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March 5, 2010

PLEASE NOTE THAT THE ORIGINAL OF THIS FILING CONTAINS CONFIDENTIAL COMMERCIAL INFORMATION

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PUBLIC SERVICE COMMISSION

Via Hand-Delivery
Mr. Jeff R. Derouen
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602-0615

Re: In the matter of MCI Communications Services, Inc., et al., v. Windstream Kentucky West, Inc., et al ("Windstream"), Case #2007-00503

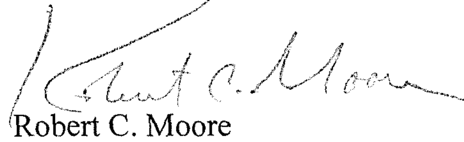
Dear Mr. Derouen:

Pursuant to my telephone conversation with Tiffany Bowman with your office, please find enclosed for filing in the above referenced case the following documents:

1) The unredacted, confidential original of Windstream's Responses and Objections to Sprint Nextel's Initial Request for Information to Windstream and one redacted paper copy and four (4) redacted digital versions of same;
2) The unredacted, confidential original of Windstream's Responses and Objections to Verizon's First Requests for Information to Windstream and one redacted paper copy and four (4) redacted digital versions of same;
3) The unredacted, confidential original of Windstream's Responses and Objections to AT&T's First Data Requests to Windstream Kentucky West, Inc., Windstream Kentucky East, Inc. - Lexington and Windstream Kentucky East, Inc. - London, and one redacted paper copy and four (4) redacted digital versions of same;
4) The unredacted, confidential original of Windstream's Responses and Objections to Commission Staff's First Information Request to Windstream and five (5) redacted paper copies of same; and,
5) The above described Responses and Objections contain information and exhibits labeled as confidential and Windstream seeks confidential treatment of this confidential commercial information. Windstream accordingly files its Petition for Confidential Treatment for all information and exhibits labeled as confidential. Please note that in certain instances, Windstream has identified the first page or title page of a document containing a voluminous number of pages as confidential without labeling each individual page as confidential. In this case, Windstream requests that the entire document be treated as confidential.

Please call me if you have any questions concerning this filing, and thank you for your attention to this matter.

Respectfully submitted,



Robert C. Moore

RCM/db
Enclosures
cc: Kimberly Bennett

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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MCI COMMUNICATIONS SERVICES, INC., BELL ATLANTIC COMMUNICATIONS, INC., NYNEX LONG DISTANCE COMPANY, TTI NATIONAL, INC., TELECONNECT LONG DISTANCE SERVICES & SYSTEMS COMPANY AND VERIZON SELECT SERVICES, INC.	)	
Complainants	)	**CASE NO. 2007-00503**
v.	)	
WINDSTREAM KENTUCKY WEST, INC., WINDSTREAM KENTUCKY EAST, INC. – LEXINGTON AND WINDSTREAM KENTUCKY EAST, INC. – LONDON	)	
Defendants	)	

RESPONSES AND OBJECTIONS TO SPRINT NEXTEL'S INITIAL REQUEST FOR INFORMATION TO WINDSTREAM

***** REDACTED VERSION *****

Windstream Kentucky West, LLC ("Windstream West") and Windstream Kentucky East, LLC ("Windstream East") submit the following responses and objections to the Initial Request for Information served by Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc., d/b/a Nextel Partners (collectively, "Sprint"):

<u>OBJECTIONS APPLICABLE TO ALL SPRINT INITIAL REQUESTS FOR INFORMATION</u>

The following objections apply to each data request and the accompanying directions and instructions served by Sprint:

1. Windstream East and Windstream West object that they are alternatively regulated local exchange carriers who are statutorily exempt from this proceeding. Their submission of these Responses is without waiver of and with express reservation of all of their rights as alternatively regulated carriers.

2. Windstream East and Windstream West object to the Initial Requests to the extent they may be construed as calling for the disclosure of information subject to a claim of privilege or immunities, including the attorney-client privilege, the attorney work product doctrine, the joint-defense privilege, or any other applicable evidentiary privilege or immunity from disclosure. The inadvertent disclosure of any information subject to such privileges or immunities is not intended to relinquish any privilege or immunity and shall not be deemed to constitute a waiver of any applicable privilege or immunity.

3. Windstream East objects to Sprint's definition of "Company" for the reason that Windstream East is only one legal entity but with two study areas.

4. Windstream East and Windstream West object to Sprint's Initial Requests (*e.g.*, definitions of "Windstream") to the extent that they seek to impose a response obligation on all affiliates of Windstream West and Windstream East who are not parties to this proceeding, operate outside the jurisdiction of this Commission, are not the subjects of Verizon's Complaint, and/or do not have access rates which are in contention in Verizon's Complaint. Without waiver of this objection, Windstream East and Windstream West state that they have provided only certain information on behalf of their affiliate,

Windstream Communications, Inc., with respect to its Kentucky operations but that they have not provided information on behalf of any NuVox affiliate operating in Kentucky, the integration of which is still in its infancy.

5. Windstream East and Windstream West object to the extensive Initial Requests that seek information relating to cost-based information or interstate rates, which information is either outside the jurisdiction of this Commission in the case of interstate rates or wholly irrelevant to alternatively regulated carriers in the case of cost-based information.

6. Windstream East and Windstream West object to any Initial Requests that seek to impose requirements on them to produce information applicable to affiliates outside of the jurisdiction of the Commission. Information pertaining to their affiliates in other states is outside the jurisdiction of the Commission, irrelevant to the matters in Verizon's Complaint which are targeted only as to Windstream East and Windstream West, and further may only be used by parties such as Verizon and Sprint for fishing expeditions for their targeted access reduction attacks in other states. Windstream East and Windstream West maintain operations only in Kentucky unlike Sprint whose long distance companies operate in multiple states.

7. Windstream East and Windstream West generally object to the Initial Requests to the extent that they: (a) are overly broad; (b) are impermissibly vague and ambiguous and fail to describe with reasonable particularity the information sought; (c) seek production of information that is not relevant to the subject matter at issue in this action and/or are not reasonably calculated to lead to the discovery of admissible evidence; and (d) impose undue burdens that outweigh any probative value the information may have in this action.

8. Windstream East and Windstream West object to the Initial Requests to the extent they seek information (*e.g.*, tariff and publicly filed report information) that is in the public domain, is available from other, more convenient sources, and/or is accessible by, if not already in the possession of, Sprint or its affiliates or representatives. Windstream East and Windstream West further object to such discovery on the grounds that it is unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible or relevant evidence.

9. Windstream West and Windstream East object to the Initial Requests to the extent they seek, without entry of an appropriate nondisclosure agreement, the production of confidential, proprietary, or sensitive commercial, business, or personal information or trade secrets relating to Windstream East or Windstream West.

10. Windstream West and Windstream East object to the Initial Requests to the extent they seek legal conclusions, contentions, previews of testimony, citations to legal authority, or copies of legal authorities.

11. Windstream West and Windstream East object to the Initial Requests to the extent they purport to impose a burden of ascertaining information that is not in their possession, custody, control, or personal knowledge, or that cannot be found in the course of a reasonable search.

12. Windstream West and Windstream East object to the Initial Requests to the extent they purport to impose upon them obligations greater than or different from those authorized by the Rules of Civil Procedure - including those imposing reasonable limitations on the amount of discovery that may be served on a party.

RESPONSES

Windstream East and Windstream West do not waive and fully preserve all of the foregoing objections, which are incorporated fully herein. Any information provided herein is made on the basis of the best information available to Windstream East and/or Windstream West at the time of gathering responsive materials or information, within the limits of, and subject to the general and specific objections set forth herein. Windstream East and Windstream West have attempted to locate responsive information through an investigation of sources from which such information might reasonably be expected to be found, but by means of responses and objections to the Requests for Information or in subsequent testimony or other filings, Windstream West and Windstream East reserve the right to supplement or modify their responses and objections if additional information becomes available.

The fact that Windstream East and Windstream West are willing to provide responsive information to any particular Initial Request does not constitute an admission or acknowledgment that the Initial Request is proper, that the information sought is within the proper bounds of discovery, or that other requests for similar information will be similarly treated. Further, any and all responses provided herein are for the purpose of the above-captioned case only and are not responses for any other purpose. Similarly, they may not be used against Windstream East or Windstream West in any other proceeding unless specifically agreed to by them or so ordered by a court or commission of competent jurisdiction.

Windstream West and Windstream East reserve the right to rely on facts, documents, or other evidence, which may develop or subsequently come to its attention, to assert additional objections or supplemental responses should it discover that there is information or grounds for objections and to supplement or amend these Responses at any time.

Due to the volume of the Initial Requests served on them by Sprint, Windstream East and Windstream West are serving their Responses in electronic format.

Request No. 1
Specify the amount of intrastate switched access revenue Windstream generated in Kentucky in 2008 from each rate element. Please provide this information separately for each of the three Windstream filing entities in Kentucky. Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing such revenue.

RESPONSES: Windstream East objects that it is only one legal entity with two study areas. Without waiving the foregoing, Windstream East and Windstream West state as follows and note that "NA" denotes information that is not available in the form or for the time period requested:

Windstream East Intrastate Switched Access Rate Elements -

Carrier Common Line Service
(i) Total MOUs for the year ending December 31, 2008 -
(ii) Total revenue for the year ending December 31, 2008 -

Cellular Interconnect - End of C Term
(iii) Total MOUs for the year ending December 31, 2008 - NA
(iv) Total revenue for the year ending December 31, 2008 -NA

Cellular Reverse Toll - End of C Orig
(v) Total MOUs for the year ending December 31, 2008 - NA
(vi) Total revenue for the year ending December 31, 2008 - NA

Cellular Reverse toll - Tandem Orig
(vii) Total MOUs for the year ending December 31, 2008 -
(viii) Total revenue for the year ending December 31, 2008 -

End Office Switching Orig
(ix) Total MOUs for the year ending December 31, 2008 - NA
(x) Total revenue for the year ending December 31, 2008 - NA

End Office Switching Term
(xi) Total MOUs for the year ending December 31, 2008 - NA
(xii) Total revenue for the year ending December 31, 2008 - NA

Indirect InterMTA Rate
(xiii) Total MOUs for the year ending December 31, 2008 -
(xiv) Total revenue for the year ending December 31, 2008 -

Information Surcharge Prem Orig
(xv) Total MOUs for the year ending December 31, 2008 -
(xvi) Total revenue for the year ending December 31, 2008 -

Information Surcharge Prem Terminating

(xvii) Total MOUs for the year ending December 31, 2008 -
(xviii) Total revenue for the year ending December 31, 2008 -

Local Switching - Originating
(xix) Total MOUs for the year ending December 31, 2008 -
(xx) Total revenue for the year ending December 31, 2008 -

Local Transport - Tandem Switched Termination
(xxi) Total MOUs for the year ending December 31, 2008 -
(xxii) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Facility Orig
(xxiii) Total MOUs for the year ending December 31, 2008 -
(xxiv) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Termination
(xxv) Total MOUs for the year ending December 31, 2008 -
(xxvi) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Termination - Term
(xxvii) Total MOUs for the year ending December 31, 2008 -
(xxviii) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Termination - Orig
(xxix) Total MOUs for the year ending December 31, 2008 -
(xxx) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Termination - Term
(xxxi) Total MOUs for the year ending December 31, 2008 -
(xxxii) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Transport
(xxxiii) Total MOUs for the year ending December 31, 2008 -
(xxxiv) Total revenue for the year ending December 31, 2008 -

LT Tandem Switching -Terminating
(xxxv) Total MOUs for the year ending December 31, 2008 -
(xxxvi) Total revenue for the year ending December 31, 2008 -

LT Tandem Switching Originating
(xxxvii)
(xxxviii) Total MOUs for the year ending December 31, 2008 -
(xxxix) Total revenue for the year ending December 31, 2008 -

Paging - Tandem Originating

(xl) Total MOUs for the year ending December 31, 2008 - NA
(xli) Total revenue for the year ending December 31, 2008 - NA

Tandem Switched Transport - Orig
(xlii) Total MOUs for the year ending December 31, 2008 -
(xliii) Total revenue for the year ending December 31, 2008 -

Tandem Switched Transport - Term
(xliv) Total MOUs for the year ending December 31, 2008 -
(xlv) Total revenue for the year ending December 31, 2008 -

Tandem Switched Transport - Termination
(xlvi) Total MOUs for the year ending December 31, 2008 -
(xlvii) Total revenue for the year ending December 31, 2008 -

Tandem Switching Orig
(xlviii) Total MOUs for the year ending December 31, 2008 - NA
(xlix) Total revenue for the year ending December 31, 2008 - NA

Tandem Switching Term
(l) Total MOUs for the year ending December 31, 2008 - NA
(li) Total revenue for the year ending December 31, 2008 - NA

Transit Traffic
(lii) Total MOUs for the year ending December 31, 2008 -
(liii) Total revenue for the year ending December 31, 2008 -

Transport Facility Originating
(liv) Total MOUs for the year ending December 31, 2008 - NA
(lv) Total revenue for the year ending December 31, 2008 - NA

Transport Termination Orig
(lvi) Total MOUs for the year ending December 31, 2008 - NA
(lvii) Total revenue for the year ending December 31, 2008 - NA

Transport Termination Term
(lviii) Total MOUs for the year ending December 31, 2008 - NA
(lix) Total revenue for the year ending December 31, 2008 - NA

Unbundled Prem Local Switching Term
(lx) Total MOUs for the year ending December 31, 2008 -
(lxi) Total revenue for the year ending December 31, 2008 -

WRLS Direct InterMTA Rate
(lxii) Total MOUs for the year ending December 31, 2008 -
(lxiii) Total revenue for the year ending December 31, 2008 -

End office Direct Trunk Port - DS1
(lxiv) Total Units for the year ending December 31, 2008 - NA
(lxv) Total revenue for the year ending December 31, 2008 - NA

Entrance Facility DS1
(lxvi) Total Units for the year ending December 31, 2008 -
(lxvii) Total revenue for the year ending December 31, 2008 -

Entrance Facility DS3 Electrical
(lxviii) Total Units for the year ending December 31, 2008 -
(lxix) Total revenue for the year ending December 31, 2008 -

LT Entrance Facility - DS1, First System
(lxx) Total Units for the year ending December 31, 2008 -
(lxxi) Total revenue for the year ending December 31, 2008 -

LT Entrance Facility 2W Voice Grade
(lxxii) Total Units for the year ending December 31, 2008 -
Total revenue for the year ending December 31, 2008 -

LT Entrance Facility DS3, First 1/4 Mile
Total Units for the year ending December 31, 2008 -
(lxxv) Total revenue for the year ending December 31, 2008 -

Windstream West Intrastate Switched Access Rate Elements -

800/877/888 Database Query Basic
(lxxvi) Total MOUs for the year ending December 31, 2008 - NA
(lxxvii) Total revenue for the year ending December 31, 2008 - NA

Carrier Common Line Service
(lxxviii) Total MOUs for the year ending December 31, 2008 -
(lxxix) Total revenue for the year ending December 31, 2008 -

Directory Surcharge
(lxxx) Total MOUs for the year ending December 31, 2008 -
(lxxxi) Total revenue for the year ending December 31, 2008 -

Indirect InterMTA Rate
(lxxxii) Total MOUs for the year ending December 31, 2008 -
(lxxxiii) Total revenue for the year ending December 31, 2008

LOC Trans Residual Interconnection Charge

(lxxxiv) Total MOUs for the year ending December 31, 2008 -
(lxxxv) Total revenue for the year ending December 31, 2008 -

Local Switching - Originating
(lxxxvi) Total MOUs for the year ending December 31, 2008 -
(lxxxvii) Total revenue for the year ending December 31, 2008 -

Local Transport - Tandem Switched Termination
(lxxxviii) Total MOUs for the year ending December 31, 2008 -
(lxxxix) Total revenue for the year ending December 31, 2008 -

Local Transport - Tandem Switched Facility
(xc) Total MOUs for the year ending December 31, 2008 -
(xci) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Termination - Term
(xcii) Total MOUs for the year ending December 31, 2008 -
(xciii) Total revenue for the year ending December 31, 2008 -

LT Tandem Switched Transport
(xciv) Total MOUs for the year ending December 31, 2008 -
(xcv) Total revenue for the year ending December 31, 2008 -

Tandem Switched Transport - Orig
(xcvi) Total MOUs for the year ending December 31, 2008 -
(xcvii) Total revenue for the year ending December 31, 2008 -

Tandem Switched Transport - Termination
(xcviii) Total MOUs for the year ending December 31, 2008 -
(xcix) Total revenue for the year ending December 31, 2008 -

Transit Traffic
(c) Total MOUs for the year ending December 31, 2008 - NA
(ci) Total revenue for the year ending December 31, 2008 - NA

Unbundled Prem Local Switching Term
(cii) Total MOUs for the year ending December 31, 2008 -
(ciii) Total revenue for the year ending December 31, 2008 -

WRLS Direct InterMTA Rate
(civ) Total MOUs for the year ending December 31, 2008
(cv) Total revenue for the year ending December 31, 2008 -

LT Entrance Facility - DS1, First System
(cvi) Total Units for the year ending December 31, 2008 -

(cvii) Total revenue for the year ending December 31, 2008 - [redacted]

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 2

Specify the billed access minutes associated with the local switching revenue amounts provided in Request No. 1. Please provide this information separately for each of the three Windstream filing entities in Kentucky. Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing such access minutes.

RESPONSE: The second request pertaining to production of all documents concerning access minutes is overly broad, burdensome, vague and ambiguous, and Windstream East further objects that it is one legal entity with two study areas. Without waiving the foregoing objections, Windstream East and Windstream West refer to Response to No. 1.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 3

Please provide the total switched access lines in service in Windstream's Kentucky service areas as of 12-31-07 and 12-31-08. Please provide a breakdown of those lines between residential and business lines. Please provide this information separately for each of the three Windstream filing entities in Kentucky. Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing such lines.

RESPONSES: The last request pertaining to production of all documents is overly broad, burdensome, vague and ambiguous, and Windstream East further objects that it is one legal entity with two study areas. Further, this question is in excess of a reasonable number of discovery questions that should be allowed under law. Without waiving the foregoing objections, Windstream East and Windstream West state as follows and notes that "NA" denotes information that is not available in the form or for the time requested:

(a) Windstream West Single Line Residential lines in service 2007 –
(b) Windstream West Single Line Residential lines in service 2008 –
(c) Windstream West Single Line Business lines in service 2007 –
Windstream West Single Line Business lines in service 2008 –
(e) Windstream West Multi-line Residential lines in service 2007 - NA
(f) Windstream West Multi-line Residential lines in service 2008 - NA
(g) Windstream West Multi-line Business lines in service 2007 –
(h) Windstream West Multi-line Business lines in service 2008 –
(i) Windstream West Other revenue producing access lines 2007 –
(j) Windstream West Other revenue producing access lines 2008 –
(k) Windstream East Single Line Residential lines in service 2007 –
(l) Windstream East Single Line Residential lines in service 2008 –
(m) Windstream East Single Line Business lines in service 2007 –
(n) Windstream East Single Line Business lines in service 2008 –
(o) Windstream East Multi-line Residential lines in service 2007 - NA
(p) Windstream East Multi-line Residential lines in service 2008 - NA
(q) Windstream East Multi-line Business lines in service 2007 –
(r) Windstream East Multi-line Business lines in service 2008 –
(s) Windstream East Other revenue producing access lines 2007 –
(t) Windstream East Other revenue producing access lines 2008 –

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 4

Please provide the revenue collected from Windstream local service customers for the calendar years 2004 through 2008 for each of the following services from Windstream in Kentucky. Please split the revenues between residential and business customers. Please provide this information separately for each of the three Windstream filing entities in Kentucky. Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing such revenue.

(a) basic local service, including mandatory additive services such as extended area calling, dial tone, etc.
(b) long distance toll service
(c) DSL
(d) all calling features
(e) wireless services

RESPONSE: The last request pertaining to production of all documents is overly broad, burdensome, vague and ambiguous, and Windstream East further objects that it is one legal entity with two study areas. The use terms such as "revenue," "all calling features," and "long distance toll" in this question generally is overly broad and ambiguous. Further, the information requested is wholly irrelevant to the matters in Verizon's Complaint and unlikely to yield production of any relevant information at all (*e.g.*, DSL and wireless which also are outside the Commission's jurisdiction). This question also is in excess of a reasonable number of discovery questions that should be allowed under law and further appears to seek information that would only be used by Sprint for its own competitive purposes. Without waiving the foregoing, Windstream East and Windstream West state that they do not provide wireless service.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 5

Please provide the count of Windstream local service customers that could have obtained each of the following services from Windstream at the end of each of the calendar years of 2004 through 2008. Please split the customer counts between residential and business customers. Please provide this information separately for each of the three Windstream filing entities in Kentucky. Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing such customer counts.

(a) basic local service
(b) long distance toll service
(c) DSL
(d) wireless services

RESPONSES: The last request pertaining to production of all documents concerning access minutes is overly broad, burdensome, vague and ambiguous, and Windstream East further objects that it is one legal entity with two study areas. The question generally is overly broad, burdensome, vague, and ambiguous. Further, the information requested is wholly irrelevant to the matters in Verizon's Complaint and unlikely to yield production of any relevant information at all (*e.g.*, DSL and wireless which also are outside the Commission's jurisdiction). This question also is in excess of a reasonable number of discovery questions that should be allowed under law and appears to seek information that would only be used by Sprint for its own competitive purposes. Without waiving the foregoing, Windstream East and Windstream West state as follows:

5(a) Windstream West - Windstream West does not provide wireless service and further states that, even if the matters had any relevance to this proceeding at all, it has no way of knowing how many customers "could have obtained" service from Windstream West for the stated time periods which answer would depend on specific populous counts in its territories for the times stated, how many individuals desired service and had the resources to obtain specific services, etc.

5(b) Windstream East - Windstream East does not provide wireless service and further states that, even if the matters had any relevance to this proceeding at all, it has no way of knowing how many customers "could have obtained" service from Windstream East for the stated time periods which answer would depend on specific populous counts in its territories for the times stated, how many individuals desired service and had the resources to obtain specific services, etc.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 6

Please provide the total universal service support payments Windstream received for its Kentucky operations from the various state and federal high cost service programs for each of the calendar years of 2004 through 2008. Please breakdown that universal service support between High Cost Model, High Cost Loop, Safety Net Additive, Safety Valve, Interstate Access, Local Switching and Interstate Common Line. Please provide this information separately for each of the three Windstream filing entities in Kentucky.

RESPONSES: This question is in excess of a reasonable number of discovery questions that should be allowed under law, and Windstream East objects that it is only one legal entity with two study areas. Without waiving the foregoing objections, Windstream East and Windstream West state as follows:

(a) Windstream West 2004 - ($78,948) High Cost Loop; $499,254 Interstate Common Line Support; $199,850 Local Switching Support; $48,108 LTS

(b) Windstream West 2005 - ($415,482) Interstate Common Line Support; $210,348 Local Switching Support

(c) Windstream West 2006 - $217,380 Interstate Common Line Support; $240,816 Local Switching Support

(d) Windstream West 2007 - $216 High Cost Loop; $285,798 Interstate Common Line Support; $263,724 Local Switching Support

(e) Windstream West 2008 - $535,644 Interstate Common Line Support; $228,168 Local Switching Support; $801,804 Safety Net Additive

(f) Windstream East 2004 - $2,024,913 High Cost Loop; $5,392,533 High Cost Model; $9,719,445 Interstate Access Support

(g) Windstream East 2005 - $1,334,784 High Cost Loop; $5,168,849 High Cost Model; $9,132,846 Interstate Access Support

(h) Windstream East 2006 - $4,044,569 High Cost Model; $7,194,297 Interstate Access Support

(i) Windstream East 2007 - $80,280 High Cost Loop; $3,854,322 High Cost Model; $5,783,916 Interstate Access Support

(j) Windstream East 2008 - $4,524 High Cost Loop; $3,637,134 High Cost Model; $5,402,529 Interstate Access Support

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 7

Please provide the total revenue generated in 2008 calendar year for basic residential local exchange service including mandatory additive services such as extended area calling, dial tone, etc. for each of the states in which Windstream operates as a local telephone company.

RESPONSES: The information sought is overly broad, vague, and ambiguous and in excess of a reasonable number of discovery questions that should be allowed under law. Further, the information requested is irrelevant to the matters in Verizon's Complaint and requests information outside of Windstream West and Windstream East which operate only in Kentucky. Without waiving the foregoing objections, Windstream East and Windstream West state that they do not have such information available in the format requested.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 8

Please provide the number of residential switched access lines that were in service on 12-31-07 and 12-31-08 in the each of the states in which revenues were provided in response to Request No. 7.

RESPONSE: See Responses to Nos. 3 and 7.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 9

Please provide the current rate offerings of reciprocal compensation services in Kentucky including local switching, common transport and tandem switching. Please provide this information separately for each of the three Windstream filing entities in Kentucky if the rate is different.

RESPONSE: Windstream East objects that it is only one legal entity with two study areas. Windstream West and Windstream East object that this question is overly broad, irrelevant, and in excess of a reasonable number of discovery questions that should be allowed under law. Further, it seeks information that is publicly available to and may be compiled directly by Sprint. Without waiving the foregoing objections, Windstream West and Windstream East state that their reciprocal compensation rates are publicly available in their interconnection agreements which Sprint may obtain from the Commission's website.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 10

Please identify and provide any other documents not provided in Request No. 9 concerning, constituting, discussing, referencing, addressing, or describing the costs associated with performing end office switching, and transport functions by Windstream incumbent local exchange carriers in Kentucky. This request includes but is not limited to Windstream's most recent studies for Kentucky of the costs of intrastate access, unbundled end office switching, unbundled tandem switching and unbundled transport and reciprocal compensation services.

RESPONSE: This question is overly broad and burdensome, and irrelevant. Without waiving the foregoing, Windstream East and Windstream West refer to partially confidential Exhibit VZ#26 (unredacted version provided in disk format).

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 11

Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing any competitive or pricing advantage the Windstream wireline long distance entities enjoy relative to wireline long distance entities not affiliated with Windstream due to the fact that intrastate switched access fees are paid to the Windstream incumbent local exchange carriers by long distance providers for long distance calls originating or terminating within Windstream's incumbent local exchange service areas.

RESPONSE: This question is overly broad, vague and ambiguous and directed toward entities that are not parties to this proceeding. Without waiving the foregoing, Windstream East and Windstream West state that they are unaware of any such document making a reference to such a "pricing advantage" as asserted in Sprint's question. Further, they state that they assess the same tariffed access charges to Windstream Communications, Inc. as they do to other interexchange carriers in Kentucky.

Windstream East / Windstream West Respondent: Cesar Caballero

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<u>Request No. 12</u>

Identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing the effect of high intrastate switched access rates on competition in any market segments, including but not limited to the wireless market and the wireline long distance market. Please include all documents Windstream has submitted in other state and federal jurisdictions addressing the impact of intrastate switched access rates on competition, including but not limited to complaints, testimony and supporting data.

RESPONSE: This question is overly broad, vague and ambiguous and seeks information which is publicly available to Sprint. Without waiving the foregoing, Windstream East and Windstream West state that they are unaware of any such documents of the sort requested by Sprint and further that they operate only in Kentucky and, therefore, have not made any filings in other state jurisdictions. To the extent that they may be considered responsive to this question, Windstream East and Windstream West refer to Exhibit SP#12 regarding certain FCC filings in which they may have participated.

Windstream East / Windstream West Respondent: Cesar Caballero

Exhibit
SP #12
Kentucky East and Kentucky West

ALLTEL CORPORATION
655 15th Street N.W.
Suite 220
Washington, DC 20005
202-783-3970
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DOCKET FILE COPY ORIGINAL

August 17, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

RECEIVED
AUG 17 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of
Access Charge Reform for
Incumbent Local Exchange Carriers
Subject to Rate-of-Return Regulation
CC Docket No. 98-77

Dear Ms. Salas:

Enclosed for filing on behalf of ALLTEL Communications Services Corporation ("ALLTEL") please find an original and sixteen (16) copies of its comments in connection with the above-referenced matter.

Also, in accordance with the Commission's Notice of Proposed Rulemaking dated June 4, 1998, I am sending two copies of ALLTEL's comments to the Competitive Pricing Division.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,

Carolyn C. Hill

Carolyn C. Hill

CCH/ss

Enclosures

cc: (w/encl.)
Kathryn C. Brown, Chief, Common Carrier Bureau
Competitive Pricing Division
International Transcription Service, Inc.

No. of Copies rec'd 0+14
List ABCDE

original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform for Incumbent	)	**CC Docket No. 98-77**
Local Exchange Carriers Subject to	)	
Rate-of-Return Regulation	)	

Comments of
ALLTEL Communications Services Corporation

ALLTEL Communications Services Corporation, on behalf of its local telephone exchange affiliates (hereinafter "ALLTEL" or the ALLTEL companies"), respectfully submits its comments on the Commission's Notice of Proposed Rulemaking ("NPRM") released June 4, 1998, in the above-captioned matter.

Introduction

In earlier filed comments and reply comments in CC Docket No. 96-262, ALLTEL argued that access reform should not be delayed for rate-of-return LECs, such as the ALLTEL companies. However, in its First Report and Order adopted May 7, 1997, in that proceeding, the Commission deferred consideration of access reform for rate-of-return companies, promising to address this issue in a separate proceeding in 1997. The instant NPRM represents that effort.

The ALLTEL comments herein focus on Item I (Introduction) and Item II (Rate Structure Modifications) of the NPRM. They also address why the controversial pricing

construct for price cap LECs should not be adopted for rate-of-return LECs and why it is imperative that pricing flexibility be granted now to the ALLTEL rate-of-return LECs.

The Overlay of a Controversial Price Cap Construct Is Not Appropriate

In the NPRM, the Commission begins with the premise that the price cap access reform plan is correct for rate-of-return LECs and challenges them to prove otherwise. It basically proposes to overlay the changes adopted in CC Docket No. 96-262 for price cap LECs to rate-of-return LECs and to slightly modify those changes to come up with proposed access rule changes for rate-of-return LECs. Regrettably, this will not result in meaningful access reform for the ALLTEL rate-of-return LECs.

It is inconsistent with the Commission's stated goals of achieving economic efficiency and advancing competition for it to concentrate on micromanaging an out-moded system of access charge regulation while deferring consideration of fundamental issues such as pricing flexibility. Specifically, the NPRM fails to address the need of the ALLTEL companies for pricing flexibility and for elimination of the Part 69 pooling rule that forces companies to make uneconomic decisions. It is only with this type of change that true access reform will occur.

If access reform is to be achieved, the ALLTEL companies, as discussed below, need the ability to manage prices effectively, including implementing geographically deaveraged rates, and to offer volume and term discounts on switched services, and they need to be able to make these decisions on a study area-by-study area basis for all access rates and services.

The ALLTEL Companies Do Not Have Market Power

The ALLTEL LECs are located in fourteen (14) states and collectively have approximately 1.6 million access lines. They are "rural telephone" companies within the meaning of Section 153(37) of the Communications Act. Though by definition these companies are classified as "rural", they nonetheless face increasing competitive pressures as the interexchange and local landscapes are reshaped and as barriers to entry are dismantled. The ALLTEL companies are not immune to or insulated from the effects of competition. In markets such as Cleveland, Atlanta, Houston, Charlotte, and Pittsburgh, exchanges of ALLTEL companies neighbor large metropolitan markets.[1] The proximity of many ALLTEL exchanges to areas in which competition already has emerged,[2] or will emerge as number portability and other pro-competitive measures are implemented, already places significant pressure on ALLTEL's access charges.

The effect of an averaged, highly distortive access charge rate structure is to create pricing aberrations and economic inefficiency. The requirement to average access prices across a study area for ALLTEL's markets containing low cost/high margin customers subjects these markets to further competitive pressures. As customers in these markets implement their alternatives, there is a "spiraling" effect which pushes additional costs to the next tier of customers and creates a new "artificial margin" that is pro-competitor rather

[1] ALLTEL has over 350,000 lines in the five MSAs listed.

[2] For example, Bell South has signed interconnection agreements with MCI Metro, Intermedia and ACS in Charlotte and in Atlanta; Bell Atlantic has signed agreements with Eastern Telelogic and MFS in Pittsburgh; Ameritech has signed an agreement with Time Warner in Cleveland; and SBC has signed numerous agreements throughout Texas.

than pro-competition. Absent pricing flexibility, ALLTEL will continue to be disadvantaged relative to both new entrants and the price cap LECs.

ALLTEL needs the freedom to respond to competition in our geographically denser markets. We need the ability now to price access flexibly. It is unnecessary for the Commission to construct elaborate regulatory schemes for the rate-of-return LECs. ALLTEL has no market power in the access realm. Existing and potential competitors abound. Wireless and cable services may have the potential to provide substitutable services. IXCs monitor our access rates closely and carefully choose between ordering services provided via dedicated circuits or switched access or through alternate facilities. IXCs also have direct contact with our customers through their provision of long distance services. This allows them to continually "take the pulse" of these customers and attempt to correct imbalances by pressuring ALLTEL to adjust access rates.[3]

Competitors contend that incumbent LECs have bottleneck facilities and, therefore, enjoy an unfair competitive advantage. Incumbency in no way translates to an ability to control prices. ALLTEL does not have the financial reserves nor the economies (cost or ubiquity) to block entry through any form of anti-competitive pricing. The market for telecommunications is national if not global, in scope. The relatively small piece of the network controlled by ALLTEL and the related prices charged for that network have a negligible impact on the provision of broadly-based telecommunications services. In the evolving telecommunications market, the product has become an integrated package of

[3] In their 1998 annual access filing, the ALLTEL companies reduced, excluding their NECA carrier common line pool rates, interstate access rates by $26.5 million. Notwithstanding that this was a twenty-five percent (25%) rate reduction, AT&T petitioned to suspend and investigate the ALLTEL filing. This request was denied by the Commission.

services, including local calling, exchange access, long distance, internet access and wireless communications. When viewed in this light, the ALLTEL companies' lack of market power is evident.

Competition does not come to all service or geographic markets in the same way or at the same time. Nor are its impacts necessarily the same. The ALLTEL companies, relative to their neighboring LECs, serve a lower percentage of low cost/high margin customers as evidenced by our lower business-to-residence ratios. The loss then of one or more large customers can have a significant adverse impact on an ALLTEL LEC as contrasted with a larger LEC or a LEC with a higher business-to-residence ratio. This volatility alone underscores the need for pricing flexibility.

This situation has been presented to the Commission in the pending ATU Telecommunications ("ATU") Part 69 Waiver Request filed on June 22, 1998. ATU, a rate-of-return LEC, serves a concentrated urban market and faces competition for its access as well as its local services. One of its largest customers, AT&T Alascom, is considering changing to ATU's facilities-based competitor, GCI. GCI, unlike ATU, is able to offer volume and term discounts and other pricing incentives to AT&T Alascom. In order not to lose AT&T Alascom as a customer, ATU has been forced to file a Part 69 waiver with the FCC in order to have the ability to offer volume and term discounts. As pointed out in the ATU Waiver Petition, it is not requesting relief from competitors, it is simply asking for the right to participate in the highly competitive Anchorage local exchange and access market. (Anchorage Waiver Petition p. 11) In this regard, ALLTEL echoes ATU's position that if

a LEC is to lose a customer, it should be due to market competition among competitors on a level playing field and not because of an inefficient regulatory construct.

Pricing Flexibility Should Not be Granted After the Fact

Under the current rate-of-return access charge regime, rural and urban customers pay averaged access rates. The result is rates that are too high to be sustained under competitive conditions in the rate-of-return LEC's larger markets. The Schmalensee and Taylor paper entitled, "The Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments," concluded that "deaveraging carrier access service prices by geographic area and class of customer more closely aligns rates with ILECs' costs and leads to efficiency improvements."[4] (NERA p. 13) The authors also concluded that such deaveraging is especially important in the early stages of competition because efficient entry decisions should be made on the basis of economic cost, not distorted price signals (Id.). The ALLTEL areas adjacent to larger markets will face competitive pressures first. This requires that the ALLTEL companies be able to respond to these competitive pressures in an expeditious manner. In such a situation, ALLTEL's rates need to reflect specific costs and conditions in those markets.[5] This is an important step towards efficient pricing. However, the ALLTEL companies should not be dependent on the arrival of a local exchange competitor or a request for unbundled network elements ("UNEs") before being granted the regulatory latitude to price in a manner that is reflective of conditions

[4] The paper prepared by Schmalensee and Taylor of the National Economic Research Associates ("NERA") was filed as a USTA ex parte in CC Docket No. 96-262.
[5] Often areas within a LEC's study area are not contiguous and may have little relationship in terms of demographics, cost characteristics or calling patterns.

within the marketplace. After-the-fact regulatory relief is too reminiscent of an offer of fire insurance after the house has burned.

If a rate-of-return LEC is precluded from deaveraging its rates, economic distortions will result. Thus arbitrage can take place relative to pricing between UNEs and the LEC's services. Competitors then gain an unfair advantage over the rate-of-return LECs by (i) targeting low cost areas where some or all customers pay higher rates than are justified by costs, (ii) purchasing cost-based UNEs in that area and (iii) undercutting the LEC's rates. The ability of the rate-of-return LEC to deaverage its access rates would mitigate the undeserved opportunity for this type of arbitrage.

Term and Volume Discounts

Economic efficiencies are derived from having the ability to price flexibly and deaverage rates. However, there is a need for additional regulatory relief for rate-of-return LECs beyond deaveraging. Term and volume discounts that reflect cost efficiencies, combined with a customer-specific contract keyed to that customer's requirements, will promote proper utilization of telecommunications resources. They align the customer's needs with the rate-of-return LEC's costs. Further, they facilitate the ability to promptly respond to specific customer requests and to tailor appropriate service offerings. The latitude to provide such arrangements is imperative where customers have substitutes available within the market.

The All or Nothing Rule Must Go

In order to deaverage rates across study areas, Section 69.3(e)(9), the "all or nothing" rule, must be eliminated. The rule currently permits exit from the NECA

common line pool on a holding company basis rather than on the needed study area basis. Deaveraging and the ability to exit the NECA CCL pool on a study area basis are necessary predicates to access reform. ALLTEL serves diverse geographic areas. Customer or line density, a primary cost driver, is widely variant in the ALLTEL system with some exchanges serving as few as 20 lines per square mile and others close to 7,000 lines per square mile. This disparity in density underscores ALLTEL's need to be able to depool individual study areas to respond to competition.

This approach would be consistent with the Commission's current rules which: (1) permit LECs to exit, as circumstances warrant, the NECA traffic-sensitive pool on a study-area by study-area basis while (2) maintaining protections against cost shifting.

Finally, any perceived benefit to high cost LECs choosing to remain in the NECA common line pool from the Commission's requirement that exit from the pool be only on a holding company basis no longer exists. This was eliminated in the Commission's May 1997 decision in Universal Service, CC Docket No. 96-45, which provided for recovery by high-cost LECs of any required long term support and DEM Weighting on an explicit cost recovery basis rather than on an implicit basis through their access rates.

Accordingly, there is nothing to be achieved by requiring study areas with widely different characteristics to remain in the NECA common line pool on an "all or nothing basis."

Inadequacies with Proposed Structure - Why SLCs and PICCs Don't Work

The structure the Commission proposes to impose on rate of return LECs is largely an overlay of the structure under which the price cap companies currently operate. At this time, there is no evidence that this structure is more efficient than the current access charge structure for rate of return LECs. If anything, there is substantial evidence that the introduction of PICCs has introduced a new level of confusion and controversy in an already turbulent environment with end users, IXCs, and even the Congress vigorously objecting to PICCs. The apparent notion of regulatory symmetry should not suggest - let alone dictate - the implementation of such a controversial approach to access reform for rate-of-return LECs.

In the NPRM, the Commission suggests that "rate-of-return LECs be allowed to move their rates to more economically efficient levels." (NPRM p. 2) ALLTEL is unconvinced that the introduction of new artificial rate elements, such as the PICC, coupled with the proposed changes to the SLC, will achieve an efficient result. If rate-of-return LECs are required to implement the price cap structure for PICCs and SLCs, this will be perceived by end users as an unwarranted local rate increase. In fact, the imposition of these charges will place rate-of-return LECs at a further competitive disadvantage. The implementation of this type of artificial pricing will result in customers making incorrect decisions in their selection of telecommunication services.

Conclusion

Any viable access charge reform plan must afford rate-of-return LECs the ability to establish prices within broad guidelines. Absent this ability, ALLTEL will be unable to compete effectively within the marketplace. In essence, competitors and not competition will have been advanced. In the instant proceeding, the Commission has the opportunity to foster the development of economically efficient competition by granting rate-of-return LECs latitude with respect to pricing. It should do this now.

Respectfully submitted,

ALLTEL Communications Services Corporation

By: Carolyn C. Hill

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Dated: August 17, 1998

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ALLTEL

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February 14, 1997

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Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket 96-262
Access Charge Reform

Dear Mr. Caton:

Enclosed for filing please find an original and twelve copies of the Reply Comments of ALLTEL Telephone Services Corporation ("ALLTEL"), in the referenced rulemaking proceeding.

In response to the Commission's Notice of Proposed Rulemaking, I have also enclosed a copy of the reply comments, on a 3.5 inch diskette formatted in a DOS PC compatible form, saved in to WordPerfect 5.1 for Windows format, in "read only" mode.

Please address any questions respecting this matter to the undersigned counsel.

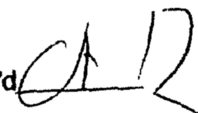
Very truly yours,

Carolyn C. Hill

CCH/ss

Enclosures

cc: (w/2 copies of Pleading)
Competitive Pricing Division
Common Carrier Bureau
1919 M Street, N.W., Room 518
Washington, D.C. 20554

No. of Copies rec'd

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	))	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	))	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)))	CC Docket No. 96-263

REPLY COMMENTS

ALLTEL Telephone Services Corporation

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Its Attorney

ALLTEL Telephone Services
February 14, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF
ALLTEL TELEPHONE SERVICES CORPORATION

ALLTEL Telephone Services Corporation, on behalf of its local telephone exchange carrier affiliates (hereinafter "ALLTEL" or the "ALLTEL Companies"), respectfully submits its reply to the comments filed January 29, 1997, in the above-captioned matter.

I. ACCESS REFORM SHOULD NOT BE DELAYED FOR RATE OF RETURN LECS

Comments filed by a myriad of interests, including incumbent LECs, IXCs, regulators, and new competitive entrants reflected a consensus that the current access charge regime requires modification because of the inherent economic inefficiencies. These inefficiencies affect all LECs, including the rate of return LECs. Many rate of return parties echoed ALLTEL's view that there are compelling reasons for the Commission to address and implement access reform now for rate of return LECs rather

than to defer it until after access reform determinations are made for price cap LECs. (TDS pgs. 7-9, GVNW pg. 4, Roseville pgs. 2, 5-6, RTC pg. 2, and Cincinnati Bell, pg. 3) To delay access reform for rate of return LECs can, as pointed out by TDS, lead to the prejudgment of issues of importance to rate of return LECs. (TDS pg. 7) In a similar vein, as noted by several other parties, historically there has been a "shadow effect" of regulatory decision - making whereby, by default or as an after-thought, rules designed for larger LECs are extended to small and mid-sized LECs. (TDS pgs. 2, 7, RTC pg. 15, and ITC pg. 1) However, ALLTEL submits that rate of return LECS have too much at risk for access reform policy to be effectuated on a default basis. For this reason, the ground rules of access reform for rate of return LECs should be adopted now.

II. COMPETITION DOES NOT STOP AT THE BORDERS OF RATE OF RETURN LECS

In the NPRM the Commission said that price cap incumbent LECs have the most immediate need for access reform based on their susceptibility to competition through the availability of unbundled network elements. (NPRM par. 52) While ALLTEL recognizes that many price cap LECs already face substantial competition, ALLTEL maintains that the reason for this competition is a function of service territory location in or around larger metropolitan areas. It is not a function of the mode of regulation. ALLTEL and other non-price cap LECs serve areas that are contiguous to these urban areas and take little comfort in the Commission's rationale that "many, if not all, non-price cap incumbent LECs may be exempt from, or eligible for a modification or suspension of, the interconnection and unbundling requirements of the 1996 Act." (Id.) At the same time, the Commission has taken the position in its Local Competition Order that exemption and

modification of these requirements should be the exception, not the rule. As the Rural Telephone Coalition stated in its comments, "The Commission cannot logically argue both that the exemption should only rarely be continued and that access reform is not now needed by rural telephone companies because they will be exempt." (RTC pg. 3)

Many rate of return LECs face immediate market pressures due to the effects of competition within and adjacent to their operating territories. Appendix A vividly demonstrates that nearly fifty-one percent (51%) of the ALLTEL Companies' access lines are located within MSA boundaries. However, ALLTEL does not enjoy the benefits of being the largest provider in any of those market areas, is still subject to the effects of competition, and continues to be regulated as a dominant carrier. ALLTEL fully expects to face competitor and customer demands to mirror the prices and structure that may be obtained from neighboring price cap LECs. Consequently, ALLTEL needs the flexibility to respond to these competitive pressures before it is subject to the resultant "cherry picking". In short, being forced to forego access reform and pricing flexibility afforded to neighboring price cap LECs until a later date places ALLTEL and other non-price cap LECs at a severe and totally unwarranted competitive disadvantage.

The Commission, as well as the 96 Act, has imposed numerous pro-competition requirements on incumbent LECs without regard to regulatory construct. These include the requirements of Section 251(b) as they relate to number portability, dialing parity, and access to rights of way. Number portability implementation illustrates the potential impact of the Commission's new "pro-competition" mandates. As shown in Appendix A, approximately forty-one percent (41%) of ALLTEL access lines fall within the

boundaries of the one-hundred (100) largest MSAs. As a result of the Commission's prescribed local number portability deployment schedule, ALLTEL will be required to upgrade software to provide the functionality necessary for porting numbers in these areas first. The implementation of these capabilities is not without cost and is particularly burdensome for small and rural LECs. ALLTEL finds the Commission's imposition of these requirements disturbing given the proposed delay of access reform and pricing flexibility for rate of return LECs. On the one hand, the Commission has directed all companies to provide for an advanced, "competitor friendly" network, while on the other hand, it has limited the ability of rate of return LECs, for the foreseeable future, to respond to the effects of competition.

Approximately fifty percent (50%) of ALLTEL's regulated telephone operating revenues are derived from access charges. Other parties indicate similar relationships. The TDS LECs, for example, receive an average of fifty-five percent (55%) of their total revenues from access charges, with individual TDS properties having access revenue percentages that range up to ninety-three percent (93%) of total revenues. With so much at stake for small and rural LECs, ALLTEL's dismay at the prospect of doing business without the benefit of the access charge flexibility which may be afforded to nearby large companies should come as no surprise to the Commission.

ALLTEL recognizes the difficulty the Commission faces in crafting an access charge system that is economically efficient while balancing the goals of universal service and inspiring the onset of immediate competition in the local exchange market;

however, the Commission should not overlook the right solution in an effort to obtain a quick solution.

III. RATE STRUCTURE MODIFICATIONS ARE NEEDED

The proposed modifications to the current access charge structure will also have a significant impact on rate of return LECs. The relationship of access charge revenues to total revenues accentuates the additional business risks faced by small LECS, and it underscores the need for the Commission's considered evaluation of any rate structure modifications adopted for rate of return LECs.

The Commission has proposed a number of reforms to the current Part 69 access rate structure that are intended to set rates that are congruent with the way in which the LECs incur costs for providing access services. (NPRM pg. 55) Industry participants echoed support for access charge modifications that will more accurately reflect "cost-causative" recovery and which send appropriate pricing signals to both consumers and competitors. Further, there was a consensus in the comments that the appropriate means by which to achieve market-driven, competitive rates and charges is to recover NTS costs on a flat-rate basis, rather than on a minute-of-use basis. ALLTEL believes that not only is this recovery method appropriate, but it is the only method which is fair to all participants in the evolving competitive marketplace.

A. Carrier Common Line/Subscriber Line Charges

In its comments, Frontier Corporation asked the Commission to eliminate the Carrier Common Line ("CCL") charge, which it called an "anachronistic cost misallocation." (Frontier pg. iii) ALLTEL disagrees. We concur with the comments

of TDS and believe that the Commission should continue to require the IXCs to pay for a portion of the ubiquitous distribution network. The carte blanche elimination of the CCL charge will create a scenario in which end users inappropriately bear the full burden of recovery through what amounts to an effective increase in their subscriber line charge or their local rates. Such a proposal would have a particularly deleterious impact on the subscribers of rural and small LECs.

Many parties advocate assessing the CCL charge based on presubscribed lines or on the customer's PIC. (e.g., LCI pgs. 20-24, MCI, pgs. 76-78, and NARUC pgs. 12-14) ALLTEL believes that this method is improper due to the use of dial around numbers (10XXX). If the assessment is based on presubscribed lines, we believe that IXCs will be in the position to avoid paying the CCL charge, which is not the intent of the Commission. We reaffirm our position relative to assessing CCL charges based on the Commission's "bulk billing" option. This mechanism will ensure that all IXCs deriving a benefit from the local loop contribute a proportionate share to the recovery of these costs.

B. Local Switching Charges

The recovery of the non-traffic sensitive ("NTS") portion of local switching costs caused little contention among the parties. As the Commission found in its Order on Reconsideration in CC Docket No. 96-98, released September 27, 1996, regarding proxies for the unbundled local switching element, the recovery of NTS costs of dedicated line ports/cards is best accomplished via flat-rate charges. The extension of this cost recovery philosophy to the local switching rate element is logical. This view

was echoed by the Rural Telephone Coalition ("RTC" pgs. 9-10) and is one shared by ALLTEL. ALLTEL believes that it is reasonable and economically efficient to recover dedicated line card costs through flat charges, provided that the actual costs are properly identified.

