

LECs?³²⁴ Should we also adopt some sort of benchmark for local retail rates within the state jurisdiction, as proposed by ARIC?³²⁵ We encourage parties to make specific proposals as to how any additional end-user charges should be calculated.

109. To the extent the Commission decides that additional universal service support also is necessary, we seek comment on how much additional support we must provide and how such support should be distributed. Should rate-of-return carriers be required to demonstrate that they are unable to recover their interstate-allocated costs from other sources before we authorize any additional universal service funding? Or should the Commission adopt a support mechanism that fixes or caps the amount of support at a level estimated by the Commission as necessary to achieve its goals?

110. If we conclude that additional universal service funding is necessary, one possible approach would be to provide such funding through the ICLS mechanism. Under such a methodology, ICLS would be expanded to include not just common line costs, but also switching and transport costs. Alternatively, the Commission could create a new interstate access support mechanism. With respect to any proposed support methodologies, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens involved. In particular, parties should address the amounts of universal service funding that would be required under the various proposals described above. NTCA stated that \$884 million would be needed to offset lost interstate access revenues if the Commission adopts a bill-and-keep regime.³²⁶ EPG states that there will be a \$900 million revenue shortfall under its plan, although this appears to be entirely associated with intrastate rate reductions.³²⁷ Interstate revenues would remain the same under the EPG plan, but would be recovered through flat-rated charges, rather than per-minute charges for some rate elements.³²⁸ We seek comment on the accuracy of these estimates and the validity of the underlying assumptions. Commenters should also address the competitive neutrality of any new proposed universal service mechanisms with respect to competitive eligible telecommunications carriers.

111. We ask parties to comment on the impact on rural consumers of replacing access charges with additional universal service support and/or subscriber charges. NTCA states that currently rural consumers tend to make more interexchange calls than urban customers (because there are fewer customers in their local calling areas) and that IXC's do not always offer their lowest priced calling plans in rural areas.³²⁹ Substantially reducing the access charges imposed on IXC's has the potential to resolve both these issues in a manner that benefits rural consumers. If interexchange rates decline with reductions in access charges, as we would expect in a competitive marketplace, rural customers could benefit even more than urban customers from a transition to a regime with substantially lower intercarrier payments.

³²⁴See *supra* paras. 101-02.

³²⁵See ARIC Proposal at 61-62.

³²⁶NTCA Jan. 7 *Ex Parte* Letter at slide 61.

³²⁷See Letter from Glenn H. Brown, Expanded Portland Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, Attach. at 15 (filed May 12, 2004) (EPG May 12 *Ex Parte* Presentation).

³²⁸EPG Proposal at 31-32.

³²⁹NTCA March 2004 White Paper at 16-21.

In addition, reductions in access charges would eliminate barriers to IXC's entering rural markets and offering their lowest priced calling plans. Furthermore, to the extent access charge revenues decline, and long-distance prices decline, are LECs more likely to offer long distance services in lieu of providing only access services? We seek comment on whether and to what extent the benefits of reduced access charges would offset the burden associated with any additional subscriber charges that might be imposed.

112. With respect to rate-of-return LECs in particular, we recognize that an approach that retains some intercarrier payments from IXC's for switched access services may be appropriate. The CBICC, ARIC, EPG, and Home/PBT proposals call for unified termination rates based on different cost methodologies or on existing rates, that will remain in effect indefinitely.³³⁰ Similarly, NASUCA proposes a interim regime based on target rates to be established by the Commission.³³¹ The ICF proposes a specific, declining termination rate, although even this plan includes some rates that would remain indefinitely.³³² Western Wireless proposes to eliminate per-minute compensation rates using targeted reductions over a four-year period, with a longer transition period for small rural incumbent LECs.³³³ In addition to these proposals, parties should comment on whether the \$0.0095 rate adopted in the *CALLS Order* might be an appropriate rate, either as a transitional rate or as an end point. Parties suggesting a different rate should explain why that rate would be more appropriate. Parties suggesting that multiple rates should be adopted should specify the rates to be used and the parameters that would determine the rates a carrier could charge.

