. § 160(c), WC Docket Nos. 01-338, 03-235, 03-260, and 04-48, Memorandum Opinion and Order, FCC 04-254, paras. 12, 15 (rel. Oct. 27, 2004), section 10(d) does not bar the Commission from forbearing from the compensation requirement contained in section 271(c)(2)(B)(xiii) if forbearance otherwise meets the requirements of section 10.

[254] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999) (holding that the Commission has jurisdiction to design a pricing methodology to be applied under section 252(d) of the Act).

must address the Commission's legal authority to implement such reform.

79. In the 1996 Act, Congress adopted section 251(b)(5) which, on its face, applies to all telecommunications. As noted above, however, Congress "carved out" access traffic from the scope of section 251(b)(5).[255] In the *Local Competition First Report and Order*, the Commission found that the section 251(g) carve-out includes intrastate access services.[256] Based on this statement in the *Local Competition First Report and Order* and the Commission's authority under section 251(g) to supersede that carve-out,[257] we ask parties to comment on whether the Commission has authority to replace intrastate access regulation with some alternative mechanism. If so, must the mechanism comply with the requirements of sections 251(b)(5) and 252(d)(2)?

80. We also seek comment on alternative legal theories under which the Commission could reform intrastate access charges. For example, under the "mixed use" doctrine, traffic is treated as jurisdictionally interstate if it is impossible or impractical to separate the interstate and intrastate components.[258] We ask parties to comment on whether this same analysis applies to other types of traffic, such as calls that originate or terminate with other types of VoIP service or on a CMRS network. With the advent of intermodal number portability, how, practically, can one be sure of a customer's physical location? Does the inability to determine the actual geographic end points of a call provide a basis on which to conclude that the intrastate component of certain types of traffic is not severable from the interstate component? If it becomes impossible or impractical to determine the end points of a substantial portion of traffic, would that justify a finding that all traffic should be treated as jurisdictionally interstate for purposes of intercarrier compensation? Do certain characteristics of IP-enabled services counsel interstate treatment for intercarrier compensation purposes, such as the inseverability of multiple features that can be accessed simultaneously, the irrelevance of geography to the provisioning and use of the service, or the lack of service-related reasons to incorporate geographic or jurisdictional tracking systems into the IP network?

81. We recognize that some of the industry proposals call for a cooperative process between the Commission and states, which may minimize concerns about this Commission's jurisdiction. For instance, the ARIC proposal calls for a joint process to establish unified compensation rates and both the

[255] 47 U.S.C. § 251(g).

[256] *Local Competition First Report and Order*, 11 FCC Rcd at 15869, para. 732.

[257] 47 U.S.C. § 251(g). (providing for continued enforcement of exchange access and interconnection agreements "… until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after the date of such enactment.")

[258] *See MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 4 FCC Rcd 5660, n.7 (1989) (*MTS/WATS Market Structure Separations Order*) (the Commission found that "mixed use" special access lines carrying more than a de minimis amount of interstate traffic to private line systems are subject to the Commission's jurisdiction because traffic on many such lines could not be measured without "significant additional administrative efforts") *See also Petition For Declaratory Ruling That pulver.com's Free World Dialup Is Neither Telecommunications Nor A Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, at 16 (2004) (finding Pulver's Free World Dialup (FWD) service to be analogous to services subject to the "mixed use" doctrine).

ARIC and CBICC proposals would involve a Joint Board.[259] We solicit comment on whether the Commission should refer any of the issues related to intrastate access charges to a Federal-State Joint Board, as ARIC and CBICC suggest.[260] Under section 410(c) of the Act, the Commission is required to refer "any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations" to a Federal-State Joint Board.[261] In addition, that same statutory provision permits the Commission to refer "any other matter relating to common carrier communications of joint Federal-State concern."[262] Do any of the issues addressed in this Further Notice fall within the scope of the mandatory referral requirement of section 410(c)?

82. The ICF maintains that the Commission already has the authority to address intrastate access reform by virtue of sections 201, 251(b)(5), and 254 of the Act.[263] According to the ICF, section 201 gives the Commission authority to implement section 251(b)(5), which covers compensation for all telecommunications involving a LEC, including intrastate telecommunications.[264] In addition, the ICF argues that the Commission may assert preemptive authority over intrastate traffic under section 254.[265] It claims that the Commission "can and should preempt intrastate access charges on the ground that they are inconsistent with the Commission's duty under section 254 to rationalize universal service support."[266] We take our charge under section 254 seriously, but are also mindful of the states' historical authority over charges for intrastate services. Accordingly, we seek comment on the legal analysis presented by these proposals concerning the Commission's authority over intrastate access reform, and specifically whether the changes wrought by the 1996 Act give the Commission the power to assert authority over the intrastate charges at issue in this proceeding.

3. Rate Averaging and Integration Requirements

83. In section 254(g), Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies.[267] The Commission implemented section 254(g) by adopting two

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[259] *See* ARIC Proposal at 37-38; CBICC Proposal at 2. The EPG plan would reduce intrastate access rates to interstate rate levels but does not explain how the Commission could require such reductions.

[260] *See* ARIC Proposal at 37-38, 56-57; CBICC Proposal at 2. *See also* NARUC Principles at 4 (suggesting that the Commission refer issues to the Joint Board in order to ensure state input). The ICF takes the position that its plan may be adopted without a joint board referral. *See* ICF Supporting Brief at 45 n.73.

[261] 47 U.S.C. § 410(c).

[262] *Id*.

[263] *See* ICF Supporting Brief at 28-38.

[264] *Id*. at 28-32.

[265] *Id.* at 35-38. Section 254 of the Act governs universal service support and Commission duties relating to universal service. *See* 47 U.S.C. § 254.

[266] ICF Supporting Brief at 35.

[267] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564, 9566-67, paras. 3-5, 9568–69, para. 9 *(Geographic Rate Averaging Order)* (citing S. Rep. No. 230, 104th Cong., 2d Sess. 1) (1996)).