C. Tandem Switched Transport Charges

The Comments of NECA and the Rural Telephone Coalition ("RTC") mirror the views of ALLTEL with respect to the deficiencies in the methodology used to calculate tandem-switched transport rates. As noted in those comments, tandem switched transport rates are based upon an arbitrarily high assumption about the minutes of use which traverse tandem circuits. (RTC pg. 11, NECA, pg. 8) Pursuant to Section 69.111(c) of the Commission's Rules, the figure currently used in the rate development process is 9,000 minutes of use. However, as the RTC points out, transmission minutes are substantially lower in rural areas. (RTC pg. 11) ALLTEL's own data indicated that a figure of four thousand (4,000) minutes of use, per month, was appropriate. The current cost recovery method for tandem switched transport should be revised to reflect a lower, realistic level of usage; otherwise, the costs to be recovered via the TIC are artificially inflated.

D. Tandem Interconnection Charges

In their comments, AT&T and LCI both argue for the elimination of the TIC. (AT&T, pg. 58 and LCI pg. 27) ALLTEL and a number of other parties disagree and believe that the elimination of the TIC via a flash-cut or a through a transition plan is not justified at this time. (Cincinnati Bell pgs. 10-12, TDS pgs. 22-24, RTC pgs. 11-

12, Roseville Telephone pg. 10, and ALLTEL pg. 12) While a significant portion of the TIC costs are undoubtedly due to jurisdictional misallocations, these cost are nonetheless real. The costs currently recovered through the TIC are the result of the LECs' applying the Part 36 and Part 69 rules as directed by the Commission. Because the costs currently recovered through the TIC are legitimate costs which the LECs must be permitted to recover, there can be no phase out of the TIC without concurrent separations reform or an alternative mechanism which allows for the continued explicit recovery of the fully embedded transport costs. We concur with the views of TDS, NECA and Cincinnati Bell that the readily identifiable TIC costs should be reassigned on a cost-causative basis.

IV. PRICING FLEXIBILITY AND REGULATORY RELIEF ARE NEEDED NOW BY RATE OF RETURN LECS

The ALLTEL Companies are faced with an uncomfortable middle ground. They are too small relative to the national (and international) communications giants, yet they are too large to automatically receive some of the existing regulatory protections provided to hundreds of small LECs (e.g., Section 61.39 regulation) The Commission must recognize this imbalance as it establishes "triggers" to be used in granting pricing flexibility and lifting regulatory burdens.

Predictably, access customers, such as AT&T and MCI favor a rigid prescriptive approach to access reform while the larger LECs favor a "hands-off" market approach. While ALLTEL supports a market approach, the "triggers" need to match the areas and markets served by the ALLTEL Companies. The end state of

access reform should be a healthy competitive environment with all competitors enjoying an equivalent level of deregulation. The continued imposition of asymmetrical regulatory requirements on the incumbent LECs works against this objective. To address this, the Commission should begin by immediately providing access pricing flexibility to the rate of return LECs. The most basic form of pricing flexibility that can be granted is the freedom to develop access rates on a geographically deaveraged basis. This will allow access rates to be aligned with the actual cost of providing access service. By this alignment, the proper signals are sent to potential competitors and inefficient market entry is prevented.

Furthermore, the alignment of deaveraged unbundled network elements with deaveraged access rates will not artificially incent new entrants to purchase unbundled elements thereby allowing them to undercut averaged access rates. Without deaveraged pricing flexibility, rate of return LECS will be unable to respond to this arbitrage. Significantly, Sprint has endorsed geographic deaveraging in its comments stating, "Sprint wholeheartedly supports geographic deaveraging of all access elements... so that prices can reflect the economics that the ILEC actually faces...." (Sprint pgs. 41-42).

Beyond pricing flexibility, there is a need for additional regulatory relief for rate of return LECs. The Competition Policy Institute ("CPI"), in its comments, laid out a set of criteria for pricing flexibility and deregulation that seems targeted to the larger ILECS, particularly the BOCs. What is of note, however, is that CPI indicates that the Commission should deregulate interstate access services only upon finding that

the ILEC does not possess the market power to raise price and restrict output. (CPI pgs. 28-30) ALLTEL has no such ability. ALLTEL has consistently reduced interstate access prices and has no reason to restrict output since there is not a complimentary service to be leveraged. A market power test would allow ALLTEL immediately to begin offering access on the same basis as competitive entrants. Compliance with Section 251(b) of the Telecom Act of 1996 would be an appropriate "trigger" for an independent LEC, such as ALLTEL, to be treated as a non-dominant carrier. The complaint process, coupled with the competitive resources of telecommunications giants, such as AT&T, MCI, and the RBOCs, will ensure that any "bottleneck" control is eliminated.

In an era of national and global telecommunications competitors, ALLTEL should be categorized as a non-dominant carrier. Its market power is already small and continues to diminish as the telecommunications market grows in volume and in the number of available services. Without the freedom to respond on an equal footing, small LECs are unfairly handicapped. This handicapping has negative implications on a universal basis for healthy telecommunication competition.

Respectfully submitted,
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APPENDIX A

To assess the impact of the introduction of competition to the local market, ALLTEL conducted a study to find the percentage of ALLTEL access lines that are located in areas currently experiencing or likely to experience competition. Due to their proximity to metropolitan areas and in keeping with the FCC's own Local Number Portability approach, MSAs were chosen to represent geographic areas that are likely to experience competition. The first chart lists each MSA in which ALLTEL has access lines. ALLTEL typically makes up less than five percent of the households in these MSAs. Therefore, while ALLTEL does not have the benefit of dominating any MSA, our presence in these areas signals a vulnerability to competition. Entrants providing service in these MSAs will have negligible barriers to also entering ALLTEL serving areas.

As the chart indicates, nearly fifty-one percent of ALLTEL access lines are located in a MSA. Furthermore, nearly forty-one percent of ALLTEL access lines are located in the top one hundred MSAs as listed in the Local Number Portability proceeding. The picture is even worse in many states like Ohio, New York, and Kentucky where up to one hundred percent of ALLTEL's access lines are in these contested areas.

Following the chart are maps (originals in color) depicting the ALLTEL presence in several MSAs. The maps show both the MSA boundaries and the ALLTEL service area boundaries, and highlight the ALLTEL areas that are in the MSA. These maps visibly demonstrate how little of the market ALLTEL holds in each MSA. The maps also highlight an additional factor. Not only are nearly 51% of

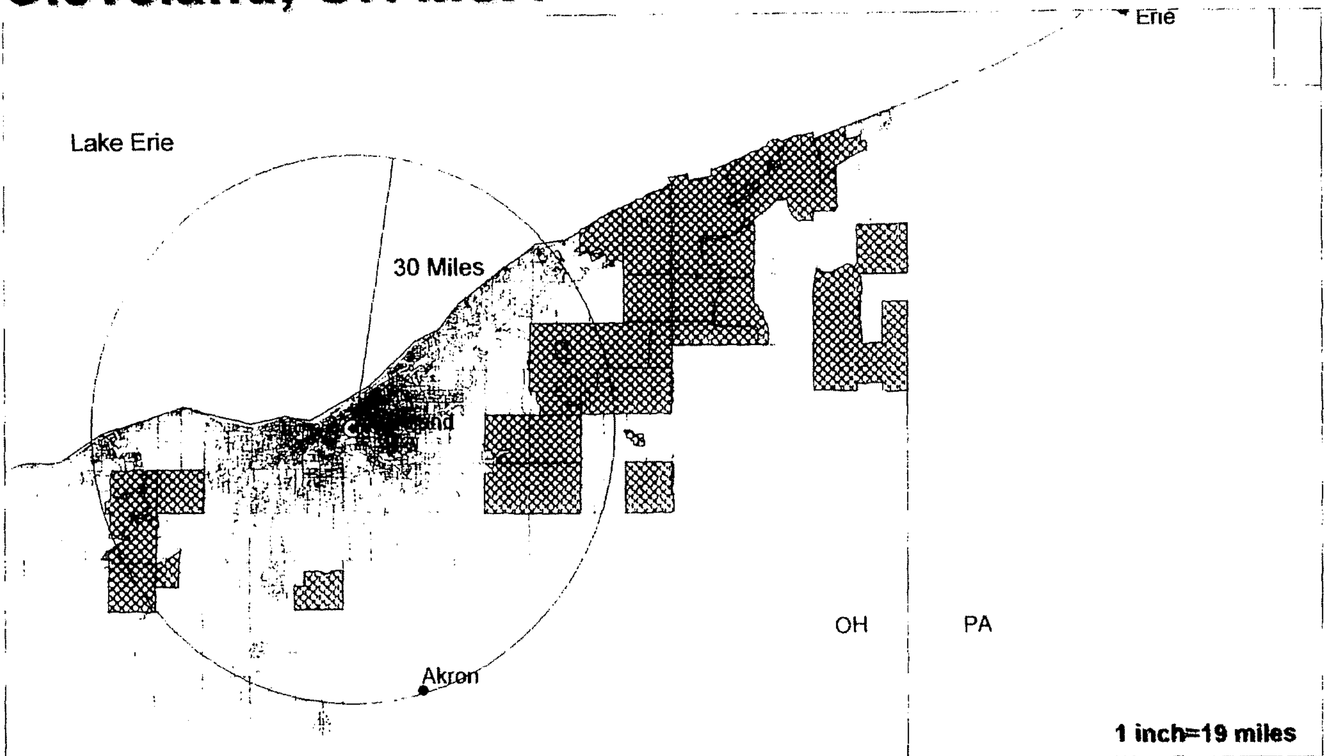
ALLTEL's access lines in MSAs, but large numbers of additional access lines are adjacent to, but not in the MSA boundary. Needless to say, competitors will not arbitrarily decide to stop their advance at the MSA boundary if they already have facilities in place.

ALLTEL Access Lines Located In MSAs

State	MSA	Number of ALLTEL lines in MSA	Number of ALLTEL lines in state	Percent of ALLTEL lines in MSA	Percent of ALLTEL lines in all MSAs
Ohio	Cleveland	137,107	305,027	44.95%	
	Akron	72,038	305,027	23.62%	
	Columbus	52,312	305,027	17.15%	
	Toledo	4,926	305,027	1.61%	
	Dayton	3,509	305,027	1.15%	
	Wheeling **	2,708	305,027	0.89%	
	Parkersburg **	1,368	305,027	0.45%	
	Steubenville **	731	305,027	0.24%	89.82%
North Carolina	Charlotte	64,941	182,509	35.58%	
	Greensboro	34,219	182,509	18.75%	54.33%
Texas	Houston	57,945	86,081	67.31%	
	Fort Worth	9,023	86,081	10.48%	
	Dallas	1,129	86,081	1.31%	
	Beaumont **	3,740	86,081	4.34%	
	Brazoria **	3,030	86,081	3.52%	86.97%
Pennsylvania	Pittsburgh	47,775	226,098	21.13%	
	Allentown	5,868	226,098	2.60%	
	Williamsport **	12,172	226,098	5.38%	
	Sharon **	11,123	226,098	4.92%	
	Erie **	4,181	226,098	1.85%	
	Johnstown **	1,803	226,098	0.80%	35.98%
New York	Syracuse	44,768	97,757	45.82%	
	Rochester	2,697	97,757	2.76%	
	Jamestown **	41,160	97,757	42.10%	
	Utica **	2,091	97,757	2.14%	92.82%
Georgia	Atlanta	48,455	415,678	11.66%	
	Macon **	30,809	415,678	7.41%	
	Chattanooga **	10,626	415,678	2.56%	
	Savannah **	8,000	415,678	1.92%	
	Columbus **	3,599	415,678	0.87%	24.42%
South Carolina	Columbia	29,579	49,164	60.16%	
	Greenville	10,922	49,164	22.22%	82.38%
Alabama	Birmingham	14,117	24,176	58.39%	
	Montgomery **	3,977	24,176	16.45%	74.84%
Arkansas	Little Rock	9,050	98,205	9.22%	
	Fayeltville **	3,720	98,205	3.79%	
	Ft. Smith **	2,088	98,205	2.13%	15.13%
Florida	Jacksonville	10,230	76,612	13.35%	
	Gainesville **	13,392	76,612	17.48%	
	Ocala **	7,595	76,612	9.91%	40.75%
Kentucky	Louisville	22,283	22,283	100.00%	100.00%
Missouri	St. Louis	1,586	54,877	2.89%	
	Joplin **	725	54,877	1.32%	4.21%
Oklahoma	Fort Smith **	1,775	32,237	5.51%	
	Lawton **	632	32,237	1.96%	1.96%
ALLTEL Telephone Totals:		**855,544**	**1,681,395**	**50.88%**	
ALLTEL lines affected by LNP requirements:		684,499	1,681,395	40.71%	

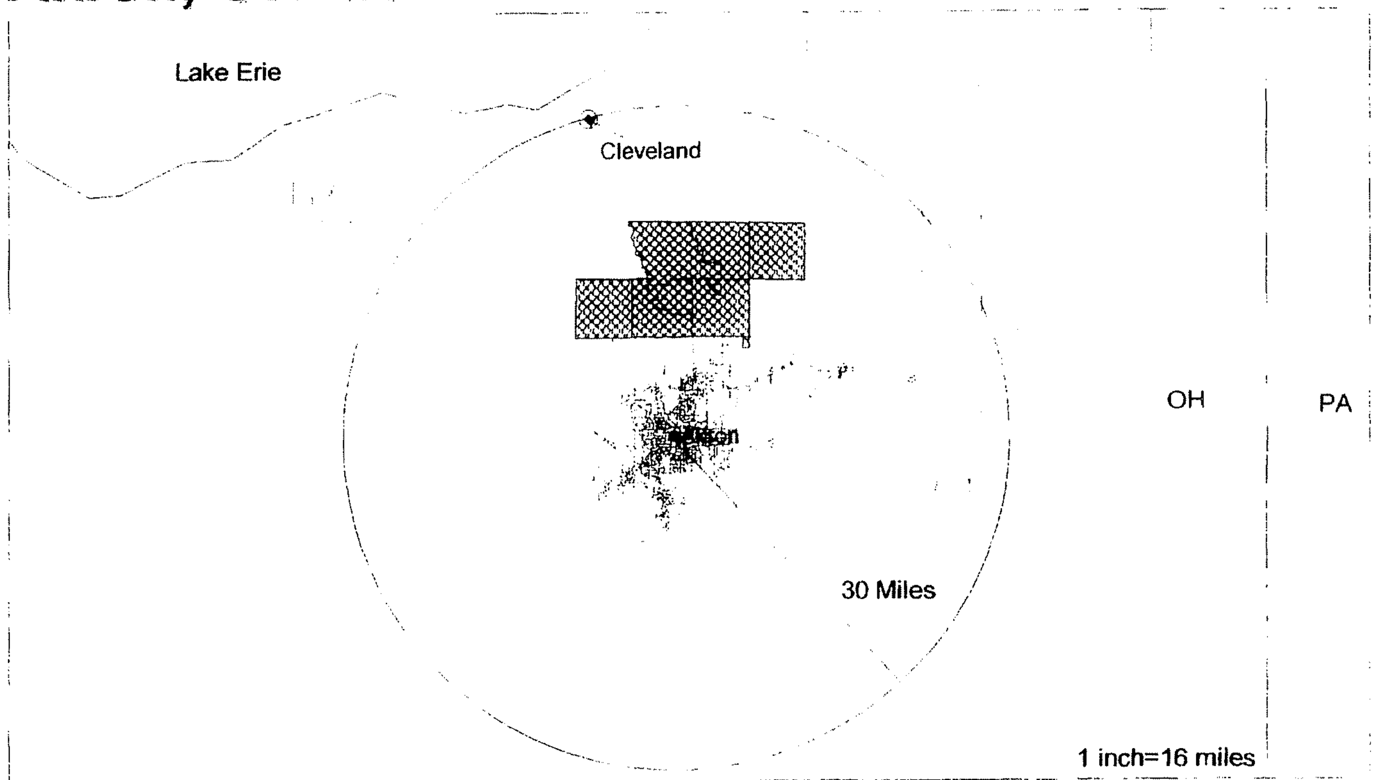
**MSA not included in Local Number Portability requirements

Cleveland, OH MSA



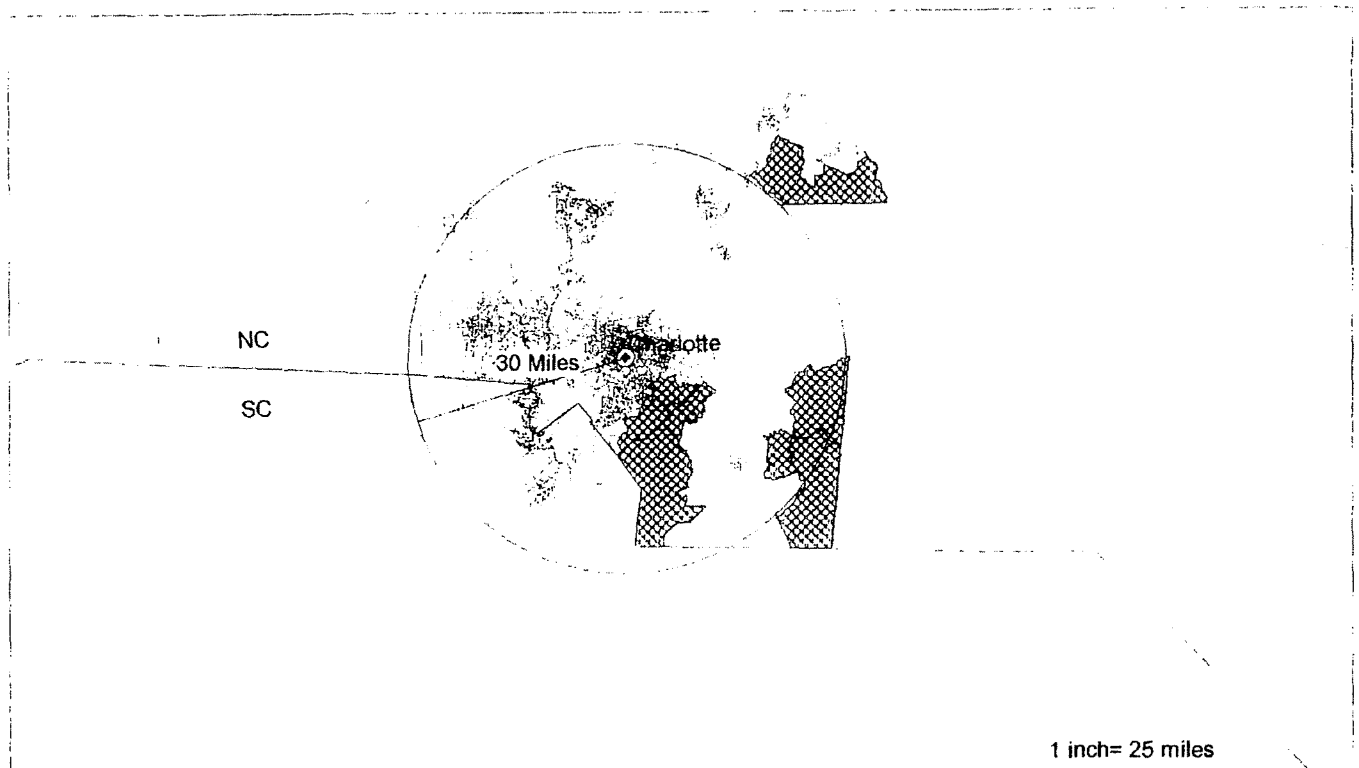
Purple: Cleveland, OH MSA
Green: ALLTEL Service Areas (OH)
Green Shaded: ALLTEL Service Areas in MSA
Blue: ALLTEL Pennsylvania
Black: State Border

Akron, OH MSA



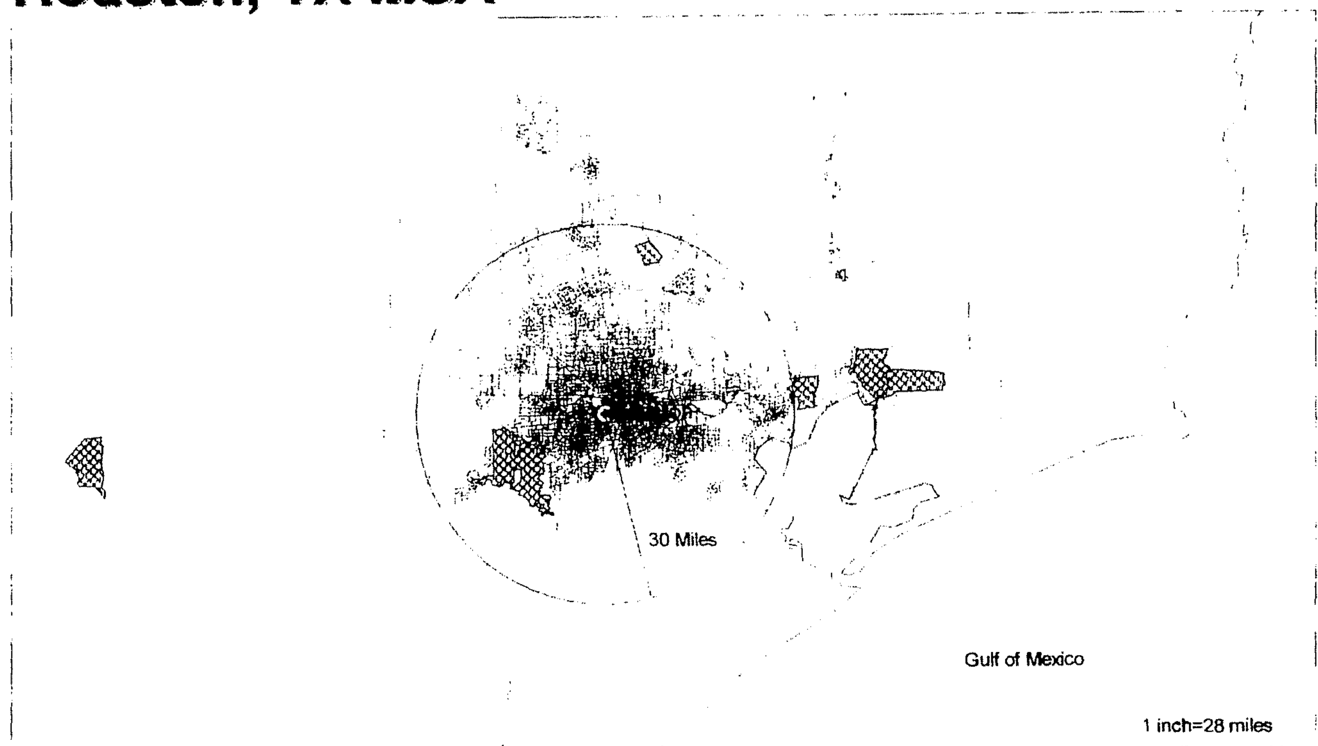
Purple: Akron, OH MSA
Green: ALLTELService Areas (OH)
Green Shaded: ALLTEL Service Areas in MSA
Blue: ALLTEL Pennsylvania
Black: State Border

Charlotte, NC-SC MSA



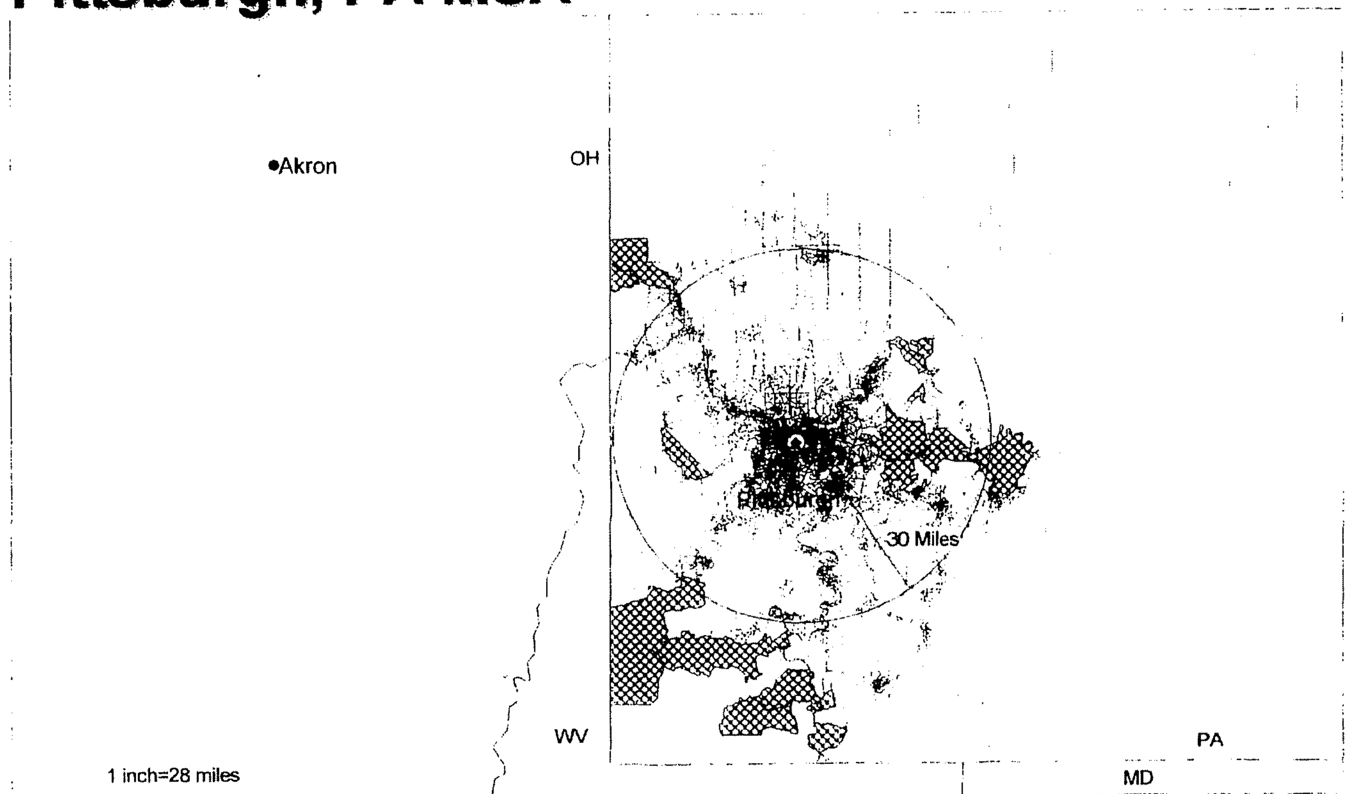
Purple: Charlotte, NC-SC MSA
Green: ALLTEL North Carolina Service Areas
Green Shaded: ALLTEL Service Areas in MSA
Blue: ALLTEL South Carolina
Black: State Border

Houston, TX MSA



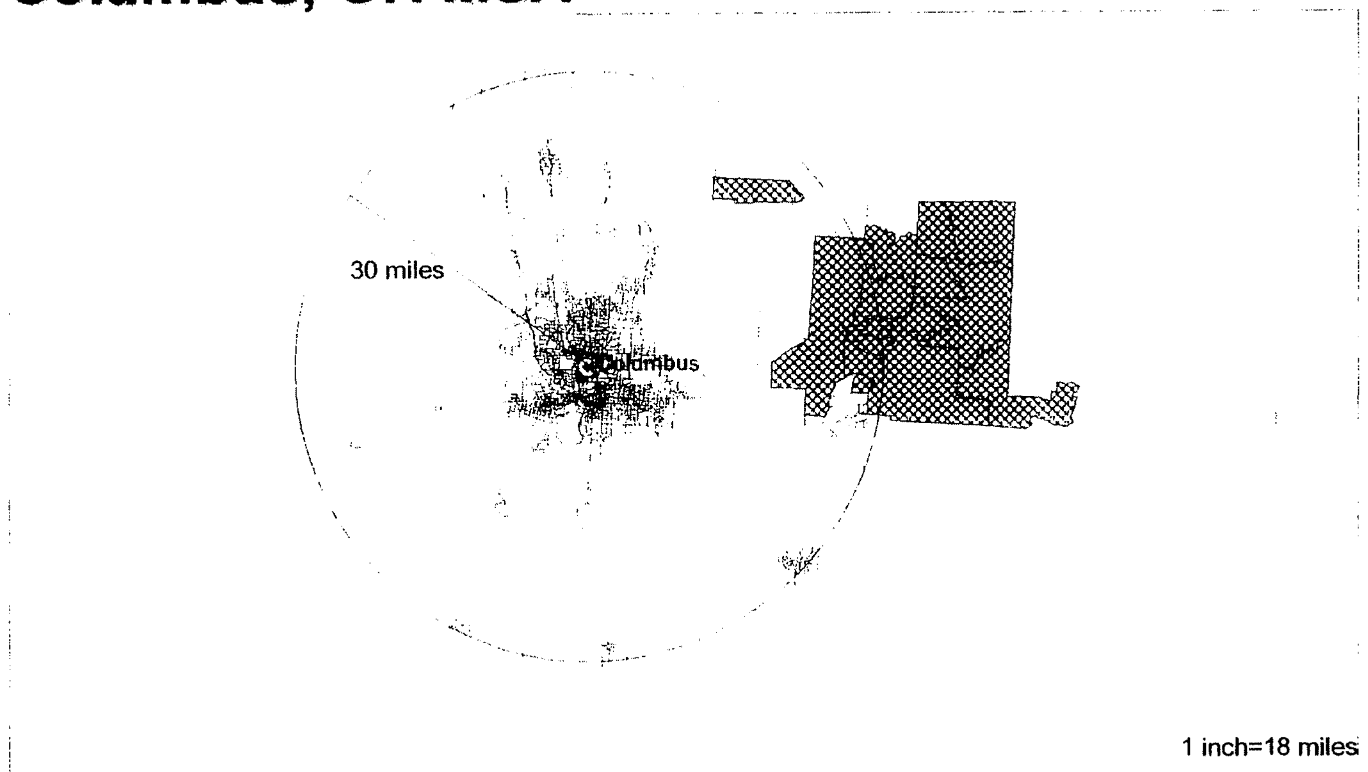
Purple: Houston, TX MSA
Green: ALLTEL Service Areas (ALLTEL Texas and Sugar Land Telephone)
Green Shaded: ALLTEL Service Areas in MSA
Black: Texas Border

Pittsburgh, PA MSA



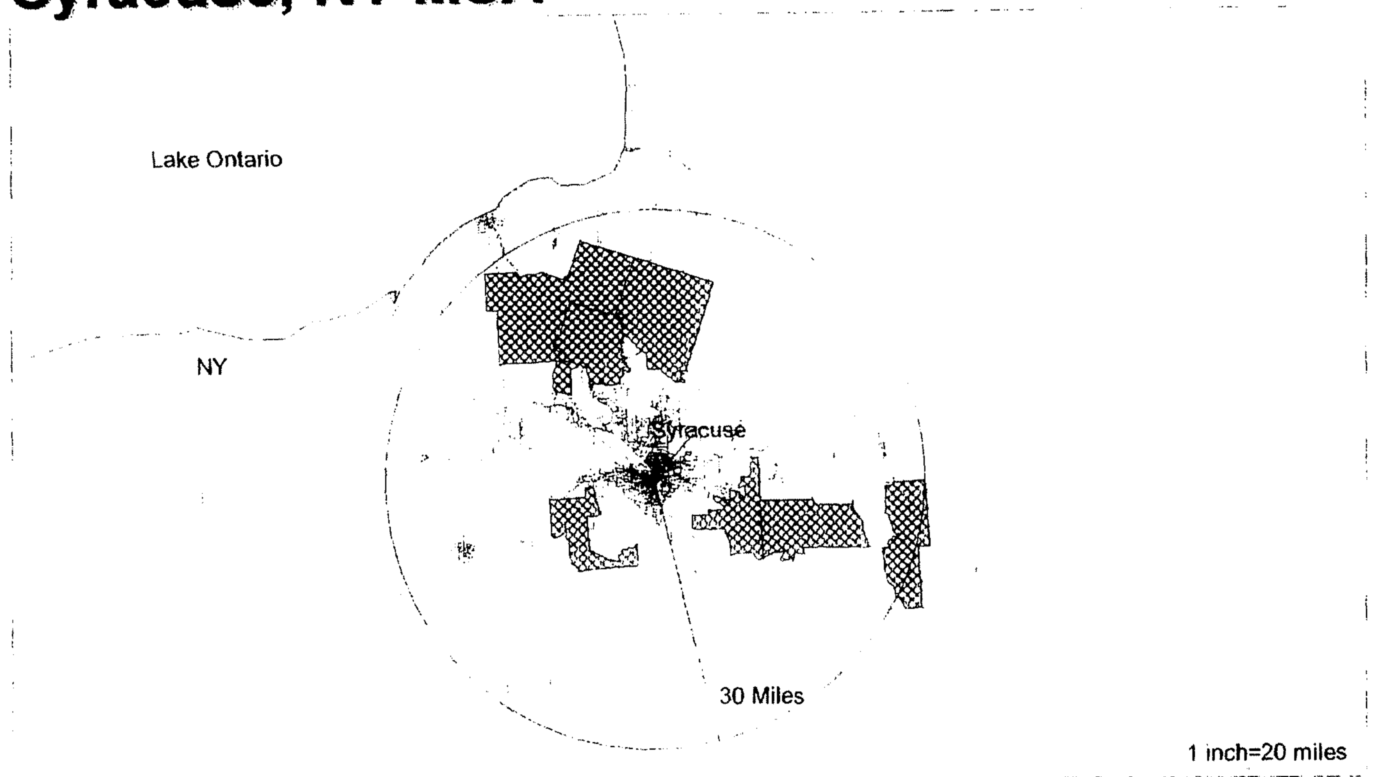
Purple: Pittsburgh, PA MSA
Green: ALLTEL Pennsylvania Service Areas
Green Shaded: ALLTEL Pennsylvania Service Areas in MSA
Blue: ALLTEL Service Areas in Ohio
Black: State Borders

Columbus, OH MSA



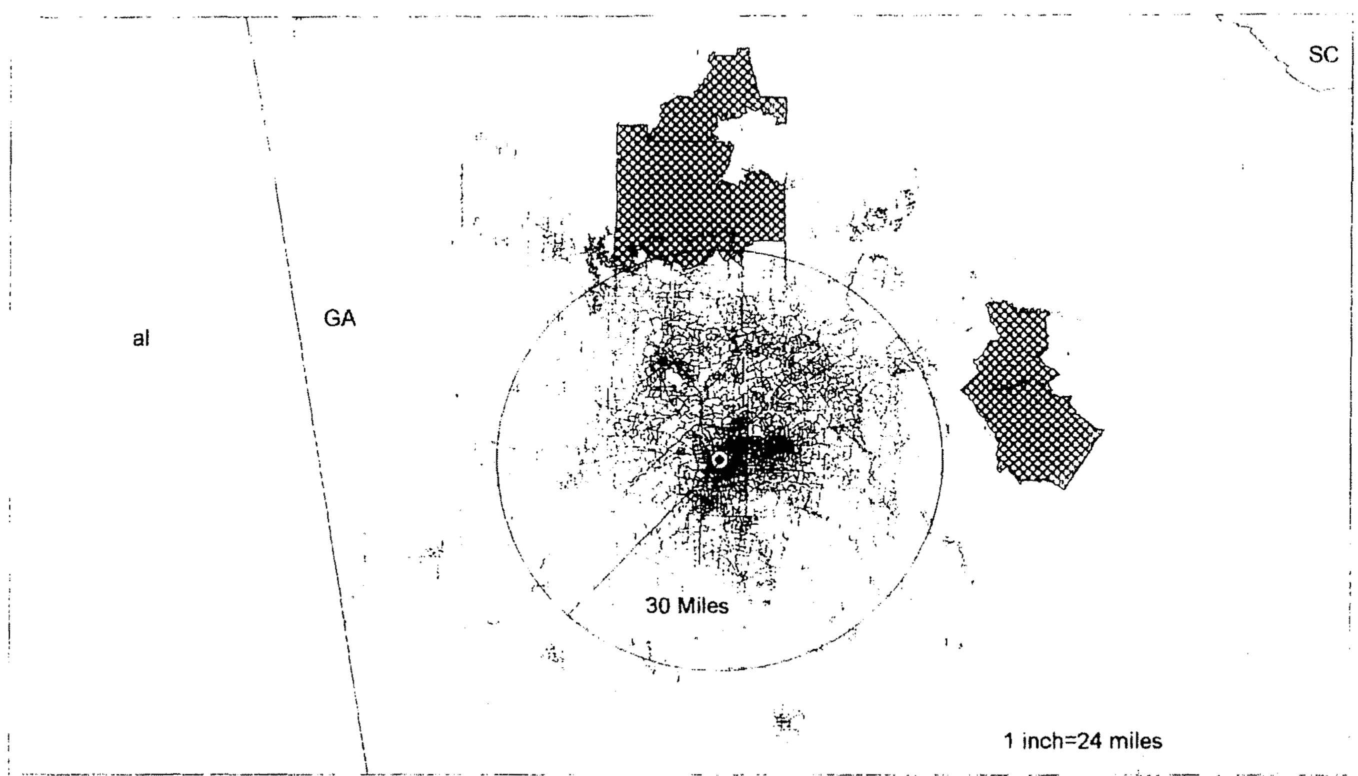
Purple: Columbus, OH MSA
Green: ALLTEL Ohio Service Areas
Green Shaded: ALLTEL Ohio Service Areas in MSA

Syracuse, NY MSA



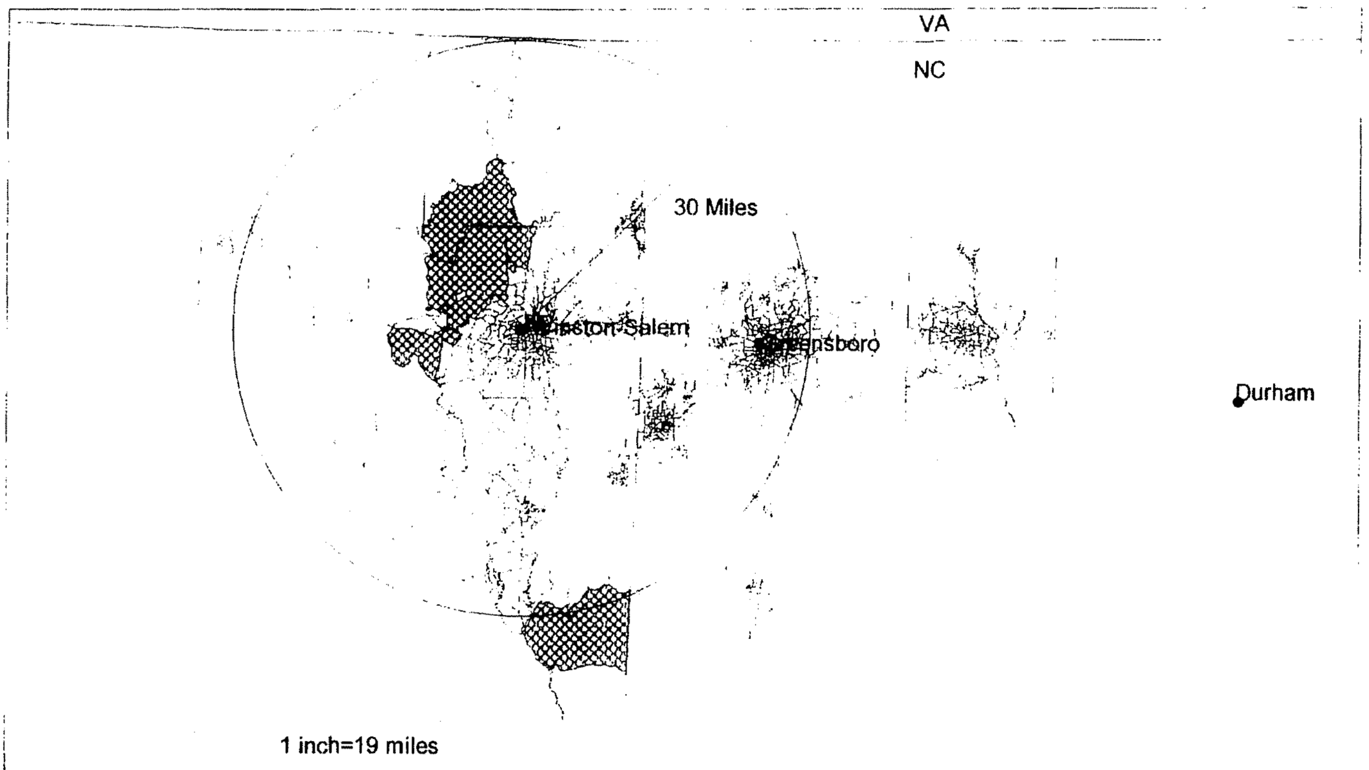
Purple: Syracuse, NY MSA
Green: ALLTEL New York Service Areas
Green Shaded: ALLTEL New York Service Areas in MSA
Black: New York Border

Atlanta, GA MSA



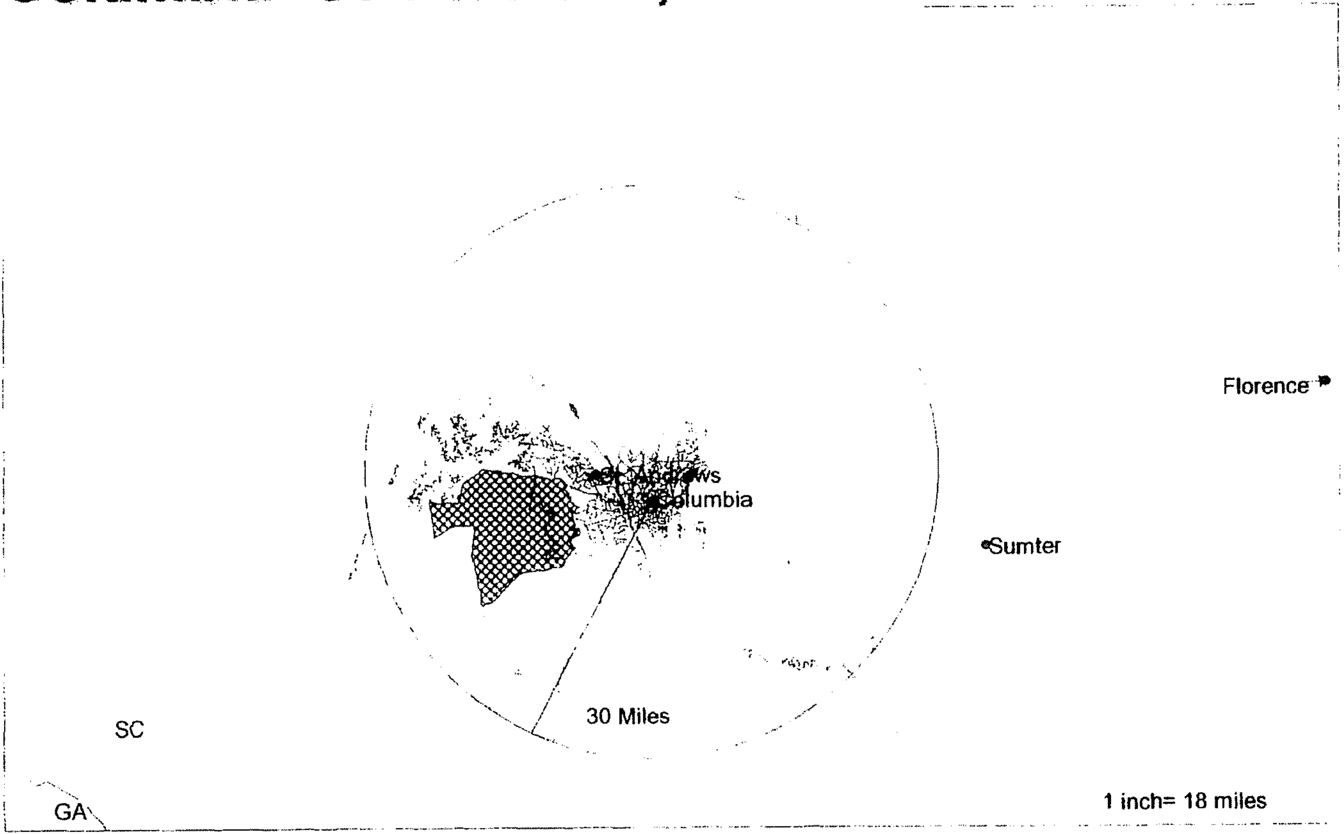
Purple: Atlanta, GA MSA
Green: ALLTEL Service Centers
Green Shaded: ALLTEL Service Areas in MSA
Black: Georgia Border

Greensboro--Winston-Salem, NC MSA



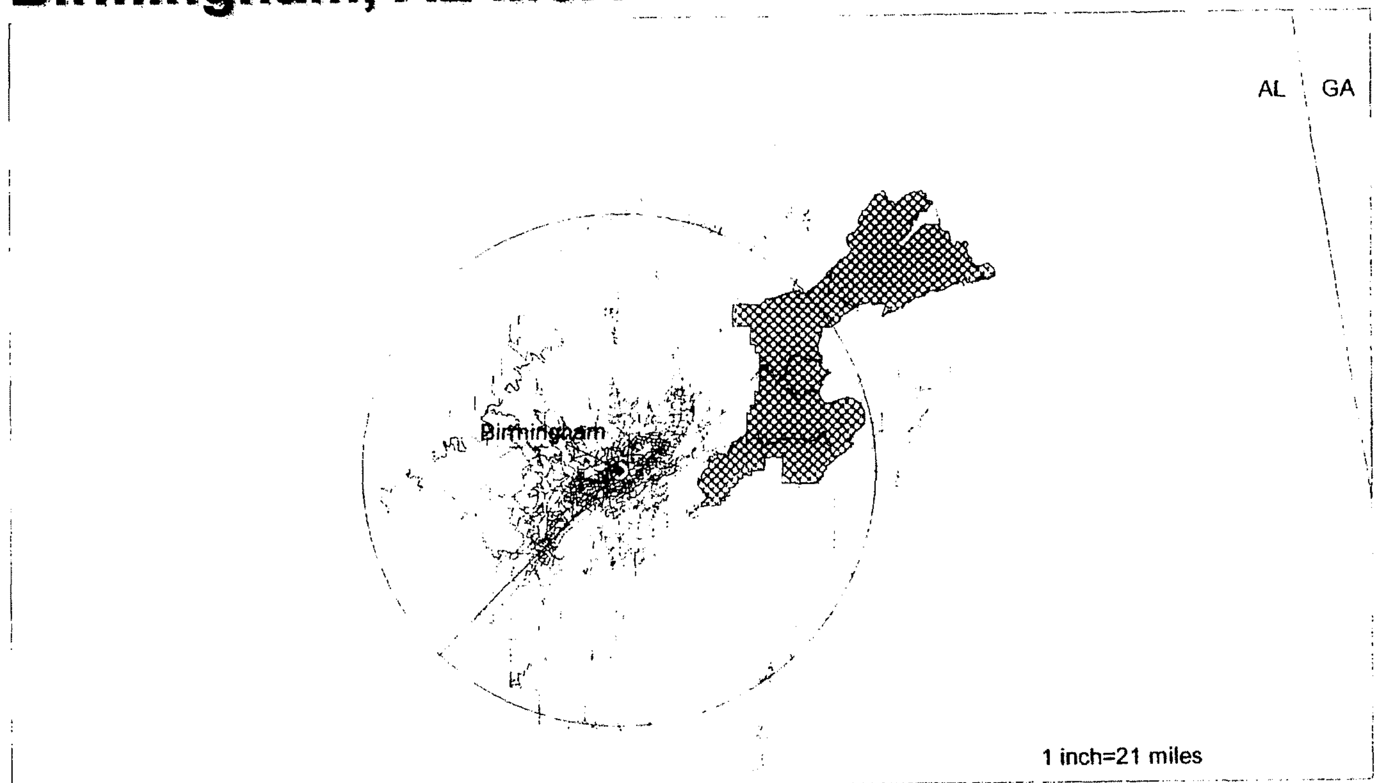
Purple: Greensboro--Winston-Salem, NC MSA
Green: ALLTEL North Carolina Service Areas
Green Shaded: ALLTEL North Carolina Service Areas in MSA
Black: North Carolina MSA