113. If we were to adopt a target rate proposal, such as that proposed by NASUCA, either as a transition or for an indefinite duration, parties should address whether there is a need to establish rules governing how that rate should be distributed among the different access categories or rate elements and, if so, what those rules should be. In this connection, commenters should pay particular attention to the potential that, in the absence of such rules, rate-of-return LECs could target reductions to areas they perceived to be subject to the most competitive risk. Parties should also address whether the definition of average traffic sensitive rates in section 61.3(e) should apply to rate-of-return LECs, or whether conditions unique to rate-of-return LECs require development of a different definition.³³⁴

2. Intrastate Access Charges

114. If the Commission acts to reduce or eliminate intrastate switched access charges, it may be necessary to give price cap and rate-of-return LECs the opportunity to offset those revenue losses with alternative cost recovery mechanisms. As with interstate access charges, the two primary mechanisms for doing this are increased subscriber charges and increased universal service funding. We ask parties to comment on how these mechanisms should be structured to give LECs the opportunity to offset lost

³³⁰See ARIC Proposal at 37 (proposing rates based on embedded costs); CBICC Proposal at 1 (proposing TELRIC-based rates); EPG Proposal at 21 (proposing rates based on interstate access levels); Home/PBT Proposal at 14 (proposing connection-based intercarrier charges capped at the national average retail fee for a standard business line).

³³¹NASUCA Proposal at 1.

³³²ICF Proposal at 36-38.

³³³Western Wireless Proposal at 13.

³³⁴47 C.F.R. § 61.3(e).

intrastate access charge revenue. In sections II.F.1.a and II.F.1.b above, we solicit comment on a number of important questions related to replacing interstate switched access charges with additional universal service funding and subscriber charges. We ask parties to address these same questions as they relate to intrastate access charges.

115. If the states reduce access charges as part of a comprehensive reform effort adopted by the Commission, issues may arise as to whether the Commission or the state is responsible for establishing an alternative revenue source. Under the ARIC proposal, for example, additional universal service support would come from both federal and state sources, but it would be distributed by the states.³³⁵ We seek comment on whether the Commission should create a federal mechanism to offset any lost intrastate revenues, or whether the states should be responsible for establishing alternative cost recovery mechanisms for LECs within the intrastate jurisdiction. We ask parties to provide specific proposals that identify the amount of revenue at issue, how such calculations were made, and the specific means by which recovery should be made available. In the event that the Commission thinks that a federal mechanism should be created to offset intrastate access charge revenue reductions, should the Commission refer to the Federal-State Joint Board on Universal Service issues related to the establishment and design of that mechanism?

G. Implementation Issues

116. Under our access charge regime, the rates, terms and conditions under which carriers provide interstate access services are generally contained in tariffs filed with this Commission.³³⁶ In contrast, the exchange of traffic under section 251(b)(5) is governed by interconnection agreements.³³⁷ We seek comment on how to reconcile these two approaches if we move to a unified rate for all types of traffic. Is a regime based solely on agreements feasible if the Commission retains intercarrier payments for origination and termination of traffic? What would be the default compensation rule if parties exchanged traffic in the absence of some type of interconnection agreement? While price cap LECs have ample experience with the negotiation and arbitration of such agreements, the same is not true for all rate-of-return LECs because new entrants have been slower to enter their service areas. In addition, many rate-of-return LECs may be exempt from some of the requirements of section 251 by virtue of the rural exemption in section 251(f).³³⁸ We ask parties to identify any unique obstacles that may arise for rate-of-return LECs in connection with a regime based solely on agreements and to propose solutions to overcome those obstacles. For example, is it possible to develop something comparable to the pooling process that takes place for carriers that participate in the NECA tariff? If not, are there other mechanisms available to rate-of-return LECs to guard against the risks pooling is designed to reduce? We also ask parties to discuss how regulation of intercarrier payments for interexchange traffic would operate with respect to LECs that have received a suspension or modification of the requirements of section 251(b) pursuant to section 251(f)(2).

³³⁵ See ARIC Proposal at 76-80.

³³⁶ 47 U.S.C. § 203. Competitive LECs are permitted, at their option, to file tariffs for interstate access services at rates at or below a prescribed benchmark. They are subject to mandatory detariffing with respect to rates above that benchmark. See *CLEC Access Charge Recon. Order*, 18 FCC Rcd at 9110-11, para. 4.

³³⁷ 47 U.S.C. §§ 251, 252.

³³⁸ 47 U.S.C. § 251(f).