Columbia--St. Andrews, SC MSA



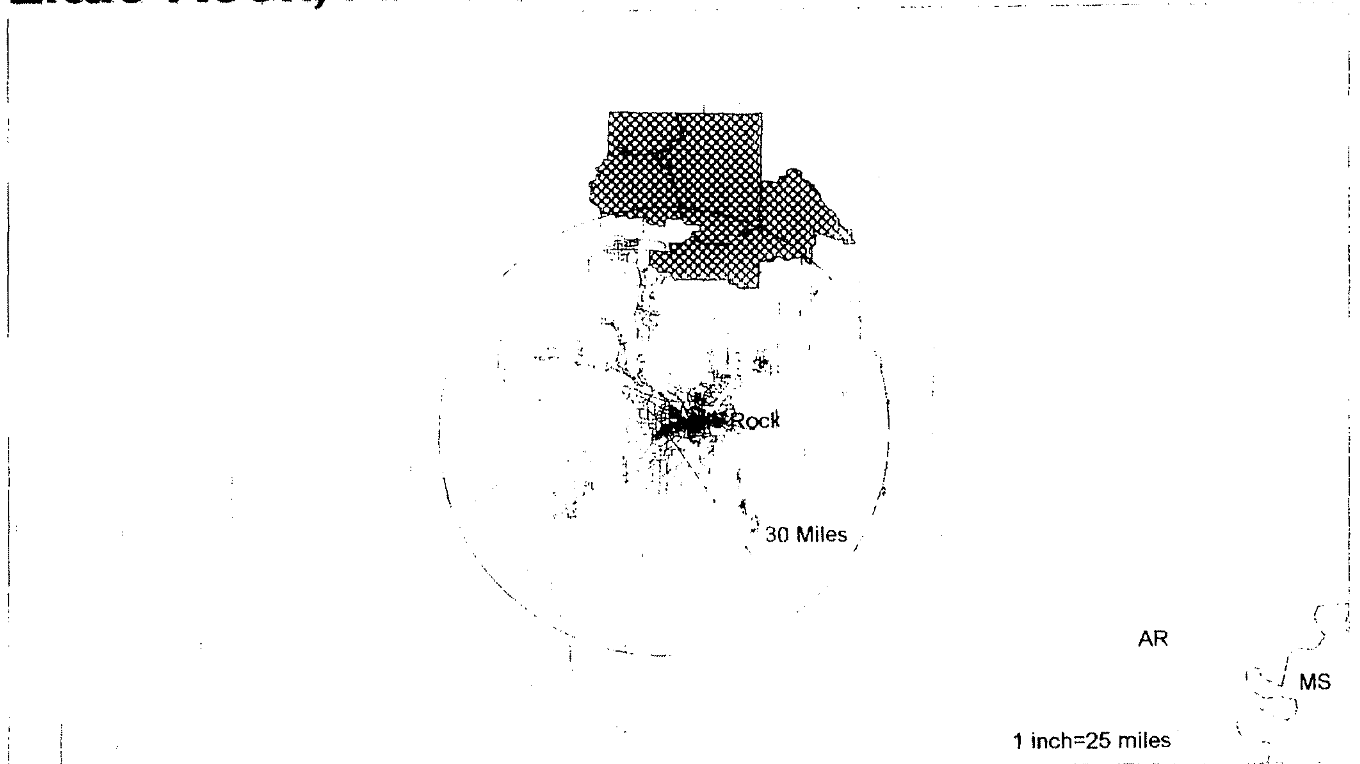
Purple: Columbia--St. Andrews, SC MSA
Green: ALLTEL South Carolina Service Areas
Green Shaded: ALLTEL South Carolina in MSA
Black: South Carolina Border

Birmingham, AL MSA



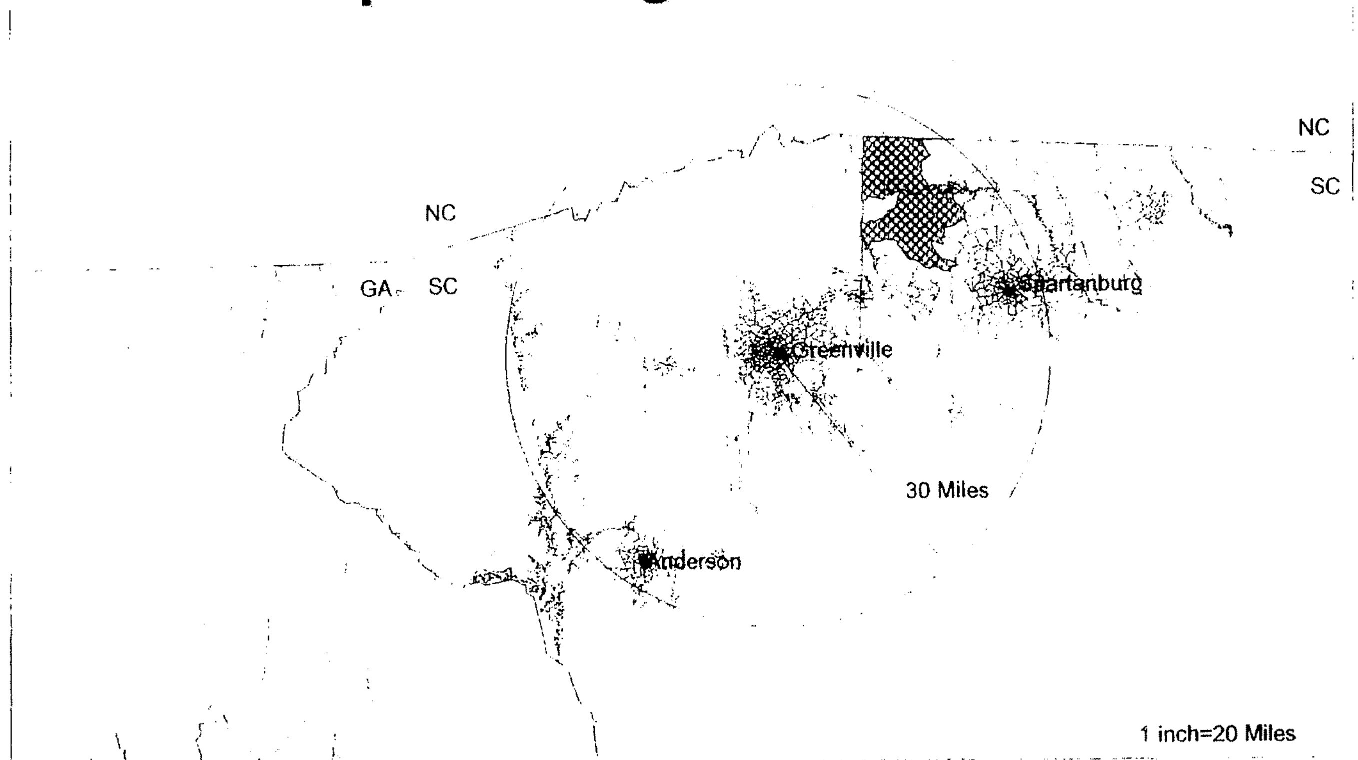
Purple: Birmingham, AL MSA
Green: ALLTEL Alabama
Green Shaded: ALLTEL Alabama inside MSA
Black: Alabama Border

Little Rock, AR MSA



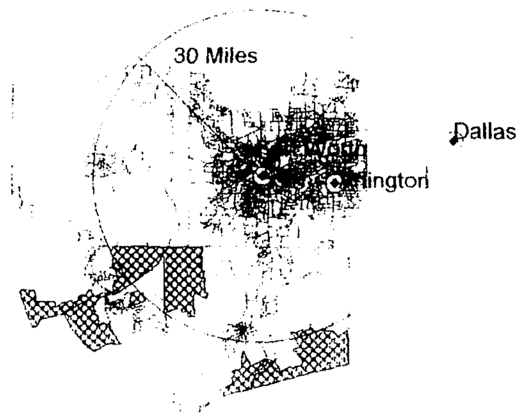
Purple: Little Rock, AR MSA
Green: ALLTEL Arkansas Service Areas
Green Shaded: ALLTEL Service Areas inside MSA
Black: Arkansas Border

Greenville-Spartanburg-Anderson, SC MSA



Purple: Greenville, et al., SC MSA
Green: ALLTEL South Carolina Service Areas
Green Shaded: ALLTEL South Carolina Service Areas in MSA
Blue: ALLTEL North Carolina
Red: ALLTEL Service Areas in Georgia

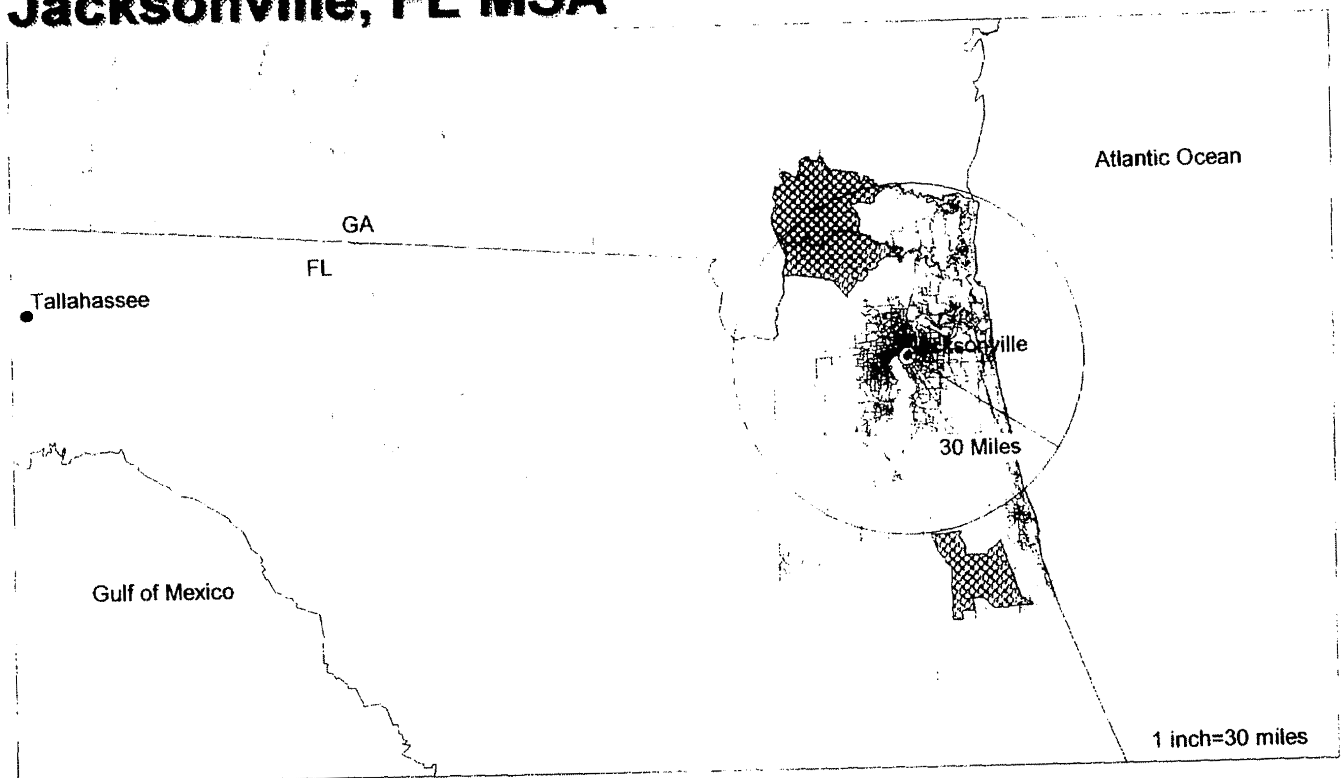
Fort Worth-Arlington, TX MSA



1 inch=30 miles

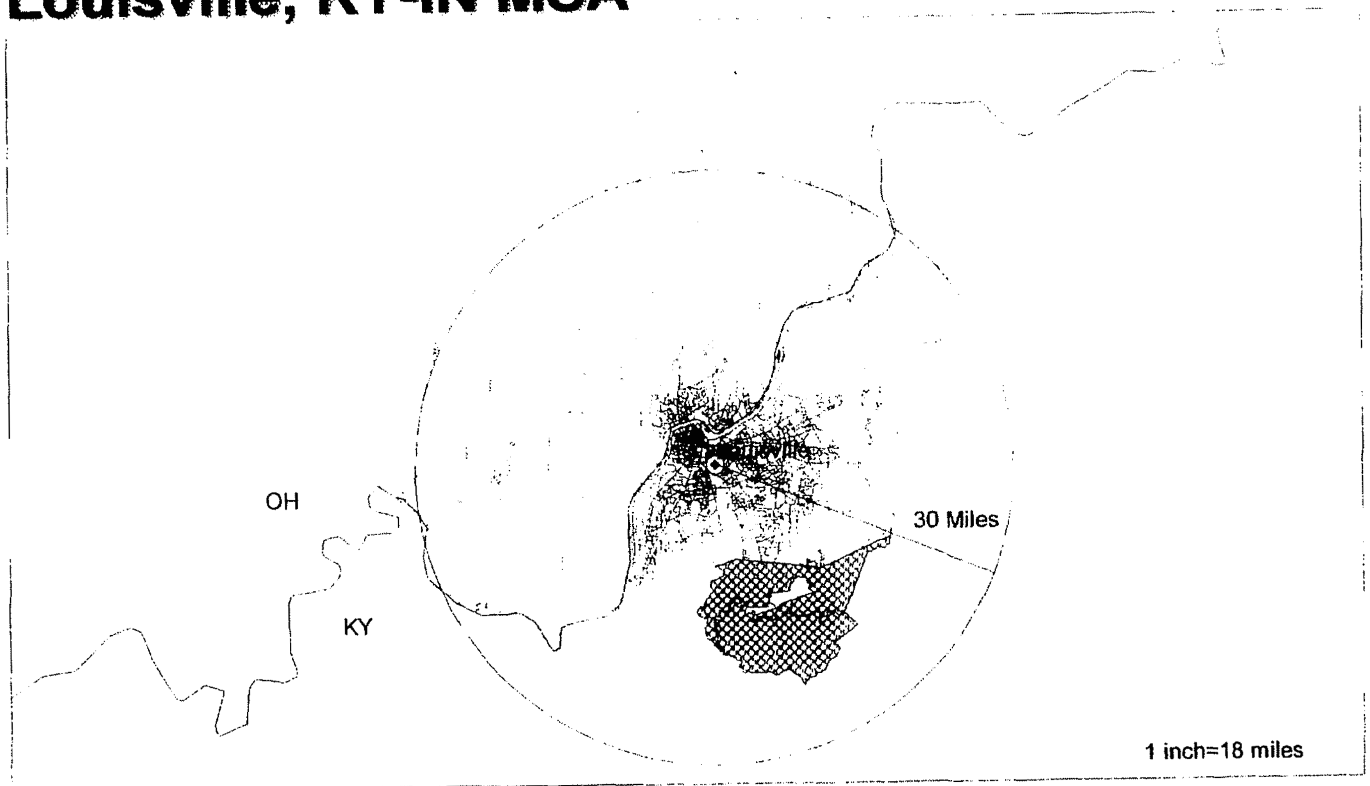
Purple: Fort Worth-Arlington, TX MSA
Green: ALLTEL Texas Service Areas
Green Shaded: ALLTEL Service Areas in MSA

Jacksonville, FL MSA



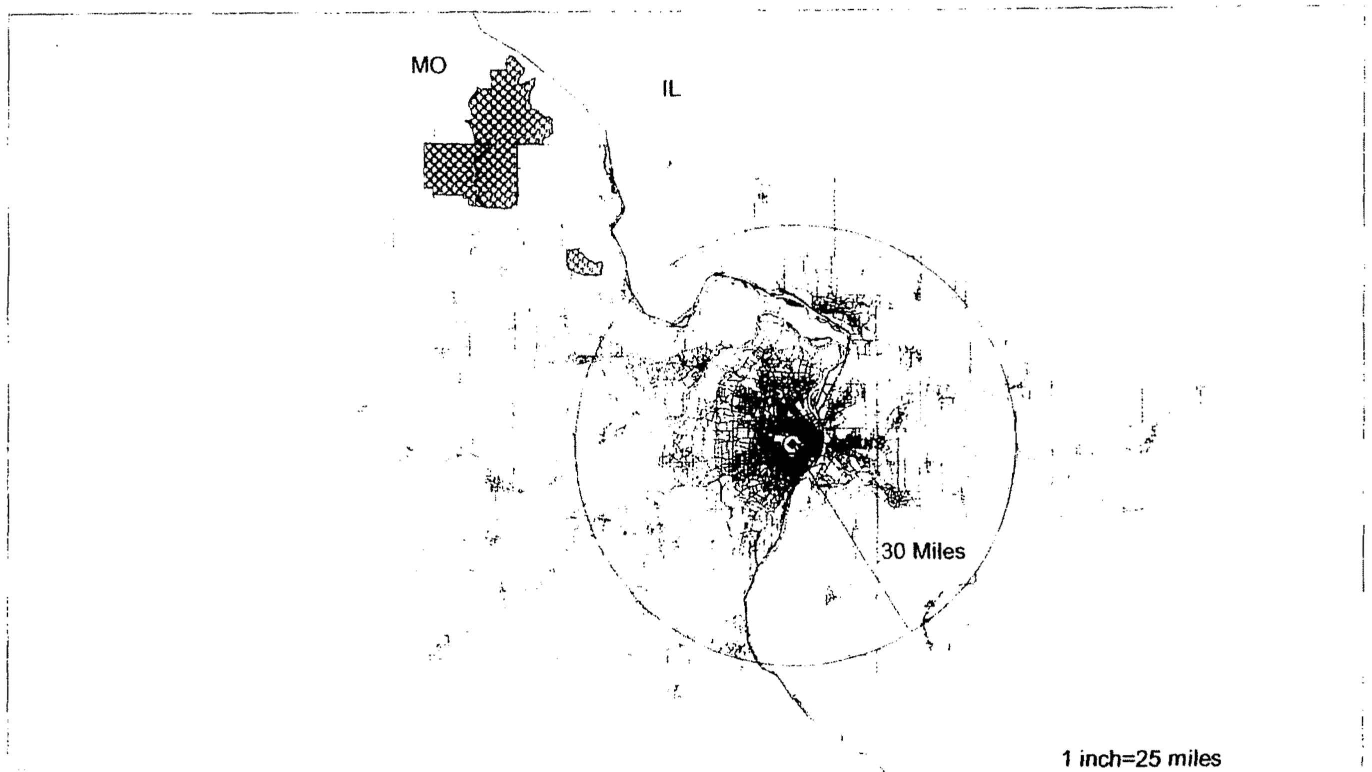
Purple: Jacksonville, FL MSA
Green: ALLTEL Florida Service Areas
Green Shaded: ALLTEL Florida Service Areas in MSA
Blue: ALLTEL Service Areas in Georgia
Black: State Borders

Louisville, KY-IN MSA



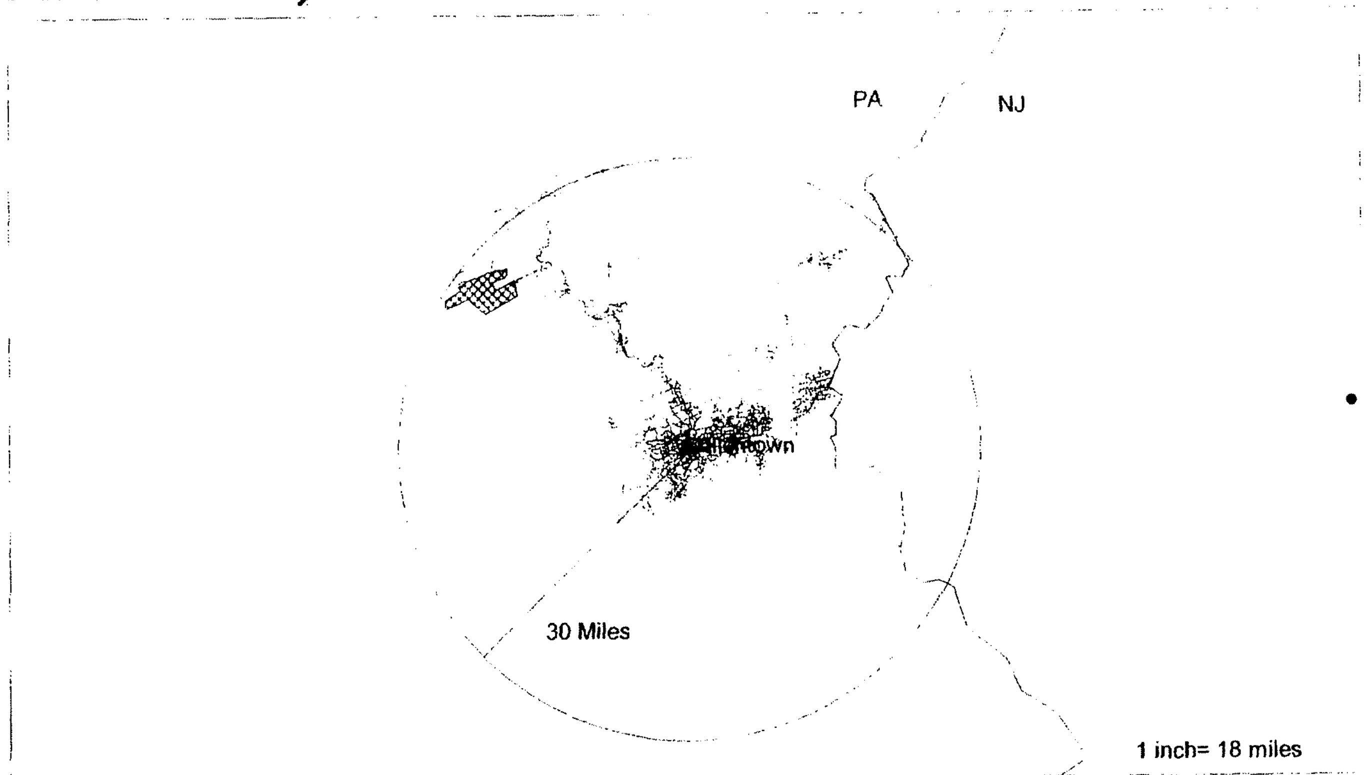
Purple: Louisville, KY-IN MSA
Green: ALLTEL Kentucky Service Areas
Green Shaded: ALLTEL Kentucky Service Areas in MSA
Black: Kentucky Border

St. Louis, MO-IL MSA



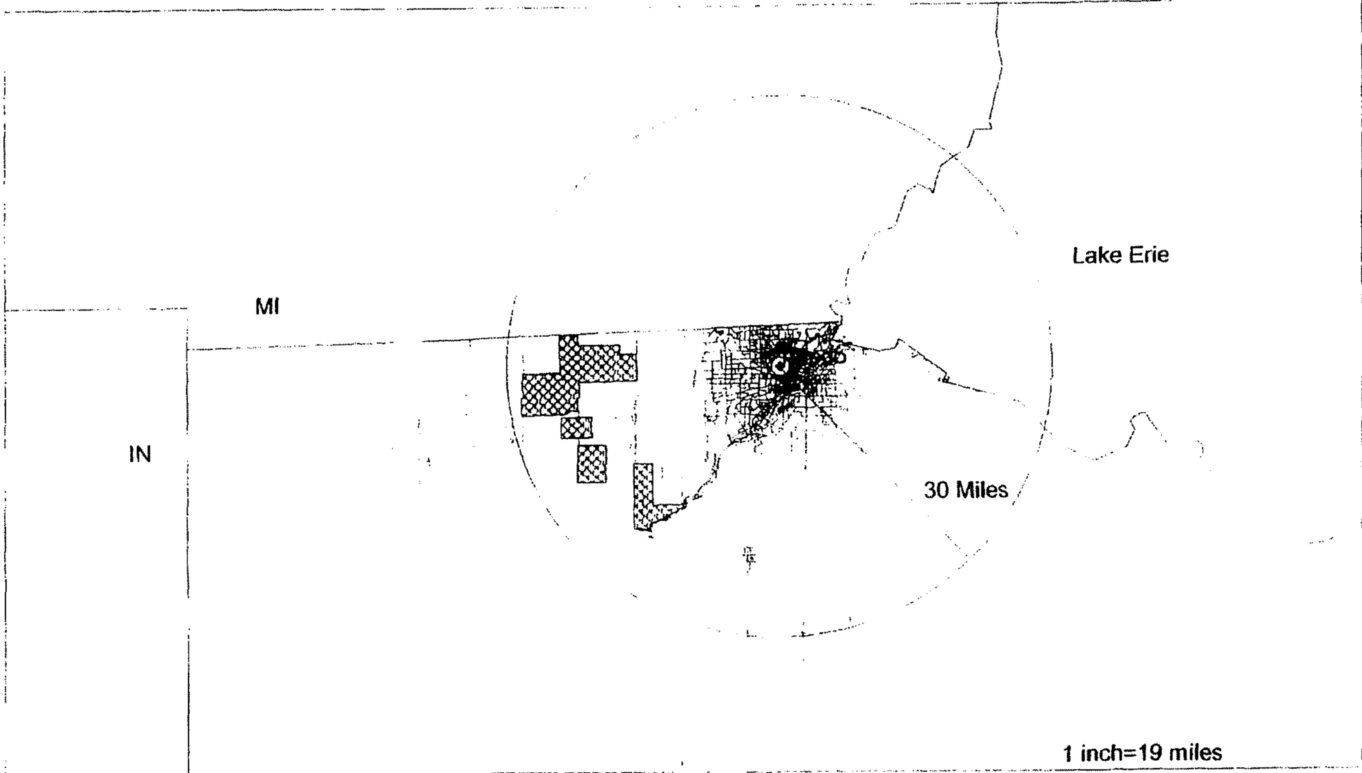
Purple: St Louis, MO-IL MSA
Green: ALLTEL Missouri (Eastern Missouri Telephone) Service Areas
Green Shaded: ALLTEL Missouri Service Areas in MSA
Black: Missouri Border

Allentown, PA MSA



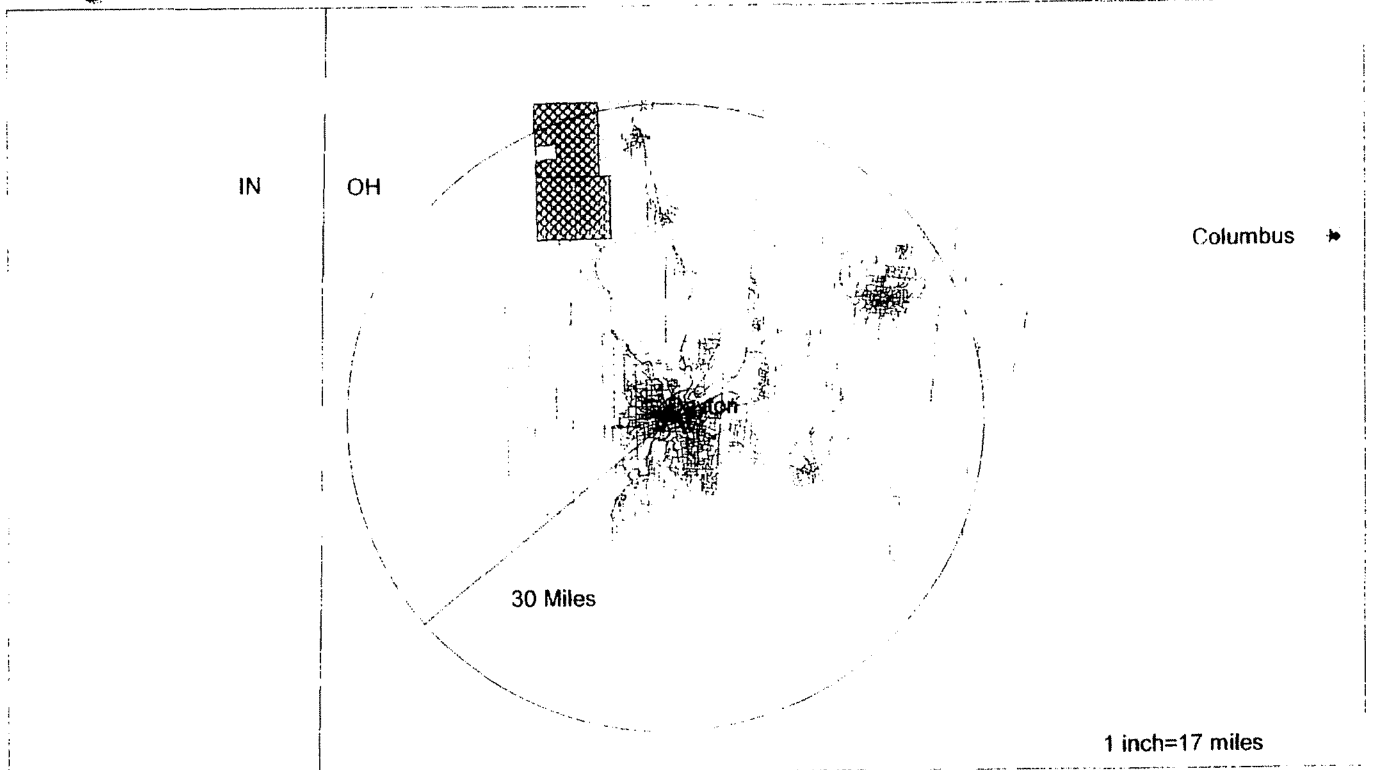
Purple: Allentown, PA MSA
Green: ALLTEL Pennsylvania Service Areas
Green Shaded: ALLTEL Pennsylvania Service Areas in MSA
Black: Pennsylvania Border

Toledo, OH MSA



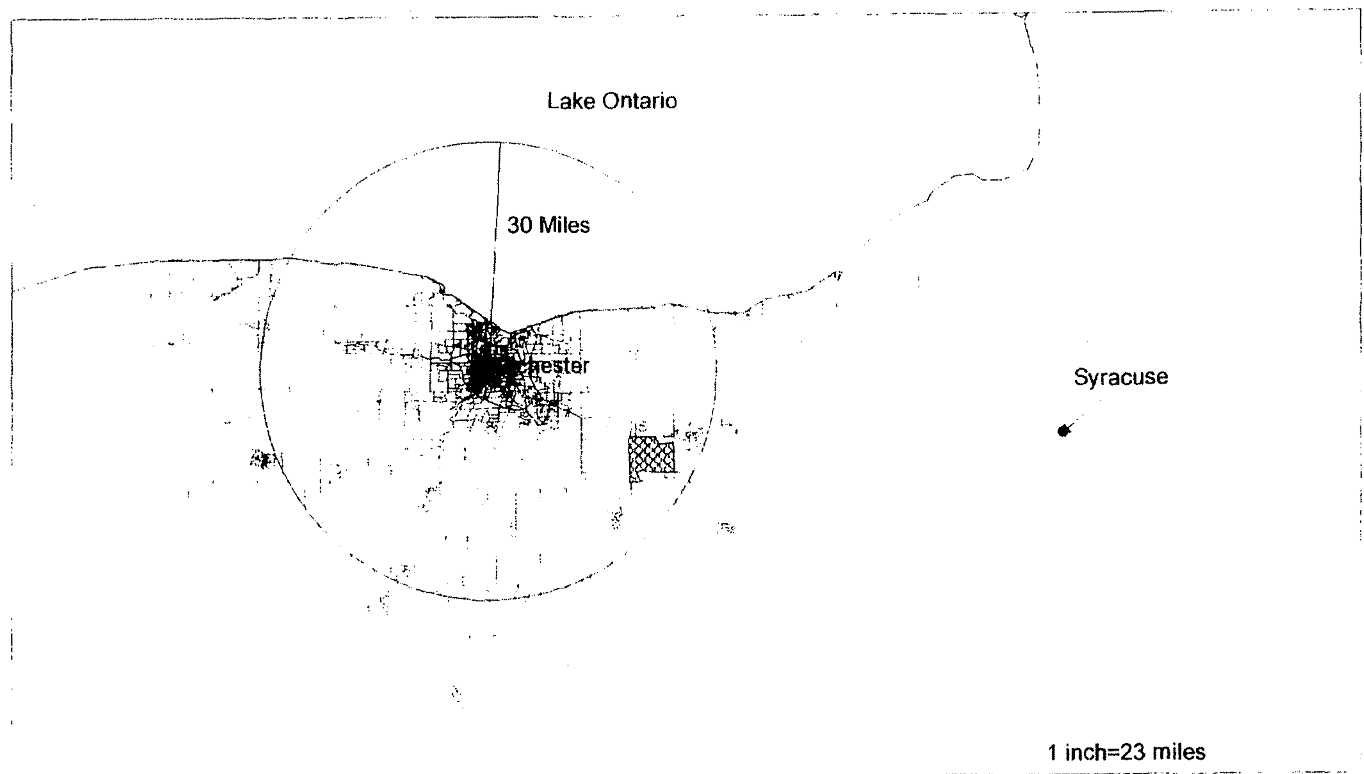
Purple: Toledo, OH MSA
Green: ALLTEL Ohio Service Areas
Green Shaded: ALLTEL Ohio Service Areas in MSA
Black: State Borders

Dayton, OH MSA



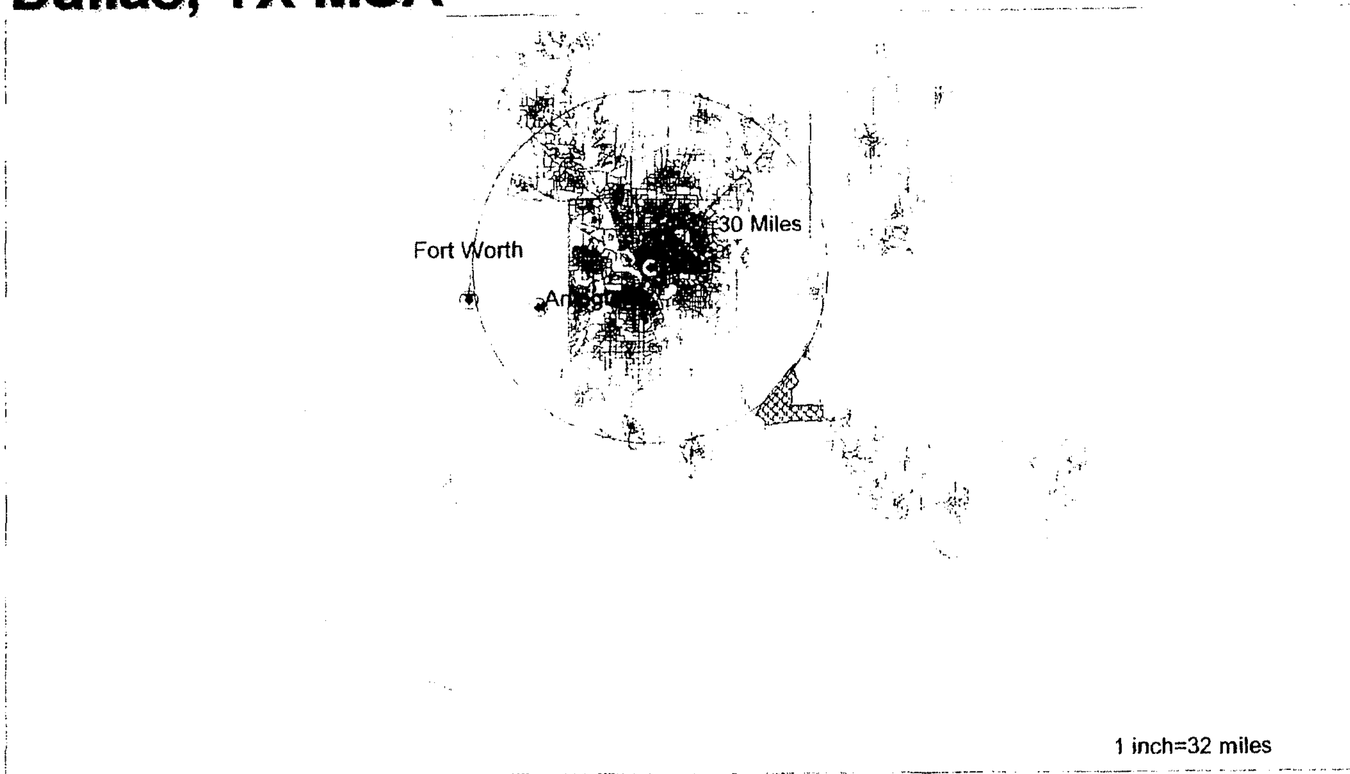
Purple: Dayton, OH MSA
Green: ALLTEL Ohio Service Areas
Green Shaded: Ohio Service Areas in MSA
Black: Ohio Border

Rochester, NY MSA



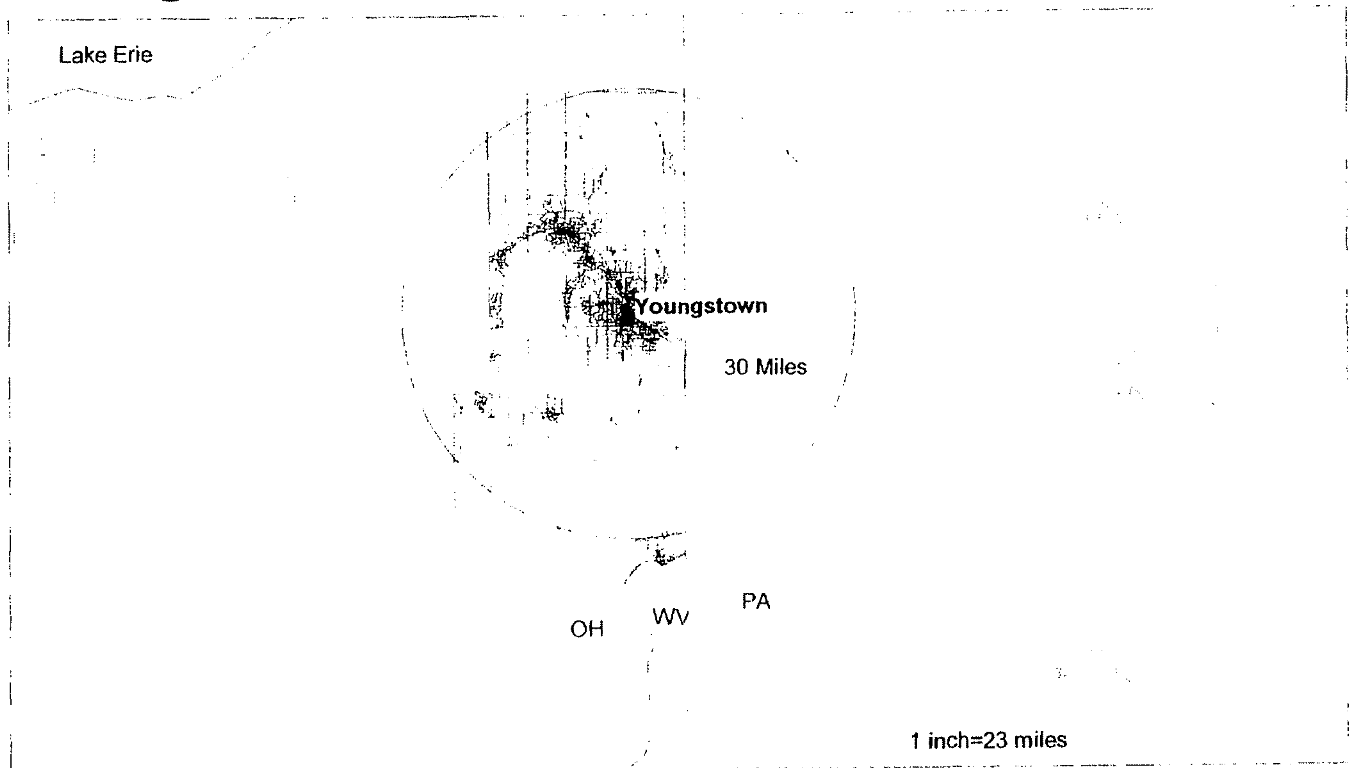
Purple: Rochester, NY MSA
Green: ALLTEL New York (Red Jacket) Service Areas
Green Shaded: ALLTEL New York Service Areas in Rochester M
Black: New York Border

Dallas, TX MSA



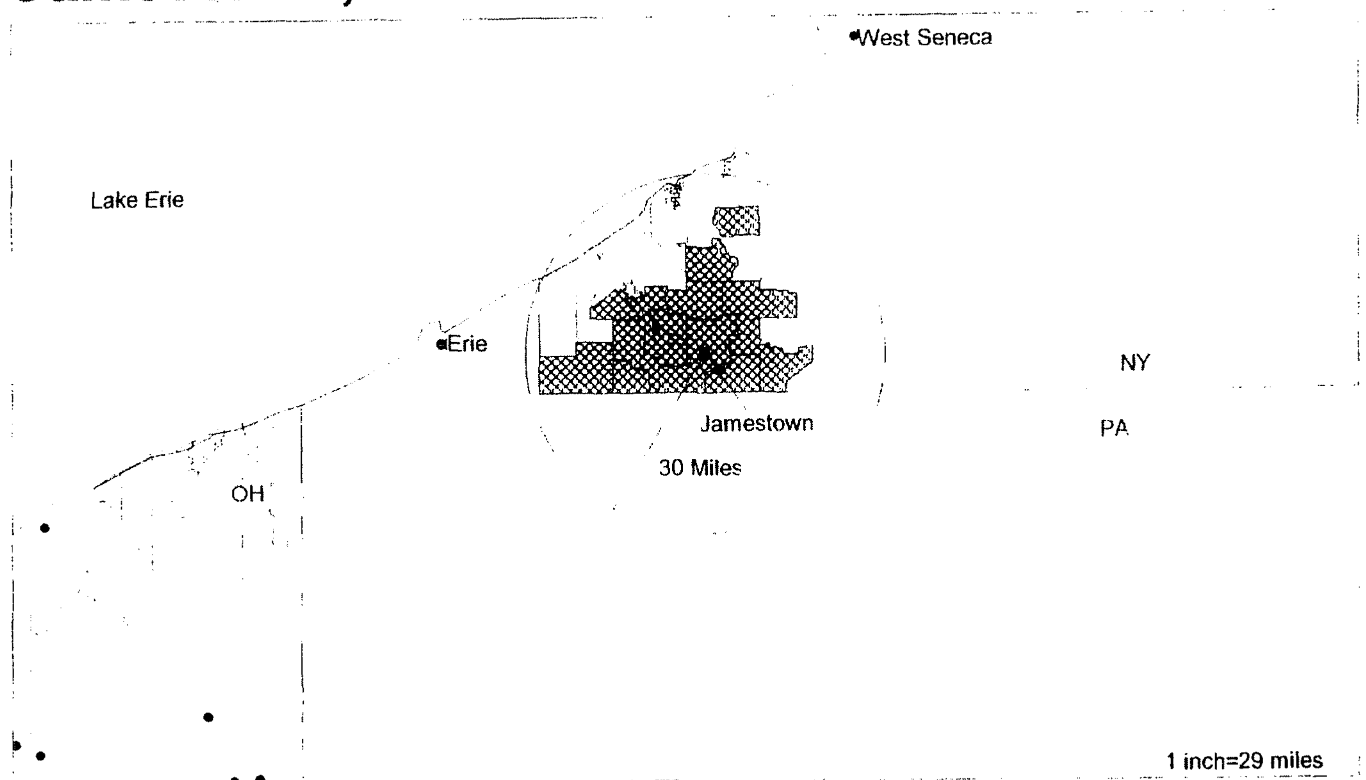
Purple: Dallas, TX MSA
Green: ALLTEL Texas Service Areas
Green Shaded: Texas ALLTEL in MSA

Youngstown, OH MSA



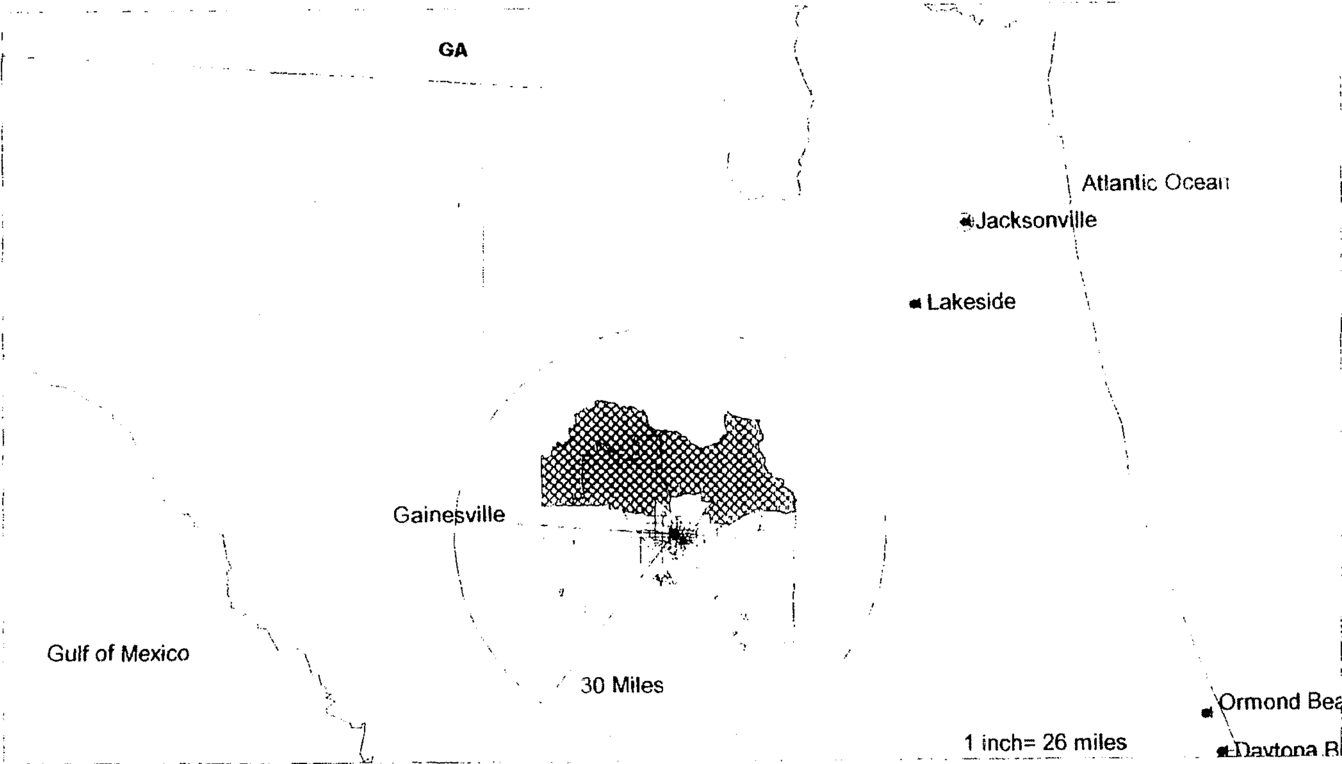
Purple: Youngstown, OH MSA
Green : ALLTEL Service Areas in OH
Blue: ALLTEL Pennsylvania
Black: State Borders

Jamestown, NY MSA



Purple: Jamestown, NY
Green: ALLTEL New York (Jamestown) Service Areas
Green Shaded: ALLTEL New York Service Areas in MSA
Blue: ALLTEL Pennsylvania
Red: ALLTEL Service Areas in Ohio

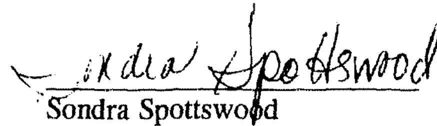
Gainesville, FL MSA



Purple: Gainesville MSA
Green: ALLTEL Florida Serving Areas
Blue: ALLTEL Serving Areas in Georgia
Green Shaded: ALLTEL Serving Areas in MSA
Black: State Borders

CERTIFICATE OF SERVICE

I, Sondra Spottswood, certify that a copy of the foregoing Reply Comments of ALLTEL Telephone Services Corporation was served this 14th day of February, 1997, by U.S. first-class mail, postage prepaid, (unless otherwise noted) to the persons on the attached service list.



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DOCKET FILE COPY ORIGINAL

January 29, 1997

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JAN 2 9 1997
Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket 96-262
Access Charge Reform

Dear Mr. Caton:

Enclosed for filing please find an original and twelve copies of the Comments of ALLTEL Telephone Services Corporation ("ALLTEL"), in the referenced rulemaking proceeding.

In response to the Commission's Notice of Proposed Rulemaking, I have also enclosed a copy of the comments, in DOS PC compatible form, in WordPerfect 5.1 for Windows format, in "read only" mode.

Please address any questions respecting this matter to the undersigned counsel.

Very truly yours,

Carolyn Hill

Carolyn C. Hill

CCH/ss

Enclosures

cc: (w/2 copies of Pleading)
Competitive Pricing Division
Common Carrier Bureau
1919 M Street, N.W.
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Washington, D.C. 20554

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Original

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Washington, D.C. 20554

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JAN 2 9 1997
Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

To: The Commission

COMMENTS

ALLTEL Telephone Services Corporation

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Its Attorney

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SUMMARY

Access reform is of fundamental importance to all local exchange carriers ("LECs"), including the ALLTEL rate of return companies. However, the instant proceeding is inappropriately focused on limiting access reform to incumbent price cap companies. ALLTEL strenuously objects to this approach. Rate of return companies are not insulated from the effects of competition. Competition and its impacts will not stop at the borders of the exchanges of rate of return companies.

Price cap status must not be a prerequisite for access reform. Rather, there must be fair and equitable consideration afforded to all. Many of the markets served by ALLTEL are adjacent to major metropolitan areas. This adjacency creates very low economic and/or financial thresholds for competitors to overcome. Competitors will be large, multi-product firms with a variety of telecommunications services to offer. They are not competing solely for local, access, or toll service. They are targeting high volume retail customers with a complete package of telecommunication services.

The protection envisioned by the Commission with respect to rate of return LECs is thin at best. It is imperative that ALLTEL be given pricing flexibility now. Limiting such pricing flexibility to incumbent price cap LECs will only serve to create further economic distortions by increasing the disparity between access prices in the metropolitan areas served by the price cap LECs and in adjacent areas served by rate of return LECs. This disparity then creates an immediate potential for competitive entry regardless of the true economics of entering that market. The outcome is that

competitors rather than competition are advanced.

To address the reality of the competitive marketplace, the Commission should grant pricing flexibility now to rate of return LECs. An initial step should be the elimination of the required waiver of Part 69 in order for a LEC to provide new services.

ALLTEL agrees that there are specific changes in the current interstate access rate structure that should be made for all LECs. However, ALLTEL disagrees that this can be achieved by changing the current application of the subscriber line charge. This could be viewed as an unwarranted local rate increase and cause end users to make uneconomic decisions regarding their telecommunications services. With respect to the recovery of the other carrier common line costs, ALLTEL advocates replacing the current minute of use charge with an approach not tied to prescribed lines. A bulk billing approach based on an IXC's percentage share of historic interstate minutes of use should be adopted.

The current local switching rate structure does require adjustment. To accomplish this, ALLTEL supports the addition of a new flat rate element for the NTS portion of local switching costs associated with line cards. This rate element should be billed to an IXC based on its percentage of interstate minutes of use.

The method of setting tandem-switched transport rates based on nine thousand (9,000) minutes of use per trunk should be revised. ALLTEL's data indicates that our usage is approximately four thousand (4,000) minutes per month, per trunk. The TIC

costs are real costs which have been identified by ALLTEL. A significant percentage can easily be reassigned on a cost-causative basis, and the remainder of the TIC costs addressed in the separations reform proceeding. Until this is completed, a mechanism should be adopted that allows the continued explicit recovery of the fully embedded transport costs.

Switched access rate reductions should be restricted to adjustments for removal of the current implicit subsidies of LTS and DEM weighting from access rates.

The current rigid rate structure and the Part 69 rules offer only the most limited pricing flexibility to rate of return LECs and should be revised now. Access prices need to be deaveraged on a geographic basis as well as a customer type/size basis. Without pricing flexibility, the ability of rate of return LECs to remain viable entities is tied to regulators.

ALLTEL does not have the market power or pricing controls to disadvantage customers or competitors. We urge the Commission to move now to a flexible pricing scheme for rate of returns LECs, closely followed by an expedited process for removing interstate access services from regulation.

Before the
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Washington, D.C. 20554

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Federal Communications Commission
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Usage of the Public Switched Network by Information Service and Internet Access Providers	)))	CC Docket No. 96-263

Comments of
ALLTEL Telephone Services Corporation

ALLTEL Telephone Services Corporation, on behalf of its local telephone exchange carrier affiliates (hereinafter "ALLTEL" or the "ALLTEL Companies"), respectfully submits its comments on the Commission's Notice of Proposed Rulemaking ("NPRM") released December 24, 1996, in the above-captioned matter.

INTRODUCTION

With the institution of this proceeding on access reform, the Commission completes the trilogy of proceedings which are designed to establish a new regulatory paradigm to advance competition, reduce regulation in telecommunications markets,

and, at the same time preserve and advance universal service to all Americans. These three proceedings on interconnection, universal service, and access reform open the door to unparalleled changes in the telecommunications industry, with significant impacts to the market segment comprised of rate of return companies.

This proceeding on access reform has been long-promised, long-awaited, and long-overdue. The Telecommunications Act of 1996 ("96 Telecom Act"), the Commission's Interconnection decisions, and the Federal-State Joint Board's Recommended Decision in the Universal Service proceeding have all magnified and intensified the immediate need for access reform for rate of return companies, such as the ALLTEL Companies. The issues presented in the instant NPRM are fundamental and basic issues, the resolution of which will affect the ability of the ALLTEL Companies to be viable participants in the competitive marketplace envisioned in the 96 Telecom Act.

Despite the fundamental importance of access reform to all local exchange carriers ("LECs"), the Commission has inexplicably proposed a dual track process which ties regulatory relief to the interstate mode of regulation employed by the LEC. Thus, the focus of this proceeding, with some exceptions, is limited to access reform for incumbent LECs subject to price cap regulation. (NPRM p. 26). Rate of return LECs must await a separate proceeding which is contemplated sometime in 1997. That inquiry will be confined to addressing whether substantial changes in Part 69 cost allocation rules are needed for the development of access charges for rate of return

companies. (Id. at 27.) ALLTEL strenuously objects to this approach. As discussed herein, rate of return companies are not insulated from the effects of competition. Competition and its impacts will not stop at the border of the exchanges of rate of return companies. As justification for the delayed consideration of access reform for rate of return companies, the Commission concludes that "many, if not all, non-price cap incumbent LECs may be exempt from, or eligible for a modification or suspension of, the interconnection and unbundling requirements of the 1996 Act." (Id.) In ALLTEL's view, this is a flawed basis for exclusion of rate of return companies from access reform relief. The Section 251 (f) exemption, suspension, or modification provisions cited by the Commission are not within its province to confer. Rather, the decision to grant suspension, exemption, or modification is within the province of the individual state commission. The grant of such is far from a "given". Moreover, in its First Report and Order in the Interconnection proceeding, CC Dkt. 96-98, the Commission said it viewed the grant of these as being the exception rather than the rule, of limited duration, and not intended to insulate smaller and rural LECs from competition. (First Report and Order, par. 1262)

ALLTEL is concerned that rate of return companies not be singled out by the Commission for disparate treatment or handicapped vis à vis other carriers. The instant proceeding is but one current example. Another is the Commission's NPRM in CC Dkt. 97-11 on Section 214 forbearance. Therein, on page 24 of the NPRM, the Commission proposes to exclude rate of return companies from the same regulatory

forbearance applied to price cap LECs, average schedule LECs, and all non-dominant carriers whether they are offering local or long distance service. The justification for the proposed exclusion is that rate of return companies, because of the method of rate regulation applied to them, can allegedly "gold plate" their facilities and also that they lack external constraints on their ability to pass such costs on to telephone service ratepayers. (Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, released January 13, 1997.)

ALLTEL is alarmed by this mind-set. In the first place, the Commission's premise for delaying access reform for rate of return LECs is incorrect. In the second place, this is not an enlightened approach to regulatory reform. Instead, it is an approach that appears to be punitive in nature. Price cap status must not a prerequisite for regulatory reform. Fair and equitable consideration and treatment must be afforded to all. This objective can be achieved by (1) adoption of meaningful access reform measures, such as pricing flexibility for rate of return LECs, and (2) a sound basis for any conclusions and proposed actions regarding the ability of one set of carriers - in this instance, rate of return carriers - to "game" the system.

I. THE NEED FOR ACCESS REFORM EXISTS REGARDLESS OF REGULATORY CONSTRUCT

A. Price Cap Regulatory Status is not a Determinant of Competition

The ALLTEL Companies are located in fourteen states and collectively have approximately 1.6 million access lines. The ALLTEL Companies are "rural telephone" companies within the meaning of Section 153(37) of the Communications

Act. Though by definition these companies are classified as "rural," they nonetheless face increasing competitive pressures as the interexchange and local landscapes are reshaped and as barriers to entry are dismantled. The ALLTEL Companies are not immune to or insulated from the effects of competition. In areas, such as Cleveland, Atlanta, Houston, Charlotte, and Pittsburgh, exchanges of ALLTEL Companies neighbor large metropolitan markets.[1] The proximity of many ALLTEL exchanges to areas in which competition has emerged,[2] places considerable pressure on all incumbent LECs' prices in those areas. In this situation, if access charge reform is limited to price cap LECs, the disparity between access prices in the metropolitan areas served by the price cap LECs and any surrounding areas served by rate of return LECs will increase. This disparity in rates will then create an immediate potential for competitive entry regardless of the true economics of entering that market and individual high volume customers in markets adjacent to those metropolitan areas will become the initial targets of competition. Furthermore, the effects of an averaged, highly distortive access charge structure will tend to push uneconomic entry into even more rural markets. Geographic service boundaries or the form of regulation applied to the LEC therefore become meaningless distinctions when competitors evaluate their entry strategies.

---

[1] ALLTEL has over 350,000 lines in the five MSAs listed.

[2] For example, Bell South has signed interconnection agreements with MCI Metro, Intermedia and ACS in Charlotte and in Atlanta; Bell Atlantic has signed agreements with Eastern Telelogic and MFS in Pittsburgh; Ameritech has signed an agreement with Time Warner in Cleveland; and SBC has signed numerous agreements throughout Texas.

On the surface, the election of price cap regulation might seem to be a logical response for ALLTEL. The federal price cap plan, however, was never designed for companies such as ALLTEL. ALLTEL does not have the levels of sustainable efficiencies inherent in the current productivity offset. This, coupled with the limited degree of pricing flexibility and the inability to realize any upside earnings potential, has made price caps a lackluster regulatory option. Further, the FCC's Rules require that price cap regulation must be elected for all study areas, i.e., on an "all or nothing" basis.[3] ALLTEL serves diverse geographic areas. Many of our existing exchanges are not contiguous and are dispersed throughout a state. Customer or line density, a primary cost driver, is widely variant in the ALLTEL system with some exchanges serving as few as twenty (20) lines per square mile and others serving close to seven thousand (7,000) lines per square mile. This variation undermines ALLTEL's election of price caps.

Access customers are almost solely price driven and make their access buying decisions based on the requirements of a particular market. They are largely unsympathetic to the regulatory constraints of averaging or public policy imposed on the incumbent LECs by the current access charge structure. In correcting its access charge plan, the Commission needs to be cognizant of the characteristics of the access providers. A "one size fits all" solution, such as the current price cap plan, is not the correct approach for the ALLTEL Companies.

[3] 47 CFR §61.41(b).

B. Rate of Return Companies are not Exempt from Competition or Competitors

The Commission, in paragraph 52 of the NPRM, appears to conclude that non-price-cap companies, such as ALLTEL, are in some way protected from the immediate impacts of a competitive telecommunications industry. This is incorrect. Any so-called "protection" afforded the rate of return LECs is thin at best. Already, some states, such as Illinois, have indicated that competition should proceed in rural markets as quickly as possible. Moreover, the Commission in its First Report and Order in the Interconnection proceeding placed the burden of proof for any Section 251(f) suspension, exemption, or modification on the incumbent rural or two-percent (2%) LEC.[4]

Furthermore, as pointed out earlier, rate of return LEC markets that are adjacent to major metropolitan areas can be expected to become targets of opportunity because this adjacency creates very low economic and/or financial thresholds for competitors to overcome. These competitors will be large, multi-product firms with a variety of telecommunications services to offer. They are not competing solely for local, access, or toll services. They are targeting high volume retail customers with a complete package of telecommunications services. This is "one stop" shopping. These firms are unconstrained by any boundaries - real or virtual - and they have considerable market power in addition to economies of scale and scope.

[4] First Report and Order at para. 1262.

The Commission, as well as the 96 Act, has imposed numerous pro-competition requirements on incumbent LECs without regard for regulatory construct. These include the requirements of Section 251(b) as they relate to number portability, dialing parity, and access to rights of way. Many of these pro-competition requirements exist absent even a request for the capability. The implementation of these capabilities is not without cost, yet the Commission imposed them without providing for additional flexibility and/or reduced regulation for the incumbent rate of return LECs. Entrants into these markets receive the best of all worlds -- an in-place, advanced, "competitor friendly" network, and an incumbent LEC disadvantaged by a restrictive and outdated regulatory scheme.

In short, before continuing down the path to delaying access reform for rate of return LECs, it is important that the Commission step back and consider the uncertainties and disincentives which rate of return LECs currently face:

- An ill-conceived interconnection and resale plan
- An uncertain (and potentially limited) universal service plan
- Competitive entry by companies many times larger than they are[5]
- An existing price cap plan targeted to larger LECs

ALLTEL believes that when all of these factors are properly considered, they underscore the need for a realistic market-based approach to access reform for rate of return LECs.

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[5] According to published financial reports, at year end 1995, AT&T had assets of $88.9 B, MCI had assets of $19.3B, and Time Warner had assets of $22.1B. ALLTEL, in contrast, had assets of $5.1B.

C. The Current Access Charge Structure Needs Revision

ALLTEL agrees with the Commission that the current access charge structure creates rates that are unrelated to underlying costs. (NPRM - p. 7) It is the misallocation of these access costs to the various access rate elements that creates the distortions between costs and price. These misallocations, many of which are intended to foster universal service, stem from a variety of policy decisions at both the state and federal levels. Access charge revenues have made a considerable contribution to universal service and other policy goals. In ALLTEL's case, roughly fifty percent (50%) of our regulated telephone operating revenues are derived from access charges. Some of our access charges contain subsidies that are directly linked to the achievement of social goals at both the federal and state levels. ALLTEL's access costs are nonetheless actual and real. These costs must be recovered if the ALLTEL Companies are to be lasting competitors.

The Commission must not presume that rate of return LECs have a guaranteed revenue stream from access. The ALLTEL Companies are in a competitive environment. Without considerable changes to the current access rate structure, their access revenue streams will diminish rapidly.

II. MODIFICATIONS ARE REQUIRED TO THE CURRENT INTERSTATE ACCESS RATE STRUCTURE FOR ALL LECS

Even with consistent access rate reductions, ALLTEL's access rates are often three to four times higher than those of the neighboring RBOC. This stems not only

from distortions in the access rate structure, but also from the averaging requirements imposed on rate of return LECs.

A. The Current Non-Traffic Sensitive ("NTS") Rates are Economically Inefficient

As the Commission has noted at page 29 of the NPRM, the costs associated with the local loop are non-traffic sensitive, but its Rules require that a portion of those costs be recovered through per-minute charges. The Commission now seeks rate structure changes that send more accurate pricing signals. NTS loop cost recovery is a good starting point.

ALLTEL's current NTS recovery is:

Interstate Common Line Revenue Requirement	
Subscriber Line Charges ("SLC")	52%
Carrier Common Line Charges ("CCL")	30%
Long Term Support (from universal service) ("LTS")	18%
Total Interstate Common Line	100%

The Commission has laid out several proposed alternatives for recovery of the SLC portion of subscriber loop costs. One such proposal is to place more of the burden of NTS loop cost recovery on the end-user through changes in the SLC as applied to second residential lines and multi-line businesses. ALLTEL opposes any change to the current application of SLCs. ALLTEL's current customer base is made up primarily of residential and small business end-users. Any change in the current application of the SLCs may be perceived as an unwarranted local rate increase and cause end users to make incorrect economic decisions regarding telecommunications service. In

addition, any change in the SLC, as applied to second access lines, poses administrative problems in terms of LEC identification of those lines.

ALLTEL recognizes that the current SLC reflects a subsidy flowing from urban to rural areas. In an effort to eliminate this imbalance, ALLTEL would support geographic deaveraging of the SLC. A deaveraged SLC should be based on three pricing zones at a minimum. SLC revenues should continue to maintain the same level of contribution towards the common line revenue requirement as they do today.

For the recovery of the remaining CCL costs, ALLTEL advocates replacing the current per minute of use charge with a recovery mechanism designed to send accurate price signals to both consumers and competitors. Although the Joint Board proposed flat per line charges based on presubscribed lines, [6]ALLTEL opposes this recommendation, in part. First of all, the imposition of an additional common line charge directly to the end user who elects not to select a PIC results in an effective SLC increase for that end-user and poses an additional administrative burden on the incumbent LEC to accomplish this billing. The subscriber loop costs should be borne by all users of the loop, including the IXCs. Second, assessing the charge on the basis of presubscribed lines fails to address 10XXX dial-around usage and potentially provides a disincentive for IXCs to compete for lower volume long distance users.

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[6] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, at par. 776, FCC 96J-3 (rel. Nov. 8, 1996).

In lieu of a charge per presubscribed line, ALLTEL believes that a bulk billing approach based on an IXC's percentage share of historical interstate minutes of use would eliminate the problems discussed above.

B. The Current Local Switching Rate Structure Requires Adjustment

ALLTEL supports a new flat rate element for the NTS portion of local switching costs associated with line cards. That new rate element should be established and billed to an IXC based on its percentage of interstate minutes of use. NTS local switching costs make up thirty-one percent (31%) of ALLTEL's interstate local switching revenue requirement. Creation of this new rate element would not only recover costs in the way that they are incurred, but would also align the access rate structure with the unbundled network element charge structure established by the Commission in its First Report and Order in the Interconnection proceeding.

C. The Current Transport Rate Structure and the Tandem Interconnection Charge ("TIC") Must be Revised

The Commission has stated its intent that any rule changes regarding the transport rate structure or the TIC adopted in this proceeding should apply to all LECs, including rate of return companies. (NPRM p. 44) ALLTEL believes that the current transport rate structure with charges for entrance facilities, direct-trunked transport and tandem-switched transport is appropriate and economically efficient. However, the current method of setting tandem-switched transport rates based upon nine thousand (9000) minutes of use per month results in arbitrarily low tandem-switched transport rates and in an increased amount of transport costs left to be recovered through the

TIC. Data for the ALLTEL Companies indicates that usage of the tandem-switched trunks amounts to approximately four thousand (4000) minutes per month, per trunk. Consequently, the use of this figure would accurately assign tandem-switched transport costs for the ALLTEL Companies.

The TIC has been described as a non-cost based charge, however, as noted by the Court of Appeals in CompTel v. FCC, the Commission has recognized that the costs assigned to the TIC are real costs.[7] ALLTEL has identified the costs that make-up the TIC. Some of the identified costs components of the TIC can be easily reassigned. This is demonstrated in the following chart:

TIC Analysis: ALLTEL

Cost Component	% of TIC	Correction
Tandem revenue requirement	6.5%	Assign to tandem switched transport
Use of 9000 minutes per tandem trunk	33%	Use of 4000 minutes per tandem trunk
Part 36 and public policy allocations	60.5%	Interim: continue to charge TIC on this level Permanent: separations reform

[7] Competitive Telecommunications Association v. FCC 87 F. 3d 522, (D.C. Cir. 1996) (Comp Tel v. FCC.

Thus, forty percent (40%) of the TIC can be reduced by logical reassignment. The remaining sixty percent (60%) of the cost recovery associated with the TIC awaits separations reform.

III. SWITCHED ACCESS RATE REDUCTIONS SHOULD BE RESTRICTED TO ADJUSTMENTS FOR LONG TERM SUPPORT ("LTS") AND DEM WEIGHTING

In the NPRM, the Commission asks for comment on how proposed changes to the universal service support mechanism should be addressed in Part 69 for non-price cap LECs. (NPRM p. 107-108) As noted by the Commission in the NPRM, the Joint Board has proposed the explicit recovery of LTS and the DEM weighting mechanism. (Id. at 22) Currently, the two implicit subsidies are reflected in the access rates of each LEC. Once these subsidies are transitioned to the high cost universal service fund, there will be, and should be, a corresponding dollar-for-dollar reduction in the associated access rates. In ALLTEL's view, the LTS and the DEM weighting mechanism are the only components of the proposed universal service plan that have a direct relationship to access rates. Other universal service support components are designed to offset the cost of providing local service in high cost areas and, as such, do not require a corresponding reduction in access rates.

IV. The FCC Should Move Expeditiously to Provide Regulatory Relief to Rate of Return LECs

As previously pointed out, ALLTEL has, for a variety of reasons, been unable to elect price cap regulation. The ALLTEL Companies serve a larger number of rural areas than the larger price cap LECs. ALLTEL does not serve any city centers having

a population in excess of one hundred thousand (100,000), but we do have markets that adjoin these areas. The geographic areas served by each of the ALLTEL Companies are often not contiguous which makes it difficult for them to achieve the economies of scale and scope enjoyed by the larger price cap LECs.

ALLTEL also has a lower percentage of low cost/high margin customers as reflected in our relatively lower business-to-residence ratios. The calling patterns are imbalanced with roughly sixty percent (60%) of all traffic moving in the originating direction. A lack of sheer size also leave us at a disadvantage. Although operating efficiently, ALLTEL has relatively greater common costs than the RBOCs and less purchasing power. Nonetheless, ALLTEL is still faced with the same competitive pressures as the larger LECs. IXCs, such as AT&T and MCI, do not question the form of regulation when making access purchases. Instead, they question the price levels for the relevant market. The requirement to average access prices across a study area subjects the low cost/high margin customers within ALLTEL's markets to intense competitive pressures. As these customers implement their alternatives, there is a "spiraling" effect which pushes additional costs to the next tier of customers and creates a new "artificial margin" that is pro-competitor rather than pro-competition. Absent access reform, ALLTEL will continue to be disadvantaged relative to both new entrants and price cap LECs.

ALLTEL needs the freedom to respond to competition in our denser markets. However, neither the market approach nor the prescriptive approach proposed by the

Commission works for ALLTEL. ALLTEL needs the ability now to price access flexibly. It is unnecessary for the Commission to construct elaborate regulatory schemes for the rate of return LECs. ALLTEL has no market power in the access realm. Existing and potential competitors abound. Wireless and cable services provide substitutable services. IXCs monitor our access rates closely and carefully choose between ordering services provided via dedicated circuits or switched access or through alternate facilities. IXCs also have direct contact with our customers through their provision of long distance services. This allows them to continually "take the pulse" of these customers and attempt to correct imbalances by pressuring ALLTEL to adjust its access rates.

Competitors contend that incumbent LECs have bottleneck facilities, and therefore, enjoy an unfair competitive advantage. While even small LECs have some advantages associated with their incumbency, this in no way translates to an ability to control prices. ALLTEL does not have the financial reserves nor the cost economies to block entry through any form of anti-competitive pricing. The market for telecommunications service is national, if not global, in scope. The relatively small piece of the network controlled by ALLTEL and the related prices charged for that network have a negligible impact on the provision of broadly-based telecommunications service. In the evolving telecommunications market, the product has become an integrated package of services, including local calling, exchange access, long distance,

internet access, and wireless communications. When the ALLTEL Companies are viewed in this light, their lack of market power is evident.

The current rigid rate structure of the FCC's Part 69 rules offers only the most limited pricing flexibility to rate of return LECs. To overcome this, as a starting point, ALLTEL proposes that the rate elements currently contained in Sections 69.106 - 69.112 of the Commission's Rules should be combined to form an access category for traffic sensitive switched access. This category would then be composed of the costs constituting the current local switching, transport, and information elements. This would permit the ALLTEL Companies to align their rates with those of larger neighboring LECs.

ALLTEL also proposes that the Commission immediately eliminate its requirement that an incumbent LEC obtain a Part 69 waiver or a rule change before it can introduce any new services. This would give ALLTEL the flexibility to offer new access services, create new rate elements, and price existing elements in a market responsive fashion.

Additionally, access prices need to be deaveraged on a geographic basis as well as a customer type/size basis. This deaveraging would be predicated on cost-causative principles. ALLTEL's current inability to establish prices in the same manner as its competitors sends improper entry and exit signals to customers and competitors alike. Without pricing flexibility, the ability of rate of return LECs to remain viable entities is tied to regulators.

Ultimately, all trappings of regulation need to be removed. As pointed out earlier, rate of return LECs have no market power; hence, the "triggers" proposed in the FCC's NPRM are overkill. ALLTEL has no services that can be leveraged by altering access prices. We are in no position to actively use prices to inappropriately meet financial or market share goals. ALLTEL has, in fact, decreased access rates by nearly thirty percent (30%) over the last three years. It would be counter-intuitive for us to raise access prices in the current environment.

ALLTEL does not have the market power nor the pricing control to disadvantage our customers or competitors. ALLTEL urges the FCC to move now to a flexible pricing scheme for the provision of interstate access, closely followed by an expedited process for removing these services from regulation.

ALLTEL is anxious to work with the Commission in addressing the necessary components of a plan that will promote a pro-competition environment in which rate of return LECs are vigorous, active participants.

CONCLUSION

ALLTEL urges the Commission not to delay access reform for rate of return LECs, such as ALLTEL. As demonstrated above, we are not exempt from competition either from existing carriers or new entrants. It is imperative that we have pricing flexibility now in order to remain viable participants in the marketplace.

Respectfully submitted,
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Dated: January 29, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	**WC Docket No. 05-337**
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Lifeline and Link Up	)	**WC Docket No. 03-109**
	)	
Universal Service Contribution Methodology	)	**WC Docket No. 06-122**
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	**CC Docket No. 96-98**
	)	
Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	**CC Docket No. 99-68**
	)	
IP-Enabled Services	)	**WC Docket No. 04-36**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
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High-Cost Universal Service Support	)	**WC Docket No. 05-337**
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Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Lifeline and Link Up	)	**WC Docket No. 03-109**
	)	
Universal Service Contribution Methodology	)	**WC Docket No. 06-122**
	)	
Implementation of the Local Competition	)	**CC Docket No. 96-98**
Provisions in the Telecommunications Act of 1996	)	
	)	
Developing a Unified Intercarrier Compensation	)	**CC Docket No. 01-92**
Regime	)	
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	**CC Docket No. 99-68**
	)	
IP-Enabled Services	)	**WC Docket No. 04-36**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following reply comments in response to the request by the Federal Communications Commission ("Commission") for comment on its Further Notice of Proposed Rulemaking ("FNPRM") and three attached proposals on intercarrier compensation and universal service reform.[1]

[1] *See Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (*"Core Remand Order"*).

I. INTRODUCTION AND SUMMARY

These reply comments are consistent with Windstream's prior submission of a proposal outlining recommendations for comprehensive intercarrier compensation reform. Windstream repeatedly has urged the Commission to adopt a measured approach to reforming intercarrier compensation and has supported a number of different reasonable approaches, in addition to the one it proposed.[2] All of these proposals would unify and significantly reduce intercarrier compensation rates while permitting affected carriers to recover associated revenue reductions to a significant degree through subscriber line charge ("SLC") increases and an alternative recovery mechanism ("ARM"). Windstream also endorses more limited measures that would enable proper billing by addressing phantom traffic and clarifying that compensation is due for traffic generated by interconnected Voice over Internet Protocol providers.

Windstream's repeated calls for such fair and balanced reforms are reinforced by comments submitted in response to the FNPRM. Many commenters ask the Commission to adopt unified, but varying terminating rates for different classes of carriers, in recognition of significant disparities in costs incurred to provide quality and affordable service in rural and urban areas.[3] A wide variety of parties criticize the new "additional

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[2] The details of Windstream's proposal are outlined in an ex parte filed on October 28, 2007, as well as in comments filed in response to the FNPRM. Letter from Eric N. Einhorn, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 06-122, 99-68, 08-152, 07-135 (filed Oct. 28, 2008) ("Windstream Intercarrier Compensation Ex Parte"); Comments of Windstream Communications, Inc. ("Windstream Comments").

[3] *See, e.g.*, Comments of CenturyTel, Inc. ("CenturyTel Comments") at 12; Comments of Cincinnati Bell Inc. ("Cincinnati Bell Comments") at 13-14; Joint Comments of Citynet, LLC, Granite Telecommunications, Inc., PAETEC Communications, Inc., RCN Telecom Services, Inc. and U.S. Telepacific Corp. ("Citynet et al. Comments") at 11-12; Comments of Embarq ("Embarq Comments") at 7; Comments of Frontier Communications ("Frontier Comments") at 5; Comments of Iowa Telecommunications Services, Inc. ("Iowa Telcom Comments") at 5; Comments of the Independent Telephone & Telecommunications Alliance ("ITTA Comments") at 8; Comments of the National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of Peoples' Counsel, The Utility Reform Network, and the Utility Consumer Action Network on Further

costs" standard proposed by the FNPRM.[4] Moreover, multiple commenters underscore the importance of making a reasonable and significant ARM available to mid-sized price cap carriers.[5]

Without these modifications, the reform proposals attached to the FNPRM would have devastating consequences for telecommunications and broadband services offered in rural regions. Since the majority of mid-sized carriers' revenues are spent to meet fixed carrier of last resort expense obligations, the staggering revenue reductions resulting from the proposed reforms would cripple mid-sized price cap carriers. The weakened carriers would be unable to deploy new broadband services to their customers, let alone maintain the prices and quality of services offered to their customers today. The impact of the proposed revenue reductions is especially significant now that the United States is experiencing one of the largest economic crises in its history.

Notice of Proposed Rulemaking ("NASUCA et al. Comments") at 16; Comments of the National Exchange Carrier Association, Inc. ("NECA Comments") at 25-26; National Telecommunications Cooperative Association Initial Comments ("NTCA Comments") at 42; Comments of TW Telecom Inc., One Communications Corp. and Cbeyond Inc. ("TW Telecom et al. Comments") at 6.

[4] *See, e.g.*, Comments of Broadview Networks, Inc., Cavalier Telephone, Nuvox, and XO Communications, LLC at 29-35; CenturyTel Comments at 16; Cincinnati Bell Comments at 10-13; Citynet et al. Comments at 19-20; Embarq Comments at 42-50; Frontier Comments at 14-17; Iowa Telecom Comments at 3-4; ITTA Comments at 10-13; NASUCA et al. Comments at 9-16; NECA Comments at 26-29; NTCA Comments at 40-41; TW Telecom et al. Comments at 5-6.

[5] *See, e.g.*, CenturyTel Comments at 14-18, 22-24; Cincinnati Bell Comments at 2-3; Embarq Comments at 7, 26; Frontier Comments at 5, 8-10; ITTA Comments at 5-9; Iowa Telecom Comments at 4-5; Comments of the United States Telecom Association ("USTelecom Comments") at 6. *See also* Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (asking the Commission to "establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out"); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that are "available to all carriers of last resort, regardless of company size, structure or regulatory classification"); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) (proposing a plan that included a recovery mechanism, which could be used by mid-sized carriers).

Following its prior critique of proposals attached to the FNPRM,[6] Windstream submits reply comments in response to parties' arguments regarding core elements of intercarrier compensation reform. Windstream addresses only three items: (1) the amount of the terminating rate, (2) the necessity of an ARM for mid-sized price cap carriers, and (3) increases to SLCs. These reply comments – given the voluminous record in this proceeding – are by no means intended to be comprehensive, but they nonetheless demonstrate that the Commission must make significant modifications before adopting comprehensive reforms considered by the FNPRM.

II. SUPPORTERS OF A UNIFORM NEAR-ZERO TERMINATING RATE STILL FAIL TO PRODUCE DATA THAT JUSTIFY ITS ADOPTION.

Comments by the leading proponents of a uniform terminating rate at or below $0.0007 fail to establish a rational basis for applying this rate to all carriers. Like the Commission's proposals, parties' comments in support of this low rate are based on unsupported assertions,[7] or rely upon facts that only apply to the very largest incumbent local exchange carriers ("ILECs"). This paltry support does not provide legitimate ground for adopting a uniform, near-zero rate.

A. Negotiated Market Outcomes Indicate that Mid-Sized Carriers Warrant a Terminating Rate Significantly Higher Than $0.0007.

Verizon asserts that "evidence of negotiated, market outcomes" supports a uniform $0.0007 terminating rate.[8] But the evidence cited by Verizon fails to demonstrate that $0.0007 is an appropriate compensable rate for all carriers. At best

[6] *See* Windstream Comments at 27-47; Windstream Intercarrier Compensation Ex Parte at 3-4.

[7] *See, e.g.,* Comments of Sprint Nextel Corporation at 6-7 (relying on statements in the Appendix A draft order to support adoption of the proposed additional costs standard); Comments of Comcast Corporation at 6 (offering its support for the new pricing methodology, but not citing any evidence that would provide a rational basis for this new methodology).

[8] Comments of Verizon and Verizon Wireless ("Verizon Comments") at 49.

Verizon's market evidence suggests that Regional Bell Operating Companies ("RBOCs") like Verizon could appropriately be subject to a uniform $0.0007 rate.

Verizon's evidence is limited to interconnection agreements that it has entered into with (premerger) AT&T and Level 3 for terminating local traffic and ISP-bound traffic, and 25 competitive local exchange carriers ("CLECs") for terminating traffic generally.[9] Such evidence is far from representative for small or mid-sized ILECs. Verizon fails to provide any evidence that small or mid-sized carriers – which realize far smaller economies of scale – have agreed to exchange local traffic at the $0.0007 rate in their interconnection agreements or that such rates reflect these carriers' circumstances. Moreover, most of the CLEC agreements cited by Verizon are bill and keep arrangements,[10] which typically are entered into when traffic is mostly in-balance.[11] It would be inappropriate for the Commission to conclude that those arrangements should be the basis for establishing a uniform rate for all carriers within a state.

With respect to small and mid-sized carriers, evidence of negotiated rates for local traffic, using Verizon's logic, indicates that these carriers should *not* be subject to a uniform near-zero terminating rate. Most of these carriers have lawfully negotiated interconnection rates that are significantly higher, in the range of $0.005 to $0.012. Their reciprocal compensation rates are set closer to interstate terminating access levels. In particular, reciprocal compensation rates lawfully negotiated by Windstream are no

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[9] *Id.* at 49-50.

[10] *See id.* at 50, n.65 (noting that 22 of 25 CLEC agreements cited are bill and keep arrangements).

[11] *See* 47 U.S.C. § 252(d)(2)(B)(I) (describing "bill and keep" as "arrangements that waive mutual recovery" of costs through "offsetting of reciprocal obligations").

where near $0.0007 for any agreement. Windstream's composite reciprocal compensation billing rate is $0.0089.[12]

B. The Proposed Methodological Shift, Coupled with the Absence of a Meaningful Alternative Recovery Mechanism, Would Indiscriminately Punish All Mid-Sized Carriers Primarily Focused on Serving Rural Areas.

AT&T asserts that the Commission's proposed "methodological shift will reward efficient carriers and punish inefficient ones" by "compelling most carriers to rely primarily on their own end users for recovery of their network costs . . . ."[13] This claim, however, overlooks the fact that carriers serving primarily rural areas incur substantially greater costs than those in urban areas. When this significant difference is taken into account, it is evident that the primary impact of the proposed methodological shift would be to reward urban carriers at the expense of rural carriers, efficiency notwithstanding.

The RBOCs – as compared to small and mid-sized ILECs – are subject to significantly different cost characteristics. Costs on a per line basis are much higher for carriers that serve primarily rural areas. A comparison of Windstream and AT&T is illustrative. Subscriber density is far lower for Windstream: Windstream's average subscriber density is approximately 21 lines per square mile, while AT&T's is approximately 99 lines per square mile.[14] Windstream, therefore, cannot benefit from the same economies of scale as AT&T. Windstream on average serves approximately 2,700

[12] The cited composite billing rate is based upon 11 months actual billing from January through November, 2008.

[13] Comments of AT&T Inc. ("AT&T Comments") at 11.

[14] These subscriber density statistics are based upon an analysis conducted in December, 2007. Verizon's subscriber density at that time was even greater than AT&T's: Verizon's subscriber density was approximately 120 lines per square mile.

lines per exchange, and 70 percent of its exchanges serve less than 2,000 lines.[15] AT&T's average exchange, in contrast, serves more than 12,000 lines. So even if Windstream is operating at the same level of efficiency as AT&T, Windstream will have significantly higher per line operating costs than its urban counterpart.

Due to different cost characteristics and the absence of a meaningful ARM, *all* mid-sized carriers primarily focused on serving rural areas, and their customers in these areas, would be punished by the one-size-fits-all, near-zero rates under the new methodology. These carriers would suffer substantial revenue reductions, which would directly impact consumers served by affected carriers. In particular, Windstream estimates that the Commission's proposed intercarrier compensation reforms would reduce Windstream's revenues by hundreds of millions of dollars over the foreseeable future, with little or no ability to recoup much of these substantial losses.[16] These reductions would be felt directly be consumers through higher rates and service impacts.

Mid-sized carriers would struggle to offset these losses. AT&T fails to appreciate the cost characteristics of mid-sized carriers when it suggests efficient carriers would be rewarded when carriers are forced to either "reduce their costs to the prescribed compensation level or incorporate those costs in their own retail rates."[17] AT&T's claim does not hold true for any mid-sized carrier.

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[15] Exchange figures referenced are based upon an analysis conducted in December, 2007. Aggregate statistics for the same time period are similarly revealing. Windstream has approximately 23 percent of the exchanges that AT&T has (approximately 1,100 as compared to 4,700), but 5 percent of the lines (approximately 3.1 million lines versus 57.2 million lines).

[16] For 2008, Windstream's terminating intercarrier compensation revenues will comprise roughly six percent of its annual revenues, whereas all of its federal high-cost support will comprise less than three percent of its annual revenues.

[17] AT&T Comments at 11.

First, mid-sized carriers cannot reduce costs to the prescribed compensation level. Network maintenance costs and deployment needs do not go away if intercarrier compensation revenues are eliminated. In order to reduce costs anywhere near the suggested compensation level, mid-sized carriers would have to effectively stop maintaining some of their existing networks and cut back on purchases of new equipment. Both of these measures would jeopardize not only the terminating switching services provided to other carriers, but also basic dial-tone service offered to end users.

Second, mid-sized carriers would be challenged by regulatory and economic factors if they sought to incorporate the joint and common costs in their retail rates. From a regulatory standpoint, state commissions are not likely to allow end user rate increases that would enable carriers to recover the revenue reductions resulting from the proposed new cost methodology. In addition, even if the states were to allow such increases, it would be near impossible for mid-sized carriers like Windstream to recover these sizable costs from their far smaller pool of end users, or for those rural consumers to afford the burden – an issue that AT&T glosses over.

C. The Commission Is Capable of Policing Artificial Traffic Stimulation Schemes Without Moving Compensation to a Near-Zero Level.

Commenters' suggestions that a single statewide rate is needed to stop arbitrageurs that specialize in terminating traffic schemes, such as free chat lines and teleconferencing services, is shallow.[18] Such parties are essentially arguing that the only way to stop the small minority of LECs that are cheating is to force every other LEC, i.e.,

[18] *See, e.g.*, Verizon Comments at 41 (asserting that "it is only through a uniform rate – applied equally to all carriers and all traffic – that the Commission can . . . eliminate the fraud and arbitrage that plague today's intercarrier compensation regime"); AT&T Comments at 9 (arguing that "the proposed 'incremental cost' standard is far superior to TELRIC as a means of setting intercarrier compensation rates . . . because it will dramatically reduce the competitive distortions that can arise from any regulatory rate-setting regime").

the vast majority of carriers that are abiding by the rules, to give access to the terminating network for free. While this measure may substantially eliminate the possibility of such cheating, the intercarrier compensation response endorsed by these commenters is an overly broad solution to address the problem at hand, unduly harmful to LECs providing the terminating services, and excessively generous to carriers using those terminating services.

The Commission does not need to condition elimination of traffic stimulation on larger intercarrier compensation reforms. Traffic stimulation schemes violate the Commission's rules requiring just and reasonable rates, and should be eliminated immediately.[19] Specifically the Commission should require suspected violators to include terms and conditions in their access tariffs that require carriers to recalculate access rates if they meet certain thresholds for abnormal increases in access minutes.[20] This reform would prevent carriers from reaping the profits associated with illegal traffic stimulation by triggering an immediate recalculation of their access rates. Qwest proposes additional, appropriate safeguards that the Commission could use to curtail

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[19] *See* Letter from Trent Boaldin, EpicTouch Co., et al. to Kevin Martin, Chairman, FCC, et al. (dated April 30, 2007) (industry letter opposing traffic pumping, which was signed by Windstream and fourteen other telecommunications companies).

[20] Language included in access tariffs could mirror language adopted by carriers subject to an access stimulation investigation last year. After the Commission suspended their tariff filings in response to access stimulation concerns (*July 1, 2007 Annual Access Charge Tariff Filings*, Order, 22 FCC Rcd 11619, ¶ 7 (rel. June 28, 2007)), some of the carriers involved agreed to recalculate local switching and transport rates if their monthly interstate local switching minutes exceeded a 100 percent increase over the same month the previous year. *See Investigation of Certain 2007 Annual Access Tariffs*, Order, 22 FCC Rcd 21261, ¶ 2 (rel. Nov. 30, 2007) (terminating the access stimulation investigation when all ILECs involved either rejoined the NECA pool or adopted "tariff language that committed them to modify their local switching and transport rates in the event they experience an increase in demand above a threshold level"). Carriers modifying their tariff language stated they would make rate revisions within 60 days of meeting the above threshold.

these illegal practices.[21] Such measures would stop destructive arbitrage activity, without making innocent carriers and customers the casualties of overbroad reform.

D. Commission Precedent Regarding Rate Symmetry Does Not Support Establishment of One Terminating Rate Per State.

Despite AT&T's suggestion to the contrary,[22] there is no current Commission practice or rule that sets a precedent for establishing one terminating rate per state. The Commission has never required rate uniformity for intrastate and interstate access, when the termination of traffic at issue is between two totally different geographic regions (within a state) with distinct cost characteristics.[23] Instead, Commission requirements for rate symmetry are limited to reciprocal compensation – and are based upon the assumption that both carriers have similar switching investment and costs in the same local calling area due to similar subscriber density, carrier size, and calling scopes.[24]

Expanding the logic for the symmetry rule to all terminating traffic (access and local) across an entire state at the same rate is illogical and inconsistent with past American practice regarding rate development. The Commission has a longstanding

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[21] *See* Comments of Qwest Communications International Inc. ("Qwest Comments") at 11-14 (proposing multiple rule changes that "deal individually with the access stimulation issue," because "the intercarrier compensation reforms proposed in the ICC proposal will not have a meaningful impact on access stimulation for several years").

[22] AT&T Comments at 14 (contending that the Commission should "adhere to the consistent American practice of ensuring rate uniformity for all carriers within a given geographic area – and . . . extend that practice to all traffic").

[23] For example, Windstream operates two operating companies in the state of Ohio. Each has its own interstate and intrastate access rates, notwithstanding the fact that they operate in the same state. Because Windstream has not adopted $0.0007 for reciprocal compensation, each has its own reciprocal compensation rates. Neither the Commission nor the Public Utilities Commission of Ohio has implemented this so-called symmetry practice. At best, some state commissions have required ILECs to mirror some of their interstate access rate elements.

[24] *See* 47 C.F.R. § 51.711 (the symmetry rule for reciprocal compensation); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 1085 (rel. Aug. 8, 1996) (explaining the rationale for the symmetry rule).

practice of recognizing cost differences in the context of not only intercarrier compensation, but also in the context of universal service support.[25] Failure to continue recognizing this distinction would be contrary to economic reality for any type of switching, through softswitches or through traditional time division multiplexing ("TDM") switches.[26]

III. COMMENTS OFFER SIGNIFICANT SUPPORT FOR PROVIDING MID-SIZED CARRIERS WITH ACCESS TO AN ALTERNATIVE RECOVERY MECHANISM.

Multiple commenters, in addition to Windstream, have produced significant record evidence in support of an ARM for mid-sized price cap carriers. Both the Independent Telephone & Telecommunications Alliance ("ITTA") and the United States Telecom Association ("USTelecom") explain that these carriers need a viable revenue replacement opportunity to continue to meet their voice service obligations and deploy new broadband services.[27] Absent adequate recovery mechanisms, ITTA reports that

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[25] *See, e.g.*, 47 CFR 54.301(a) and *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 212 (rel. May 8, 1997) (establishing local switching support in recognition that carriers serving rural areas must incur higher switching costs to provide voice service to an individual customer); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45; 15 FCC Rcd 12962, ¶ 162 (rel. May 31, 2000) (recognizing differences between urban and rural price cap ILECs when establishing different interstate average traffic sensitive charges for different classes of carriers). *See also* C. A. Bush et al., Computer Modeling of the Local Telephone Network, App. B, 39 (Oct. 1999), *available at* http://www.fcc.gov/wcb/tapd/hcpm/welcome.html (describing how the forward-looking universal service cost methodology responds to differences in switching costs incurred by carriers of different sizes).

[26] The incremental cost of termination is near zero under the proposed additional costs standard not due to the degree of blocking or scalability of a type of switch, but instead due to the fact that the proposed standard classifies a much greater proportion of switching-related costs as joint and common and then excludes these costs from the calculation of additional costs. *See* Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) (explaining how the proposed standard would overlook significant costs incurred in switching traffic via softswitches, as well as traditional TDM switches).

[27] ITTA Comments at 9 (proposing an ARM for mid-sized price cap carriers to provide them with an opportunity to recover revenue reductions from access rate reductions); USTelecom Comments at 6 (stating that mid-sized price cap carriers deserve a viable replacement opportunity for mandated rate reductions).

mid-sized price cap carriers would have to cut capital and operational costs and increase prices.[28] It asserts that the proposed reforms, as a result, would "retard broadband deployment, rather than promote it . . . ."[29] In addition, USTelecom finds that the proposed revenue mechanism for mid-sized price cap carriers fails to recognize carrier of last resort obligations.[30] USTelecom concludes that the proposed reforms would diminish these carriers' "ability to maintain the prices and quality of services currently offered to their customers and will severely harm their ability to further deploy advanced services."[31]

Individual carriers also provide noteworthy support for an ARM. First, Embarq endorses both USTelecom's and ITTA's proposals to implement an ARM for mid-sized price cap carriers.[32] It observes that Commission precedent recognizes that "a sufficient, reliable recovery mechanism is a vital component of any intercarrier compensation reform plan that reduces intercarrier compensation revenues."[33] Second, CenturyTel, in support of the ITTA plan, explains that the Commission in the past always has indicated that some form of access replacement fund may be necessary whenever considering reductions to intercarrier compensation rates.[34] CenturyTel adds that such a mechanism is important to a wide variety of carriers, as high-cost characteristics exist regardless of whether a carrier is price cap or rate of return regulated, or whether the company is public

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[28] ITTA Comments at 7.

[29] *Id.*

[30] USTelecom Comments at 6.

[31] *Id.*

[32] Embarq Comments at 7.

[33] *Id.* at 26.

[34] CenturyTel Comments at 12, 14.

or private.[35] Third, Frontier calls upon the Commission to recognize challenges facing mid-sized price cap carriers and the need to ensure these carriers have an opportunity to recover network costs.[36] Frontier supports ITTA modifications that would implement an ARM for mid-sized price cap carriers.[37] Finally, Cincinnati Bell declares that "recovery mechanisms are inadequate, particularly for mid-size ILECs."[38] "If the Commission truly wants to make broadband available to all Americans," Cincinnati Bell asserts that the Commission "must reexamine the impacts of its ICC reform proposals on the mid-size companies, particularly the mid-size ILECs, which have long held carrier of last resort obligations that place extra burdens on them, but will likely suffer the most significant uncompensated and unrecoverable losses . . . ."[39]

Commenters opposing meaningful recovery do not identify any legitimate policy rationale for distinguishing mid-sized price cap carriers from mid-sized rate of return carriers.[40] Free Press, for example, fails to establish a rational basis for distinguishing price cap carriers from rate of return carriers, as proposed in the ill-considered "compromise path" suggested in its comments.[41] This path would afford rate of return carriers a revenue neutral mechanism, while price cap carriers' recovery would be limited to a $150 million ARM that would be eliminated after five years. The impact of this

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[35] *Id.* at 15.

[36] Frontier Comments at 9 (citing "problems of areas served with low customer densities and networks with long transport routes that are dependent on the tandem of others").

[37] *Id.* at 9.

[38] Cincinnati Bell Comments at iv.

[39] *Id.* at 2-3.

[40] Indeed, many parties – both proponents and opponents of an ARM for mid-sized carriers – agree that price cap and rate of return carriers should be treated the same for cost recovery purposes. *See, e.g.*, Mercatus Center Public Interest Comment on Intercarrier Compensation and Universal Service at 10 (arguing that all mid-sized carriers should be subject to a single mechanism and that mechanism should not consider non-regulated revenues/costs in its determination of whether an ARM is warranted).

proposal would be disastrous for mid-sized price cap carriers and their customers.[42] The ARM recommended would not provide the financial stability needed to continue investing in the network. This temporary support would have a negative impact on rural consumers and further broadband deployment – contrary to the very principles Free Press endorses.[43]

IV. AFFORDABILITY CONCERNS ARE BETTER ADDRESSED WITH A RATE BENCHMARK, RATHER THAN UNDUE CONSTRAINTS ON SUBSCRIBER LINE CHARGES.

Many parties offer general support for using SLC increases as the first source of funding recovery of intercarrier compensation reductions.[44] Specifically Windstream supports the proposal to increase SLCs by $1.50 for residential and single line businesses and by $2.30 for multi-line businesses.[45] Although competition restrains full recovery of permitted SLC increases in many circumstances,[46] allowing carriers to increase SLCs in this manner would give them the opportunity to recover at least some of their reduced intercarrier compensation through increases to their end user rates.

To the extent there is opposition to SLC increases, much of this opposition is focused on affordability and comparability of consumer rates. For example, Free Press

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[41] Comments of Free Press ("Free Press Comments") at 16.

[42] *Id.* at 17.

[43] *See id.* at 5 (arguing the Commission should "rationalize its regulatory structure in a manner that protects consumers and fosters the universal deployment of affordable advanced information and telecommunications technologies"). Free Press also recommends that the Commission "consider phasing out all IAS support." Free Press Comments at 17. Only price cap carriers receive IAS support, thus adopting this recommendation would only exacerbate problems created by the proposed order.

[44] *See, e.g.*, CenturyTel Comments at 23; Embarq Comments at 7; Frontier Comments at 6; ITTA Comments at 9; NECA Comments at 6; Qwest Comments at 5-9; TW Telecom et al. Comments at 9; USTelecom Comments at 7.

[45] *See Core Remand Order*, App. A at ¶ 298, App. C. at ¶ 293 (proposing these SLC increases).

[46] Rate increases are restrained by competition, because consumers will leave carriers if their services are not competitively priced.

voices concerns that SLC increases would "unfairly burden local ratepayers."[47] Some state commissions likewise worry about how consumers would be impacted by SLC increases.[48] The National Association of State Utility Consumer Advocates, joined by other consumer advocacy organizations, adds that proposed SLC increases should not allow customers in one state to replace revenue losses from another state.[49]

Reducing the level of all possible SLC increases, however, is not the best way to address these concerns regarding consumer rates. A preferable route is to use rate benchmarks.[50] As noted in proposals considered by the FNPRM, the Commission could establish a national benchmark for affordability and comparability, and then constrain SLC increases that would cause customers' rates to exceed the benchmark.[51] If a carrier would require revenue recovery in addition to increases above a SLC cap or rate benchmark, it then could look to the ARM. This benchmark could be set at $20.76, the amount that represents the national average urban residential rate as determined by the Commission,[52] or at some other reasonable level. Using such a benchmark would begin to eliminate existing, significant rate inequities between consumers of different carriers

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[47] Free Press Comments at 4. *See also* Letter from Chris Murray, Consumers Union, and Mark Cooper, Consumer Federation of America, to Kevin J. Martin, Chairman, FCC, et al., CC Docket Nos. 01-92, 96-45 (filed Oct. 27, 2008) at 1 (questioning whether a SLC increase is "fair for consumers").

[48] Comments of the Nebraska Public Service Commission ("NPSC Comments") (worrying that consumers could be "unfairly penalized" by SLC increases); Comments of the Pennsylvania Public Utility Commission at 14 (expressing concerns that SLC increases could signify a "considerable cost increase" for consumers).