117. Many of the proposals submitted in this record include some sort of transition period to give carriers sufficient time to make necessary changes in their business operations. Given the substantial changes that are possible in this rulemaking, we seek comment on what type of transition would be needed for a new regime. What type of transition would be needed if we reduced, but did not eliminate, interstate switched access charges? Should one component of any such transition be conversion of per-minute charges to flat-rated charges that better reflect the manner in which switching costs are incurred? Parties should be specific in proposing time frames and milestones that would be part of any transition to a new access charge regime. Further, if the Commission has legal authority to reduce or eliminate intrastate access charges, should intrastate access charges be reduced or eliminated on the same schedule as interstate access charges, or would it be better to give states more flexibility in light of the role they historically have played in addressing these issues?

118. Parties also should address whether there are any adverse consequences associated with transitioning rate-of-return LECs toward a new unified regime at a slower pace than price cap LECs. For example, are there arbitrage issues associated with maintaining a rate differential between rural and non-rural LECs? Does such an approach place nationwide long distance carriers at a competitive disadvantage relative to IXC that focus on lower cost areas (*e.g.*, the BOCs)?

119. Some rate-of-return LECs state that they are not authorized to provide interexchange services.³³⁹ If the Commission moves to reduce, and possibly eliminate, the imposition of access charges by rate-of-return LECs, is there any reason for states to prohibit them from providing toll services? Would preemption of any such prohibitions be appropriate under section 253 of the Act, which generally prohibits state and local governments from preventing any carrier from providing any intrastate or interstate telecommunications service?³⁴⁰ Parties should discuss the benefits that might accrue to rural customers if all rate-of-return LECs were permitted to provide interexchange services.

H. Additional Issues

1. Transit Service Issues

a. Background

120. Transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network.³⁴¹ Typically, the intermediary carrier is an incumbent LEC and the transited traffic is routed from the originating carrier through the incumbent LEC's tandem switch to the terminating carrier. The intermediary (transiting) carrier then charges a fee for use of its facilities. Although many incumbent LECs, mostly BOCs,

³³⁹See, *e.g.*, Letter from Sylvia Lesse, Counsel to the Missouri Companies, to William F. Caton, Acting Secretary, Federal Communications Commission, CC Docket No. 01-92, at 6 (filed Mar. 22, 2003); Letter from Glenn H. Brown, Great Plains Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 8 (filed Sept. 23, 2003); Letter from W.R. England, III, Counsel to the Missouri Small Rural Incumbent Local Exchange Companies, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 3 (filed Oct. 31, 2003).

³⁴⁰47 U.S.C. § 253.

³⁴¹The exchange of access traffic, including the joint provision of access by two or more carriers, is governed by federal and state access charge rules.

currently provide transit service pursuant to interconnection agreements,³⁴² the Commission has not had occasion to determine whether carriers have a duty to provide transit service. The reciprocal compensation provisions of the Act address the exchange of traffic between an originating carrier and a terminating carrier, but the Commission's reciprocal compensation rules do not directly address the intercarrier compensation to be paid to the transit service provider.³⁴³

121. In the *Inter-carrier Compensation NPRM*, the Commission sought comment on issues that arise under the current intercarrier compensation rules when calls involve a transit service provider, and how a bill-and-keep regime might affect such calls.³⁴⁴ Specifically, the Commission sought comment on the transport obligations of interconnected LECs and whether it should allow LECs to charge each other for delivering transit traffic that originates on the networks of other carriers.³⁴⁵ The Commission recognized that CMRS carriers also originate and terminate section 251(b)(5) traffic that transits incumbent LEC networks, and requested comment on the issues or problems that the current rules present for these calls.³⁴⁶ In this section, we solicit further comment on whether there is a statutory obligation to provide transit services under the Act, and, if so, what rules the Commission should adopt to advance the goals of the Act.

122. Incumbent LECs argue that they are not required to provide transit service under the Act and that transit service offerings should remain voluntary.³⁴⁷ They explain that they limit the availability

³⁴²Indeed, the record suggests that most BOCs currently offer transit service to competitive LECs and CMRS providers pursuant to agreements. *See, e.g.,* Verizon Reply at 26-27.

³⁴³*See* 47 U.S.C. § 252(d)(2)(A)(i) (requiring that the terms and conditions for reciprocal compensation provide for the “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”).