[49] NASUCA et al. Comments at 20.

[50] Many commenters suggest that the Commission should consider using some form of a rate benchmark. *See, e.g.*, CenturyTel Comments at 23; Comments of CTIA—The Wireless Association at 36; NECA Comments at 6-7; NTCA Comments at 3, 10-11; USTelecom Comments at 7-8.

[51] *Core Remand Order*, App. A at ¶ 307, App. C. at ¶ 302.

[52] *See* Letter from Joshua Seidemann, Independent Telephone and Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45; WC Docket No. 05-337 (filed Oct. 20, 2008) at 2 (proposing a SLC benchmark rate that excludes taxes and fees, but includes SLCs).

and consumers in different states. Such disparities are the product of the different local rate setting policies in individual states.

Comments of the Nebraska Public Service Commission ("NPSC") provide useful elaboration on why a national rate benchmark is needed.[53] NPSC argues that "[c]onsumers should not be burdened with rate increases, particularly in states where rates are high in comparison to other states' rates."[54] As explained by NPSC, increasing SLCs without regard to a national benchmark would penalize consumers residing in states like Nebraska, which already have reduced state access with application of local rate benchmarks and state universal service funding.[55] In contrast, NPSC observes that "[c]onsumers in surrounding states" would "benefit[] from their states not taking the initiative to rebalance rates and reduce access charges consistent with the 96 Act."[56]

V. CONCLUSION

The Commission should act now to adopt fair and balanced reforms supported by Windstream. The record before the Commission provides significant reinforcement for a more measured approach to reforming intercarrier compensation and universal service. Reforms recommended by Windstream would remove implicit subsidies and tighten the link between costs and rates, without jeopardizing communications services offered in rural areas.

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[53] NPSC Comments at 8-10.

[54] *Id.* at 2.

[55] *Id.* at 9-10.

[56] *Id.* at 10.

Respectfully submitted,

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December 22, 2008

Its Attorneys

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	**WC Docket No. 05-337**
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Lifeline and Link Up	)	**WC Docket No. 03-109**
	)	
Universal Service Contribution Methodology	)	**WC Docket No. 06-122**
	)	
Implementation of the Local Competition	)	**CC Docket No. 96-98**
Provisions in the Telecommunications Act of 1996	)	
	)	
Developing a Unified Intercarrier Compensation	)	**CC Docket No. 01-92**
Regime	)	
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	**CC Docket No. 99-68**
	)	
IP-Enabled Services	)	**WC Docket No. 04-36**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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Appendix A

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	**WC Docket No. 05-337**
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Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
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	)	
Intercarrier Compensation for ISP-Bound Traffic	)	**CC Docket No. 99-68**
	)	
IP-Enabled Services	)	**WC Docket No. 04-36**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following comments in response to the request by the Federal Communications Commission ("Commission") for comment on its Further Notice of Proposed Rulemaking ("FNPRM") and three attached proposals on intercarrier compensation and universal service reform.[1]

[1] *See Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (*"Core Remand Order"*).

I. INTRODUCTION AND SUMMARY

Windstream has consistently supported fair and balanced reforms of intercarrier compensation and universal service. The current regulatory system is ailing. But "cures" under consideration in the FNPRM would seriously injure or even permanently disable some of the telecommunications carriers that are subject to this system. If adopted without revision, the proposals would produce some combination of the following consequences: Broadband expansion in rural communities served by mid-sized companies would slow substantially or cease; existing broadband deployment would be scaled back; the quality of existing voice and broadband services would be degraded; retail prices for rural consumers would increase substantially; and the pace and number of job reductions in rural communities would accelerate. The Commission, therefore, should not adopt the proposals without making the modifications described in these comments.

Windstream endorses the Commission's overarching goal of "ensuring that broadband is available to all Americans."[2] With relatively little assistance from the federal high-cost fund,[3] Windstream has aggressively deployed broadband to approximately 85 percent of its customer base.[4] Now almost one million of its three million customers subscribe to broadband – a statistic that places Windstream's

[2] *Id.* at App. A ¶ 4. If the same text is found in multiple Commission proposals, Windstream references this text by citing the applicable paragraph(s) in Appendix A.

[3] Windstream receives less than 1 percent of its total revenue from high-cost loop and model support, and less than 3 percent of its total revenues from all federal high-cost support combined.

[4] This access line statistic – like others referenced, unless indicated to the contrary – represents Windstream's ILEC access lines as of year-end 2007, excluding those recently acquired through Windstream's acquisition of CT Communications, Inc. Windstream's number of broadband-capable lines has increased significantly since September 2006, the first quarter after Windstream was formed as a result of its spin off from Alltel Corporation. Only 76 percent of Windstream's access lines were broadband-capable in September 2006.

broadband penetration ahead of its mid-sized incumbent local exchange carrier ("ILEC") peers and the Regional Bell Operating Companies ("RBOCs").[5] This performance is all the more impressive in light of the fact that Windstream, which serves primarily rural regions, operates in areas where deployment and operating costs are high and subscriber density is low.[6]

To offer service in its primarily rural service territory, Windstream must rely on private investment. Private investors enable Windstream and other mid-sized carriers to obtain debt financing, finance broadband deployment, and otherwise remain fiscally sound, so they can serve rural America. Such investors look for stability in the mid-sized carrier's financial position and the environment they operate within, including outside influences like the regulatory structure. The stability of a mid-sized carrier's business model is particularly important to the type of investors it attracts. These investors –

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Company	**Access Lines**	**Broadband Lines**	**Broadband Penetration**
AT&T	57,191,000	14,841,000	25.9%
Verizon	37,072,000	8,459,000	22.8%
Qwest	11,869,000	2,793,000	23.5%
Embarq	5,850,000	1,390,000	23.8%
Windstream	3,086,200	962,700	31.2%
Frontier	2,296,400	571,900	24.9%
CenturyTel	2,041,000	628,000	30.8%
Fairpoint	1,474,394	294,134	19.9%

Sources: Company financial reporting for 3rd Quarter 2008. Broadband penetration is the quotient of broadband lines divided by access lines.

6 With an average subscriber density of approximately 20 access lines per square mile, Windstream offers telecommunications services to approximately 3.1 million access lines across 16 states. Windstream's annual capital expenditures exceed $300 million.

which include many public employee pension funds and insurance companies[7] – are drawn to mid-sized carriers due to their historic cash flows, ability to pay dividends regularly, and consistent levels of profitability. A mid-sized carrier's stock is similar to a bond in that equity investors do not expect stock appreciation over the long term, but rather obtain their expected return primarily through receipt of dividends.[8]

The proposals considered by the FNPRM, however, demonstrate a fundamental lack of appreciation for how this capital structure brings communications infrastructure investment to rural America. The proposals take issue with the fact that mid-sized carriers "consistently are paying dividends,"[9] as if the payment of dividends somehow signals that these carriers do not need the revenues to maintain current levels of service and make new investments. This criticism does not grasp the critical role that investors of these carriers play in maintaining and bringing voice and broadband services to high-cost, rural areas, and the role that dividends play in attracting such investors. Without payment of dividends, investors would have little reason to maintain their equity investments. The mid-sized price cap carriers, in turn, would have severely diminished access to debt and equity investments needed to fund their operations, and they would need more public funds to achieve the Commission's goal of broadband ubiquity.

Furthermore, the Commission's proposal for a new interpretation of "additional costs," pursuant to the pricing standards of Section 252(d)(2), would result in an irrational assignment of carriers' switching costs. The new interpretation would require

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[7] Many investment firms also hold Windstream stock on behalf of individual investors or in income-focused mutual funds.

[8] Stock prices of mid-sized carriers, which are linked to generally flat or declining total revenues, typically would track such revenue expectations over the long term.

[9] *Core Remand Order* App. A ¶ 324.

that all common costs, including overhead costs and non-traffic sensitive costs ("joint and common costs"), to be excluded from the cost studies that determine terminating rates. Currently joint and common costs that are allocated to switching services are recovered from all users who generate switched traffic. But under the proposed regime, more switching costs would be classified as joint and common, and carriers would not be allowed to recover any of these costs from carriers using their switched network to terminate calls. Costs, therefore, would be shifted to consumers who purchase services that may not generate any switched traffic, for example, broadband Internet users. This mismatch between switching costs and consumer prices is an unjustified departure from current practice.

Reductions to intercarrier compensation rates, based on the new additional costs standard, are likewise unwarranted and would result in catastrophic revenue reductions. The Commission can find little support for its contention that uniform, near-zero intercarrier compensation rates would permit sufficient cost recovery. This conclusion is inconsistent with longstanding intercarrier compensation and universal service decisions that have reviewed switching costs in detail and determined that carriers in rural regions incur substantially different costs than carriers able to take advantage of economies of scale in urban regions. Instead of relying on this substantial record, the proposals turn to sources of the likes of Wikipedia, self-described as "the free encyclopedia that *anyone* can edit"; a *Telephony Online* interview of a then-BellSouth employee in 2006; and an unpublished presentation, which its author says adopts "perhaps over-simple cost

estimates . . . [to] derive some perhaps plausible insights about . . . the future of consumer pricing."[10]

Imposing such sharp and unjustified reductions to intercarrier compensation revenues would make it substantially more difficult for mid-sized carriers to enhance and expand their broadband networks. Windstream estimates that the Commission's intercarrier compensation reforms would reduce company revenues by hundreds of millions of dollars over the foreseeable future, with little or no ability to recoup much of these substantial losses.[11] Relatively small changes in revenues will result in disproportionately large impacts on financial stability, including substantially reduced equity values and operating cash flows, and increased cost of access to equity and debt capital.[12] For an indication of how investors would react to the proposed rate reductions, the Commission need only look at the sharp decline in Windstream's and other mid-sized carriers' stock prices after proposed reforms were announced.[13] Such a change to a mid-

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[10] *See id.* at App. A ¶ 261, n.688 (citing the Wikipedia entry "Broadband Internet Access," http://en.wikipedia.org/wiki/Broadband_Internet_access (last visited Oct. 11, 2008); Telephony Online, "OFC: BellSouth Chief Architect warns of HD VOD costs," March 7, 2006, http://telephonyonline.com/iptv/news/BellSouth_VOD_costs_030706 (last visited Oct. 11, 2008); David Clark, A Simple Cost Model for Broadband Access: What Will Video Cost?, Presentation at the Telecommunications Policy Research Conference (Sept. 28, 2008) (reporting the two prior estimates), *available at* http://tprcweb.com/files/Cost%20analysis%20TPRC.pdf).

[11] For 2008, Windstream's terminating intercarrier compensation revenues will comprise roughly six percent of its annual revenues, whereas all of its federal high-cost support will comprise less than three percent of its annual revenues.

[12] The high-fixed cost nature of a rural ILEC's business limits its ability to manage cash expenses. Letter from Michael J. Balhoff, Balhoff & Williams, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68, 96-45, WC Docket Nos. 05-337 (filed Oct. 28, 2008), 6. Consequently a "10% reduction in revenues can result in cash flow and equity declines of 40%, with the potential for equity to fall farther." *Id.* With reduced access to equity, carriers likely would be "compelled to make capital decisions that affect customers." *Id.*

[13] Between October 13, 2008, the day before the Chairman's reform proposal was announced, and October 29 Windstream's stock was down 27% – a $1.1B loss in market capitalization. By November 4, 2008, after the announcement that the Commission was not going to vote on the reform proposal, Windstream had recovered a large percentage of the decline and was only down 5% compared to October 13 or $211.0M in market capitalization. These reductions were significantly greater than the general market indexes over the same period, but similar to the declines of other mid-sized price cap carriers' stock prices.

sized carrier's intercarrier compensation revenues could trigger a mass exodus of the private investment necessary to sustain and advance operations. This risk is heightened now that the United States is experiencing one of the largest economic crises in its history.

The Commission would be unable to prevent the flight of private investors with a promise of possible, supplemental universal service support in the future, as permitted in the proposals. The proposals would allow this support only after the Commission considered all of a mid-sized carrier's revenues and found that the carrier was unable to return a "normal profit." This "opportunity" is ill-considered and likely ephemeral. It would effectively require carriers to offset their reduced intercarrier compensation with broadband revenues before they could be eligible for support. A carrier's incentive and ability to further deploy broadband in unserved areas would be significantly reduced. And by the time any Commission decision would be made (even if a carrier could meet the proposed draconian standard), a carrier already would have suffered significant losses – both in terms of short-run reductions in intercarrier revenues and liquidation of equity investment.

Damage from intercarrier compensation reforms would be exacerbated by the proposed universal service reform. Windstream and other similar carriers could not justify expenditures needed to meet the proposed broadband commitment, which would condition continued receipt of high-cost funds on ubiquitous broadband deployment. Windstream currently receives approximately $82 million in federal high-cost support, an amount that pales in comparison to the $250 to $400 million in capital costs and many millions more in annual operating costs that Windstream expects it would need to incur to

offer broadband to its approximately 450,000 customers who currently do not have access to this service.[14] Thus, Windstream would have to forgo its high-cost support, and then would be subject to the proposals' ill-defined reverse auctions regime. Significant uncertainties surrounding the reverse auction process would plague Windstream's business plans and hinder its ability to attract private investment.

To truly advance broadband adoption, the Commission, instead, should revise its approach toward intercarrier compensation and universal service reform. First, intercarrier compensation reform should be more measured. Consistent with prior incremental reductions in rates, the Commission should bring interstate, intrastate and reciprocal compensation rates to interstate CALLS target rate levels over a three-year period, and in years four and five further reduce this rate to the lowest CALLS rate of $0.0055. Reform should allow impacted carriers to recover associated revenue losses to a significant degree through subscriber line increases and support from an Alternative Recovery Mechanism. Coupled with measures to address phantom traffic and clarify compensation applicable to interconnected Voice over Internet Protocol ("VoIP") providers, this approach toward reform would help rationalize the intercarrier compensation system, without seriously jeopardizing private investment in mid-sized price cap carriers. The Commission also should proceed with a thorough review of the "additional costs" standard. Any new standard, if the Commission concludes one is needed, should allow adequate recovery of joint and common costs from all switched traffic.

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[14] Comments of Windstream Communications, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 13-14 (filed Apr. 17, 2008) ("Windstream USF Comments") (this capital expense projection is based upon offering broadband at speeds ranging from 768 Kbps to 1.5 Mbps).

Second, reform of the high-cost mechanism should focus on retargeting funds so that they are narrowly tailored to granular, high-cost areas most in need of support. As Windstream previously has explained,[15] the Commission's current high-cost program provides too much support to some ILECs and not enough to others, all without an objective way to assure service is affordable to consumers. But if these deficiencies are corrected, many high-cost areas that are currently uneconomic to serve would receive additional funding that would enable providers to shorten loops and perform other upgrades to dual-use plant. This funding would help justify business plans for expansion of broadband networks in high-cost areas. Collecting universal service support on a numbers basis would further rationalize the high-cost system.

Third, the Commission can boost broadband adoption in rural areas by adopting a Lifeline/Link Up Pilot Program that gives rural consumers a meaningful opportunity to receive broadband discounts. Under the proposed Pilot Program, Windstream and many other broadband providers in rural areas would not be able to participate, due to the requirement that participating providers offer broadband to all customers in their service territories. But if the eligibility criteria and distribution mechanism were modified, Lifeline and Link Up funds could provide a meaningful response to Section 254(b)(2)'s instruction that universal service funds help provide "[a]ccess to advanced telecommunications and information services . . . in all regions of the Nation."[16]

II. THE COMMISSION SHOULD ADOPT FAIR AND BALANCED INTERCARRIER COMPENSATION REFORMS THAT ADDRESS THE AREAS WHERE COMMISSIONERS HAVE IDENTIFIED A "GROWING MEASURE OF CONSENSUS."

[15] *See id.* at 4-11, 25-27 (describing these deficiencies).

[16] 47 U.S.C. § 254(b)(2).

The Commission's intercarrier compensation reforms should focus on areas where Federal Communications Commissioners have identified a "growing measure of consensus."[17] Such areas, specifically, include the following: (1) moving intrastate access rates to interstate access levels over a reasonable period of time; (2) implementing an Alternative Recovery Mechanism in certain circumstances; (3) not unduly burdening consumers with increases in their rates untethered to reductions in access charges; and (4) addressing phantom traffic and traffic stimulation.[18] The Commissioners also asked for input on how to define the additional costs standard utilized under Section 252(d)(2) of the Communications Act of 1934, as amended ("the Act")[19] and how to set the terminating rate for Section 251(b)(5) traffic. Constructive action on each of these issue areas is critical to ensuring the success of any plan to comprehensively reform intercarrier compensation.

Specifically Windstream recommends a series of concurrent, interrelated modifications that would ensure that intercarrier compensation reforms are more fair and balanced than any of the proposals being considered in the FNPRM. First, Windstream supports moving all of a carrier's rates to its interstate CALLS target rates by study area and then to the lowest CALLS rate of $0.0055, so long as the Commission provides for a reasonable opportunity for and appropriate level of recovery of intercarrier compensation revenue reductions, as well as reasonable time for this transition to occur. Second, any additional intercarrier compensation reforms under consideration should be subject to further, much needed review. Third, Windstream urges the Commission to adopt

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[17] Separate Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate, and Robert M. McDowell, *Core Remand Order*.

[18] *Id.*

Sprint

measures that will curb phantom traffic. Finally, Windstream asks the Commission to clarify that interconnected VoIP providers are responsible for compensating circuit switched network providers for the use of their networks at the appropriate access rates. These recommendations are described below and in detail in an ex parte filed by Windstream on October 28, 2008,[20] attached to these comments as Appendix A.

Windstream's desire for a fair and balanced approach to reform is not narrowly limited to its own proposal. Windstream also supports other comparable frameworks designed to achieve the same result. For instance, concurrent with this filing, Independent Telephone and Telecommunications Alliance ("ITTA") and USTelecom propose thoughtful and reasonable modifications to the proposals under consideration in the FNPRM. The Commission should look closely at these recommended modifications and act now to adopt an order that reforms intercarrier compensation and universal service within the bounds of the similar frameworks suggested by the largely overlapping proposals filed by Windstream, ITTA, and USTelecom.

A. The Commission Should Transition Intrastate Access Rates to Interstate Levels Over a Reasonable Period of Time.

Windstream recommends that the Commission reasonably transition intrastate access rates to interstate levels. This measure would eliminate substantial arbitrage based upon disparities between interstate and intrastate access rates. With a reasonable transition period, it also would provide stability to broadband providers seeking to construct business plans for further development of their high-speed networks.

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[19] 47 U.S.C. § 151 *et seq*.

[20] Letter from Eric N. Einhorn, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 06-122, 99-68, 08-152, 07-135 (filed Oct. 28, 2008).

1. Windstream's Recommendations for Rate Reductions Are Consistent with the Trajectory Established by CALLS and MAG.

In the past, the Commission has moved forward with intercarrier compensation reform with deliberate and prudent steps to ensure progress while not derailing carriers' ability to serve consumers. The CALLS proceeding is an apt model for further intercarrier compensation reform.[21] Prudently, the Commission recognized in the *CALLS Order* that "one stroke of the sword" could not undo the "Gordian knot" of determining the appropriate level of access charges and converting implicit subsidies in those access charges into an explicit and sufficient Alternative Recovery Mechanism.[22] The *Order*, instead, adopted several steps over a five-year period that moved "toward the Commission's goals of using competition to bring about cost-based rates, and removing implicit subsidies without jeopardizing universal service."[23] The Commission found that this approach was "preferable and more reasonable . . . , even if incomplete, than to remain frozen with indecision because a perfect, ultimate solution remains outside our grasp."[24]

Following the trajectory established in the *CALLS Order* and the subsequent *MAG Order*, the Commission should adopt further intercarrier compensation reform that, again over a five-year period, will provide "stability during its term" and address several issues that have served as major obstacles to intercarrier compensation and universal service

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[21] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45; 15 FCC Rcd 12962 (rel. May 31, 2000) ("*CALLS Order*") (reforming interstate access rates for price cap ILECs).

[22] *Id.* at ¶ 26.

[23] *Id.* at ¶ 36.

[24] *Id.* at ¶ 27.

reform.[25] Specifically, the Commission should require each carrier, on a study area basis, to reduce reciprocal compensation and intrastate access rates to their respective CALLS target levels by study area in measured increments over a three-year period. Then, by the fifth year, all terminating access rates for price cap carriers would be reduced to $.0055, the lowest CALLS target pursuant to Section 61.3(qq)(1). Specific details regarding each year of the proposed transition are provided in the ex parte Windstream filed on October 28, 2008, which is attached to these comments as Appendix A.

This proposed plan for intercarrier compensation reform, like prior Commission actions, would create a more rational rate structure that, in turn, "will support more efficient competition, more certainty for the industry, and permit more rational investment decisions."[26] Windstream's recommended intercarrier compensation reforms are measured, but significant. The Commission would tackle the most egregious problem first: arbitrage based upon disparities between interstate and intrastate access rates. Often the differential between these rates is significant. The Missoula Plan documented that the average access rates for small ILECs were $0.051 for intrastate traffic and $0.018 for interstate traffic, whereas the average rates for large ILECs were $0.025 for intrastate

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[25] *Id.* at ¶ 35. *See also Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Report and Order, 16 FCC Rcd 19613 (2001) ("*MAG Order*") (extending interstate access reform to rate of return carriers), *recon. in part, Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, First Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635 (2002), *amended on recon., Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003).

[26] *CALLS Order* at ¶ 1.

traffic and $0.006 for interstate traffic.[27] Such disparities in rates tempt bad actors to mask intrastate traffic as interstate. But if Windstream's recommendations are adopted, arbitrage based on these rate disparities will be altogether eliminated. Moreover, where reciprocal compensation rate levels are higher than interstate rate levels, as is the case for Windstream and many other mid-sized price-cap carriers, rates would be fully unified at the interstate level.

2. The Commission Has Authority to Unify Interstate and Intrastate Access Rates as Proposed by Windstream.

Based on its own interpretations of the Act, the Commission retains authority to adopt the rate modifications Windstream proposes here.[28] Windstream's recommendations, whether traffic is subject to Section 251(g) or Section 251(b)(5), would not preclude the Commission from implementing further reductions in access rates, or from adopting another interpretation of additional costs at some point in the future. Findings in the *Core Remand Order* reaffirm the Commission's authority and discretion in this context.

Consistent with the legal framework adopted in the *Core Remand Order*, compensation for the transport and termination of traffic either is subject to

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[27] Oregon Public Utility Commissioner Ray Baum, USF Reform and ICC Reform: Together Again? The Basics, Address Before the Summer Meeting at the National Association of Regulatory Utility Commissions, slide 23 (July 22, 2008), PowerPoint slides *available at* http://www.narucmeetings.org/Presentations/Baum%20NARUC%20July%2022%202008_071508%20FINAL.ppt.

[28] In these Comments, Windstream does not challenge but takes as given the Commission's previous legal interpretations, particularly as detailed in the recent *Core Remand Order*. Windstream notes, however, that other jurisdictional bases for comprehensive intercarrier compensation reform have been offered in this proceeding. *See, e.g.*, Letter from Melissa E. Newman, Qwest Communications International, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 05-337, 04-36, 06-122, 05-195 (filed Oct. 7, 2008); Letter from Donna Epps, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, WC Docket Nos. 04-36, 06-122 (filed Sept. 19, 2008).

Section 251(g), or it is subject to Section 251(b)(5).[29] Section 251(g) preserves ILEC obligations for exchange access that predated the 1996 Act "under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission."[30] As the Commission has noted in its proposals, this statutory provision can be read to preserve both "the interstate access regime the Commission had prescribed for all carriers *and* the intrastate access regime the Bell Operating Companies had agreed to in the Modified Final Judgment."[31]

Under this interpretation, the Commission would have wide latitude to set rates for traffic governed by section 251(g), including intrastate traffic, and thereby adopt the access rate reforms proposed by Windstream.[32] This conclusion is bolstered by the D.C.

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[29] *See Core Remand Order* ¶ 16 (agreeing "with the finding . . . that traffic encompassed by section 251(g) is excluded from section 251(b)(5) except to the extent that the Commission acts to bring that traffic within its scope"); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶¶ 31-34 (rel. Apr. 27, 2001).

[30] *See* 47 U.S.C. § 251(g) (emphasis added).

[31] *Core Remand Order* App. A ¶ 232, n.615. Section 251(g) authority to regulate interstate rates is especially clear. *See CompTel v. FCC*, 117 F.3d 1068, 1072-73 (8th Cir. 1997); *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 324-25 (5th Cir. 2001). These charges unquestionably constitute pre-1996 Act obligations within the meaning of Section 251(g), and even the court in *WorldCom* assumed the Commission could rely on Section 251(g) to modify (as opposed to merely preserve) carriers' pre-Act obligations. *See WorldCom v. FCC*, 288 F.3d 429, 433 (D.C. Cir. 2002) ("We will assume without deciding that under Section 251(g) the Commission might *modify* LEC's pre-Act 'restrictions' or 'obligations,' pending full implementation of relevant sections of the Act.") (emphasis in original). *See also CompTel v. FCC*, 117 F.3d 1068, 1072 (8th Cir. 1997) (finding that Section 251(g) "plainly preserves certain rate regimes already in place"). Further, it is well established that Section 201 grants the Commission authority to ensure that rates for *interstate* services are "just and reasonable." *See, e.g., U.S. v. Western Elec. Co. Inc.*, 531 F.Supp. 894 (D.N.J. 1981); *see also* Letter from Gary L. Phillips, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-98, 99-68, at 2 (filed May 9, 2008) (noting that prior to the enactment of the 1996 Act, the Commission established the compensation rules collectively known as the "ESP exemption" by relying on its Section 201 authority). Congress's intention to preserve this authority is codified by Section 251(i). 47 U.S.C. § 251(i).

[32] *See Petition of Core Communications, Inc. for Forbearance From Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, Memorandum Opinion and Order, 22 FCC Rcd 14118, ¶ 14 (rel. Jul. 26, 2007) (finding that "enforcement of the rate regulation preserved by section 251(g) and its related implementing rules remains necessary to ensure that intercarrier charges and practices are just and reasonable and not unreasonably discriminatory").

Circuit's prior conclusion that the Commission may take action to end the access charge regimes ushered in by that provision.[33] The Commission has reasoned in its proposals that "inherent within the [Commission's] power to supersede the grandfathered access regime is the lesser power to prescribe regulations that determine *how* to transition to a cost-based pricing mechanism."[34]

Even if the Commission concludes that certain categories of traffic are not currently subject to Section 251(g), however, the Commission could set rates for those categories pursuant to Section 251(b)(5). The Commission's reading of the Act in the *Core Remand Order* means that Section 251(b)(5) can apply to both *interstate and intrastate* access rates.[35] The *Order* interpreted Section 251(b)(5) to encompass all forms of telecommunications traffic, regardless of whether that traffic is considered to be "local" or "long distance" in nature.[36] The Commission's examination of Section 251(b)(5), which imposes on local exchange carriers the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications,"[37] found that this provision does not include limitations based on geography (i.e., "local," "intrastate," or "interstate") or the particular service offered.[38] The Commission added

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[33] *See WorldCom, Inc. v. FCC*, 288 F.3d 429, 431 (D.C. Cir. 2002) (finding that section 251(g) is a transitional device "until such time as the Commission should adopt new rules according to the Act").

[34] *Core Remand Order* App. A ¶ 232 (emphasis in original).

[35] In the *Core Remand Order,* the Commission conceded that there may be more than one plausible interpretation of Section 251(b)(5), but under its view including "all telecommunications" within the potential scope of Section 251(b)(5) constituted "the better reading" of the Act. *See Core Remand Order* ¶ 15. Although the D.C. Circuit's *WorldCom* decision rejected the view that Section 251(g) constitutes a "limitation" on Section 251(b)(5) with respect to ISP-bound traffic, the court did not question the Commission's express finding that Section 251(b)(5) applies to *all* telecommunications traffic.

[36] *Core Remand Order* ¶ 13, n.49.

[37] 47 U.S.C. § 251(b)(5).

[38] *Core Remand Order* ¶ 8.

that Congress had the option of proscribing categories of traffic from the reach of Section 251(b)(5), but elected not to do so.[39]

Because of this applicability to intrastate (as well as interstate) traffic, the Commission retains authority to adopt Windstream's proposed reforms when traffic falls under Section 251(b)(5), rather than Section 251(g). The Act authorizes the Commission to prescribe rules and regulations "as may be necessary in the public interest to carry out the provisions of this Act."[40] As the Supreme Court made clear in *AT&T v. Iowa Utilities Board*, this rulemaking authority is not limited to jurisdictionally interstate matters covered by Section 201, but extends to *all* provisions in the Act, including the provisions that once fell within the exclusive jurisdiction of the states prior to 1996.[41] Thus, the Commission may adopt rules implementing Section 251(b)(5) for interstate *and* intrastate traffic. Moreover, the Commission may adopt rules that affect how state commissions establish the prices that carriers pay each other pursuant to Section 252(d)(2), which details the pricing standards for traffic covered by Section 251(b)(5).[42]

B. To Ensure Carriers Have a Meaningful Opportunity to Recover Intercarrier Revenue Reductions, the Commission Must Provide an Alternative Compensation Recovery Mechanism and Permit Carriers to Increase Subscriber Line Charges.

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[39] *Id.*

[40] 47 U.S.C. § 201(b).

[41] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378-86 (1999).

[42] 47 U.S.C. § 252(d)(2). Under the *Core Remand Order*'s legal framework for ISP-bound traffic, interstate traffic subject to Section 251(b)(5) also is subject to the Commission's Section 201 authority. The Commission explained that Section 251(i) retains the Commission's preexisting, independent authority over interstate matters despite the existence of a "parallel" federal/state jurisdictional arrangement under sections 251 and 252 of the Act. *Core Remand Order* ¶ 18. Thus, despite acknowledging that ISP-bound traffic is Section 251(b)(5) traffic, the Commission concluded that it could separately regulate and set rates for that traffic under its Section 201 authority. *Id.* ¶ 21. The Commission stated that its independent Section 201 authority includes the power "to regulate intercarrier compensation with respect to interstate access services, rates charged by CMRS providers, and other traffic . . . such as ISP-bound traffic." *Id.* ¶ 17.

As described above, the Commission has long held the goal of removing implicit support contained in intercarrier charges and moving such charges toward economically efficient levels.[43] In taking steps toward this goal, the Commission, where it has removed implicit support, has replaced it with explicit support.[44] The Commission has recognized that creating an Alternative Recovery Mechanism is critical to carriers' ability to offer services in higher cost areas that are reasonably comparable to those offered in lower cost areas.[45] For example, the *CALLS Order* found that creating a new Interstate Access Support mechanism was needed to satisfy the "dual goals of providing explicit and sufficient universal service support while promoting local competition."[46]

There is no rational basis for breaking from the Commission's past practice of establishing Alternative Recovery Mechanisms when it reduces carrier revenues as a result of intercarrier compensation reform. The intercarrier compensation reforms proposed today, like those previously enacted, "could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations."[47] Indeed, the proposals under consideration by the Commission could result in unprecedented reductions in mid-sized carriers' intercarrier compensation revenues.

Any significant reduction in intercarrier compensation revenues, therefore, must be offset in significant part by a meaningful Alternative Recovery Mechanism. A wide

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[43] *See, e.g., Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, ¶ 44 (rel. May 16, 1997) ("*Access Charge Order*") (declaring that the Commission has the "goal of removing implicit universal service subsidies from interstate access charges and moving such charges toward economically efficient levels").

[44] *See CALLS Order* ¶ 3 (replacing implicit support with explicit support); *MAG Order* ¶ 8 (same).

[45] *See CALLS Order* ¶ 201; *MAG Order* ¶ 128.

[46] *CALLS Order* ¶ 192. *See also id.* at 195 (establishing an explicit interstate universal service support mechanism).

[47] *Access Charge Order* at ¶ 46.

array of parties support the need for such a mechanism.[48] Consistent with these parties, Windstream urges the Commission to provide mid-sized price cap carriers access to a mechanism for reasonable recovery of lost intercarrier compensation revenues. This recovery mechanism, described in detail in Appendix A, would *not* make Windstream and other similarly situated carriers whole as compared to their position under the current intercarrier compensation regime.[49]

Any ability to recover intercarrier compensation revenues would be offset first by proposed subscriber line charge ("SLC") increases (i.e., $1.50 for residential and single line business and $2.30 for multi-line business). SLCs should be imputed when calculating support available under the recovery mechanism. Designing the mechanism in this manner would provide appropriate continuation of universal service support, while

[48] *See, e.g.,* Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (urging the Commission to "establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out"); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that "should be available to all carriers of last resort, regardless of company size, structure or regulatory classification"); Letter from Walter McCormick, USTelecom, President, to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (Oct. 10, 2008), at 5, 7, 8 (declaring that "establishment of a credible and compensatory ARM is an essential element of comprehensive intercarrier compensation reform"); Letter from Curt Stamp, ITTA, President, to Secretary Dortch, Secretary, FCC, CC Docket No 01-92 (Sept. 19, 2008), at 5 (recommending that mid-sized carriers be able to use an Alternative Recovery Mechanism); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) (proposing a plan that included a recovery mechanism, which could be used by mid-sized carriers) ("Missoula Plan Ex Parte Letter").

[49] There are several reasons why this recovery mechanism would not make Windstream whole. First, Windstream's interstate access rate reductions to its target CALLS rates resulting from its conversion to price cap regulation would not be recovered via the intercarrier compensation replacement mechanism. Windstream is required to reduce its interstate access rates to its CALLS targets, but under this proposal the transition to the lower rate would be accomplished in three years, rather than the longer transition provided under the CALLS rules. Second, only 50 percent of the revenue reduction resulting from interstate, intrastate, and reciprocal compensation rate reductions from $.0065 to $.0055 would be recovered through the replacement mechanism. Third, the increased subscriber line charges would not be fully recovered, as rate increases are restrained by competition.

not unduly burdening consumers with rate increases untethered to access charge reductions.

In contrast, failure to adopt such an Alternative Recovery Mechanism would be contrary to Section 254 of the Act. Without a meaningful opportunity for recovery, mid-sized price cap carriers seeking to maintain their current operations would have to ask their customers in lower cost areas to pay increased rates in order to implicitly subsidize delivery of comparable, affordable telecommunications services to customers residing in high cost areas. *Effectively this approach means the Commission merely would replace one form of implicit universal service support with another form of implicit universal service support.* Such a measure would be in direct contravention of the Congressional directive that universal service support "should be explicit and sufficient to achieve the purposes" of Section 254, which includes the purpose that all Americans should have access to telecommunications services at affordable and reasonably comparable rates.[50]

C. Further Comment and Review Is Needed Before the Commission Modifies the Longstanding Additional Costs Standard.

In their separate statement, the four Commissioners specifically sought input on how to define the additional costs standard utilized under Section 252(d)(2) of the Act and how to set the terminating rate for Section 251(b)(5) traffic. As described below in Section III.A, there are a number of significant issues with the new "additional cost" standard and the uniform, near zero terminating rates proposed in Attachment A and C. The short comment period and even shorter reply period do not allow parties to consider and comment on all such issues. The Commission also lacks sufficient time to consider

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[50] 47 U.S.C. § 254(e).

any record that could be developed even if parties were afforded more time to comment on the additional costs standard.

Given these practical difficulties, Windstream again urges the Commission to seek additional comment on what steps to take following the reduction of intrastate, interstate, and reciprocal compensation rates to the lowest CALLS interstate rate level over five years. Specifically, Windstream suggests that the Commission explore, among other items: whether to establish one unitary rate for all intercarrier compensation; unified rates by carrier, state, or track; the methodology for setting rates and establishing "additional cost" under Section 252(d)(2); and the proper role of state commissions, the Federal-State Separations and Universal Service Joint Boards, and the Federal-State Joint Conference on Advanced Telecommunications Services. This recommendation is consistent with the questions and tentative consensus described in the Separate Statement and would allow for a meaningful opportunity for comment by the public and consideration by the Commission. Moreover, seeking additional comment will not unduly delay the Commission from further action if warranted and supported, given it will take a matter of years to move beyond even the first step included in the proposals put out for comment by the Commission.

D. To Enable Proper Billing, the Commission Should Adopt Reforms That Specifically Address Phantom Traffic.

Windstream largely supports the phantom traffic reform measures proposed by the Commission. Proposed phantom traffic reforms are generally consistent with those included in USTelecom's phantom traffic proposal, which Windstream and a majority of

the wireline telecommunications industry support.[51] Like the USTelecom recommendations, the Commission's proposed reforms, among other items, would implement call signaling rules to prohibit stripping or altering information in the SS7 call signaling stream[52] and clarify that the prohibition on altering or stripping signaling information applies to the charge number as well as the calling party number.[53] In addition, the proposed rules would establish payment obligations for service providers that fail to provide the required call detail information.[54] These reforms would help ensure the proper labeling of traffic so carriers can appropriately bill for carrying it.

Windstream, however, recommends two modifications to the phantom traffic measures under consideration by the Commission. First, Windstream, consistent with the USTelecom proposal, asks the Commission to extend the *T-Mobile* decision to negotiations between ILECs and competitive local exchange carriers ("CLECs").[55] This extension would provide ILECs with the right to engage competitive local exchange carriers in negotiations and, if necessary, arbitration for agreements that would establish intercarrier compensation rates, terms, and conditions.[56] Second, Windstream, also like the USTelecom proposal, requests that the Commission require carriers to perform local number portability queries.[57] These modifications would help ensure that originating and intermediate carriers deliver traffic to the correct terminating carriers, making it possible

[51] Letter from Glenn Reynolds, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008), Attachment ("USTelecom Phantom Traffic Proposal").

[52] *Core Remand Order* App. A ¶ 331.

[53] *Id.* at App. A ¶ 333.

[54] *Id.* at ¶ 329.

[55] USTelecom Phantom Traffic Proposal.

[56] Extension of *T-Mobile* is particularly warranted for ILECs that receive traffic from CLECs indirectly through an unaffiliated tandem switch.

[57] USTelecom Phantom Traffic Proposal.

for ILECs to negotiate agreements with all carriers terminating traffic on their networks, and reduce the amount of improperly billed traffic.

E. The Commission Should Clarify That Compensation is Due for IP/PSTN Traffic.

Windstream strongly urges the Commission to clarify that compensation for IP/PSTN traffic should flow immediately. Requiring compensation for this traffic is critical to achieving the Commission's goal of minimizing arbitrage. As the Commission itself has emphasized, "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network or on a cable network."[58]

Failure to require compensation for IP/PSTN traffic would be contrary to the Commission's desire for a more economically rational intercarrier compensation scheme. Moreover, deferring clarification that compensation is due for IP/PSTN traffic would only introduce further complications, as this traffic is likely to continue growing dramatically. Risks of arbitrage would significantly expand in upcoming years – likely to the particular detriment of consumers and carriers in high cost, rural areas.[59]

In addressing whether compensation is due for IP/PSTN traffic, the Commission need not reach the question of whether IP/PSTN service should be classified as an "information service" or a "telecommunications service." Under the Commission's own

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[58] *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, ¶ 33 (rel. Mar. 10, 2004) (*"IP-Enabled Services NPRM"*).

[59] *See, e.g.*, Tom Burton, "Twenty Percent Annual Growth for VoIP," FierceVoIP (Feb. 25, 2008) (citing the Telecommunications Industry Association's 2008 *Market Review and Forecast*, which predicts that the domestic residential VoIP market will grow at a compounded annual rate of twenty percent over the next four years). *See also* Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) ("Windstream Softswitch Ex Parte") (explaining why rural areas are unlikely to see the same level of VoIP deployment as urban areas).

reading of the Act, Section 251(b)(5) applies to the "transport and termination of telecommunications," which would seem to cover both telecommunications offered to the public for a fee (*i.e.*, "telecommunications services") and "telecommunications" itself.[60] Moreover, past Commission decisions demonstrate that the agency could rely on its ancillary authority to impose Title II obligations on IP/PSTN services, without making a decision as to the statutory classification of these services.[61]

III. INTERCARRIER COMPENSATION REFORMS INCLUDED IN THE COMMISSION'S PROPOSALS WOULD JEOPARADIZE COMMUNICATIONS SERVICES OFFERED BY MID-SIZED PRICE CAP CARRIERS.

The intercarrier compensation reforms considered by the FNPRM would undermine the ability of mid-sized price cap carriers to offer quality, affordable communications services in rural areas. The proposal to replace the existing incremental cost definition with another is both unwarranted and ill-considered. It has troubling legal and public policy implications. Mid-sized price cap carriers, subject to this new standard, would struggle to maintain current operations, let alone deploy further broadband networks. Without an adequate mechanism to recover lost revenues, mid-sized carriers and their rural customers would suffer the full weight of these ill-considered reforms.

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[60] *See* 47 U.S.C. §§ 153(43) & (46). *See also Core Remand Order* App. A ¶ 218 n.564 (noting that "information services, by definition, are provided 'via telecommunications,' enabling [the Commission] to bring IP/PSTN traffic within the section 251(b)(5) framework."). Thus, by this same reasoning Section 251(b)(5) applies to IP/PSTN services regardless of whether these services are classified as telecommunications services or information services.

[61] The Commission has used its ancillary authority to impose Title II obligations on "interconnected VoIP" in multiple instances. *See IP-Enabled Services NPRM; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 24 (rel. Jun. 3, 2005) (requiring interconnected VoIP providers to supply 911 capabilities for services that utilize the PSTN); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶¶ 38-49 (rel. June 27, 2006) (establishing universal service contribution requirements for interconnected VoIP providers); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, ¶¶ 54-59 (rel. Apr. 2, 2007) (extending the application of CPNI rules to interconnected VoIP providers).

A. The Proposed Additional Costs Standard Produces an Irrational Assignment of Switching Costs.

The Commission's proposal for a new interpretation of "additional costs," pursuant to the pricing standards of Section 252(d)(2), would significantly change how costs for terminating traffic are calculated. Use of the proposed additional costs standard would result in an irrational assignment of switching costs. Currently joint and common switching costs are recovered from all users who generate switched traffic. But under the proposed regime, the vast majority of switching costs would be classified as joint and common, and these costs would not be allocated to carriers using the switched network to terminate traffic. The newly enlarged pool of joint and common costs would only be recovered from a subset of users who generate switched traffic (i.e., originating customers and the carrier's own local customers). Also other consumers – who may generate little or no switched traffic – would have to assume responsibility for some of the joint and common costs previously allocated to switching services. This mismatch between switching costs and consumer prices is unjustified and would distort competition among communications providers.

Any new additional costs standard should recognize that different carriers incur different degrees of switching costs. Switching costs per minute are much greater in rural areas, where switching facilities support fewer calls than switching facilities in urban areas. The Commission has a longstanding practice of recognizing cost differences in the context of not only intercarrier compensation, but also in the context of universal service

support.[62] Failure to continue recognizing this distinction would be contrary to economic reality and would constitute an unjustifiable departure from agency precedent.

There will continue to be significant cost differences between rural and urban carriers, even if all such carriers deploy soft-switches throughout their networks. The Commission's proposals attempt to discount agency precedent with the assertion that modern circuit and soft switches will impose little or no costs under the proposed standard.[63] The proposals assert that modern softswitches are "non-blocking, which would suggest that the incremental cost of termination is zero" and that "softswitches are easily scalable, and thus the incremental cost of termination does not vary with the number of lines the switch serves."[64] But as discussed in more detail below, the incremental cost of termination is near zero under the proposed additional costs standard not due to the degree of blocking or scalability of a type of switch, but instead due to the fact that the proposed standard classifies a much greater proportion of switching-related costs as joint and common and then excludes these costs from the calculation of additional cost.[65]

1. The Proposed Additional Costs Standard Would Skew How Costs are Assigned by Only Requiring a Subset of Switched

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[62] *See, e.g.*, 47 CFR 54.301(a) and *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 212 (rel. May 8, 1997) (establishing local switching support in recognition that carriers serving rural areas must incur higher switching costs to provide voice service to an individual customer); *CALLS Order* ¶ 162 (recognizing differences between urban and rural price cap ILECs when establishing different interstate average traffic sensitive charges for different classes of carriers). *See also* C. A. Bush et al., Computer Modeling of the Local Telephone Network, App. B, 39 (Oct. 1999) *available at* http://www.fcc.gov/wcb/tapd/hcpm/welcome.html (describing how the forward-looking universal service cost methodology responds to differences in switching costs incurred by carriers of different sizes).

[63] *See e.g., Core Remand Order* App. C ¶¶ 250, 252 & 269.

[64] *Id.* at App. C ¶¶ 250, 269.

[65] For this reason, these comments focus on proposed changes to how joint and common costs are categorized and assigned. But for an additional review of why it is altogether inappropriate to consider use of softswitches, see Windstream Softswitch Ex Parte (indicating that for now and the foreseeable future it would be inefficient to use softswitches in rural areas).

Traffic to Pay for Costs that Are Joint and Common to All Switched Traffic.

The fact that the ILEC network is largely in place does not mean that it has been fully paid for. Recovery of switching costs has always been part of the rate setting principles in telecommunications, and the recovery of switching investment and associated direct expenses has traditionally been included in the cost of all switched minutes (intrastate, interstate, and local) over the useful life of the switch. The Commission consistently has regulated setting of depreciation rates and lives through the depreciation standards in Section 43.43 of the Commission's rules.[66]

The Commission's revised additional costs standard, however, would radically change how carriers recover their switching costs. Although both standards are based on incremental cost, the revised additional costs standard is different from the existing standard in two key respects. First, the revised standard classifies more costs as "joint and common." The standard in the proposals would include switching investment and associated direct expenses in the pool of joint and common costs, whereas today the Commission would not.[67] Second, the revised additional costs standard would preclude carriers from recovering switching investment and other joint and common costs from terminating traffic.[68] Together these changes would significantly reduce the degree to which switching costs can be recovered from terminating traffic. Terminating rates, to the extent they were based on the proposed additional costs standard, would drop to levels at or near zero.

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[66] 47 C.F.R. § 43.43.

[67] *Core Remand Order* App. A ¶ 271.

[68] *Id.* at App. A ¶ 273.

These revisions to the additional costs standard are contrary to the very goals set forth in the Commission proposals. The proposals are premised on the notion that "a minute is a minute" for the purposes of generating costs.[69] Yet for setting prices, applying the revised additional costs standard will mean that some users generating switched minutes will pay for joint and common switching costs, while other users generating switched minutes will not. Now the only switched traffic required to bear joint and common costs will be originating access calls or local calls that stay on a single carrier's networks (i.e., switched traffic not subject to Section 251(b)(5)). Alternative carriers will benefit from being able to interconnect with other networks,[70] but will not be responsible for a reasonable amount of the expanded pool of joint and common costs incurred to provide this benefit.

2. Under the Proposals, Carriers Subject to the New Additional Costs Standard Would Be Forced to Recover Some of Their Switching Costs from Customers Purchasing Broadband and Other Services That Do Not Even Use Switches.

Imposing the revised additional costs standard gives rise to an important question: If users generating terminating access traffic are no longer responsible for their former share of switched investment, direct switching expense, and joint and common switching costs, who is? These costs must be recovered from some source. Basic economic theory dictates that companies like telecommunications carriers must set prices above marginal

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[69] Different rates for the same function violate the Commission's goal requiring similar rates for like traffic. *See id.* at App. A ¶ 178 (criticizing instances where "arbitrage in the marketplace" occurs "because of the different rates for similar functions").

[70] As the draft order notes in a different context, each carrier benefits from another's network, because each network connects end users that may make or receive calls from other networks. *Id.* at ¶ 109.

costs: "If marginal cost is less than the average total cost per unit, and prices are set at the former level, total revenues will be less than total costs."[71]

To some degree carriers may seek to recover joint and common costs previously recouped through terminating access rates from switched traffic not subject to Section 251(b)(5) pricing regulation. But carriers' ability to recover costs from this traffic would be significantly limited by statute and pricing regulations. First, Section 254(k) of the Act establishes that the Commission cannot allow "services included in the definition of universal service [to] bear . . . more than a reasonable share of the joint and common costs of facilities used to provide those services."[72] Second, federal and state pricing regulations would directly restrict rates placed on originating traffic and local traffic within a single carrier's network. The Commission's proposals would prohibit any increases in originating access rates during the proposed transitional mechanism.[73] Similarly, state alternative regulation plans often either freeze local rates for a specified period of time, or limit local rates to specified price increases pursuant to a price cap formula.

To the extent Section 254(k) and pricing rules prevent full recovery of joint and common costs from non-Section 251(b)(5) traffic, carriers will have no choice but to seek recovery of remaining joint and common switching costs from services that do *not even use* switching facilities. This means broadband customers, who do not use switching services, will likely experience higher prices to help offset switching costs not recoverable from parties that use the switch. Forcing carriers, in effect, to shifting costs

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[71] 1 ALFRED E. KAHN, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS 130 (6th ed. 1995).

[72] 47 U.S.C. § 254(k).

in this manner – arising in the absence of a clear statutory directive or overriding policy interest – is irrational, unjustified, and should be avoided by the Commission.

3. Applying the Proposed Additional Costs Standard Would Result in Less, Not More, Broadband Deployment in High-Cost Areas.

The Commission, in large part, bases its decision to revise the additional costs standard on the incorrect, unsubstantiated belief that eliminating intercarrier compensation revenues will somehow clear the way for an all-IP broadband world.[74] The Commission only cites a Phoenix Center filing as justification for this belief. In that filing, the Phoenix Center constructs a model that "finds" that "in high-cost areas, the incentive of an incumbent LEC to upgrade its network to broadband service is diminished – and perhaps even outright deterred – by the current system of high, carrier-specific call termination rates."[75] It reasons that "cannibalization of existing access revenue may occur when a LEC upgrades to broadband, which accordingly facilitates the migration of its customers to VoIP and other technologies that bypass higher priced access services."[76]

The Phoenix Center filing provides dubious support for the Commission's proposals. It is unclear how its "model" can "find" anything when no numbers are inserted into its equation. Indeed, the Phoenix Center stops short from arguing the intercarrier compensation regime has *ever* caused broadband investment to be "outright

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[73] *Core Remand Order* App. A ¶ 229.

[74] *See id.* at App. A ¶ 189 (asserting that the existing intercarrier compensation regulatory regime poses "an obstacle to the transition to an all-IP broadband world").

[75] T. RANDOLPH BEARD & GEORGE S. FORD, DO HIGH CALL TERMINATION RATES DETER BROADBAND DEPLOYMENT? (Phoenix Center Policy Bulletin No. 22, Oct. 2008) 8, *available at* http://www.phoenix-center.org/PolicyBulletin/PCPB22Final.pdf.

[76] *Id.* at 3.

deterred."[77] It "impress[es] upon the reader" that its "focus in this discussion is rather narrow and directed" and its review is not sufficient for it to support proposed intercarrier compensation reforms.[78] The Phoenix Center cites no specific instance where the desire to avoid losing some intercarrier revenues would outweigh a carrier's desire to obtain new broadband customers, and have any impact on broadband deployment.

The model's "finding," in fact, is contrary to substantial evidence of investment in rural broadband networks. Windstream's investment history makes it clear that the incentive to open up new broadband revenue streams far outweighs any theoretical incentive, if one even exists, to prevent further loss of intercarrier compensation revenues. Given declining revenues from traditional voice services, wireline carriers like Windstream have aggressively deployed broadband in an effort to retain customers and develop new revenue sources. Already Windstream has invested hundreds of millions of dollars in deploying broadband in rural America. And in the company's third quarter earnings call held earlier this month, Windstream Chief Executive Officer Jeff Gardner reaffirmed that Windstream is "very much aligned with the FCC's objective to deploy broadband to rural America, as evidenced by our plans to get to 88 percent broadband addressability [by year's end] and our industry leading broadband penetration."[79]

In the limited instances where it has not deployed broadband, Windstream's investment decisions are dictated solely by an assessment of whether projected revenues and operational savings will outweigh the associated investment and ongoing operating

[77] *Id.* at 8.

[78] *Id.* at 4.

[79] Jeff Gardner, Remarks on the Third Quarter 2008 Windstream Communications Earnings Call (Nov. 7, 2008) (citing statistics based on access lines including those acquired through Windstream's acquisition of CT Communications, Inc).

costs.[80] As noted above, Windstream has estimated that it would cost $250 to $400 million to deploy broadband to reach the approximately 15 percent of its customers who currently do not have access to broadband.[81] Windstream then would need to spend many millions more on ongoing broadband operating costs.[82] It is absurd to think that a reduction in intercarrier compensation rates would change a mid-sized price cap carrier's decision about whether to incur these overwhelming costs – other than to make it *more difficult* for a carrier to dedicate already scarce funds to further deployment of advanced services.

4. Replacing the Existing Additional Costs Standard, Which Is Legally Sound, With the Proposed New Standard Would Generate Uncertainty and a New Round of Legal Challenges.

Longstanding Commission precedent supports recovery of a reasonable allocation of joint and common costs from intercarrier compensation rates.[83] This approach toward recovery, embodied in the Total Element Long *Incremental* Cost Standard ("TELRIC"), has survived legal scrutiny and the test of time.[84] The Commission has deemed the TELRIC methodology to be consistent with its "forward-looking, economic cost

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[80] This assessment is required for any public, for-profit business.

[81] Windstream USF Comments (this capital expense projection is based upon offering broadband at speeds ranging from 768 Kbps to 1.5 Mbps).

[82] *Id.* at 14-15 (such operating costs encompass, but are not limited to, transport fees that Windstream must pay to connect island exchanges to the Internet backbone).

[83] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499 (rel. Aug. 8, 1996) ("*Local Competition Order*") ¶ 1058:

> Rates for termination pursuant to a TELRIC-based methodology may recover a reasonable allocation of common costs. A rate equal to incremental costs may not compensate carriers fully for transporting or terminating traffic when common costs are present. We therefore reject the arguments by some commenters that 'additional costs' may not include a reasonable allocation of forward-looking common costs.

[84] *See id.* at ¶ 1058.

paradigm."[85] As the Commission's proposals recognize, common costs comprise a significant portion of a firm's total costs when a firm provides multiple services,[86] and the Commission previously has voiced concerns regarding use of any cost methodology that "may not compensate carriers fully for transporting and terminating traffic when common costs are present."[87] The Supreme Court's approval of TELRIC rates as being "just and reasonable" underscores that the "additional cost" standard may be satisfied through the use of a methodology that accounts for joint and common costs.[88]

Replacing the existing incremental cost definition with another would generate a new round of legal challenges regarding whether the Commission's new incremental cost definition appropriately fulfills the "additional cost" provision articulated in Section 252(d)(2) of the Act. The proposal is contrary to the Act's requirement that universal service enable access to affordable, high-quality service in rural areas.[89] It also would undermine the Act's call for the Commission to encourage reasonable and timely deployment of advanced services to all Americans.[90]

If it adopts Windstream's proposed plan, the Commission would not have to confront these legal issues. The Commission can reduce rates now pursuant to its transitional authority under Section 251(g), which does not implicate the definition of "additional costs" under Section 252(d)(2). Or if it finds that Section 251(b)(5) governs the rates at issue, the Commission can continue to rely on the TELRIC standard in the

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[85] *Id. at* ¶ 694.

[86] *Core Remand Order* App. A ¶ 248.

[87] *Local Competition Order* ¶ 1058.

[88] *See* Verizon Commc'ns Inc. v. FCC, 535 U.S. 467 (2002).

[89] 47 U.S.C. § 254(b).

[90] 47 U.S.C. §§ 157 nt, 254.

short term,[91] and then consider whether it should revise its interpretation of Section 252(d)(2) in a further notice of proposed rulemaking. A further proceeding could ensure that the Commission fully appreciates the implications of any change in course.

5. Any New Additional Costs Standard Should Account for Significant Variations in Switching Costs Incurred by Different Carriers.

If the Commission believes it needs a new additional costs standard, the Commission should seek additional comment to determine what the new standard should be, but in no instance should the new standard produce a uniform rate across all carriers. Given the differences in areas served by the RBOCs, wireless carriers, CLECs, and small and mid-sized ILECs, there is no reason to accept or conclude that the terminating costs for all of these different types of carriers within a state will be equal. This practice defies significant Commission precedent where the agency has recognized cost disparities in the context of universal service and intercarrier compensation.[92] Indeed, the *ISP Order on Remand* proceeding was a direct response to instances where the costs of terminating traffic varied between ILECs and CLECs that placed themselves between an ILEC and an Internet Service Provider.[93]

Even the proposals currently under consideration by the Commission recognize that different cost characteristics warrant different treatment. The proposals, albeit, do so in an arbitrary and relatively unsupported manner: They provide Alaska, Hawaii, and other territories and possessions a blanket carve out from intercarrier compensation

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[91] The Commission could rely on its general authority to adopt transitional measures to shield consumers and the industry from disruptions that might otherwise occur in the wake of "flash cut" reforms. *See, e.g.*, *CompTel v. FCC*, 309 F.3d 8, 14 (D.C. Cir. 2002) ("Avoidance of market disruptions pending broader reforms is, of course, a standard and accepted justification for a temporary rule.") (citations omitted).

[92] *See supra* note 62(citing several examples of this Commission precedent).

[93] *Core Remand Order* ¶ 3.

reform, with no explanation for how urban areas in these locales warrant special treatment as compared to rural, high cost areas in the continental United States.[94] Nevertheless the Commission could build upon this acknowledgement that cost characteristics of different carriers matter, and it could adopt measures to respond to cost characteristics of carriers in rural regions throughout the United States.

The draft orders' support for a uniform rate requirement reduces down to the assertion that the incremental cost of terminating services is near zero for all carriers. This assumption only holds under two scenarios. First, all carriers within a state will have the same, near zero cost if there are no longer any economies of scale in the telephone network. Second, the incremental cost for all carriers will be near zero if it is appropriate to disregard the vast majority of costs associated with termination services, because these costs are considered common to all voice traffic.

Neither of these scenarios is generally accepted as applicable to the telecommunications industry. The industry still is considered to be one characterized by a high degree of fixed costs.[95] And as noted above, the Commission has a longstanding practice of allocating joint and common switching costs across all services, including switched traffic.

The lack of justification for a near-zero, uniform rate is perhaps best indicated by the sources the Commission cites in support. The Commission does not reference its

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[94] *Id.* at App. A ¶ 191. Certainly Honolulu and Anchorage are not more costly to serve than, for example, Windstream's service territory in New Mexico, which stretches across the state and on average contains less than five subscribers per square mile.

[95] *See* Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 157, n.515 (rel. August 21, 2003) (finding there is a "very high proportion of joint and common costs and fixed costs" in the telecommunications industry).

prior intercarrier compensation or universal services decisions that have engaged in extensive reviews of switching costs, and have determined that carriers in rural regions incur substantially different costs than carriers able to take advantage of economies of scale in urban regions. To justify the amount of the rate, the Commission, instead, turns to sources of the likes of Wikipedia, self-described as "the free encyclopedia that *anyone* can edit"; a *Telephony Online* interview of a then-BellSouth employee in 2006; and an unpublished presentation, which its author says adopts "perhaps over-simple cost estimates . . . [to] derive some perhaps plausible insights about . . . the future of consumer pricing."[96]

B. The Lack of Meaningful Revenue Replacement for Mid-Sized Price Cap Carriers Is Unjustified and Would Result in Harm to Consumers Served by These Carriers.

The intercarrier compensation proposals under consideration would produce catastrophic reductions in intercarrier compensation revenues for Windstream and other mid-sized price cap carriers, without reasonable opportunities to replace these revenue reductions. The result would be a direct and significantly detrimental impact on rural customers' lives and livelihoods. If either of the intercarrier compensation reform proposals were adopted, Windstream and the other mid-sized carriers would not be in a position to deploy new broadband services to their customers, let alone maintain the prices and quality of services they offer to their customers today. Communications services for rural development and employment, public safety, modern health care, and education would be placed in jeopardy. This impact on its own should raise serious concerns for the Commission. In light of the largest financial crisis in 75 years,

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[96] *Core Remand Order* App. A ¶ 261, n.688.

consideration of the intercarrier compensation reform proposals without the modifications proposed by Windstream should be a non-starter.

The Commission's intercarrier compensation reform proposals recklessly underestimate the negative impact they would have on mid-sized price cap carriers and the rural consumers they serve. Although the proposals recognize that reforms would result in reduced revenues for many carriers, they fail to grasp the effect or magnitude of the revenue reductions. Rather, the proposals brashly and incorrectly assert that mid-sized price cap carriers are using universal service funds to provide for "high overhead, sumptuous earnings, [and] rich dividends."[97] The proposals miss the mark by assuming that revenue shortfalls can and should be absorbed by implicit subsidies from other customers or unregulated products, or could be offset by reductions in dividends. If adopted, the proposals would produce some combination of the following consequences: Broadband expansion in rural communities served by mid-sized companies would slow substantially or cease; existing broadband deployment would be scaled back; the quality of existing voice and broadband services would be degraded; retail prices for rural consumers would increase substantially; and the pace and number of job reductions in rural communities would accelerate.

1. When Reducing Intercarrier Compensation Rates, the Commission Must – as It Always Has in the Past – Respond to Mid-Sized Carriers' Significant Need for Reasonable Opportunities to Replace Lost Revenues.

When previously taking steps to reform intercarrier compensation, the Commission has always recognized the need to provide carriers with reasonable opportunities to replace reductions in intercarrier compensation revenues, including SLC

[97] *Id.* at App. A ¶ 324.

increases <u>and</u> revenue replacement mechanisms.[98] The Commission, in fact, has been so sensitive to the impact of revenue reductions on carriers' ability to serve rural consumers that it has noted with concern that dramatic cuts in access charges "could result in a substantial decrease in revenue for incumbent LECs, which could prove highly disruptive to business operations" *even when accompanied by new explicit support mechanisms and changes to rates.*[99] There is no reason to be any less concerned about such dramatic changes today.

For a mid-sized price cap carrier like Windstream, the intercarrier compensation proposals under consideration by the Commission would result in unprecedented revenue reductions. Windstream's annual terminating intercarrier compensation revenues comprise roughly six percent of its $3.1 billion in annual revenues, or roughly $200 million. Significant reductions in these revenues, with insufficient opportunities for replacing them and no realistically obtainable opportunity for explicit universal service, would imperil Windstream and other mid-sized carriers' ability to serve their rural customers.

Although permitting a reasonable, moderate increase to the SLC cap is appropriate, affordable SLC increases alone will fall short of mid-sized carriers' needs. A reasonable recovery mechanism must be part of any significant intercarrier compensation reform. The mechanism need not guarantee "absolute revenue neutrality" for mid-sized carriers,[100] but it should be sufficient to ensure that these carriers are able to

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[98] *See, e.g., CALLS Order* ¶¶ 31-32; *MAG Order* ¶ 15.

[99] *Access Charge Order* ¶ 46.

[100] *Core Remand Order* App. A ¶ 325.

continue providing affordable, quality services in rural areas as required by Section 254 of the Act.[101] A wide array of parties support the need for such a mechanism.[102]

2. The Proposed Case-By-Case Opportunity for Revenue Replacement Is Woefully Inadequate and Would Discourage Further Broadband Deployment in Rural Areas Served by Mid-Sized Price Cap Carriers.

The proposals' case-by-case mechanism to review and consider the need for additional revenue recovery beyond available SLC increases is woefully inadequate and likely ephemeral. The undefined nature of the standard for relief and the process to obtain it would inject continued uncertainty into the business plans of the mid-sized price cap carriers. This uncertainty would plague their business model and dissuade vital private investment. By the time the Commission could make any decision about whether a price cap carrier is able to earn a "normal profit"[103] (even if a carrier could meet such a draconian standard), a mid-sized price cap carrier already would have suffered significant losses – both in terms of short-run reductions in intercarrier compensation revenues and liquidation of equity investment. This measure would provide too little relief, far too late to prevent significant harm to mid-sized price cap carriers and the rural customers they serve.

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[101] 47 U.S.C. § 254(b).

[102] *See, e.g.,* Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (urging the Commission to "establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out"); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that "should be available to all carriers of last resort, regardless of company size, structure or regulatory classification"); Letter from Walter McCormick, USTelecom, President, to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (Oct. 10, 2008), at 5, 7, 8 (declaring that "establishment of a credible and compensatory ARM is an essential element of comprehensive intercarrier compensation reform"); Letter from Curt Stamp, ITTA, President, to Secretary Dortch, Secretary, FCC, CC Docket No 01-92 (Sept. 19, 2008), at 5 (recommending that mid-sized carriers be able to use an Alternative Recovery Mechanism); Missoula Plan Ex Parte Letter.

To conclude that an Alternative Recovery Mechanism is not needed, the proposal makes the observation that marketplace developments have resulted in new revenue opportunities for carriers.[104] While it is true that new opportunities exist, the Commission ignores the other side of the equation: Marketplace developments also have resulted in substantial reductions to revenues from traditional local voice products. The incremental revenues from new services and business opportunities are barely keeping pace with the amount of retail and wholesale revenues lost annually to competitors and other sources. Thus, most mid-sized price cap carriers have flat to slightly declining revenues year-over-year, as they replace local voice revenues with revenues from new sources like broadband.[105]

Moreover, the proposed methodology for revenue replacement contradicts the letter and intention of Section 254 of the Act. There Congress directs the Commission to make implicit universal service support explicit, and to ensure that this support provides sufficient funding for carriers serving high-cost, rural areas that are otherwise uneconomic to serve.[106] But rather than eliminating implicit support and making it explicit as the Act requires, the proposals would create new implicit support mechanisms by requiring carriers to cross-subsidize the supported services they are required to provide as Eligible Telecommunications Carriers and carriers of last resort with unregulated services that they are not required to provide. This measure would

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[103] *See Core Remand Order* App. A ¶ 323.

[104] *Id.* at App. A ¶ 313.

[105] For example, Windstream's *total* revenues – which include voice, broadband, and video (i.e., from DISH TV) – are flat or declining in recent years.

[106] Congress recognized that the introduction of competition would up-end regulators' historical reliance on implicit cross-subsidization to support affordable service by carriers of last resort in high-cost areas. *See CALLS Order* at ¶¶ 21-25 (describing Congressional intent).

discourage carriers from investing in the very services – like broadband and VoIP – that the Commission's proposals assert they intend to encourage.

3. The Current Broken Universal Service Fund Cannot Be Relied on as a Safety Net.

Existing federal universal service support offers little consolation to mid-sized price cap carriers. A common misconception is that all of these carriers, including Windstream, are funded largely by federal universal service support or rely heavily on such support to pay dividends to private investors. That simply is not the case. The outdated federal universal service mechanisms provide a disproportionately large amount of support to small, and even some mid-sized, rate of return carriers, but do not provide adequate support to mid-sized price cap carriers serving high-cost rural areas. Due to averaging of costs and inconsistencies between high-cost support calculations and rate regulations, the universal service system fails to target support directly to high cost areas where it is needed most. Consequently, Windstream – with 27 percent of its exchanges comprised of 500 access lines or less – receives less than 1 percent of its total annual revenues from high-cost loop and model support, and less than 3 percent of its total revenues from all federal high-cost support combined.

4. The Commission's Proposals for Revenue Replacement Break the Commission's Long Held Policy of Encouraging Price Cap Regulation and Arbitrarily Favor Rate of Return Carriers.

The Commission's proposals inexplicably break with the Commission's long held policy of encouraging price cap regulation. The proposals favor rate of return carriers with special treatment for revenue replacement.[107] They even go so far as providing a

[107] *See, e.g.*, *Core Remand Order*, App. C.

new path for price cap carriers to make a one-time election back to rate of return regulation.[108]

These proposals are contrary to the public policy interests recognized repeatedly by the Commission in the past. As the Commission explained in the *LEC Price Cap Order*, price cap regulation "permit[s] LECs to migrate their rates toward a set of prices that enhances efficiency"[109] and rewards "companies that become more productive and efficient."[110] This productivity and efficiency ultimately benefits consumers. Price cap regulation produces these public interest benefits while using fewer regulatory and administrative resources to police carriers than are required to prevent the misallocation of costs under rate of return regulation.[111] Price cap regulation also can stimulate residential and business customer demand for telecommunications services.[112] More efficient use of and greater demand for the nationwide telecommunications network, in turn, contributes to overall economic growth by reducing the cost of telecommunications services that are used by other industries to produce goods and services.[113]

The Commission's proposals provide no rational basis for this sudden change in policy. Indeed, favoring rate of return carriers in this context is arbitrary and does not

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[108] *Core Remand Order* App. A ¶ 324.

[109] Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd 6786, ¶ 35 (rel. Oct. 4, 1990, cor. Oct. 31, 1990) ("*LEC Price Cap Order*").

[110] *Id.* at ¶ 1.

[111] *See id.* at ¶ 34 ("Previous orders in this docket have articulated the pressures that a rate of return system places on cost allocation systems. . . . Indeed, given the incentives rate of return creates for companies to misallocate costs, thereby threatening our policy of ensuring that rates are based on their fully distributed costs, we spend a great deal of our regulatory resources policing our cost allocation systems. Under incentive regulation, prices would no longer be set by reference to a set of fully distributed costs. . . . Incentive regulation, by in large measure removing the incentive to misallocate costs between services, may mitigate misallocation as a regulatory concern.").

[112] *Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, 10 FCC Rcd 8961, ¶ 2 (rel. Apr. 7, 1995).

accurately reflect regulatory structures in place in many state jurisdictions. These deficiencies are especially apparent in how the proposals approach offsetting intercarrier revenue reductions with universal service support.[114] Under the proposed mechanism, a carrier operating under federal price cap regulation could attain such support only after a review of all its revenues and costs (including non-regulated), but no such review would be required of carriers operating under federal rate of return regulation.

The Commission's proposals base this disparate treatment on at least two incorrect conclusions. First, the proposals baldly assert that different treatment is warranted for price cap carriers, because these carriers pay dividends and use the same network to provide regulated and deregulated services.[115] Both price cap and rate of return carriers, however, engage in these legitimate practices.

Second, the Commission's proposals ignore that the regulatory treatment of carriers in the federal jurisdiction often does not match the regulatory framework at the state level. The proposals assert, without further explanation, that "differences are warranted by the different rate regulation frameworks"[116] and that "interstate rate-of-return carriers present a special situation."[117] This assertion, however, does not hold up with respect to many intrastate rates. Like the Commission, many states have adopted alternative regulation plans (i.e., price cap like plans) that no longer subject carriers to an earnings test, and provide incentives for carriers to become more efficient and retain the

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[113] *Id.* at ¶ 3.

[114] *Core Remand Order* App. A ¶ 314; App. C ¶ 312.

[115] *Core Remand Order* App. A ¶ 314.

[116] *Core Remand Order* App. A ¶ 324.

[117] *Core Remand Order* App. C ¶ 320.

resulting savings.[118] Thus, in many instances, carriers operating under rate of return regulation at the federal level may be rate regulated at the state level in exactly the same manner as a carrier that is price cap regulated at the federal level. There is simply no basis for treating a federal rate of return carrier differently with regards to intrastate access reductions resulting from the proposals than a federal price cap carrier especially when both are often regulated as price cap carriers in the state jurisdiction. Yet the Commission's proposals would provide such carriers with very different federal recovery mechanisms to replace mandated reductions in intrastate access revenues.

IV. PROPOSED REFORMS TO THE UNIVERSAL SERVICE MECHANISM ARE INADEQUATE AND COULD EXACERBATE EXISTING PROBLEMS WITH HIGH-COST SUPPORT.

Although Windstream is the largest independent communications provider focused primarily on rural areas,[119] Windstream does not receive a significant amount of funding under the current high-cost system relative to its overall revenues.[120] This gap between funding needed and funding received is reflective of larger problems with the high-cost mechanism. As Windstream has described in detail in past comments,[121] which it incorporates by reference here, the current universal service high-cost system does not accomplish the goals set out in Section 254 of the Act.[122] The Commission's program

[118] For example, in South Carolina most carriers have elected to operate under an alternative form of regulation, in Georgia 27 of 35 small rural companies also operate under an alternative form of regulation. In some states like Alabama, Arkansas, and Kentucky all carriers have elected to operate under an alternative regulation plan. Some states, like New Mexico, have completely eliminated rate of return regulation.

[119] With an average subscriber density of approximately 20 access lines per square mile, Windstream offers telecommunications services to 3.1 million access lines across 16 states.

[120] Windstream receives less than 1% of its total revenue from high-cost loop and model support, and less than 3% of its total revenues from all federal high-cost support combined.

[121] *See, e.g.*, Windstream USF Comments.

[122] Section 254 of the Communications Act articulates principles that should serve as the basis for the Commission's "policies for the preservation and advancement of universal service."[122] These principles

plainly fails to target sufficient and predictable high-cost support directly to high-cost areas. It provides too much support to some ILECs and not enough to others, all without an objective way to assure service is affordable to consumers. These flaws are to the detriment of all consumers paying for universal service, and in particular to the detriment of rural consumers living in areas served by underfunded carriers.

Windstream continues to urge the Commission to take action now to bring the existing high-cost system in line with the universal service principles adopted in Section 254 of the Act. The federal system is in need of significant reform, and none of the proposals adequately address its problems. Instead of pushing off the difficult task of reforming universal service, the Commission should enact reforms now that ensure fair, rational, and targeted allocation of universal service funds to the benefit of rural consumers regardless of the size of the carrier that happens to serve them.

A. The Proposal to Condition Receipt of Existing Universal Service Support on a Carrier's Ability to Offer Ubiquitous Broadband Would Unduly Benefit Overfunded Carriers, While Jeopardizing the Broadband Deployment Efforts of Underfunded Carriers That Serve Truly High-Cost Areas.

Windstream does not support the proposal to condition receipt of universal service funds on making a commitment to offer broadband service throughout the supported study area within five years. Although it holds out the promise of identifying areas that require additional support for severely underfunded carriers like Windstream,

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include, among others, (i) "specific, predictable, and sufficient" support should be provided "to preserve and advance universal service"; (ii) "quality services should be available at just, reasonable, and affordable rates"; and (iii) consumers in "all regions of the Nation" should have access to telecommunications and information services at "reasonably comparable rates." 47 U.S.C. § 254(b). The Commission repeatedly has recognized that these principles should guide its allocation of high-cost support. *See, e.g., Identical Support Rule NPRM* at ¶ 2 (recognizing "Section 254(b) of the Communications Act of 1934, as amended, (the Act) directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles"); *Joint Board Comprehensive Reform NPRM* at ¶ 2 (same); *Reverse Auctions NPRM* at ¶ 2 (same).

this measure will continue to support many small, rural ILECs that are able to meet the commitment only because they have been and will continue to be overfunded by the high-cost fund. At best, this reform has the potential to highlight the areas that need more support to make such a commitment, but lacks sufficient specificity about how much support would be needed and how such support would be distributed.

Many carriers, including Windstream, would be unable to make such a commitment and would see their existing universal service support placed at risk. In Windstream's case, the significant amount of capital investment and ongoing operational expenses required to meet the commitment would far outweigh the amount of high-cost support it receives. Windstream currently receives approximately $82 million in federal high-cost support. This amount pales in comparison to the funding required to offer broadband to Windstream's approximately 450,000 customers who currently do not have access to this service: Windstream previously has estimated that it would cost $250 to $400 million to deploy broadband facilities to these customers,[123] and it then would need to spend many millions more on ongoing broadband operating costs.[124] Windstream would have to forgo high-cost support if that support was conditioned on incurring these capital and operating expenses.

Significant uncertainties, consequently, would plague Windstream's business plans and hinder its ability to maintain private investment and continue its broadband deployment initiatives. The Commission would subject the carrier's support to reverse

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[123] Windstream USF Comments 13-14 (this capital expense projection is based upon offering broadband at speeds ranging from 768 Kbps to 1.5 Mbps).

[124] *Id.* at 14-15 (such operating costs encompass, but are not limited to, transport fees that Windstream must pay to connect island exchanges to the Internet backbone; additional customer call center staffing required to support broadband products; creation and maintenance of a system that tracks the provision and capacity

auctions. If there is no bidder, it is not clear what steps the Commission would take next. The proposed order merely provides that the Commission "will reexamine any such study area to determine whether the frozen high-cost support amount is sufficient," without explaining the basis for that determination. If it finds that support is not sufficient, the proposal states that the Commission would take further undefined steps, such as possibly disaggregating the study area on a wire center basis or increasing the reserve price. Again, the proposal fails to specify how these steps would be accomplished, or reconciled with a cap placed on total high-cost support. Given the Commission still has not been able put forward a satisfactory definition of the term "sufficient" for purposes of Section 254,[125] it is not adequate for the Commission to put off for another day the task of sorting out these critical questions.

B. To Realize Ubiquitous Broadband Deployment, Policymakers Will Need to Dedicate Substantial Additional Funding to Carriers Serving High-Cost Areas.

Windstream shares the Commission's goal of ubiquitous broadband deployment and has consistently urged the Commission to develop policies that encourage broadband deployment where economically feasible and boost consumer adoption where broadband already has been deployed.[126] Windstream has invested hundreds of millions of dollars to aggressively deploy broadband to consumers in its service territory. This commitment has resulted in an industry-leading penetration level of its customers who can and do subscribe to broadband. Specifically Windstream currently is able to reach

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of each existing Digital Subscriber Line Access Multiplexer; grooming of cable pairs; and installation of jumpers to connect a phone line to broadband equipment).

[125] *See* Qwest Corporation v. FCC, 398 F.3d 1222, 1233 (10th Cir. 2001) (holding that the Commission failed to reasonably define the term "sufficient").

[126] Windstream USF Comments 12.

approximately 85 percent of its total customer base. Of those residential customers that can purchase Windstream's broadband service, 48 percent actually subscribe. Speeds offered by Windstream are at least 1.5 Mbps, and can go up to 12 Mbps. This record is particularly impressive in light of the rural, high-cost nature of Windstream's service territory – approximately 20 subscribers per square mile – and the relatively little high cost support it receives.

Sharing the Commission's goal of broadband ubiquity, however, does not mean that Windstream will be able to achieve this goal on its own. The combination of high capital and operational costs with few customers to offset those costs makes it especially challenging to meet business plan objectives. Moreover, continued receipt of existing high-cost support is insufficient to offset these costs. As noted above, Windstream currently only receives approximately $82 million – an amount far less than the $250 to $400 million it would need to incur in up-front capital costs, and the many millions more that it would need to incur in ongoing operating costs.

If broadband providers are to assume such costs in the near term,[127] additional funds will be required to provide adequate returns on the associated investments. In part this additional funding can come from retargeted, existing high-cost support. As Windstream has proposed previously, the Commission could place all price cap companies under a forward-looking mechanism, and reform the "non-rural" mechanism to eliminate eligibility requirements based on statewide average costs.[128] These reforms in and of themselves will improve the economics for deploying broadband in high-cost

[127] Although no one can predict what the future holds with confidence, it is likely that technological advances will improve broadband providers' ability to deploy broadband deeper into their networks and at greater speeds. For example, Windstream this year was able to double the available speeds for some of its broadband connections due to a technological advancement.

areas that are otherwise too expensive to serve. As support is recalculated and retargeted, many high-cost areas that are currently uneconomic to serve because of the costs associated with shortening loops and otherwise upgrading dual-use plant, will receive additional funding. This targeted high-cost support would improve the economics for broadband deployment in many such areas that are currently uneconomic to serve.

To address rural areas where funding will remain insufficient, the Commission should take steps now to model the cost of making broadband available to all consumers. It makes no sense, as proposed by the Commission, to delay this measure until after reverse auctions have been unable to attract bidders. Designing and implementing the reverse auctions process could take years to complete, while in the meantime carriers would be cautious or discouraged from deploying broadband due to the uncertainty of continued funding. This unnecessary delay should be avoided. A better approach would be to determine the proper amount of universal service funding required to build and operate a ubiquitous broadband network. By using a forward-looking model with proper network inputs and design, the Commission would be able to ascertain the amount of additional funds required for carriers to deploy ubiquitous broadband services.

C. In Conjunction With Fundamental Reform of the High-Cost Mechanism, the Commission Should Cap High-Cost Support for Both the Total Fund and Individual Lines.

Windstream supports a cap on total high-cost universal service as a means to address sustainability of the fund, so long as that cap is accompanied by fundamental reform of the high-cost mechanism. The Commission must not merely freeze in place the current levels of high-cost support distributed under existing rules, as is largely proposed

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[128] Windstream USF Comments 4-11.

by Appendix A and C of the FNPRM.[129] Rather, the Commission should objectively identify actual high-cost areas and then should target the support under the total cap to those areas on an equitable basis. Moreover, any cap on the total fund should not apply before taking into account any new explicit universal service support needed to offset the loss of implicit support from intercarrier compensation reform.[130]

Windstream also would support the use of reverse auctions to further reduce the level of total funding and promote efficiency. All three of the FNPRM proposals, however, fail to meet this condition. A significant flaw with the FNPRM proposals is that setting a reserve price based on existing levels of support will not result in meaningful bidding in truly high-cost areas where currently there is too little or no high-cost support. As noted above, the Commission's proposals do not specify how the agency will respond to instances when auctions for such areas employ a reserve price that is too low to attract serious bidders.

Finally, Windstream recommends that the Commission set an additional cap on per-line high cost support. It makes little sense for the Commission to cap the overall fund but to continue allowing carriers to receive per-line support amounts at unchecked levels. Certainly, at some level, one has to question the rationale for providing telecommunications service to consumers regardless of the cost. Just as there should be a cap on the total size of the fund to ensure sufficiency and affordability, the Commission should set a maximum amount beyond which the universal service program provides no further support.

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[129] *Core Remand Order* App. A ¶ 30.

[130] The Commission, however, may deem it appropriate to set a separate target for the explicit support, as it did for Interstate Access Support.

V. THE PROPOSED LIFELINE/LINK UP PILOT PROGRAM FAILS LOW-INCOME, RURAL CONSUMERS.

Windstream was pleased to see the Commission propose "to examine how the Lifeline and Link Up universal service support mechanism can be used to enhance access to broadband Internet access services for low-income Americans."[131] Windstream has consistently and repeatedly urged federal policymakers to give serious consideration to using Lifeline and Link Up dollars to increase broadband adoption.[132] Any meaningful USF support for broadband must address the needs of low-income consumers who cannot afford to purchase broadband service. As Windstream Chief Executive Officer Jeff Gardner explained before Commissioners Michael J. Copps and Jonathan S. Adelstein at a U.S. Senate Commerce Committee field hearing last year, "[t]he gap between those consumers who are online and offline more and more is defined by their economic, rather than geographic, conditions."[133]

The Commission's stated goals for the Lifeline/Link Up Pilot Program suggest that it recognizes the potential, widespread benefits that could be realized with such a program. The Commission declares that all qualifying low-income consumers should be able to receive broadband discounts, "limited only by the availability of funds."[134] It also asserts that the design of the Pilot Program "comports with" Section 254(b)(2)'s instruction that the Commission base policies for the advancement of universal service on

[131] *Core Remand Order* App. A ¶ 64.

[132] *See, e.g.*, Windstream USF Comments 18; Letter from Eric Einhorn, Vice President Governmental Affairs, Windstream Communications Inc., to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 99-68, 08-122, 05-337, 08-152 (Sept. 24, 2008).

[133] Written Testimony of Windstream President and Chief Executive Officer Jeff Gardner, U.S. Senate Committee on Commerce, Science, and Transportation Field Hearing: The State of Broadband in Arkansas 5 (Aug. 28, 2007).

[134] *Core Remand Order* App. A ¶ 85.

the principle that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation."[135]

The Commission's specific plan for the Lifeline/Link Up Pilot Program, however, falls short of its potential and the Commission's stated objectives. Without modification, the Pilot Program will do little to promote broadband access to low income consumers residing in high-cost, rural areas. The proposed carrier eligibility criteria and distribution mechanism would make it difficult, or more likely altogether cost prohibitive, for many rural broadband providers to participate. Many low-income, rural consumers, in turn, would have no opportunity to benefit from the Pilot Program, due to lack of participating providers in their regions.

A. To Afford Rural Consumers a Meaningful Opportunity to Benefit From Broadband Discounts, the Commission Should Not Condition Pilot Program Participation on A Broadband Provider's Ability to Offer Broadband Service to All Customers in Its Service Territory.

The requirement for a participating broadband provider to offer "services and supported devices . . . throughout its service areas"[136] would unduly penalize broadband providers serving truly high-cost regions. Windstream's experience indicates that it is both economically and technically infeasible for companies to deploy broadband in the next few years to all residents in truly high-cost regions. Consequently many rural broadband providers, and many low-income consumers in their service territories, would be unable to participate in the Pilot Program.

Windstream, in particular, could not justify spending the gargantuan sums required to meet the ubiquitous broadband deployment obligation, in the hope of

[135] *Id.* at App. A ¶ 72 (citing 47 U.S.C. § 254(b)(2)).

[136] *Id.* at App. A ¶ 87.

obtaining discounts for a limited number of low-income consumers in its service area. As indicated in Section IV.A above, Windstream estimates that it would cost the company somewhere between $250 and $400 million to deploy broadband to reach the approximately 450,000 customers who still do not have access to its broadband.[137] Capital costs are all the more staggering when placed within the context of the number of customers a company currently could expect to gain from new broadband deployment. Assuming a take rate of 30 percent, Windstream expects its capital costs, on average, to exceed $1,800 for each new broadband customer brought onto its expanded network.[138] Windstream then would need to spend millions more each year on ongoing broadband operating costs.[139] The potential to benefit from Pilot Program participation is insufficient to offset these substantial costs.

And even if it could justify the costs, Windstream nevertheless would not be able to build out its network in the timeline required for participation in the Lifeline/Link Up Pilot Program. Windstream, with full funding, estimates that it would take *three* years, if not more, for it to deploy broadband to its approximately 450,000 unaddressed customers. Efforts to bring unaddressed customers online would be very time and resource intensive. To bring these customers onto its broadband network, Windstream would need to shorten copper analog loops between customers' homes and their serving Digital Subscriber Line Access Multiplexers ("DSLAMs") because Windstream's

[137] Windstream USF Comments 13-14 (this capital expense projection is based upon offering broadband at speeds ranging from 768 Kbps to 1.5 Mbps).

[138] This figure does not account for additional associated operating and acquisition costs.

[139] *See* Windstream USF Comments at 14-15 (such operating costs encompass, but are not limited to, transport fees that Windstream must pay to connect island exchanges to the Internet backbone; additional customer call center staffing required to support broadband products; creation and maintenance of a system that tracks the provision and capacity of each existing Digital Subscriber Line Access Multiplexer; grooming of cable pairs; and installation of jumpers to connect a phone line to broadband equipment).

customers who are outside of the company's broadband footprint typically reside in areas furthest away from Windstream's broadband serving devices.

Given these technical and economic limitations, the Commission must eliminate the ubiquitous broadband build out obligation if it truly intends to permit low-income customers "in all regions" to participate in the Pilot Program. Otherwise rural, low-income customers will be left without any options for participating providers – a result contrary to universal service goals adopted by Congress and the Commission's stated objectives for the Pilot Program.[140]

B. Limited Pilot Program Funding Should Not Be Administered to Low-Income Consumers on a First-Come, First-Served Basis, Since This Approach Likely Would Not Result in a Proportionate Distribution of Support to Rural Consumers.

Distributing the limited Lifeline/Link Up Pilot Program funds on a "first-come, first-served basis" will not provide for a proportional share of funding for rural, low-income consumers.[141] Under a first-come, first-served regime, broadband providers would find themselves in a race to sign up customers, but the customers in rural markets will be more difficult and costly to reach. Broadband providers in urban areas can readily employ concentrated media marketing programs to reach millions of customers. In contrast, rural providers have little scale to use radio and television communications to promote available discounts. Often it is altogether economically infeasible to use mass

[140] *See* 47 U.S.C. § 254(b) (articulating principles serving as the basis for "policies for the preservation and advancement of universal service," which include, but are not limited to, (i) "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation" and (ii) "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to . . . information services . . . that are reasonably comparable to those services provided in urban areas . . . .").

[141] *Core Remand Order* App. A ¶ 85.

media in rural areas.[142] Rural broadband providers, instead, must resort to using bill inserts, which are expensive and less likely to have an immediate impact as compared to repeated mass media advertisements aired over a short time period. Given these rural advertising challenges, the first-come, first served scheme would disadvantage rural consumers whose broadband providers would be hindered relative to urban providers that can most easily direct resources to "winning" the broadband marketing race.

Using a "first come, first served" basis for distributing funds would mean that discounts effectively would be directed away from regions where broadband adoption is needed most: rural areas. As acknowledged by proposed Commission orders, "[b]roadband Internet access plays a special role in rural areas, reducing the burdens of distance":

> For example, high-speed connections to the Internet allow children in rural areas to have access to the same information as school children in urban areas. Telemedicine networks made possible by broadband Internet access service also save lives and improve the standard of healthcare in sparsely populated, rural areas that may lack access to the breadth of medical expertise and advanced medical technologies available in other areas.[143]

The role of broadband in rural areas is particularly important for low-income, rural residents, who may have little resources available to supplement their children's

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[142] Advertisers purchase mass media advertising for designated market areas ("DMAs"), or regions where consumers receive the same television or radio station offerings. DMAs can stretch over wide swaths of both urban and rural areas, so a carrier hoping to use mass media to reach a small number of rural consumers may have to assume the cost of advertising to a large number of urban consumers as well. Wasted mass media advertising dollars in this instance can be significant. For example, for Windstream to advertise to Canton, Monroe, and Widener, Georgia, it would have to purchase mass media for the entire Atlanta DMA, when only 8 percent of individuals in the DMA reside within Windstream's service territory.

[143] *Core Remand Order* App. A ¶ 22.

classroom learning and who may not be able to afford travel for medical care. Broadband also is critical for supporting commerce and jobs in rural areas.[144]

Using Lifeline/Link Up funds to increase the pool of potential broadband subscribers in rural areas also may drive further broadband deployment in rural areas. Currently only 38 percent of rural households subscribe to broadband service, as compared to the 57 percent and 60 percent of households in urban and suburban areas, respectively.[145] Increasing rural demand for broadband could, in turn, spur increased supply. While the potential for Lifeline/Link Up broadband subscribers certainly will not make it economic to deploy broadband in all locations over time, the presence of a larger number of expected subscribers may tip the scale in favor of building out broadband networks in some areas that previously failed to meet business case objectives.

Given the special need to ensure broadband discounts are available in rural areas, the Commission should earmark 50 percent of all Pilot Program funding to qualified low-income consumers residing in rural regions. This measure would ensure that sufficient funds are allocated for low-income consumers in rural areas, which should include any area that qualifies as "rural" for the purposes of administration of the U.S. Department of Agriculture's Broadband Access Loan program.[146] Implementing the Pilot Program in

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[144] *Id.* at App. A ¶ 22 (quoting Broadband Data Improvement Act, Pub. L. No. 100-385, 122 Stat. 4096, § 102(1)–(2) (2008)).

[145] *See* 2008 PEW BROADBAND ADOPTION STUDY at 3–4 (reporting the findings of a survey conducted from April 8, 2008 to May 11, 2008 among 2,251 American adults, 1,153 of whom were broadband users).

[146] *See* 7 U.S.C. § 1991(a)(13) (in general defining "rural" as the following: "any area other than-- (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) any urbanized area contiguous and adjacent to a city or town described in clause (i)"). Alternatively the Commission, for ease of administering the Pilot Program, could define a "rural" area as any study area served by a "rural telephone company," as defined by 47 U.S.C. § 153(37). *See Federal-State Joint Board on Universal Service*, FCC 97-157, CC Docket No. 96-45 (rel. May 8, 1997) at ¶ 310 (defining "rural carriers" as "those carriers that meet the statutory definition of a 'rural telephone company'"). Windstream does not prefer this approach, because as it has noted on multiple occasions, a region should be designated as "rural" due to the characteristics of the individual region, rather than the size (or study) area of telecommunications company

this manner would best respond to Congressional calls for universal service to ensure, in particular, that consumers who are "low-income . . . and . . . in rural, insular, and high cost areas . . . have access to . . . information services . . . that are reasonably comparable to those services provided in urban areas. . . ."[147]

C. Requiring Small and Mid-Sized Broadband Providers to Offer a "Wide Array" of Broadband Internet Devices Would Be Unduly Burdensome and Might Limit These Providers' Ability to Secure Bulk Discounts.

The Commission should not condition Pilot Program participation on whether a broadband provider makes "available a wide array of cost efficient broadband Internet access devices . . . ."[148] This proposed requirement would unduly favor larger, integrated carriers that are more likely to have existing relationships with equipment manufacturers, and a customer base large enough to justify bulk discounts across a variety of products. In contrast, small and mid-sized carriers, with fewer resources at their disposal, would have more difficulty shouldering the administrative burden of offering a wide array of devices. The requirement also might make it more difficult for small and mid-sized carriers to secure bulk discounts for individual devices.

VI. THE COMMISSION SHOULD REPLACE THE EXISTING UNIVERSAL SERVICE CONTRIBUTIONS METHODOLOGY, WHICH IS BASED ON REVENUES, WITH A TELEPHONE NUMBER-BASED METHODOLOGY.

Windstream supports replacing the existing universal service contribution methodology, which is based on revenues, with a methodology based primarily on telephone numbers. Changing conditions in the telecommunications marketplace have

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serving it. *See, e.g.*, Reply Comments of Windstream Communications, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 4 (filed July 2, 2007).

[147] 47 U.S.C. § 254(b)(3).

challenged the current methodology. First, interstate retail revenues continue to decline.[149] This decline, coupled with an increase in universal service disbursements, has placed upward pressure on the contribution factor and jeopardized the sustainability of universal service support. Second, technological changes and the rising popularity of "all-you-can-eat" service plans has made it more difficult to assign revenues to jurisdictions in a meaningful manner.[150] There can be significant ambiguity as to whether revenues qualify as assessable interstate or international end-user telecommunications revenues. Transitioning to a numbers-based methodology, however, will reduce these issues by simplifying reporting, establishing a sustainable contribution base, and providing for a more transparent assessment to customers.

Concurrent with universal service reforms, the Commission should conform the methodology used for all the other funds that use Form 499 – e.g., TRS, NANPA and Local Number Portability – to the new methodology employed for universal service. Carriers should not be required to continue reporting revenues in the Form 499 in addition to information required by the new methodology. The logic for eliminating

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[148] *Core Remand Order* App. A ¶ 90.

[149] *See id.* App. A ¶ 91 ("The total assessable revenue base has declined in recent years, however, from about $79.0 billion in 2000 to $74.5 billion in 2006, while universal service disbursements grew over that same time period from $4.5 billion in 2000 to over $6.6 billion in 2006."). Some recent reforms, however, have partially offset pressure placed on sustainability of the fund. These reforms include increasing the wireless safe-harbor and requiring interconnected VoIP providers to make USF contributions. *See Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of 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; IP-Enabled Services*; Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 2.

[150] *Core Remand Order* App. A ¶ 92 (finding that "interstate end-user telecommunications service revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services").

revenue-based reporting for universal service contributions applies with equal weight to contributions for these other programs. In addition, maintaining revenue-based reporting in Form 499 for non-universal service mechanisms would present undue administrative complications if the Commission moved to a numbers-based regime for universal service.

Consistent with the Commission's proposal, Windstream also recommends that the Commission provide exemptions from universal service assessments only when individuals "are truly unable to bear the burden of contributing to the universal service fund . . . ."[151] By limiting exemptions to Lifeline customers and customers purchasing stand-alone voicemail services, the Commission appropriately balances dual Congressional goals: It guarantees universal service support mechanisms are "specific and predictable," while ensuring "low-income consumers. . . have access to telecommunications and information services."[152]

In the event the Commission decides to adopt a hybrid mechanism that combines telephone numbers with another basis for assessment, Windstream agrees with AT&T and Verizon that a numbers/connections approach is preferable to the transitional numbers/revenues proposal currently under consideration.[153] A hybrid methodology that uses connections, which can be clearly categorized as intrastate or interstate, would be easier to administer and could be adopted immediately. Moreover, Windstream supports limiting the number of connection tiers to further simplify reporting and contribution requirements. AT&T and Verizon's recommended approach, which identifies two tiers

[151] *Id.* at App. A ¶ 140.

[152] 47 U.S.C. 254(b).

[153] Letter from Mary L. Henze, AT&T Services, Inc. & Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket 06-122, CC Docket No. 96-45, 1 (filed Oct. 20, 2008).

of connections and assesses different USF surcharges to each,[154] would provide this simplification in a manner that appropriately responds to the desire to account for user demand when assessing surcharges.

VII. CONCLUSION

Reform of intercarrier compensation and universal service is a worthwhile, but complex, endeavor. As the Commission has recognized in the past, these policies raise issues that are difficult to address with "one stroke of the sword."[155] The Commission, however, can make substantial progress toward fulfilling the Act's goals by adopting a more fair and balanced approach – such as suggested by Windstream, ITTA, or USTelecom – that addresses areas where the Commissioners have identified a "growing measure of consensus."

Respectfully submitted,

/s/ Eric N. Einhorn

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Dated: November 26, 2008

Its Attorney

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[154] *Id.* at 2. A $5 surcharge would be assessed to the low bandwidth connection, as compared to a $35 surcharge assessed on the high bandwidth connection. *Id.*

[155] *CALLS Order* ¶ 26.

APPENDIX A

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Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
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Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Universal Service Contribution Methodology, WC Docket No. 06-122; Intercarrier Compensation for ISP-Bound Traffic, WC Docket No. 99-68; Petition of AT&T for Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption," WC Docket No. 08-152; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

Windstream is very concerned that the intercarrier compensation reforms under consideration will jeopardize mid-sized price cap carriers' ability to continue providing affordable, quality broadband and voice services in rural areas. If they are forced to incur sizable losses in intercarrier compensation revenues, mid-sized price cap carriers will not be in a position to deploy new broadband services to their customers, let alone maintain the prices and quality of services currently offered to their customers today. These carriers' communications services are critical for rural development and employment, public safety, modern health care, and education. Thus, adoption of this proposal could have a direct and significantly detrimental impact on rural customers' lives and livelihoods. This impact on its own should raise serious concern for the Federal Communications Commission ("Commission"). When considered in light of the largest financial crisis in 75 years and during what appears to be a serious global recession, the intercarrier compensation reform proposal should be a non-starter as written.

Given these substantial concerns, Windstream requests that the Commission put its intercarrier compensation reform proposal out for comment. Alternatively, if the Commission believes it must take additional steps to address comprehensive intercarrier compensation reform now, the Commission should take a more measured approach by adopting together interrelated modifications to the plan, as suggested below.

I. Private Investment Is Needed to Support Voice and Broadband Services in Rural Areas.

To provide affordable, quality broadband and voice services to rural consumers, mid-sized carriers, like Windstream, rely on private investment. Private investors enable these carriers – among other items – to service debt, finance broadband deployment, and otherwise remain fiscally sound. Such investors look for stability in the mid-sized carrier's financial position and outside influences, including the regulatory structure and economic environment.