³⁴⁴*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9634, para. 71. In a related proceeding, Qwest had argued that a bill-and-keep arrangement does not work when three carriers are involved in the transport and termination of traffic because the carrier providing the transit service does not have a customer involved in the call from which it can recover costs. *Id.* (citing Letter from Lynn R. Charytan, Counsel for Qwest Communications International, Inc. to Magalie R. Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-98 and 99-68, App. B, at ii (filed Nov. 22, 2000)). *See also* Qwest Reply at 25 n.14 (clarifying that its concern applied only to the situation where the intermediary carrier has no relationship with the end-user, and, therefore, cannot recover its costs from the end-user).

³⁴⁵*Inter-carrier Compensation NPRM*, 16 FCC Rcd at 9634, para. 71.

³⁴⁶*See id.*

³⁴⁷*See* MITG Reply at 9-10; SBC Reply at 19; Verizon Reply at 25-26. *See also* Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at 6 (filed Aug. 29, 2003) (BellSouth Aug. 29 *Ex Parte* Letter); Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed May 16, 2003) (attaching Letter from Glenn Reynolds, Vice President, Federal Regulatory, BellSouth Corporation, to William Maher, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 01-92 at 3 (filed May 15, 2003) (BellSouth May 16 *Ex Parte* Letter); Letter from Joseph Mulieri, Executive Director – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at 2-6 (filed June 13, 2003) (Verizon June 13 *Ex Parte* Letter); Letter from Joseph Mulieri, Assistant Vice President, Federal Regulatory (continued....)

of such services in order to prevent traffic congestion and tandem exhaust, and to encourage carriers to establish direct interconnection when traffic volumes warrant it.³⁴⁸ According to these commenters, transiting should be treated as an unregulated service offered at market-based prices, or, alternatively, as special access.³⁴⁹

123. Competitive LECs and CMRS providers argue that incumbent LECs are required to provide transit service under the Act,³⁵⁰ and they urge the Commission to ensure continued access to transit service.³⁵¹ These carriers explain that indirect interconnection via a transit service provider is the most efficient means of interconnection and that the availability of transiting is critical to the development of competition.³⁵² CMRS providers in particular argue that the low volume of traffic exchanged with smaller LECs does not warrant direct interconnection and that transit service is necessary for indirect interconnection.³⁵³ These commenters urge the Commission to set cost-based compensation for transit (Continued from previous page)

Advocacy, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, at 2-4 (filed Sept. 4, 2003) (Verizon Sept. 4 *Ex Parte* Letter).

³⁴⁸Verizon Reply at 26-27. *See also* Verizon June 13 *Ex Parte* Letter at 6; Verizon Sept. 4 *Ex Parte* Letter at 6. Moreover, the smaller incumbent LECs complain that the larger incumbent LECs, *i.e.*, the BOCs, have entered into transiting arrangements with other carriers, whereby the BOC delivers traffic destined for a rural LEC to that LEC for termination without authorization or any agreement among all the carriers involved. *See* Alliance of Incumbent Rural Telephone Companies and Independent Alliance Reply at 6-7. They further argue that such transiting arrangements preempt any opportunity for the small incumbent LEC to establish an agreement with the originating carrier and provide interconnection services. *See id.* at 7; MITG Reply at 9.

³⁴⁹*See* SBC Reply at 19 (advocating market-based rates); USTA Reply at 22 (arguing that transit service should be treated as an unregulated service or, in the alternative, treated as special access); Verizon Reply at 27 (advocating market-based rates); BellSouth Aug. 29 *Ex Parte* Letter at 11 (supporting market-based rates); Verizon Sept. 4 *Ex Parte* Letter at 2 (supporting market-based rates). *Cf.* MITG Reply at 11-15 (arguing that access charges must apply to transit service because three carriers are involved in the call rather than two).

³⁵⁰*See* Sprint Comments at 34 (relying on sections 251(a) and 251(c)(2)(B) of the Act); AT&T Reply at 48 (discussing sections 251(a) and 251(c)(2)(B) of the Act); VoiceStream Reply at 22 (citing section 251(a) of the Act). *See also* Letter from Laura H. Phillips, Counsel to Nextel Communications, Inc. and T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at Attach. (filed May 16, 2003) (stating that sections 251(a)(1), 251(b)(5), 251(c) and 332(c) of the Act require incumbent LECs to provide transit service at cost-based rates) (Nextel/T-Mobile May 16 *Ex Parte* Letter).