The stability of a mid-sized carrier's business model is particularly important to the type of investors it attracts. These investors – which include many public employee pension funds and insurance companies[1] – are drawn to mid-sized carriers due to their historic cash flows, ability to pay dividends regularly, and consistent levels of profitability.[2] Thus, any significantly negative change to the mid-sized carrier's business model could trigger a mass exodus in private investment, which would impair these carriers' ability to fulfill central public policy goals of the Communications Act. Mid-sized carriers would struggle to maintain "reasonably comparable rates" and "quality services," and would have to curtail plans for further deployment of advanced services.[3]

If confidence in the viability of the mid-sized rural business model is undermined, it will be too late for the Commission to unring that bell. Investors will not wait around to see if the Commission comes to the rescue and how. To prevent this outcome, mid-sized carriers, if at all possible, will have no choice but to try to maintain their investors' returns by raising prices, and decreasing spending on their networks and operations.[4] And if these measures are not sufficient to retain private investment, the Commission will face a new challenge: finding new broadband and voice providers able to adequately serve high-cost rural areas.

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[1] Many investment firms also hold Windstream stock on behalf of individual investors or in income-focused mutual funds.

[2] Dividend payments are central to the mid-sized carrier's business model. A mid-sized carrier's stock is similar to a bond. Stock prices of these carriers, which are facing declining revenues, typically do not appreciate. Instead, mid-sized carriers reward equity investors by paying regular dividends. Without these dividends, investors would have little reason to hold onto their stock. If investors decide to sell their stock because of concerns about their investment, a mid-sized carrier's share price will decline, making it even more difficult for the carriers to obtain capital from the debt markets, which have been for all intents and purposes "closed" due to the extreme volatility in recent months.

[3] *See* 47 U.S.C. § 254(b) (articulating principles serving as the basis for "policies for the preservation and advancement of universal service," which include, but are not limited to, (i) consumers in "all regions of the Nation" should have access to telecommunications and information services at "reasonably comparable rates" and (ii) "quality services should be available at just, reasonable, and affordable rates").

[4] Most mid-sized carriers likely would decrease dividends or returns to shareholders only as a last resort, because this measure would be extremely harmful to their ability to maintain vital access to the capital markets.

II. The Reform Plan Grossly Underestimates the Negative Impact on Mid-sized Price Cap Carriers and the Customers They Serve.

Based on recent meetings with Commission staff, Windstream believes that the Commission has been grossly underestimating the negative impact that the reform proposal would have on mid-sized price cap carriers and the rural consumers they serve. Windstream estimates that the plan would cause it to lose hundreds of millions of dollars in revenues, with little or no ability to recover these substantial losses.

First, the Commission's proposal appears to rely on incorrect, unsubstantiated suggestions that eliminating intercarrier compensation will somehow enhance rural broadband deployment and a transition to all-IP voice.[5] Nothing could be further from the truth. Windstream's broadband and Voice over Internet Protocol ("VoIP") investment decisions are dictated solely by an assessment of whether projected new revenues and operational savings will outweigh the associated, gargantuan costs. With respect to broadband in particular, Windstream previously has estimated that it would cost $250 to $400 million to deploy broadband to reach the approximately 15 percent of its customers who currently do not have access to its broadband.[6] Windstream then would need to spend many millions more on ongoing broadband operating costs.[7] To deploy VoIP, Windstream expects it would need to spend hundreds of millions above and beyond capital and operating expenses necessary to support ubiquitous broadband.[8] It is unrealistic to think that a reduction in intercarrier compensation rates would change a mid-sized price cap carrier's decision about whether to

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[5] *See* Letter from Brian Benison, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 05-337, 99-68, 07-135 (Aug. 5, 2008), Attachment at 2 (failing to identify any case where the alleged incentive of "carriers to cling to the traditional voice model" resulted in less broadband deployment); Letter from AT&T, CompTIA, CTIA, Global Crossing, The Information Technology Industry Council, National Association of Manufacturers, New Global Telecom, PointOne, Sprint Nextel Corp., The Telecommunications Industry Ass'n, T-Mobile, Verizon, and The VON Coalition to FCC Chairman Kevin J. Martin, WC Docket No. 04-36, CC Docket No. 01-92 (Aug. 6, 2008), at 3 (failing to identify any specific instance when reform to intercarrier compensation spurred "innovation and the deployment of . . . IP services as well as the broadband networks they ride over"); Letter from Ben Scott, Free Press, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92, WC Docket Nos. 05-337 and 06-122 (Oct. 13, 2008), at 5 (claiming that the current intercarrier compensation regime produces a "strong incentive for rural carriers to delay the full transition to the broadband world," but providing no examples of instances where this "strong incentive" led to actual delay).

[6] Comments of Windstream Communications, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 13-14 (Apr. 17, 2008) (this capital expense projection is based upon offering broadband at speeds ranging from 768 Kbps to 1.5 Mbps).

[7] *Id.* at 14-15 (such operating costs encompass, but are not limited to, transport fees that Windstream must pay to connect island exchanges to the Internet backbone; additional customer call center staffing required to support broadband products; creation and maintenance of a system that tracks the provision and capacity of each existing Digital Subscriber Line Access Multiplexer; grooming of cable pairs; and installation of jumpers to connect a phone line to broadband equipment).

[8] *See* Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) (establishing that transforming to an all-IP network is not economically viable for the foreseeable future and any such transition would require substantial, additional governmental support above and beyond what carriers currently receive from the Universal Service Fund).

incur these overwhelming costs – other than to make it *more difficult* for a carrier to dedicate scarce funds to further deployment of advanced services.

Second, the Commission's proposal, as we understand it, seems to adopt the unrealistic belief that the Commission can prevent harms to mid-sized price cap carriers by allowing the carriers to attain additional recovery after making a showing of confiscation. This "opportunity," as we understand it, is completely inadequate and likely ephemeral. Continued uncertainty would plague the mid-sized price cap carrier business model. By the time the Commission would make any decision about confiscation (even if a carrier could meet such a draconian standard), a mid-sized price cap carrier already would have suffered significant losses – both in terms of short-run decreases in intercarrier compensation revenues and flight of equity investment. This measure would provide too little relief, too late to prevent significant harm to mid-sized price cap carriers and the rural customers they serve.

Third, existing federal Universal Service Fund ("USF") support offers little consolation to mid-sized price cap carriers. A common misconception is that mid-sized price cap carriers, like Windstream, are funded largely by federal USF support. That simply is not the case. The outdated federal USF mechanisms provide a disproportionately large amount of support to small and mid-sized rate-of-return carriers, but do not provide adequate support to the mid-sized price cap carriers that serve high-cost rural areas of the Nation. Due to averaging of costs and inconsistencies between USF support calculations and rate regulations, the USF system fails to target support directly to the high cost areas where it is actually needed. Consequently, Windstream – with 27 percent of its exchanges comprised of 500 access lines or less – receives less than 1 percent of its total annual revenues from high-cost loop and model support, and less than 3 percent of its revenues from all federal high-cost support combined.

III. The Commission Should Adopt a Measured Approach to Intercarrier Compensation Reform.

Given the complexity of intercarrier compensation reform and the high stakes for rural consumers and carriers, Windstream requests that the Commission put the intercarrier compensation reform proposal out for public comment and formal consideration by the Federal-State Separations and Universal Service Joint Boards and the Federal-State Joint Conference on Advanced Telecommunications Services. Public release of the proposal will allow stakeholders to provide specific information about potential impacts, as well as offer modifications for consideration if appropriate. Moreover, this action would be consistent with the Commission's practice in other complex proceedings, such as when the Commission recently released its tentative conclusions and rules pertaining to the 700 MHz "D Block" auction.[9]

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[9] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Third Further Notice of Proposed Rulemaking, FCC 08-230, WT Docket No. 06-150, PS Docket No. 06-229 (rel. Sept. 25, 2008) (seeking comment on its tentative conclusions and rules designed to create a nationwide interoperable public safety-private partnership through an auction of commercial spectrum ("D Block")).

If it is serious about enabling the shift to an all-IP network, the Commission must obtain a fact-based understanding of associated costs and benefits, and then craft public policies that will thoughtfully reach that goal. Merely ordering it "to be so" will not produce an all-IP network. Instead, the Commission should initiate a proceeding to gather facts so it can make informed decisions about any such transition.[10] In particular, it could seek input from the states and other experts, such as the Federal-State Joint Board on Universal Service and the Federal-State Joint Conference on Advanced Telecommunications Services.

The Commission's response to the D.C. Circuit's remand of *In re Core Communications* should not be used as justification for pushing out ill-considered comprehensive intercarrier compensation reforms. The stakes are too high and the details too important. The Commission can decide the issue of ISP-bound traffic on its own and separately seek comment on the comprehensive proposal before it, or with modifications as proposed below.

Alternatively, if the Commission believes it must take additional steps to address intercarrier compensation reform at this juncture, Windstream offers the following modifications to the proposal under consideration. These concurrent, interrelated modifications would ensure that intercarrier compensation reforms are more fair and balanced. As a result, Windstream likely would support intercarrier compensation reform if its recommended changes were made to the existing plan, as we understand it.

Windstream cautions, however, that the modifications outlined below, to be successful, must be made together and in the time sequence recommended. The intercarrier compensation plan, even with these revisions, would *not* make Windstream and other similarly situated carriers whole as compared to their position under the current intercarrier compensation regime (which Windstream recognizes is eroding). First, Windstream's interstate access rate reductions to its target CALLS rates resulting from its conversion to price cap regulation would not be recovered via the intercarrier compensation replacement mechanism.[11] Second, only 50 percent of the revenue reduction resulting from interstate, intrastate, and reciprocal compensation rate reductions from $.0065 to $.0055 would be recovered through the replacement mechanism. Third, the increased subscriber line charges would not be fully recovered, as rate increases are restrained by competition. And to the extent changes are made that will impose further intercarrier compensation revenue losses, these modifications could place mid-sized price cap carriers in further financial jeopardy.

Specifically Windstream proposes the following *concurrent, interrelated* modifications (which are outlined in further detail in the attached Appendix) to the intercarrier compensation plan currently before the Commission:

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[10] Key questions to be asked are as follows: What steps are needed from a technological perspective to achieve the goal? How much will those changes cost? Would a transformation to all IP networks require regulation of the Internet backbone and/or transport arrangements to reach the backbone? What impact will such a transformation have on public safety? How would consumers benefit, and at what price?

[11] Windstream is required to reduce its interstate access rates to its CALLS targets, but under this proposal the transition to the lower rate would be accomplished in three years, rather than the longer transition provided under the CALLS rules.

- **First**, the Commission should transition each carrier's intrastate rates to its interstate rate levels by study area over several years.

- **Second**, the Commission must provide mid-sized price cap carriers, like Windstream, access to a recovery mechanism for recovery of lost intercarrier compensation revenues, offset in part by the subscriber line charge ("SLC") increases proposed in the plan (i.e., $1.50 for residential and single line business and $2.30 for multi-line business). A wide array of parties are on the record supporting the need for such a mechanism.[12] Funds from this recovery mechanism, which should apply after imputation of the rate benchmark and SLC increases, could be limited to operating and capital expenditures associated with support, maintenance, enhancements, and expansion of broadband offerings. This measure would replace the proposal to tie the future receipt of high-cost universal service support to a 100 percent broadband deployment commitment.

- **Third**, the Commission should issue a Further Notice of Proposed Rulemaking ("FNPRM") to seek comment on next steps and the framework for additional intercarrier compensation reform. The Commission should seek comment on, among many other items: whether to establish one unitary rate for all intercarrier compensation; unified rates by carrier, state, or track; the methodology for setting rates and establishing "additional cost" under Section 252(d)(2); and the proper role of state commissions, the Federal-State Separations and Universal Service Joint Boards, and the Federal-State Joint Conference on Advanced Telecommunications Services.

- **Fourth**, the Commission should preserve the status quo with respect to ISP-bound traffic and make it clear that VoIP traffic must continue to pay access and reciprocal compensation charges until the Commission issues a final order resulting from the FNPRM.

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[12] *See, e.g.,* Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (urging the Commission to "establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out"); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that "should be available to all carriers of last resort, regardless of company size, structure or regulatory classification"); Letter from Walter McCormick, USTelecom, President, to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (Oct. 10, 2008), at 5, 7, 8 (declaring that "establishment of a credible and compensatory ARM is an essential element of comprehensive intercarrier compensation reform"); Letter from Curt Stamp, Independent Telephone and Telecommunications Alliance (ITTA), President, to Secretary Dortch, Secretary, FCC, CC Docket No 01-92 (Sept. 19, 2008), at 5 (recommending that mid-sized carriers be able to use an Alternative Recovery Mechanism); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) (proposing a plan that included a recovery mechanism, which could be used by mid-sized carriers) ("Missoula Plan Ex Parte Letter").

Please contact me if you have any questions regarding this proposal.

Respectfully submitted,

/s/ Eric N. Einhorn

Eric N. Einhorn

cc: Dan Gonzalez
Amy Bender
Greg Orlando
Scott Deutchman
Nick Alexander
Scott Bergmann
Dana Shaffer
Don Stockdale
Marcus Maher
Randy Clarke

Appendix

Minimum Necessary Steps to Modify Proposal

- Years 1-3 -- Reduce terminating interstate, intrastate, and reciprocal compensation access rates for price cap carriers, phased in equal increments annually, to each carrier's interstate CALLS target by study area pursuant to 47 C.F.R. § 61.3(qq) (i.e., $0.0095, $0.0065, or $0.0055).

- Years 4-5 -- Reduce terminating interstate, intrastate, and reciprocal compensation access rates for price cap carriers, phased in equal increments annually, to the lowest CALLS target pursuant to 47 C.F.R. § 61.3(qq)(1) (i.e., $0.0055) and unify any higher reciprocal compensation rates to that level.

- Establish an Intercarrier Compensation Replacement Fund -- Provides a revenue replacement opportunity for revenue losses due to mandated rate reductions.
  - Available to non-RBOC price cap carriers and Fairpoint.
  - For Years 1-3, equals cumulative revenue loss due to intrastate and reciprocal compensation rate reductions, assuming maximum SLC increases.
  - For Years 4-5, equals 50% of the total reduction (interstate, intrastate, and reciprocal compensation) to $0.0055 plus the cumulative total from Years 1-3.
  - Each year the amounts received from the Fund would be indexed by the carrier's previous year's reported percentage of subscriber line loss.
  - Could limit use of funds to support for operating and capital expenditures associated with support, maintenance, enhancements, and expansion of broadband offerings.
  - Offset recovery from the Fund with imputed SLC increases.
  - Establish a rate benchmark so as not to overburden consumers in states that have already rate rebalanced.
  - This measure would replace the proposal to tie the future receipt of high-cost universal service support to a 100 percent broadband deployment commitment.

- Clarify treatment of VoIP traffic during transition, as follows:
  - VoIP to PSTN calls: Local (by telephone number) calls pay reciprocal compensation. Appropriate interstate and intrastate rates due on non-local calls (by telephone number) until interstate and intrastate rates are equal.
  - PSTN to VoIP calls: Local calls pay reciprocal compensation. Originating and terminating access due on non-local calls. Terminating access rate declines as provided in the transition plan. Originating access remains until end of transition.

- Issue a FNPRM seeking comment on steps for additional comprehensive intercarrier compensation reform during Years 5-10. The Commission should seek comment on, among many other items, whether to establish one unitary rate for all intercarrier compensation; unified rates by carrier, state, or track; the methodology for setting rates and establishing "additional cost" under Section 252(d)(2); and the proper role of state

Commissions; the Federal-State Separations and Universal Service Joint Boards; and the Federal-State Joint Conference on Advanced Telecommunications Services.

- Refer to the Federal-State Separations and Universal Service Joint Boards relevant issues, such as: whether to set a rate benchmark to constrain SLC increases in high rate states; whether a mechanism is needed to replace access or reciprocal compensation revenues during the next stage; and the impact of any changes or transitions on the separations process.

- Preserve the status quo with respect to ISP-bound traffic, pending completion of the FNPRM referenced above.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing A Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

ALLTEL Communications, Inc.

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Its Attorney

November 5, 2001

Executive Summary

ALLTEL continues to encourage the immediate authorization of pricing flexibility so that if and when a new intercarrier compensation mechanism is adopted, the impact on the end user will be minimized. ALLTEL also awaits the release of the Commission's Order regarding the MAG Plan for Regulation of Interstate Services of Non-Price Cap ILECs. The rules adopted in this plan should be analyzed and given a chance to operate before any fundamental changes are made to the intercarrier compensation system. Existing arbitrage and gaming of the system must be addressed by simultaneous rule and policy clarification and implementation at both the federal and state levels and symmetrically among wireline, wireless and other technologies.

The actual consequences of a bill-and-keep regime as proposed under COBAK and BASICS are unknown, but the extent of detriment such proposals could have on intercarrier compensation was voiced in numerous comments. Both technical issues like the point of interconnection (POI) and policy matters like universal service received much attention and clearly require further comment prior to any rule modification or implementation.

Neither COBAK nor BASICS will lessen regulatory intervention. On the contrary, these proposals could perpetuate the regulatory fictions that exist under the current system. It is ALLTEL's continued position that no bill-and-keep regime can adequately replace the current intercarrier compensation mechanism. Rather, with establishment of a few conditions precedent coupled with explicit rule clarification, the Commission can avoid additional arbitrage-creating regulation and foster investment and competition.

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing A Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF ALLTEL COMMUNICATIONS, INC.

ALLTEL Communications, Inc., on behalf of its local exchange carrier affiliates and its various subsidiaries and corporate affiliates providing commercial mobile radio services ("CMRS") (hereinafter "ALLTEL" or the "ALLTEL Companies") respectfully submits its reply comments in response to the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1]

I. Introduction

This proceeding began as an overall assessment of the current intercarrier compensation mechanism as it exists in the industry today and proposed two potential courses for the future. The resultant outpouring of comment raised numerous questions and concerns and resulted in limited agreement. ALLTEL is concerned that a new mechanism based on bill-and-keep will have a significant impact on revenue growth, market expansion of new advanced services, and cost recovery of past investments.

[1] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking* FCC 01-132 (rel. April 27, 2001) ("*Intercarrier Compensation Notice*").

In shaping the future of intercarrier compensation, the Commission must continue to focus on promoting competition. The Commission has made a commendable effort to encourage competition. Now is the time for the Commission to focus on fashioning rules explicitly designed to encourage investment in both wireline and wireless networks. As evidenced by current industry conditions, competition policy is not the same thing as investment infrastructure policy. Thus, any future intercarrier compensation mechanism must protect existing markets while promoting competition, the provision of advanced services and the infrastructure necessary for their deployment.

II. The Unintended Consequences Of New Regulation.

As stated in its comments, ALLTEL supports the Commission's reform of the current intercarrier compensation mechanism, but feels implementation of a theory-driven bill-and-keep system, untested by actual market events, is not prudent at this time. Refining existing rules that govern pricing flexibility and universal service mechanisms would be far more beneficial in determining true subsidy needs than implementing an untested paradigm of regulation whose potential material impact is indeterminable.

The existence of regulatory arbitrage that hinders the current system of intercarrier compensation was not the intention of regulators. Rather it is the unintended consequence of cumbersome, compulsory regulation on an industry where competitive market forces should be fostering competition. New regulation will have new unintended consequences.

> The Commission has begun to address the regulatory gaming that has been ongoing. In adopting interim compensation mechanisms for traffic bound for Internet Service Providers ("ISP") and competitive local exchange carriers' ("CLEC") access charges, the Commission

> acknowledged the imperfections that exist in the current regulatory regime that not only permitted but also induced carriers to behave in ways not contemplated by the Commission when it initially adopted its rules and policies. By working and manipulating the Commission's rules, carriers could and did profit handsomely by taking advantage of the imperfections in the regulatory process. As the Commission approaches redefining the rules for intercarrier compensation, it must remain mindful of this experience.[2]

The current intercarrier compensation mechanism has already created arbitrage opportunities never envisioned by its designers. An intercarrier compensation mechanism based on bill and keep will also have innumerable loopholes and pitfalls. Numerous ILECs and non-ILECs share this concern to some degree. Time Warner Telecommunications succinctly states, "COBAK may simply replace old inefficiencies created by arbitrage with new inefficiencies ('of unknown magnitude') created by arbitrage..."[3] Diminishing regulation, not merely exchanging regulation, is an essential step toward advancing competition and investment.

III. The Conditions Precedent To Any New Intercarrier Compensation Regime.

a) Universal Service.

ALLTEL stated in its comments that the Commission must provide for universal service support in ways that are explicit, sufficient and predictable. Verizon agrees that "a new framework such as bill-and-keep will provide a different distribution of payments...[and] change the amounts different customers pay."[4] It is unlikely that the current universal service mechanism will provide sufficient support for high cost areas under the proposed bill-and-keep regime. If the Commission intends to implement bill-

[2] Comments of BellSouth Corporation at 2.
[3] Comments of Time Warner Telecom at 11.

and-keep for all current wholesale services, and bill and keep proposes to reduce both reciprocal compensation and access charges to zero, then there is a high probability that the states will ultimately be forced to reduce intrastate access rates to zero (since the incentive for regulatory arbitrage to bypass intrastate access will be very high). Legitimate costs will have to be recovered elsewhere, placing an even greater potential burden on universal service and compounding the effect of rate shock on customers. Rural carriers will have to rely on their smaller customer bases and universal service to recover costs. In order to keep these increased rates within reason, monies that could be better spent improving network quality and deploying advanced service will be reallocated. Therefore, if the Commission intends to reduce the level of interstate access charges, it should not implement any form of bill-and-keep, but rather must ensure universal service support that is currently implicit in interstate access charges is made explicit, sufficient and predictable.

> The Commission should therefore focus on reducing its regulation of interstate access charges, not by prescribing bill-and-keep default rules, but by (1) identifying and rendering explicit large amounts of universal service support now implicit in interstate access charges; and (2) granting increased pricing flexibility to rural and rate-of-return ILECs so that they may align prices more closely with the varying costs of different areas and different access configurations.[5]

b) Immediate Pricing Flexibility.

The Commission must authorize dramatic pricing flexibility to allow carriers to better prepare for any new system of intercarrier compensation. This concern is shared by BellSouth:

> Movement to a bill-and-keep intercarrier compensation mechanism will impact cost recovery. Where a carrier recovered some of its access

[4] Comments of Verizon Communications at 16.
[5] Comments of CenturyTel at 12.

> charges from other carriers, these cost will now have to be recovered from a carrier's end user...Pricing flexibility is the only sure way of ensuring that market responsive rates are established. Failure to provide for pricing flexibility would only transfer to the end user the many regulatory conundrums that have been encountered with regard to intercarrier compensation.[6]

If an intercarrier compensation regime intends to replace access charges with increased end user rates, carriers must have the pricing flexibility to implement capacity-based pricing plans, package pricing and other pricing plans to recover from end users in a reasonable and affordable manner. Otherwise, the true subsidy needs that must be calculated prior to the implementation of such a regime will be distorted. ALLTEL agrees with CenturyTel's argument that granting increased pricing flexibility will allow rural and rate-of-return ILECs to align prices more closely with the costs and access configurations of more rural areas.[7]

c) Transitional Equities.

Many carriers have designed their business plans based on a specific set of assumptions inherent to CPNP regarding compensation, costs, rates and investments. As mentioned above, a viable intercarrier compensation structure must allow each network access provider the opportunity and flexibility to establish a mechanism to recover their network access costs from the end user customer at both the interstate and intrastate levels. In addition, any reallocation of revenue burdens in this docket must account not only for the impact of this proceeding, but also for the practical and collective effect of parallel activities now ongoing. Verizon Communication echoed these sentiments when it stated that "whatever new rules the Commission adopts in response to the Multi-

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[6] Comments of BellSouth at 15.

[7] Comments of CenturyTel at 12.

Association Group ("MAG") plan should be given a chance to run their course before any fundamental change [is made] in the intercarrier compensation system."[8]

d) Simultaneous State And Federal Implementation.

ALLTEL also emphasized in its comments the need for the next intercarrier compensation regime to be implemented simultaneously at both the state and federal levels, as well as symmetrically among different technologies and network configurations. Otherwise, unforeseen arbitrage opportunities will negate any benefits of a new intercarrier compensation mechanism, a result the NPRM seeks to avoid.

e) COBAK and BASICS Create Point Of Interconnection Concerns That Demand Further Comment.

Resolution of the point of interconnection (POI) issue will be a critical determining factor in the viability of a workable replacement intercarrier compensation mechanism. Under COBAK, a called party's carrier cannot charge an interconnecting carrier to terminate a call (each carrier recovers the cost of the loop and local switch from its end-user). However, by making the calling party's network responsible for the cost of transporting a call between the calling party's central office and the called party's central office, COBAK creates a potential POI problem. If a carrier's switch is located many miles from where a call terminates, the originating carrier could incur huge costs in transporting traffic to a terminating carrier switch. These costs would be passed on to the end user customer.

Level 3 recommends that the Commission continue to require carriers to haul traffic to a single POI per LATA, but does not provide analysis as to whether the current

[8] Comments of Verizon Communications at 18.

rule will be appropriate in the future.[9] BellSouth feels that there needs to be a "geographical limitation associated with the point of interexchange."[10] It is ALLTEL's belief that the POI issue will have a disparate impact on different carriers due to their differences in technology and network architecture. Therefore, the POI issue demands further comment and inquiry.

IV. Bill And Keep In The Context Of LEC-CMRS Interconnection.

The wireline-centric model of both the COBAK and BASICS proposals fails to account for the unique nature of CMRS network architecture, the scope of the MTA-wide local calling area for CMRS, and the evolving nature of LEC-CMRS interconnection arrangements. The Commission should recognize that the adoption of a specific compensation regime intended to universally cover the costs of interconnection of network traffic is not appropriate in a diverse telecommunications market comprised of a variety of service providers using differing and evolving technologies.[11] Therefore, ALLTEL cannot support either proposed bill-and-keep model as the mandated default LEC-CMRS interconnection regulation.

a) COBAK and BASICS Both Require Regulatory Intervention and Perpetuate Regulatory Fictions.

The Commission has attempted to promote default bill-and-keep through COBAK and BASICS under the guise of reduced regulatory intervention. COBAK and BASICS will not generally accomplish this goal, and particularly not in the context of LEC-CMRS interconnection. The COBAK proposal centers around the location of a "central office."

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[9] Comments of Level 3 Communications, LLC at 20.
[10] Comments of BellSouth at 14-15.
[11] Comments of the National Association of State Utility Consumer Advocates at 4.

As Verizon Wireless notes in its comments, "it would require a regulatory body to determine on a case-by-case basis what is a 'central office.'"[12] To the extent there is a ready analog to a "central office" in a CMRS network, this alone would increase the need for regulatory intervention and lead to further regulatory fiction. CTIA echoes this sentiment and adds, "it is at best futile and at worst dangerous to compare newer network architectures to the architecture of legacy networks for determining the terms and conditions of interconnection...The risk of regulatory 'getting it wrong' leads to inadvertent favoritism of some networks over others."[13]

The BASICS proposal, in proposing a split in the incremental interconnection costs equally among carriers does not clearly define how this would be accomplished. Carriers would bid on the right to provide transport to another network, but agreeing on the incremental cost of interconnection and refereeing the bidding process remains undefined and may require more regulatory intervention, not less. As CTIA notes, BASICS "invites once again widespread regulatory battles over what costs are appropriately included, and how to quantify them."[14]

b) Carriers May Adopt Bill and Keep Today.

Intercarrier compensation for local interconnection traffic today is largely governed by market forces that drive negotiated carrier interconnection agreements. The Local Competition Order clearly stated that "all CMRS providers provide telecommunications [services] and that LECs are obligated pursuant to Section 251(b)(5) (and the corresponding pricing standards of Section 252(d)(2)) to enter into reciprocal

[12] Comments of Verizon Wireless at 22.
[13] Comments of CTIA at 38.
[14] Comments of CTIA at 23. The proposal also appears to ignore the efficiencies of larger carriers serving in the role of transit carriers, aggregating traffic and terminating it at a rate reflecting the total volume.

compensation arrangements with all CMRS providers... for the transport and termination of traffic."[15] Under the current rules, in situations where market forces dictate, carriers are free to adopt bill-and-keep compensation terms for local interconnection traffic with Commission approval. As noted in CenturyTel's comments, "the fact that interconnection agreements do not universally reflect bill-and-keep compensation arrangements... demonstrates that the market will not universally produce the results the Commission seeks to establish under its default rules."[16] ALLTEL agrees. The fact that negotiated bill-and-keep arrangements exist does not mean they are the most efficient means of ensuring competition. Therefore, ALLTEL questions whether there is a compelling need for the Commission to uproot the rules governing reciprocal compensation arrangements and replace them with default bill-and-keep under either COBAK or BASICS.

c) The existing mechanism for LEC-CMRS interconnection would benefit from the immediate adoption of critical rule and policy clarifications.

The Commission's effort to improve the rules governing LEC-CMRS interconnection is commendable, but mandatory bill-and-keep in any form is not the answer. ALLTEL agrees that the current intercarrier compensation negotiation process needs improvement. Verizon Wireless and Nextel proposed the following measures to clarify and improve the process. First, in order to improve efficiency and reduce regulatory intervention, the Commission should establish a rebuttable presumption that a CMRS carrier's wireless mobile switching center ("MSC") serves a comparable

[15] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1997) ("*Local Competition Order*").
[16] Comments of CenturyTel, Inc. at 23.

geographic area to the ILEC tandem.[17] Second, the Commission's determination that CMRS carriers' "local" calling areas is the Major Trading Area ("MTA") for purposes of reciprocal transport and termination needs to be reiterated.[18] This rule allows CMRS carriers to request interconnection at any technically feasible point in the MTA and precludes ILECs from assessing access charges on CMRS carriers for traffic originating and terminating in the same MTA. Many CMRS have configured their networks around existing MTA boundaries. CTIA points to instances of rural ILECs using boundaries other than the MTA to define the local calling area, "thereby effectively reclassifying local CMRS calls as toll calls and subjecting these calls to toll rates and access charges."[19] In order to prevent the questionable behavior of certain rural LECs who have attempted to circumvent LEC-CMRS interconnection rules in rural areas, the Commission should reiterate and clarify that rural carriers must bear the cost to transport their local traffic within the MTA to the CMRS carrier's MSC and must compensate CMRS carriers for the costs of terminating such traffic.

Additional problems have arisen where CMRS providers connect indirectly with small ILECs through a larger ILEC. These small, rural ILECs have suggested that CMRS carriers pay for direct trunking arrangements to bring terminating CMRS traffic directly to them.[20] It would be highly inefficient to establish direct physical connections with every carrier within an MTA because traffic flows are so low and CMRS customers only occasionally terminate calls on these rural ILEC's networks.[21] The impediments being imposed on indirect interconnection by rural ILECS are jeopardizing the

[17] Comments of Verizon Wireless at 39; Comments of Nextel at 36.
[18] Comments of Nextel at ii.
[19] Comments of CTIA at 15.
[20] Comments of Nextel at 26.

competitive availability of wireless service in rural areas and must be addressed by the Commission, because CMRS carriers are, for purposes of the Act, "telecommunications carriers" vested with the right to connect directly or indirectly with other carriers.[22]

d) Rural ILEC Gaming Violates Commission Rules and Distorts the Intentions of the 1996 Act.

As several commenting parties noted, without reiteration and clarification of the rules governing LEC-CMRS interconnection in rural areas, abuses are likely to continue. Specifically, rural ILECs in Missouri have filed tariffs that impose unilateral, access-like rates for termination of local wireless calls.[23] CMRS carriers fought these unilateral tariff filings arguing that such tariffs violated the 1996 act and Commission interconnection rules.[24] The Missouri Public Service Commission ("PSC") rejected the CMRS carrier claims concluding that wireless carriers were free to pursue direct interconnection arrangement with each individual rural ILEC if the tariffed rates were not satisfactory. As mentioned above, the cost of establishing a direct physical connection to each rural ILEC to whom it terminated *de minimus* amounts of traffic would be economically infeasible.[25] Clearly, the Missouri PSC's intent to drive parties to the bargaining table was misguided. At worst, the PSC's allowing of the rural ILEC to choose to route intraMTA calls through an IXC, thereby receiving originating access compensation from the IXC, while avoiding any payment of reciprocal compensation to CMRS carriers that transport and terminate the traffic, was a deliberate decision to skirt current Commission rules and Section 251/252 of the Act.

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[21] *Id.* at 27.
[22] See Telecommunications Act of 1996, Section 251(a)(1).
[23] *Id.* at 40.
[24] Comments of Nextel at 11.
[25] *Id.* at 13.

V. Conclusion.

ALLTEL does not endorse either of the Commission's bill-and-keep proposals as an appropriate replacement for the current intercarrier compensation mechanism. Neither COBAK nor BASICS has been proven to provide adequate cost recovery and both will likely perpetuate regulatory fictions. Refining existing rules governing pricing flexibility, universal service and interconnection would be a more appropriate course of action for the Commission at this time. Implementing an untested regulatory mechanism while the success or failure of access reform for both price-cap and rate-of-return carriers remains uncertain would not be prudent.

Respectfully submitted,

ALLTEL Communications, Inc.

By: ______________________

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November 5, 2001

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August 21, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Developing A Unified Intercarrier Compensation Regime
CC Docket No. 01-92

[illegible] of [illegible] ti Inc.

Dear Ms. Salas,

Enclosed for filing by ALLTEL Communications Inc. are an original and four copies of its Comments in the matter referenced above. Should there be any questions regarding this matter, please contact the undersigned counsel.

Sincerely,

(David C. Bartlett
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OFFICE OF THE SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing A Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**COMMENTS
OF
ALLTEL COMMUNICATIONS, INC.**

ALLTEL Communications, Inc.

David C. Bartlett
Assistant Vice President
Federal Regulatory Affairs
601 Pennsylvania Ave, NW
Suite 720
Washington, D.C. 20004
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Its Attorney

August 21, 2001

Executive Summary

ALLTEL shares the views expressed by the Commission in the Notice that it is necessary to make fundamental changes to the regulatory system that currently governs communication services and providers. The digital revolution has rendered obsolete numerous regulatory categories, definitions, rules and constraints. Obsolete regulatory schemes carried over and applied to new techno-economic circumstances are inefficient and undercut the fundamental goals of national telecommunications policy.

The Notice correctly singles out intercarrier compensation gaming schemes as wasteful and inefficient practices that send false signals to investors and entrepreneurs and cause inequitable transfers of wealth among carriers. It also correctly identifies that changing the method of cost recovery from substantial reliance on interconnecting carriers to exclusive reliance on customers cannot be done immediately or without substantial cost to some carriers, customers, parts of the country and investors.

Before any new intercarrier compensation mechanism can be implemented, several conditional safeguards (some involving corresponding changes in other rules and policies) must be in place for the proposal to succeed. Carriers have conditioned their networks to operate in the current recovery environment. If that environment dramatically changes, carriers must have ample opportunity to design the means to offset the potential harm caused by the changes. Adoption of the Multi-Association Group Plan' as proposed would assist rate of return ILECs in the transition. Universal service support mechanisms must be guaranteed in a new intercarrier compensation environment and carriers must have the flexibility to offer varied pricing options to their customers.

The mechanism that emerges from this rulemaking must apply to all carriers, networks and technologies equally, and be implemented in both interstate and intrastate jurisdictions simultaneously. Otherwise, the regulatory arbitrage that limits the current system will continue to infest the next regime.

The Commission specifically requests comment on the feasibility of using a bill and keep approach to achieve a unified regime for intercarrier compensation. While ALLTEL supports modifications to current cost recovery mechanisms, we do not support a transition at this time to bill and keep for those intercarrier transactions not currently operating under a bill and keep system. Far less dramatic measures will have equally beneficial effects. Our comments emphasize the conditional nature of our support for any changes and spell out both the policy goals that must drive a new regime and the conditions that necessarily must precede or accompany adoption of any new intercarrier compensation mechanism.

ALLTEL believes the Commission has the opportunity to strike a better balance among the goals of the Telecommunications Act of 1996.[2] The focus of much of the Commission's activity has been to prepare the way for and to provide a sustaining environment for competition. The issues in this proceeding will require the Commission to focus intently on adapting its processes to foster less regulation and greater investment while protecting universal service, especially in rural areas, and consolidating gains achieved in creating a more competitive marketplace.

[1] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Report and Order, CC Docket 00-256, FCC 01-157 (rel. May 23, 2001) ("MAG plan").
[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

For most carriers, the proposal to shift cost recovery from intercarrier settlements to carriers' customers will be disruptive given the scale and scope of existing revenue streams involved. Moreover, absent appropriate transitions, there could be dramatic winners and losers among classes of carriers, customers, services and locations. ALLTEL respectfully suggests the Commission reconvene a Rural Task Force-like entity to further examine the potential impact of a new intercarrier compensation mechanism based on a bill and keep or similar model.

In the course of considering and implementing changes, the Commission must take great care to identify and anticipate disruptions and provide safety nets, damage control mechanisms and other ameliorative devices to ensure transitional equity. There must be assurances that regulatory change will provide the flexibility both in time and regulatory latitude, for entities to adapt to the new rules.

Opportunities to allow ILECs to recover potentially large losses must be devised, i.e., allowing innovative pricing schemes, reducing the inefficiencies of asymmetrical regulation, sharing responsibilities for assuring universal service, and spreading the burden of carrier-of-last-resortobligations. Similarly, it is imperative that complementary changes in intrastrate rate regulation policies take place concurrently with any major interstate revision of intercarrier compensation. These and other safeguards to shield customers and their carriers-of-last-resortproviders (if only temporarily) should be conditions precedent to any major change and are, in any event, necessary to protect the public's long term interest.

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing A Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

COMMENTS
OF
ALLTEL COMMUNICATIONS, INC.

ALLTEL Communications, Inc., on behalf of its local exchange carrier affiliates and its various subsidiaries and corporate affiliates providing commercial mobile radio service ("CMRS") services (hereinafter "ALLTEL" or the "ALLTEL Companies") respectfully submits its comments in response to the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking *("NPRM")* in the above-captioned proceeding.[3]

ALLTEL is a diversified telecommunications and information services company headquartered in Little Rock, Arkansas. The ALLTEL companies largely serve small to mid-sized towns and cities where they provide a full complement of communications services and solutions including local wireline, competitive local exchange carrier ("CLEC"), long distance, internet, cellular, paging, and advanced digital wireless services.

The ALLTEL wireline companies consist of twenty-two (22) individual incumbent local exchange carriers ("ILEC") which provide integrated telecommunications services to approximately 2.6 million access lines in 15 states. The ALLTEL wireless operations

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[3] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, ***Notice of Proposed Rulemaking*** FCC 01-132 (rel. April 27, 2001) ("Intercarrier Compensation Notice").

provide service to 6.4 million customers throughout the Southeastern, southwestern and Midwestern United States. Additionally, 1.2 million customers subscribe to ALLTEL long distance, and the company provides more than 200,000 customers with Internet access.

I. Introduction

The Commission is to be commended for implementing this comprehensive reevaluation of the regulatory patchwork that currently governs intercarrier compensation. With this NPRM, the Commission acknowledges the impediments, inconsistencies and inefficiencies of existing interconnection rate regulation and seeks a more permanent form of intercarrier compensation that will ultimately end the Commission's role as regulatory referee. ALLTEL agrees with the Commission that an intercarrier compensation mechanism is needed to encourage more efficient use of, and investment in, telecommunications networks, while providing for the equitable development of competition.[4] Consistent with the pro-competitive and deregulatory goals of the 1996 Act, ALLTEL endorses the Commission's effort to establish a cost recovery mechanism that minimizes the need for regulatory involvement, both now and as competition continues to develop.[5] The intercarrier compensation mechanism that ultimately flows from this proceeding will dramatically affect the future performance of the telecommunications industry and shape the welfare of its consumers, carriers and investors. During the transition, the Commissions must establish safeguards for rural consumers and the companies responsible for bringing both voice and broadband facilities to homes and businesses across America. As mentioned previously, ALLTEL

[4] ***Intercarrier** Compensation **Notice*** at ¶ 2.
[5] ***Id.***

believes a logical step towards this goal would be the implementation of interstate access reform set forth in the MAG plan that is currently pending before the Commission.

With this NPRM, the Commission hopes to find "market-oriented solutions [that] may provide more timely adjustment and avoid distortions resulting from incorrect or outdated regulatory decisions."[6] ALLTEL applauds this effort. These comments will discuss the shortcomings of the existing mechanism, the goals of a unified intercarrier compensation mechanism, the potential impact of a bill and keep regime, the practical consequences of a dramatic restructuring of the existing intercarrier compensation system and the safeguard conditions that must be in place prior to any transition.

II. Problems With the Existing Intercarrier Compensation Mechanism

A. The Existing System is Unnecessarily Administratively Burdensome

In the twenty-first century, competition in the telecommunications industry exists in a tenuous environment of patchwork rules and rates that results in avoidable administrative burdens on all carriers. Not only is the current regulatory framework of intercarrier compensation fraught with costly reporting requirements and administrative minutia, the basic tenets of the underlying cost model are being reevaluated; i.e.; transport costs (who is the "cost causer"); embedded costs vs. forward looking costs. Further study of these tenets is warranted.

The Commission poses the question, should efficiency "be the sole or paramount goal of intercarrier compensation?"[7] ALLTEL agrees with the Commission that increased efficiency based on deregulation must be a high **priority,** however, ALLTEL does not think adopting a bill and keep regime will encourage efficiency. The current

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[6] ***Intercarrier Compensation Notice*** ai ¶ 34.
[7] *Id.* at ¶ 33.

level of regulatory intervention is ineffective, impractical and too often results in costly litigation, which delays investment and the provisioning of new services. A new intercarrier compensation regime based on bill and keep will likely have the same effect by detracting from rather than contributing to consumer welfare.

B. The Existing System Provides Opportunities for Regulatory Arbitrage

The Commission correctly emphasizes the incidence and impact of regulatory arbitrage and seeks to "eliminate or ameliorate most of the regulatory arbitrage opportunities caused by the existing . . . regulations."[8] As the intercarrier compensation system exists today, there is an incentive to distort state/interstate differences, reciprocal compensation, enhanced service provider exemptions and engage in other profit-maximizing behavior borne of the inconsistent and asymmetrical blend of regulation that currently exists when carriers originate, transport and terminate traffic.

The Commission deftly notes that "parties will revise or rearrange their transactions to exploit a more advantageous regulatory treatment, even though such actions, in the absence of regulation, would be viewed as costly or inefficient."[9] The resulting regulatory arbitrage distorts investment incentives and network efficiency by connecting profit to regulation rather than market conditions, thus creating the illusion of economic value where there is none. The proliferation of regulatory arbitrage, coupled with the technological advances of other communications platforms (voice over Internet protocol, wireless, cable and satellite service) will continue to erode current ILEC revenue streams and introduce additional pressures on universal service. We caution that the changes being proposed may well create other regulatory arbitrage opportunities,

[8] ***Intercarrier Compensation Notice*** **at ¶ *52.***
[9] *Id.* at ¶ 12.

especially among intrastate and interstate services or among voice services offered via internet protocol versus traditional voice services over the public switched network. Therefore, the Commission should consider the broadest possible analysis of a new system and be willing to evaluate such "sacred cows" as the Internet Service Provider ("ISP") exemption or the universal service obligations of voice over Internet protocol providers.

C. The Existing System Encourages Inefficient Investment Decisions

Regulatory arbitrage encourages investment in facilities where value is derived exclusively from arbitrary administrative conventions. Such rules effectively tax some entities – consumers and investors – as a means of subsidizing others, all without increasing aggregate economic value. Arbitrage related to ISP-bound traffic is the most notorious example of regulatory intervention resulting in inefficient investment decisions. Numerous carriers based their business models on reciprocal compensation revenues derived from Internet bound traffic. By exploiting this regulatory loophole, these companies wagered their economic futures, and the dollars of their investors, on this continued stream of reciprocal compensation created predominantly by administrative rules that were applied on an inconsistent and untimely basis. Such arcane regulation also kept ISP traffic on the switched network which delayed deployment and improvement of technologies such as Digital Subscriber Line ("DSL").

Regulatory arbitrage is a regulatory problem. That does not mean, however, that it requires the ultimate regulatory solution, i.e., bill and keep. Other mechanisms such as unitary rates, or preferably greater pricing flexibility (thus, allowing the marketplace to

establish rates) will reduce arbitrage, direct traffic to more efficient networks and better utilize excess bandwidth.

D. The Existing System Reflects Obsolete Market Conceptions

Technologies are rapidly converging in the marketplace. The Commission must not lose sight of the fact that the communications marketplace of the future will ultimately be driven by technological advancement. New policy initiatives must anticipate that new technology platforms will be competing for existing customers. The efficient intercarrier compensation mechanism of the future should ultimately apply to all technology platforms and networks in the same manner.

Consider Internet services. The consensus, based firmly in recent historical data, is that Internet Services will come to dominate those provided via different network protocols. Services provided via the Internet neither respect nor reflect most of the traditional boundaries and classifications of service used to define regulatory status. Internet services know no jurisdictional bounds; they are indifferent to local versus long distance distinctions; they ignore technological distinctions between, say, wireline and wireless propagation; and, most importantly, they are transparent with respect to different applications and content, i.e., voice, data, video, graphics, etc. Thus, as a practical matter all regulations based on these distinctions are obsolete.

Traditional models of business are blurring. Denoting traffic as intrastate or interstate, toll or local, voice or data, is becoming increasingly counterproductive. The fastest growing communications platforms are those that are not regulated by geographic, technological or economic boundaries and do not have clearly defined services requiring

separate pricing structures. The ineffective way intercarrier compensation is currently regulated is not reflective of this limitless communications marketplace.

III. Objectives of a Unified Intercarrier Compensation Mechanism

In seeking more permanent and progressive alternatives to the existing intercarrier compensation regime, the Commission hopes to consummate the pro-competitive vision of the 1996 Act. This vision includes numerous complex components. The most critical goals from ALLTEL's perspective as they relate to intercarrier compensation are:

- Deregulation reliant on market forces;
- Competitive viability of multiple carriers;
- Continued investment in advanced services; and
- Preservation and advancement of universal service.

The current system's patchwork of invasive and inconsistent regulation undermines these goals by relying on administrative rules rather than market conditions. The 1996 Act's pro-competitive vision will only be recognized if it is simultaneously considered in the context of its deregulatory intentions. We must examine how these important issues will be addressed by new intercarrier compensation mechanisms.

A. Deregulation Based on Market Forces

Movement away from intercarrier compensation and toward full cost recovery from customers will magnify and expand the case for less intrusive regulation. For ILECs currently under the most abstruse regulatory restraints, the Commission should reexamine traditional legacy rules whose negative impacts will be compounded in the context of any new intercarrier Compensation regime. Many of these legacy rules are

already outmoded and onerous in the converged telecommunications environment, and will become even more burdensome as the marketplace evolves.

Deregulation must occur sooner than later. The Commission should move immediately to eliminate current rules which prevent carriers from offering innovative rate and services packages or other forms of pricing flexibility. The longer deregulation is delayed, the greater the detrimental affect on the industry, innovation and the consumer.

A marketplace transition to a new intercarrier compensation mechanism should be devoid of lengthy pricing reviews and should allow contract pricing, term pricing, capacity-based pricing and assorted bundles of services to be priced on a package basis. Examples of such ratemaking flexibility abound for interexchange carriers, diversified entrants and ISPs, all of whom routinely offer highly varied rate and service packages. Other pricing innovations should include the availability of multi-state local service options. Without this pricing flexibility, a carrier's ability to recover costs **from** end users will be hampered, thereby throwing even greater responsibility for cost recovery on universal service mechanisms. Deregulation of the existing pricing system is an integral step toward competitive panty and market equilibrium reflecting true cost and value differences.

B. Competitive Viability of Multiple Carriers

The communications marketplace is in flux and will continue to develop differently from market to market. Competition's survival and development will be contingent upon the Commission's willingness to be competitively neutral and to eschew the asymmetric regulation that harms long-term consumer interests.

New intercarrier compensation mechanisms must not benefit the large national players at the expense of the smaller regional players. New mechanism must allow companies with smaller customer bases to reasonably recover costs and stay competitive with larger carriers. Existing mechanisms, such as wholesale opportunities, must continue to provide support for retail offerings in areas that do not or cannot operate at full capacity. New mechanisms should not discriminate among different technologies or network configurations by favoring one over the other. The Commission has long proclaimed technological neutrality as a goal and should take great care here to assure that it is realized.

ALLTEL's wireline companies serve predominantly rural areas. Compared to non-rural carriers, rural carriers generally have higher operating and equipment costs, which are attributable to lower subscriber density and smaller exchanges. They lack certain economies of scale, scope and density. It is crucial to rural carriers that interexchange access charges be transitioned over a period of time, sufficient to avoid rate shock and capital spending interruptions.

The Commission has already given price-cap ILECs the flexibility to manage reductions in interexchange access charges by adopting the *CALLS* ***Order.*** With the recent adoption of the *Reciprocal Compensation Order* and the *CLEC Access Charge Order* the Commission has also adopted interim measures that allow ISPs and CLECs to anticipate and manage their financial futures. Rate of return carriers have been left without the flexibility to chart an economic glide path because the MAG plan is still pending before the Commission.

The MAG plan is a five year transitional plan intended to provide predictable levels of compensation to rural carriers so they may continue to provide affordable, quality services in rural America.[10] The MAG plan is a comprehensive plan that would create a more efficient access rate structure, more explicit universal service support and new incentives for rate of return carriers to increase efficiency and invest in advanced services.

The **MAG** plan proposes to increase the cap on Subscriber Line Charges (SLC) for all rate of return ILECs, tracking the SLC caps for carriers subject to the ***CALLS Order.*** For certain ILECs, the plan also lowers the Composite Access Rate (CAR) to **1.6** cents per minute on average two years after the start of the transition period. The **MAG** plan proposes a glide path that will allow rate of return ILECs flexibility to control administrative and regulatory burdens. Without the flexibility of such **a** plan, rate **of** return ILECs will not have adequate notice to avoid economic displacement and rate shock to customers. ALLTEL urges the Commission to adopt the MAG plan without modification.