³⁵¹*See* Triton Comments at 13; Verizon Wireless Comments at 42-44; AT&T Reply at 48; Nextel Reply at 10; Sprint Reply at 16-18; Triton Reply at 8-9; Verizon Wireless Reply at 16; VoiceStream Reply at 22.

³⁵²*See* Sprint Comments at 33; Triton Comments at 13-14; AT&T Reply at 48; Nextel Reply at 10; Sprint Reply at 16-17; Triton Reply at 9; VoiceStream Reply at 22. In response to claims that transiting hinders the development of facilities-based competition, Sprint responds that duplicating incumbent LEC facilities would only impose unnecessary costs on new entrant carriers. *See* Sprint Reply at 17.

³⁵³*See* Triton Comments at 13-14 (arguing that transiting traffic is the only economically justifiable way for a CMRS provider to exchange traffic in rural areas); Verizon Wireless Comments at 43 (stating that transiting is the best way to ensure cost-effective service availability to rural customers); Nextel Reply at 10 (asking the Commission to ensure that indirect transit traffic arrangements remain a viable option because indirect interconnection is far more efficient in circumstances where a relatively small volume of traffic is exchanged); Triton Reply at 8-9 (urging the Commission to facilitate indirect interconnection through transiting arrangements); VoiceStream Reply at 22 (stating that CMRS carriers do not have the traffic volumes to justify direct connections).

service using the Commission's forward-looking TELRIC cost methodology.³⁵⁴

124. In addition to these comments, several of the reform proposals include new rules addressing the regulation of transit services. For instance, the ICF proposal includes, as part of its network interconnection rules, a finding that tandem transit service is an interstate common carrier offering subject to regulation by the Commission.³⁵⁵ Under this proposal, incumbent LECs already providing transit service would continue to offer the service for the entire term of the ICF plan.³⁵⁶ The ICF plan also includes a clarification of carrier responsibilities in a transit service arrangement and specified rate caps for transit services, which vary depending on the stage of the ICF plan.³⁵⁷ In contrast, under the CBICC proposal, transit service providers would charge TELRIC-based rates for the functions provided.³⁵⁸ Under the Western Wireless proposal, incumbent LECs would be required to offer transit service at capped rates.³⁵⁹

b. Discussion

125. The record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act.³⁶⁰ It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.

126. Moreover, it appears that indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic.³⁶¹ Competitive LECs and CMRS carriers claim that indirect interconnection via the incumbent LEC is an efficient form of interconnection where traffic levels do not justify establishing costly direct connections. As AT&T explains, “transiting lowers barriers to entry because two carriers avoid having to incur the costs of constructing the dedicated facilities necessary to link their networks directly.”³⁶² This conclusion appears to be supported by the widespread use of transiting arrangements.

³⁵⁴Sprint Comments at 35; Sprint Reply at 18; VoiceStream Reply at 25.

³⁵⁵See ICF Proposal at 25.

³⁵⁶See *id.* Further, a carrier seeking to discontinue offering tandem transit service would need to obtain section 214 authorization under the ICF plan. *Id.*

³⁵⁷*Id.* at 25-29. Moreover, the ICF proposal includes certain traffic volume limitations and other restrictions in situations of tandem congestion or exhaust. *Id.* at 30-31.

³⁵⁸See CBICC Proposal at 2.

³⁵⁹Western Wireless Proposal at 12.

³⁶⁰See 47 U.S.C § 251(a)(1).

³⁶¹See Triton Comments at 13-14; AT&T Reply at 48; Nextel Reply at 10; Sprint Reply at 17; Triton Reply at 8-9; VoiceStream Reply at 22.

³⁶²AT&T Reply at 48.

127. We seek comment on the Commission's legal authority to impose transiting obligations. For example, competitive LECs and CMRS carriers point to sections 251(a)(1) and 251(c)(2)(B) of the Act in support of transiting obligations.³⁶³ AT&T and Sprint contend that the language in section 251(a) regarding indirect interconnection requires carriers to provide transiting arrangements.³⁶⁴ In addition, these carriers rely on the "at any technically feasible point" language in section 251(c)(2)(B) in support of transiting obligations.³⁶⁵ They explain that interconnection at the tandem switch provides access to the full tandem switching functionality, including access to subtending end offices owned by carriers other than the tandem provider.³⁶⁶ Furthermore, Sprint points to the language of section 251(c)(2)(a), requiring incumbent LECs to interconnect with requesting carriers for the "transmission and routing of telephone exchange service and exchange access," to support transiting obligations.³⁶⁷

128. Under section 251(a) of the Act, telecommunications carriers "should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices."³⁶⁸ The Commission's rules define the term "interconnection" to mean "the linking of two networks for the mutual exchange of traffic" and not "the transport and termination of traffic."³⁶⁹ We seek comment on whether that definition applies, or should apply, in the context of section 251(a).³⁷⁰ In particular, we ask parties to comment on whether the statutory language regarding the duty to interconnect directly or indirectly under section 251(a) should be read to encompass an obligation to provide transit service. To whom would that implied obligation run?³⁷¹ Parties commenting on this issue should address the positions raised in the record and any other arguments concerning the Commission's legal authority to impose transiting obligations. For instance, we seek

³⁶³47 U.S.C. § 251(a)(1) (requiring telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers"); 47 U.S.C. § 251(c)(2)(B) (requiring incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network").

³⁶⁴Sprint Comments at 34; AT&T Reply at 48. *See also* VoiceStream Reply at 22. For instance, Sprint states that 251(a)(1) becomes "meaningless" if the BOCs can ignore their transiting obligations. *See* Letter from Luisa L. Lancetti, Vice President, Regulatory Affairs, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 at 6 (filed Aug. 6, 2003) (Sprint Aug. 6 *Ex Parte* Letter). *But see* Verizon June 13 *Ex Parte* Letter at 2 (arguing that nothing in the Act requires Verizon to accept and transport traffic destined for a third party carrier).

³⁶⁵Sprint Comments at 34; AT&T Reply at 48.

³⁶⁶Sprint Comments at 34; AT&T Reply at 48.

³⁶⁷Sprint Aug. 6 *Ex Parte* Letter at 6 (citing 47 U.S.C. § 251(c)(2)(A)).

³⁶⁸*Local Competition First Report and Order*, 11 FCC Rcd at 15991, para. 997 (defining interconnection obligations under section 251(a)).

³⁶⁹47 C.F.R. § 51.5. *See also* *Local Competition First Report and Order*, 11 FCC Rcd at 15590, para. 176 (interpreting section 251(c)(2) of the Act).

³⁷⁰47 U.S.C. § 251(a).

³⁷¹For example, if two carriers choose to meet their obligation under section 251(a) by interconnecting directly, should each be obligated to pass traffic to other carriers through the direct connection?

comment on whether a transiting obligation could also arise under section 251(b)(5)³⁷² or other sections of the Act, including section 201(a).³⁷³ Parties should also identify and address other regulatory implications of the Commission's conclusions on this issue.³⁷⁴

129. Assuming that the Commission has the necessary legal authority, we solicit comment on whether we should exercise that authority to require the provision of transit service. We recognize that many incumbent LECs, mostly BOCs, voluntarily provide transit service pursuant to interconnection agreements. These carriers argue that there is no need to adopt rules for transit service.³⁷⁵ The record suggests, however, that some carriers may experience difficulty in obtaining transit service,³⁷⁶ and the record is silent on whether transit service is currently available at reasonable rates, terms, and conditions. We acknowledge the concerns of competitors that the unavailability of transit service at reasonable rates, terms, and conditions could pose a barrier to entry, and we also recognize the importance of identifying and implementing appropriate interconnection incentives for the future. Thus, we seek additional comment on the extent to which providers (including non-incumbent LECs) make transit service available in the marketplace at reasonable rates, terms, and conditions, and the extent to which rules implementing transit service obligations are warranted at this time. In this regard, we seek comment on the possibility that mandated transiting or regulated rates for such service might discourage the development of this market. Conversely, we seek comment on whether any rules adopted should encourage the provision of transit service by carriers other than incumbent LECs and, if so, how.

130. If rules regarding transit service are warranted, we seek comment on the scope of such regulation. Specifically, we seek comment on whether transit service obligations under the Act should extend solely to incumbent LECs or to all transit service providers, including competitive LECs.³⁷⁷ Parties advocating that any rules should apply exclusively to incumbent LEC transit service should address whether the regulation of some transit service providers but not others would create arbitrage risks or result in an unfair competitive advantage.

131. We also seek comment on the need for rules governing the terms and conditions for transit service offerings. In particular, we seek comment on whether limitations on transit service obligations should be considered and the legal authority for imposing such limitations if transit service

³⁷²See 47 U.S.C. § 251(b)(5) (requiring that LECs establish reciprocal compensation arrangements for the transport and termination of telecommunications).

³⁷³See 47 U.S.C. § 201(a) (giving the Commission the authority to establish physical connections and through routes if it, after opportunity for hearing, finds such action necessary or desirable in the public interest).

³⁷⁴For example, a determination that incumbent LECs have a transiting obligation pursuant to section 251(c)(2) would also trigger an obligation to provide such a service under section 271(c)(2)(B)(i).

³⁷⁵See Verizon Reply at 26 (stating that carriers will offer transit service where it is economical for them to do so). See also USTA Reply at 22 (stating that the better policy option is to permit all carriers the ability to offer transit service as an unregulated service).

³⁷⁶Sprint Comments at 33 (stating that some BOCs have refused, or announced their intention to refuse, to provide indirect interconnection or transiting). See also Triton Comments at 13 (describing difficulties experienced in trying to obtain transit arrangements).

³⁷⁷The source of legal authority affects the scope of the obligation. See *supra* para. 128 (seeking comment on which section of the Act provides legal authority for the imposition of transiting service obligations).

rules are adopted. For instance, if a transit service obligation is imposed, indirectly interconnected carriers may lack the incentive to establish direct connections even if traffic levels warrant it.³⁷⁸ As mentioned above, some incumbent LECs currently limit the availability of transit services in order to prevent traffic congestion and tandem exhaust, and to encourage carriers to establish direct interconnection when traffic volumes warrant it.³⁷⁹ We ask parties to comment on whether similar limitations should apply to any transit service obligations, and under what conditions.

132. Further, if the Commission determines that rules governing transit service are warranted, we seek additional comment on the appropriate pricing methodology, if any, for transit service. The reciprocal compensation provisions of the Act address the exchange of traffic between two carriers, but do not explicitly address the intercarrier compensation to be paid to the transit service provider for carrying section 251(b)(5) traffic.³⁸⁰ Similarly, section 251(a)(1) does not address pricing. Most commenters agree that incumbent LECs should be compensated for transit service, but they disagree as to the appropriate pricing methodology for this service.³⁸¹ Thus, we seek further comment on the appropriate pricing methodology, including the possibility of requiring that transit service be offered at the same rates, terms, and conditions as the incumbent LEC offers for equivalent exchange access services (*e.g.*, tandem switching and tandem switched transport) and how this option would be affected by our proposals to alter the current switched access regime.³⁸² Moreover, if transit service is treated as an access service, we seek comment on whether pricing flexibility could be obtained based on our existing rules, and seek input on the appropriate test to determine when pricing flexibility would be appropriate. Parties should provide evidence of the degree to which there is, or could be, competition for transit services and how the level of competition should be reflected in our choice of a pricing methodology. Further, we ask parties to comment on whether the efficient pricing of transit service would eliminate the need for any explicit limitations on transit obligations, *i.e.*, whether the correct price signals would encourage direct connections when necessary.

133. Finally, we recognize that the ability of the originating and terminating carriers to determine the appropriate amount and direction of payments depends, in part, on the billing records generated by the transit service provider. Thus, we ask carriers to comment on whether the current rules and industry standards create billing records sufficiently detailed to permit the originating and terminating

³⁷⁸See Verizon Reply at 27 (arguing that limitations are necessary to provide the incentive for direct connections between carriers).

³⁷⁹See, *e.g.*, Verizon Reply at 26-27. Verizon, for instance, offers transit service and tandem switching of transit traffic up to a DS-1 capacity level and offers special access arrangements for traffic above a DS-1 level. *Id.* at 27.

³⁸⁰See 47 U.S.C. § 251(b)(5); 47 U.S.C. § 252(d)(2)(A)(i) (requiring that the terms and conditions for reciprocal compensation provide for the “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”).

³⁸¹The Illinois Commission supports cost-based rates for transit service, but it does not advocate a specific pricing methodology. Illinois Commission Comments at 10. It supports market-based rates once “sufficient competition develops.” *Id.* at 9.

³⁸²See MITG Reply at 11 (concluding that, if reciprocal compensation rates do not apply to this traffic, then access rates must apply).