C. Continued Investment in Network and Advanced Services

An orderly, managed transition must be established if new intercarrier compensation regulation is going to drastically alter the way a carrier collects revenue and recovers legitimate costs. Rural carriers in particular must have time to modify their business plans to control costs and recover revenues from alternative sources if existing networks are to be maintained and advanced services are to be increasingly provisioned

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[10] *Federal-State* **Joint** *Board on Universal Service, CC* Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC* Docket *00-256,* Fourteenth Report and Order, **para.1** (2001) *(Fourteenth Report and Order).*

in all regions of the nation. The Commission must adopt policies and mechanisms to accommodate these market and operational circumstances faced by telecommunications carriers serving high cost areas. If prices are not affordable and reasonably comparable or cannot be sustained, universal service and/or continued wholesale charges must be available.

While the average rural end user is denied advanced services and must absorb increased costs for existing service, the high volume end users will benefit from broadband roll out and reduced prices as new entrants continue to target the higher margin markets. As advanced services are rolled out to high margin markets without appropriate safeguards, the digital divide will widen between the rural and urban consumer.

D. Preservation and Advancement of Universal Service

The proposed plan will shift cost recovery responsibility among different beneficiaries and users of local networks. There will be winners and losers among different classes of carrier, customer, services and market location – especially with respect to rural and urban users. Thus, the proposed regime will necessitate adjustments and perhaps additions to current universal service support mechanisms. Reasonable assurances of the opportunity to recover costs sunk in current networks are absolutely imperative if capital markets are to continue to fund critical infrastructure investment to meet market demand and competitive pressures. Under the proposed regime, current wholesale cost recovery will shift to the end user. In areas where end user recovery results in rates that are not affordable and reasonably comparable to those available in urban areas, universal service support will be required. The Commission must assure that

appropriate mechanisms for assuring sufficient support are in place before exposing carriers to rate shocks that may accompany the proposed changes.

The Commission must provide for universal service support in ways that are explicit, sufficient and predictable. It is unlikely that the current universal service mechanism will provide sufficient support for high cost areas under the proposed bill and keep regime. If the Commission intends to implement bill and keep for all current wholesale services, and bill and keep proposes to reduce both reciprocal compensation and access charges to zero, then there is **a** high probability that the states will ultimately be forced to reduce intrastate access rates to zero (since the incentive for regulatory arbitrage to bypass interstate access will be very high), placing an even greater potential burden on universal service.

IV. Discussion of a Bill and Keep Regime

Converting from the current intercarrier compensation network to bill and keep poses a daunting challenge. In our current calling-party-network-pays("CPNP") system, the calling party, deemed the primary beneficiary of the call, is responsible for the transport costs associated with the call. Under bill and keep, the called party would share in the cost of the call because of their decision to be on the network and receive calls. This economic principle of cost causation is consistent with the Commission's desire in the NPRM to shift a portion of cost recovery to the end user customer.

In the NPRM, the Commission includes a description of two theoretical constructs offeringjustifications for a bill and keep approach to intercarrier compensation: Central Office Bill and Keep ("COBAK") and Bill Access to Subscriber Cost Splits ("BASICS"). Both proposals rely on negotiating network interconnection agreements initially, but they

differ in the default provisions that would be triggered should negotiations fail. It should be noted that COBAK and BASICS are theoretical constructs untested by actual market events.

Under COBAK, no carrier may recover any cost of its customers' local access facilities from an interconnecting carrier, and the calling party's network is responsible for the cost of transporting the call to the called party's central office.[11] In short, COBAK sets the cost of interconnection between parties at zero requiring local carriers to recover the cost of termination from their end user, thereby theoretically eliminating the terminating access monopoly.[12] The BASICS proposal proposes slightly different rules with a similar result: networks should recover all intra-network costs from their end-user customers, and the costs that result purely from interconnection are divided equally between the networks.[13] Under either default proposal, a significant portion of the cost recovery is shifted to the end user. In certain circumstances the impact will likely be so severe that the current universal service mechanisms will not be able to absorb the impact, both in terms of the sufficiency of support and in terms of maintaining equitable contributions.

Both COBAK's and BASICS' default proposal contain flaws above and beyond the potential upheaval of universal service in the wake of radical revenue stream reductions. The BASICS proposal, in proposing a split in the incremental interconnection costs equally among carriers (with remaining costs recovered from the carrier's end user), does not clearly define how this would be accomplished. Carriers would bid on the right to provide transport to another network, but agreeing on the

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[11] *Intercarrier Compensation Notice* at ¶ 23.
[12] *Id. at* ¶ *53.*

incremental cost of interconnection and refereeing the bidding process remains undefined and may require more regulatory intervention, not less.

Under COBAK, a called party's carrier cannot charge an interconnecting carrier to terminate a call (each carrier recovers the cost of the loop and local switch from its end-user). However, by making the calling party's network responsible for the cost of transporting a call between the calling party's central office and the called party's central office, COBAK creates a potential point of interconnection ("POI") problem. If a carrier's switch is located many miles from where a call terminates, the originating carrier could incur huge costs in transporting traffic to a terminating carrier switch. These costs would be passed on to the end user customer.

There needs to be a geographical limit on the network access provider's obligations to reach the POI. Resolution of this POI issue, as well as other matters discussed below, will be critical determining factors in the viability of bill and keep as a workable replacement intercarrier compensation mechanism.

IV. Practical Consequences of Bill and Keep

Transition to an intercarrier compensation system based on bill and keep will be slow and costly to rate of return carriers and their end users. As the implicit access revenue subsidies currently collected by rate of return carries moves to zero, legitimate costs will have to be recovered elsewhere. State access subsidies will likely decrease as well (to avoid arbitrage opportunities), potentially compounding the rate shock for ILEC customers. The Commission acknowledges that such a shift would "likely result in some increase in flat-rated charges assessed against end users" and "further increase the rates

[13] *Intercarrier Compensation Notice* at ¶ 25.

of customers in high-cost areas."[14] Rural carriers will have to rely on their smaller customer base and universal service to recover these costs. In order to keep these increased rates within reason, monies that could be better spent improving network quality and deploying advanced service will be reallocated. At a time when the demand for faster, reliable, ubiquitous broadband service is increasing across the nation, the possibility of network infrastructure degradation runs counter to the public interest.

VII. Conditions Precedent to an Effective Intercarrier Compensation Mechanism

In order to fulfill the objectives of a unified intercarrier compensation mechanism discussed above, the following conditions must be firmly established before the transition to a new intercarrier compensation regime commences:

- Innovative Pricing Opportunities
- Transitional Equity
- Universal Service Rights vs. Responsibilities for Carriers of Last Resort
- Companion **and** Concurrent Changes In Deregulatory Policies

First, the Commission must authorize dramatic pricing flexibility to allow carriers to better prepare for a new system. If an intercarrier compensation regime intends to replace access charges with increased end user rates, carriers must have the pricing flexibility to implement capacity-based pricing plans, package pricing and other pricing plans to recover from end users in a reasonable and affordable manner. Otherwise, the true subsidy needs that must be calculated prior to the implementation of such a regime will be distorted. Second, the transitional equities issue will have to be addressed. **A** viable intercarrier compensation structure must allow each network access provider the

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[14] ***Intercarrier Compensation Notice*** **ai** ¶ 123

opportunity and flexibility to establish a mechanism to recover their network access costs from the end user customer at both the interstate and intrastate levels. Third, in conjunction with envisioned increase in end user rates, a comprehensive universal service mechanism must be in place that provides support for customers that reside in areas in which prices are not or will not be affordable. Fourth, the new regime must be implemented simultaneously at both the state and federal levels, otherwise, arbitrage opportunities will negate any benefits of a new intercarrier compensation mechanism.

VII. Conclusion

In order to achieve effective intercarrier compensation reform, the above mentioned safeguards will have to be present to minimize the collateral damage to end users of the new system. Discretion requires a further discussion of the current CPNP regime and continued analysis and assessment of the COBAK and BASICS proposals. ALLTEL urges cautious and conscientious analysis going forward and feels it would be beneficial for the Commission to issue a Further Notice of Proposed Rulemaking requesting additional comments on this subject.

The proposed bill and keep system would fundamentally change the current cost recovery mechanisms. While ALLTEL supports reform of the existing patchwork of regulation, implementation of a theory-driven bill and keep system is not prudent without further investigation into the potential material impacts of such a regime. There are less drastic ways to improve the current intercarrier compensation system. Pricing flexibility must be immediately implemented to assist in determining true subsidy needs. The condition precedents discussed above must be in place prior to any intercarrier compensation transition. Adoption of the MAG plan would facilitate the transition. In

the interim, the benefits of deregulation based on pricing flexibility would be efficient, administratively less costly, and remove the Commission from its role as regulatory referee.

A reasonable intercarrier compensation mechanism must provide all parties with the opportunity to minimize collateral harms. The Commission must take a broad look at all the participants that will be affected by this rulemaking. ALLTEL hopes these comments provide valuable insight that facilitates this rulemaking process.

Respectfully submitted,

ALLTEL Communications, Inc.

By:

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Its Attorney

August 21,2001

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Request No. 13

(a) Identify Windstream's initial switched access rates in Kentucky along with the date such rates were established.

(b) Identify any subsequent adjustments to your initial switched access rates identified in (a) along with the date(s) that the adjusted rates were established.

RESPONSES: This question is in excess of a reasonable number of discovery questions that should be allowed under law and seeks information which is publicly ascertainable by Sprint in the tariffs of Windstream West and Windstream East which are publicly filed with the Commission. Without waiving the foregoing objections:

13(i) Windstream West states that its intrastate switched access rates were established in approximately 1999.

13(ii) Windstream East states that its rates became effective in 2002 when it adopted the tariffed rates of its Verizon ILEC predecessor.

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 14

Please identify each situation within the last five years where a Windstream local telephone company was required to reduce the level of its intrastate switched access rates as the result of state regulatory or legislative mandate. Please include a description of the access change rates, the amount of annual access revenue reduction and other rate changes permitted by the mandate.

RESPONSE: This question is in excess of a reasonable number of discovery questions that should be allowed under law and seeks information outside this Commission's jurisdiction and otherwise wholly irrelevant to the matters set forth in Verizon's Complaint. This question is nothing more than a fishing expedition for Sprint's use in compiling information on Windstream affiliates in other states in which Sprint may also be pursuing targeted access expense reductions. Without waiving the foregoing, Windstream East and Windstream West state that they operate only in Kentucky and to the best of their knowledge have not previously been ordered to reduce their intrastate switched access rates although they were required to cap said rates pursuant to their alternative regulation elections. Windstream East notes, however, that it is generally aware that its Verizon ILEC predecessor was ordered by the Commission around 2000 or 2001 to make substantial reductions in its intrastate switched access rates, which rates were then adopted by Windstream East in 2002.

Windstream East / Windstream West Respondent: Cesar Caballero

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Request No. 15

Please identify and provide all documents concerning, constituting, discussing, referencing, addressing, or describing an affordable rate level for residential basic local service.

RESPONSE: This question is overly broad and burdensome, vague and ambiguous, and in excess of a reasonable number of discovery questions that should be allowed under law. Without waiving the foregoing, Windstream East and Windstream West refer to Exhibit SP#15.

Windstream East / Windstream West Respondent: Cesar Caballero

Exhibit
SP #15
Kentucky East and Kentucky West

December 7, 2009

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Response to NBP Public Notice No. 19

International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, GN Dkt. No. 09-47; *A National Broadband Plan for Our Future,* GN Dkt. No. 09-51; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act,* GN Dkt. No. 09-137; *Federal-State Joint Board on Universal Service,* CC Dkt. No. 96-45; *High-Cost Universal Service Support,* WC Dkt. No. 05-337; *Lifeline and Link Up,* WC Dkt. No. 03-109; *Universal Service Contribution Methodology;* WC Dkt. No. 06-122; *Numbering Resource Optimization,* CC Dkt. No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Dkt. No. 96-98; *Developing a Unified Intercarrier Compensation Regime,* CC Dkt. No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic,* CC Dkt. No. 99-68; *IP-Enabled Services,* WC Dkt. No. 04-36

Dear Ms. Dortch,

In response to National Broadband Plan Public Notice No. 19, the undersigned mid-sized incumbent local exchange carriers submit the "Broadband Now Plan." The attached document includes the Plan and describes the rationale behind its key provisions.

If you have any questions concerning this filing, please do not hesitate to contact Eric Einhorn at 202-223-7668. We urge the Federal Communications Commission to take prompt action in this Docket so that the Plan can be implemented in early 2010.

Sincerely,

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DESCRIPTION OF BROADBAND NOW PLAN

The undersigned mid-sized incumbent local exchange carriers – CenturyLink, Consolidated Communications, Frontier Communications, Iowa Telecom, and Windstream Communications (collectively, the "mid-sized ILECs") – are at the front lines of deploying broadband Internet access to millions of Americans in rural areas, while continuing to provide essential telecommunications services to consumers in areas where no other provider invests capital to deploy alternative networks and services. Collectively we provide communications and entertainment services to more than 12 million voice lines and 4 million broadband connections. Our experience and track record of success in deploying voice and broadband services to high-cost areas – precisely the types of areas that present the greatest challenges in achieving the ubiquitous availability of broadband Internet access service – provide us with a unique vantage point in understanding and assessing how to surmount those challenges.

In this filing, we propose a plan that would take immediate, significant strides toward fulfilling the Commission's broadband deployment goals, while paving the way for more fundamental reforms in the future. In particular, the Broadband Now Plan would

- Jump-start further broadband deployment by providing targeted, incremental support that would be dedicated to deployment of broadband facilities in high-cost areas that are currently unserved or have access only to service at speeds slower than 6 Mbps;
- Unlock private sector investment that would not otherwise be made by conditioning receipt of incremental support on making private investment equal to at least $800 per household without access to broadband (and $50 per household with access to broadband, but at less than 6 Mbps throughput);
- Increase the efficiency of universal service by calculating support on a more granular wire center level and awarding that wire center support in a competitively neutral manner that would permit a provider that required less targeted support to step forward and receive support in place of the incumbent (while then assuming carrier of last resort obligations for that wire center);
- Result in approximately 95% of our voice connections having access to broadband service delivering at least 6 Mbps throughput within 5 years and the creation of a robust, fiber-rich, second mile and middle mile transport network that would facilitate the provision of *mobile* broadband service through shared, more efficient backhaul[1]; and
- Reform intercarrier compensation by reducing terminating switched access and reciprocal compensation rates and eliminating loopholes and regulatory arbitrage opportunities, while replacing a portion of the lost revenue with explicit, predictable support that would

[1] This estimate is based on (a) the signatories' existing service territories as of the date of this filing and does not include any areas that might be acquired in any pending or future transactions since they may have different levels of existing broadband availability than the signatories' current operations; and (b) adoption of the Broadband Now Plan in its entirety.

increase carriers' ability to attract private investment capital needed for increased broadband deployment.

As the Commission has noted in connection with development of a National Broadband Plan, it has "not yet met the challenge of bringing broadband to everyone" and its "goal must be for every American citizen and every American business to have access to robust broadband services."[2/] The *Rural Broadband Strategy Report* found in particular that "[n]o national broadband strategy can be undertaken without due consideration to the rural broadband infrastructure."[3/] The mid-sized ILECs agree that policymakers must focus on and address obstacles to further broadband deployment in high-cost, rural areas. We have deployed high-speed broadband service to the vast majority of our customers in rural and small communities – approaching 90% of our customers. The challenge, however, is to make such investments economically viable where the business case does not support deployment. Despite aggressive deployment, the mid-sized ILECs, in aggregate, still have approximately 1.3 million customers who lack access to our broadband service. But with sufficient government funding, we are committed to deployment of broadband infrastructure to the remainder of our customer base by leveraging our existing infrastructure and making necessary investments.

While some would argue the Commission should first create new broadband-based policy and rules from whole cloth, such extensive reform would require new rounds of notice and comment, resulting in a substantial delay in transitioning the Universal Service Fund from a mainly voice-oriented model to one that can support both broadband and voice. The Commission is not limited to such a binary choice. Rather, the Broadband Now Plan offers a framework of reforms to the Commission's universal service and intercarrier compensation regimes for the near term as a way to make quick progress on deploying extensive broadband networks at speeds of 6 Mbps or higher, while embarking on the longer and more difficult journey to further modernize the universal service and intercarrier compensation systems.

I. The Universal Service Regime Should Be Reformed to Provide Incremental Support That Would Be Tied to Increased Private Investment and Dedicated to Broadband Deployment in Areas Lacking Access to 6 Mbps Service.

As the Commission's broadband team has recognized, the current universal service system suffers from structural problems that present a significant hurdle to ubiquitous broadband deployment.[4] With reforms, universal service can serve as a critical component of a national broadband strategy for the simple reason that additional, targeted support is needed to fund deployment of high-speed broadband service in areas lacking access to broadband service of at least 6 Mbps.

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2 A National Broadband Plan for Our Future, *Notice of Inquiry*, 24 FCC Rcd 4342, ¶ 5 (2009).

3 *See* FCC Report, "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," at ¶ 8 (May 22, 2009).

4 Staff Presentation, "Broadband Gaps," at Nov. 18, 2009, FCC Open Meeting.

A. Reform Would Proceed in Two Phases That Permitted Immediate Progress on Broadband Deployment While Setting the Stage for More Fundamental Changes.

As set forth in more detail in the attachment, we propose to create a system that would reform high-cost universal service support in two phases to aid broadband deployment. In Phase I, universal service support would be determined on a more granular level based on the highest cost wire centers (rather than broad study areas or states that qualify for support). Eligible wire centers would qualify for additional support beyond current levels; that incremental support would be devoted to broadband deployment in areas lacking access to 6 Mbps service. Carriers that elect to receive this incremental support would be required to invest $800 per household of their own funds to deploy broadband facilities if the household is unserved (and $50 per household in areas with access to broadband at speeds less than 6 Mbps). In other words, a carrier would be required to invest $800 of the amount needed to bring broadband to an unserved household in connection with its draw on incremental universal service funding. Carriers would receive this incremental high-cost model support until they completed deployment of 6 Mbps to 98 percent of their lines. To help provide the necessary incremental funding, the Commission would change the Universal Service Fund ("USF") contribution methodology to include all connections—broadband and voice—in a competitively neutral fashion.

Upon implementation of Phase I, the Commission would launch Phase II by beginning a proceeding to determine the mechanism for future high-cost funding for existing broadband and voice services and the extent to which further funding is needed for new broadband deployment. This proceeding would specifically address, among other items, how the broadband standard should evolve over time and how the universal service fund should be sized and directed to achieve chosen policy objectives. The Commission also would consider what, if any, updates should be made to the forward-looking cost model to better identify high-cost areas where support for broadband and voice services are needed.

Phase II would take significant time, including various rulemakings, reasonable transition periods, and related steps. Although these steps likely will be necessary, we do not believe reform should await their completion given that Phase I can be implemented in the short term based on rulemaking proceedings the Commission already has, in some cases, had open for years and will facilitate meaningful progress toward universal broadband deployment. Further, some of the measures proposed for Phase I (e.g., determining support on a more granular basis) will be necessary elements of implementing Phase II reform and thus will move us closer to fundamental reform. And proceeding in stages will result in less disruption and uncertainty – factors that would otherwise discourage large, long-term private investments in broadband deployment and upgrades.

B. The Plan Would Provide Effective and Efficient Support for Increased Broadband Deployment.

This proposal rapidly and effectively addresses many of the structural problems in the current universal service system identified by the Commission's broadband team. It would dedicate incremental universal service funding exclusively to the deployment of broadband and create a higher level of accountability for the use of universal service support for that purpose.

This new targeted funding would significantly improve the availability of broadband Internet access. Under our proposal, the Commission would support a robust offering of 6 Mbps throughput, which would require carriers to deploy fiber deeper into their networks (requiring a 12,000 foot carrier serving area).[5] We estimate the Broadband Now Plan could deliver broadband service at speeds of 6 Mbps to approximately 95 percent of the voice connections of the signatory mid-sized ILECs within a span of just 5 years.[6]

The investments that would be supported by the incremental universal service funding would enable not only wider provision of wireline broadband Internet access service, but also would facilitate the provision of *mobile* broadband service using Long Term Evolution ("LTE") and similar technologies. In those areas where we do not yet offer broadband service, the critical needs are to deploy fiber deeper into the network – the so-called "second-mile" problem – and in some cases to overcome the cost of backhaul to the Internet – the so-called "middle mile" problem. By expanding and enhancing the second mile and middle mile infrastructure already used by both wired and wireless providers, the cost of providing (and increasing capacity of) both fixed and mobile broadband will be reduced. It is more efficient for multiple networks to share the same backhaul infrastructure in areas that cannot economically support more than one deployment, and this deployment will ensure spectrum can be maximized for end user connectivity, its highest value purpose. Absent some form of predictable and sufficient support, the business case for deploying infrastructure to support broadband in these high-cost areas does not exist.

Further, the Plan would achieve increased broadband deployment by using universal service funding in a more efficient and effective way. First, the Plan would calculate support on a more granular basis (i.e., wire centers) that more accurately identifies the highest cost areas than the current system, which allocates funding based on average costs of broader areas that sometimes encompass a mix of high-cost and lower-cost wire centers. Second, under the Broadband Now Plan, carriers that accept an incremental increase in universal service support for broadband deployment in areas lacking 6 Mbps service would have to match support they receive with their own private investment up to the level of investment they generally make in areas that are economic to serve. By eliciting such private investment as a condition of receiving support, the Plan would multiply the effect of limited universal service dollars. Moreover, once the Commission determines that sufficient broadband coverage and speeds have been achieved, it could revisit the size of the fund and reduce or eliminate support for new broadband deployment, while leaving funding in place for operating and maintenance capital expenditures.

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5 The Commission alternatively could choose to support a higher throughput option. The higher throughput option would take longer and cost more in the short-run to deploy than would the 6 Mbps option, but it likely would save substantially on future upgrades by minimizing the need to reconfigure last-mile facilities.

6 As mentioned above, this estimate is based on (a) the signatories' existing service territories as of the date of this filing and does not include any areas that might be acquired in any pending or future transactions since they may have different levels of existing broadband availability than the signatories' current operations; and (b) adoption of the Broadband Now Plan in its entirety.

Third, the Plan would award incremental support in a competitively neutral way to the carrier that would be able to provide service at the lowest cost, thus ensuring that no more universal support than necessary was used to increase broadband support in an area. In particular, if a carrier other than the incumbent could demonstrate that its own costs of providing service would require less targeted support than would otherwise be needed based on the forward-looking model, that carrier would receive the lower amount of support in place of the incumbent, provided that it agreed to assume exclusive carrier of last resort ("COLR") obligations for offering facilities-based voice service to all lines in the wire center. Of course, that carrier – like any incumbent recipient of support – would have to use the incremental additional support for purposes of deploying broadband in areas that lack 6 Mbps service and meet the same private investment thresholds.

Finally, the Plan recognizes that even as the focus of universal service support increasingly shifts to expanding broadband network availability and speed, there continues to be a need to provide support for current voice services and the network investments already made by carriers. Entirely shifting existing support to new high-speed broadband services would leave some customers behind and create new problems. Universal service funding in uneconomic areas is critical to fulfilling COLR obligations, particularly as implicit subsidies are rapidly being eliminated due to competitive pressure and questionable traffic routing and compensation schemes. The signatory companies, in aggregate, make capital expenditures of nearly $1.7 billion each year, which amount to annual per customer investments in the range of approximately $100-$140.[7] Universal service support has played and continues to play an important role in deploying carrier of last resort infrastructure, and it would not be prudent to strand consumers where support is needed to continue existing service. Moreover, focusing universal service support only on new broadband deployment could have the perverse effect of undermining private sector broadband investment: Investors would be less willing to provide capital to carriers serving high-cost areas – capital that could be used to invest in broadband deployment – if those carriers were forced to bear the economic burden of COLR obligations without sufficient support for existing services.

II. A Broadband Solution Requires Reasonable Reforms of Intercarrier Compensation That Virtually Eliminate Incentives for Arbitrage and Loopholes that Currently Distort the Marketplace.

In addition to changes to the universal service regime, a broadband solution requires that the Commission enact reasonable intercarrier compensation reform. The need for such reform is well-documented and acknowledged by a wide variety of stakeholders. The current intercarrier compensation regime has created opportunities for arbitrage, produced numerous disputes, and done little to prevent unlawful non-payment and evasion, all of which result in competitive distortions and unfair burdens on some consumers and providers as compared to others. The resulting regulatory uncertainty, disputes, and increased costs discourage broadband investment and create regulatory barriers to broadband deployment.

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[7] In 2008, CenturyLink's total annual capital expenditures were approximately $973 million, Windstream's were approximately $318 million, Frontier's were approximately $288 million, Consolidated's were approximately $48 million, and Iowa Telecom's were approximately $28 million. These figures are on a pro forma basis for any acquired properties.

Under the Broadband Now Plan, intercarrier rates would be reduced, with the lost revenues addressed in part through opportunities to rebalance end-user rates and the elimination of certain loopholes and arbitrage opportunities (e.g., phantom traffic and failure to pay approved rates for use of switched access services). Reduction in intercarrier rates will help transition the industry from relying on implicit subsidies from access charges. At the same time, replacement of some of the lost access revenue with explicit, predictable support would recognize the higher costs of providing service in rural areas and lead to reduction in carriers' cost of capital as investors perceive risks lower than those inherent in today's intercarrier compensation system. The Broadband Now Plan couples these measures with reform that would eliminate equal access obligations on a going forward basis, while preserving the status quo for existing customers as a way to wind down the originating access system.

A clear and enforceable system of intercarrier compensation will produce conditions that facilitate carriers' ability to attract private investment capital needed for widespread deployment under the National Broadband Plan. Carriers, however, would not be made whole for lost intercarrier compensation revenue. The intent is to create a fair and workable set of reforms that equitably spread the burdens among the relevant stakeholders.

* * *

The Broadband Now Plan does not purport to address every issue and problem with the current universal service and intercarrier compensation rules. Rather, our goal is to present a reasonable and achievable framework that will rapidly modernize the existing universal service and intercarrier compensation regimes in a way that will support achievement of the Commission's broadband goals. The Broadband Now Plan supports the immediate deployment of broadband in unserved areas, provides material regulatory reform, and establishes a clear transition plan for further comprehensive reform.

ATTACHMENT

BROADBAND NOW PLAN

Universal Service Fund Reform.

Phase I

- **Reform high-cost model support and permit rural price-cap carriers to elect on a one-time basis to receive this support.** A price cap-regulated carrier would be allowed to make a one-time request for increased Non-Rural High-Cost model support through a mechanism that would provide support for each *wire center* where the forward-looking cost of universal service per line (determined by the Synthesis Model) was greater than 2.75 times the national average cost per line. To provide continuity, we propose that Interstate Access Support and Interstate Common Line Support would be excluded from this discrete change to the current USF mechanisms, as these funds would continue to be used in part for maintenance-related operating and capital expenditures to help meet existing COLR obligations. Carriers would receive the incremental high-cost model support until they complete deployment of broadband service at speeds of 6 Mbps to 98% of their lines.

- **Dedicate the incremental forward-looking high-cost support to broadband deployment.** A service provider that elected to receive increased universal service support would be required to dedicate the incremental funding, combined with its private investment (described below), to increase the availability of high-speed broadband Internet access to households in areas in its service territory that lack access to 6 Mbps service.

- **Require the recipient of incremental forward-looking high-cost support to invest its own capital in support of broadband deployment.** For each household for which a provider uses incremental universal service funding under this proposal to support network expansion, the carrier would be required to invest (using private funding) at least $800 where no high-speed broadband access service exists today and $50 where broadband has been deployed but available speeds are less than 6 Mbps. Put another way, a provider would be required to invest $800 of the amount needed to bring broadband to an unserved household in connection with its draw on incremental universal service funding.

- **Award the incremental high-cost model support in a competitively neutral fashion.** *Any* broadband provider could apply for wire center support so long as it would be willing (1) to assume exclusive COLR responsibilities for offering facilities-based voice service to all lines throughout the entire wire center; (2) to use the incremental support, above and beyond current funding levels, to deploy broadband in areas lacking 6 Mbps service; and (3) to meet the investment thresholds noted above. The incumbent serving as the COLR would receive the model support unless a lower cost provider stepped forward to assume these commitments; such a new entrant would have to demonstrate based on its own costs and network that it would require less targeted support than would

otherwise be needed as determined by the forward-looking model and would become the COLR for that wire center. If such a new entrant were awarded support, the incumbent would be relieved of any and all COLR obligations including, but not limited to, unbundling, resale, and pricing regulations, but it could engage in commercial arrangements at its discretion.

- **Revise the USF contribution methodology to include all connections.** To facilitate the transition to supporting broadband and help provide the necessary incremental funding, the Commission would change the USF contribution methodology to include all connections—broadband and voice—in a competitively neutral fashion. The Commission also may consider other measures to help offset the cost of the incremental funding, including, for example, eliminating access replacement for Competitive Eligible Telecommunications Carriers.

Phase II

- Upon implementation of Phase I changes, the Commission would launch a proceeding to determine (1) the mechanism for future high-cost funding for existing broadband and voice services and (2) to what extent, if any, further funding is needed for new broadband deployment.
  - The Commission would consider whether to transition to a new mechanism that provides support for capital expenditures for specific broadband deployment projects, with recurring support limited to operating and maintenance capital expenditures, as well as how it will continue to support voice services in high-cost areas.
  - New broadband funding may be dedicated to expanding broadband access to any areas that have not been addressed by 6 Mbps service yet or increasing speeds in areas where 6 Mbps service is already offered but not by more than one provider.
- In that same proceeding, the Commission also would consider what, if any, updates should be made to the forward-looking cost model to better identify high-cost areas where support for broadband and voice services is needed.

Intercarrier Compensation Reform.

- **Eliminate loopholes and arbitrage opportunities.** Some providers improperly divert significant amounts of lawfully compensable traffic away from intercarrier compensation mechanisms under the current regime. This creates competitive distortions, regulatory uncertainty, and disincentives to invest in network facilities, including those used for broadband. The Commission would eliminate these loopholes and arbitrage opportunities by:

  - Explicitly confirming that all traffic that terminates on the PSTN – including in particular IP-originating traffic – is subject to existing access charge and reciprocal compensation mechanisms. Access rate arbitrage is increasing and undermines a key revenue stream used to support the COLR system and promote network stability to advance broadband deployment. For example, the inappropriate questioning of whether VoIP-originated traffic is subject to terminating access charges has generated a raft of disputes among carriers, leading to significant regulatory uncertainty, litigation costs, investment risks, and a patchwork of interim solutions. The Commission would finally act to eliminate any questioning and make clear that all non-local traffic that terminates on the PSTN is subject to terminating access charges throughout and subsequent to the transition periods contemplated in this proposal. The principles and regulations should be clear and enforceable.

  - Implementing rules for the elimination of "phantom traffic." Phantom traffic consists of traffic that is sent without signaling information, or with improper information, and that inappropriately escapes the application of intercarrier compensation rules.

- **Reduce price cap carriers' terminating switched access and reciprocal compensation rates.** Initial reductions would occur in two phases. First, interstate and *intrastate* terminating switched access rates and reciprocal compensation rates would be reduced to the CALLS target rate of $0.0065 in three equal installments over a period of three years. Second, in years four and five, the unified terminating switched access and reciprocal compensation rates would be reduced in two equal adjustments to the lower CALLS target rate of $0.0055 per minute.

- **Establish local service benchmark rate and permit capped annual increase of retail rates to reach that benchmark for mid-sized price cap carriers.** This proposal would establish a local service benchmark rate that would ultimately be $23.50 for residential service, including the basic service rate, subscriber line charges, and mandatory EAS charges. This local benchmark rate contemplates an increase in the current residential subscriber line charge from $6.50 to $8.00 per line. The benchmark would be used to determine the appropriate amount of funding needed to replace a portion of the lost access and reciprocal compensation revenues due to the rate reductions described above. No carrier would be required to increase its rates, but a carrier would be imputed revenue equal to the benchmark rate for each customer for purposes of this calculation, even if the actual rate charged was lower. There would be

a five-year transition phase. During that time, a carrier would be permitted to increase its total retail rate (including the subscriber line charge) by no more than $1.50 per year until it hit the final $23.50 benchmark rate; the carrier would be imputed revenue equal to that amount regardless of whether it actually increased rates by $1.50. Because carriers in many cases would be unable to raise rates by the imputed amount due to competitive pressures, the effect would be that carriers would not fully recover their lost revenues due to the access and reciprocal compensation rate reductions. If a carrier cannot increase its local rates because it does not have retail pricing flexibility at the state level, and the state has an existing high-cost fund in place that could be utilized for rate rebalancing, then the Network Advancement Mechanism (described below) would not be reduced due to the imputation of a local rate benchmark.

- **Establish a Network Advancement Mechanism to recover a portion of revenues lost as a result of terminating access and reciprocal compensation rate reductions.** Under this proposal, the Commission would set up a Network Advancement Mechanism ("NAM") under the USF, the purpose of which would be to compensate carriers for a portion of the revenues they will lose as a result of the mandatory reductions in terminating switched access and reciprocal compensation rates. The size of this fund would be equal to the amount of the intrastate switched access and reciprocal compensation revenue reductions for the first three years, and 50% of the reductions for the remaining two years of the transition period; as a result, during those last two years, carriers would recover only half of the total lost revenues from the rate reductions (or less if their retail rates were below the local service benchmarks for those years). After the transition period, the NAM would be calculated on a per-connection basis, and support from the NAM likewise would be based on the number of connections.

- **Eliminate equal access obligations to harmonize the treatment of all competitors.** The Commission would remove the Equal Access obligations for new customers. Equal Access scripting requirements have been lifted already for even the Bell Operating Companies. Under this proposal, the scripting requirements would be lifted for all other providers, and the other Equal Access rules would be eliminated for new customers, which will result in a measured phase out of the rules over time.

- **Open a further proceeding at the end of year five to assess the need for and options for further reform.** The Commission would institute a proceeding to consider further reform at the end of year five. Specifically the Commission would seek comment on, among many other items, whether to establish one unitary rate for all intercarrier compensation or unified rates by carrier, state, or track; and the proper role of state Commissions, the Federal-State Separations and Universal Service Joint Boards, and the Federal-State Joint Conference on Advanced Telecommunications Services. The Commission also would refer relevant issues to the Federal-State Separations and Universal Service Joint Boards relevant issues, including the following: whether to set a rate benchmark to constrain SLC increases in high rate states; whether a mechanism is needed to replace access or reciprocal compensation revenues during the next stage; and the impact of any changes or transitions on the separations process.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Petition of AT&T for Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption"	)))))	WC Docket No. 08-152 CC Docket Nos. 94-68, 01-92 WC Docket Nos. 07-135, 04-36, 06-122, 05-337
Intercarrier Compensation for ISP-Bound Traffic	))	WC Docket No. 99-68
Universal Service Contribution Methodology	))	WC Docket No. 06-122
Federal-State Joint Board on Universal Service	)	CC Docket 96-45

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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Dated: August 21, 2008

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Before the
Federal Communications Commission
Washington, D.C. 20554

Petition of AT&T for Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption"	)))))	WC Docket No. 08-152 CC Docket Nos. 94-68, 01-92 WC Docket Nos. 07-135, 04-36, 06-122, 05-337
Intercarrier Compensation for ISP-Bound Traffic	))	WC Docket No. 99-68
Universal Service Contribution Methodology	))	WC Docket No. 06-122
Federal-State Joint Board on Universal Service	)	CC Docket 96-45

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following comments in response to the Federal Communications Commission ("Commission") request for comment[1] regarding the Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption" ("AT&T Petition").[2] Windstream also responds to two interrelated letter filings made by AT&T on the same day.[3]

Windstream, like AT&T, believes that the best way for the Commission to address intercarrier compensation is through comprehensive reform that carefully balances end-user

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[1] *Petition of AT&T for Interim Declaratory Ruling and Limited Waivers Pleading Cycle Established*, Public Notice, WC Docket No. 08-152, DA 08-1725 (WCB rel. July 24, 2008)..

[2] Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption," WC Docket No. 08-152 (filed July 17, 2008) ("AT&T Petition").

[3] AT&T's Petition is one of a set of three filings made on July 17, 2008 (collectively, "July 17th Filings"). *See* Letter from Bob Quinn, AT&T, to Marlene Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 04-36; WC Docket No. 05-337, 99-68, 07-135 (filed July 17, 2008) ("AT&T July 17 Cover Letter"), 1 (explaining that, in addition to the Petition, AT&T was also filing two ex parte letters addressed to Chairman Martin urging comprehensive intercarrier compensation reform and the extension of the *Vonage Order* to fixed-location VoIP).

rates, intercarrier rates, and universal service support. Pursuant to Section 254 of the Communications Act ("the Act"), this reform should lessen arbitrage opportunities and maintain revenue streams adequate to support affordable, quality service by carriers of last resort ("COLR") in high-cost rural areas.[4] Windstream and AT&T agree that the Missoula Plan provides a ready vehicle for advancing this positive, industry-wide reform.[5]

Windstream, however, strongly opposes AT&T's piecemeal, "second best" proposals for intercarrier compensation reform. Far from second best, the AT&T Petition and AT&T's ex parte letter request for extension of the *Vonage Order*[6] ("AT&T VoIP Preemption Ex Parte Letter") altogether fail to address the problems faced by mid-sized and small carriers and the rural, high-cost regions they serve. In particular, any alternative that proposes special treatment for Voice over Internet Protocol ("VoIP") should be rejected, because, among other defects, that proposal would increase, rather than decrease or eliminate, arbitrage opportunities.

I. The Commission Should Deny AT&T's Petition

The AT&T Petition does not advance intercarrier compensation reform for any carrier except AT&T and accordingly should be rejected. In the absence of comprehensive reform through adoption of the Missoula Plan or appropriate implementation of its Benchmark Framework, AT&T proposes the Commission grant its Petition seeking a piecemeal fix to address termination of IP-PSTN traffic terminating on its network. AT&T requests that the

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[4] *See* 47 U.S.C. § 254(b) (establishing that the Commission should ensure that rates are "just," "affordable," and "reasonably comparable" across regions).

[5] *See* Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) ("Missoula Plan Ex Parte Letter"); *Comment Sought on Amendments to the Missoula Plan Intercarrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism*, Public Notice, DA 07-738, CC Docket No. 01-92 (WCB, rel. Feb. 16, 2007) ("Missoula Plan Amendments Public Notice"), 1, n.2 (listing AT&T and Windstream as supporters of the Missoula Plan).

[6] *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, FCC 04-267, WC Docket No. 03-211 (Nov. 12, 2004) ("Vonage Order"), *aff'd*, Minnesota Pub. Utils. Comm'n v. FCC, 483 F.3d 570 (8th Cir. 2007).

Commission clarify that terminating intrastate access charges would apply to IP-originated traffic terminated on AT&T's network, but only where its intrastate terminating access charges are equal to or less than AT&T's interstate terminating access rate. AT&T would be able to increase its originating access rates up to the maximum ATS target rate for rural price cap companies, which is $0.0095, and subscriber line charges ("SLCs") to the relevant cap to make up the revenue it would otherwise lose from the reduction of its intrastate access rates to the interstate level.

The AT&T Petition does not provide a rational path that most other carriers can follow. The SLC is an inadequate recovery mechanism for the majority of mid-size and small carriers. AT&T has more room to increase SLC rates to the caps than mid-size and small carriers, many of whom are already at or very close to the SLC cap. In addition, a number of mid-sized and small carriers are already near or above the $0.0095 originating rate cap proposed by AT&T, therefore, providing no opportunity for an increase. Moreover, AT&T generally has a smaller gap between its intrastate and interstate access rates than the mid-size and small carriers (not to mention lower rates to begin with). Thus, the AT&T Petition does not provide a pathway for intercarrier compensation reform for mid-sized or small ILECs.

II. The Commission Should Adopt the Missoula Plan

Windstream joins AT&T in reiterating its support of the Missoula Plan.[7] The Commission can and should adopt this plan now. The Missoula Plan provides a thoughtful and balanced approach to comprehensive intercarrier compensation reform. As described in 2006 by its supporters, which included AT&T and Windstream, the Missoula Plan would comprehensively reform intercarrier compensation by "rationalizing current regulatory

[7] *See* Missoula Plan Ex Parte Letter; Missoula Plan Amendments Public Notice.

distinctions, reducing the disparity in intercarrier charges, and shifting a portion of network cost recovery from intercarrier charges to a combination of (i) modestly higher subscriber line charges ("SLCs") and (ii) a new federally administered program called the Restructure Mechanism."[8] This plan has been extensively discussed in the record and has been endorsed by hundreds of carriers.[9]

III. The Effectiveness of Any Other Comprehensive Reform Plan Will Depend on Identifying the Correct Policy "Dials" and Setting These Dials at Appropriate Levels

If, however, the FCC does not adopt the Missoula Plan, AT&T's Benchmark Framework Ex Parte Letter offers useful guidance on issues that need to be addressed by any truly comprehensive reform.[10] AT&T would have the Commission establish a national rate benchmark and then address certain variables or "dials" in "systematic fashion . . . to adjust a flow of revenue or to achieve a specific policy outcome" – e.g., a uniform terminating intercarrier rate, changes to the Federal SLC, and universal service support.[11] AT&T identifies most of the correct dials to consider when reforming intercarrier compensation.

The AT&T Benchmark Framework Ex Parte Letter, however, fails to provide adequate guidance on how the Commission should set these policy dials. Without further clarification by AT&T, parties may try to use the AT&T Benchmark Framework as support for unsustainable proposals to move to a forced "bill and keep" model or to set unified termination rates at a level

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[8] Letter from Brian Benison (for the Missoula Plan Supporters) to Marlene Dortch, Secretary, FCC, WC Docket No. 01-92 (filed Aug. 22, 2006).

[9] See Comment Sought on Missoula Intercarrier Compensation Reform Plan, Public Notice, DA 06-1510, CC Docket No. 01-92, (WCB 2006) (requesting comments on the Missoula Plan); Missoula Plan Amendments Public Notice (requesting further comments on and listing supporters of the compromise plan).

[10] *See* Letter from Bob Quinn, AT&T, to Kevin Martin, Chairman, FCC, CC Docket Nos. 01-92, 96-45; WC Docket No. 05-337, 99-68, 07-135 (filed July 17, 2008) ("AT&T Benchmark Framework Ex Parte Letter"), 1.

[11] *Id.* at 4.

below the economic cost of providing the service. Such proposals would not recognize that most COLRs still must rely heavily on revenues from intrastate and interstate access charges to keep rates and services affordable and comparable. Any reduction in intercarrier compensation rates without corresponding (real) recovery opportunities will jeopardize the availability of quality and affordable service to much of the high-cost and rural areas of the nation.[12]

To be successful, the Commission's intercarrier compensation reform plan not only must consider all the appropriate dials, but also must set these dials at appropriate levels. Below, Windstream provides guidance on the appropriate settings for these policy dials. This discussion provides critical instruction on how to ensure AT&T's Benchmark Framework serves as a blueprint for constructing robust, industry-wide reform.

A. A National Rate Comparability Benchmark Is a Necessary Component of Any Comprehensive Intercarrier Compensation (and Universal Service) Reform Plan.

Windstream supports the premise that carriers should first recover a reasonable amount of the costs to provide service from their customers before seeking universal service funding. Accordingly, Windstream agrees with AT&T's recommendation that the Commission establish a national rate comparability benchmark as part of comprehensive reform to reflect what consumers should generally pay for basic telephone service. A benchmark would act in combination with the SLC cap and explicit universal service support to ensure that universal service funding is not funding unreasonable low rates for basic telephone service.[13]

[12] This result would be contrary to the universal service principles adopted in Section 254 of the Act. *See* 47 U.S.C. § 254(b) (establishing that the Commission should ensure that rates are "just," "affordable," and "reasonably comparable" across regions).

[13] In its Benchmark Framework Ex Parte Letter, AT&T proposes to include the following elements in its rate benchmark: (1) the rate for basic telephone service; (2) SLCs (including state SLCs if applicable); and (3) the end-user charge attributable to any state high-cost universal service funds in the calculation of the benchmark. AT&T Benchmark Framework Ex Parte Letter at 6.

When instituting this national benchmark, the Commission, however, should be mindful of two important considerations. First, the Commission should set the national benchmark at a reasonable level. Windstream recommends a level between $20.00 to $25.00 per month, as proposed by the Missoula Plan.[14] Setting the benchmark at this level would ensure that rates in rural areas are "reasonably comparable" to rates charged for similar services in urban areas (as required by the Act),[15] without allowing rates to remain at unreasonably low or high levels. Second, the benchmark should include any mandatory extended area service ("EAS") additives that are common in local exchange carrier's local service. Expanded local calling rate additives are particularly widespread in rural service areas where the local exchange area is geographically smaller. Over time, state commissions have expanded mandatory calling areas and, in many instances, have allowed a separate rate additive to reflect the larger local calling scope.

B. Uniform Terminating Intercarrier Compensation Rate Reductions Must Be Offset by Reasonable Recovery of Network Cost Through Increased End-User Rates/SLCs and Universal Service.

AT&T's proposal calls for terminating intercarrier rates for intrastate, interstate, and local traffic to be transitioned to a uniform structure and unified "at relatively low reciprocal compensation levels (i.e., below existing interstate access rate levels)."[16] AT&T recognizes that "[t]he precise rate levels would depend on the Commission's decisions concerning the size of the universal service fund and end-user rates."[17] It concludes that "moving to a unified terminating rate will result in access revenue reduction that should be offset by these other revenue sources,"

[14] *See* Letter from State Commissions and Missoula Plan Supporters, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Jan. 30, 2007) (describing the benchmark designed for the Early Adopter Fund).

[15] 47 U.S.C. § 254(b)(3).

[16] AT&T Benchmark Framework Ex Parte Letter at 4.

[17] *Id.* at 6.

but does not identify how much end-user rate increases can be expected, or universal service support will be needed, to offset the reductions.[18]

Although it generally supports unifying such rates (as is the case in the Missoula Plan), Windstream is concerned with the lack of detail presented in AT&T's proposal. The proposal, without further detail, could be used to justify rates that do not allow ILECs a reasonable opportunity to recover revenue from other sources. Unified intercarrier compensation rates that are too low would result in unaffordable end-user rates, an unsustainable increase to the universal service fund, and/or revenue reductions that are too large to enable carriers to provide quality services to consumers (especially in high-cost and rural areas).

This lack of detail is even more significant in light of a letter AT&T jointly filed ("Joint Letter"), subsequent to its July 17th filings, with a group of companies that would benefit from lower access rates.[19] The Joint Letter requests that the Commission establish a uniform terminating rate for all carriers at no higher than $0.0007 per minute – an amount that is not cost based.[20] Thus, unfortunately, taking these various filings together, it appears AT&T's proposal is not only for supporting a uniform terminating rate to be set below current interstate levels, but also supports a rate that effectively eliminates intercarrier compensation (i.e., set at $0.0007).

Setting a uniform rate at $0.0007 would jeopardize the ability of carriers of last resort to offer telecommunications services, in particular in high-cost and rural areas. As a price-cap company, Windstream operates in areas that for interstate access rate purposes have a target of $0.0095 per minute, $.0065 per minute, and $0.0055 per minute. At the $0.0007 rate proposed

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[18] *Id.*

[19] *See* Letter from AT&T et al. to Kevin Martin, Chairman, FCC, et al., WC Docket 04-36, CC Docket No. 01-92 (filed Aug. 6, 2008) ("August 6 Joint Filing").

[20] *Id.* at 2.

by the Joint Letter, Windstream's *interstate* access rates would be reduced by over 90 percent, to just tiny fractions of a cent per minute. The impact is even larger when considering *intrastate* access reductions. Imposing a $0.0007 rate would only provide Windstream a fraction of the annual revenue it would otherwise be entitled to recover for terminating on its network many billions of minutes of other carriers' traffic. In fact, the cost of recording, billing and collecting intercarrier compensation revenues for terminating other carrier's traffic on our network would likely exceed the $0.0007 per minute rate.

Setting rates at the unduly low level proposed by AT&T runs contrary to Commission precedent that recognizes rate levels should reflect the different conditions of carriers of different sizes. For example, the *CALLS Order* concluded that the rates of the larger carriers and the mid-size and small carriers need not be unified at the same level.[21] The Commission there found that the RBOCs and GTE had significantly larger economies, and, therefore, should be able to recover a fair portion of their network costs through lower rates.[22]

C. A Modest Increase in Federal SLCs Could Be Used to Offset Reductions in Terminating Revenues and to Constrain Increases to the Universal Service Fund.

AT&T proposes that the Commission allow increases in the SLC cap to recover a portion of the revenue reductions resulting from the reductions in terminating access rates when a carrier is below the national comparability benchmark.[23] Although AT&T makes no specific recommendation with regard to what the "moderate" increase in the SLC cap amount should be,

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[21] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45; FCC 00-193 (rel. May 31, 2000), ¶ 177.

[22] *Id. See also Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, FCC 90-314, CC Docket No. 87-313 (rel. Oct. 4, 1990, as corrected Oct. 31, 1990), ¶ 262 (concluding that mid-sized and small carriers, unlike the Regional Bell Operating Companies and GTE, may not have the scale to benefit from price cap regulation, so price cap regulation was offered on an optional basis).

it clearly links the increase in the SLC cap to the amount needed to reach the comparable benchmark for end users' rates.

Windstream supports this general recommendation that the Commission consider modest increases in the SLC caps as a means to constrain the growth of the universal service fund, with one important clarification: The Commission should not require carriers to increase SLCs to the cap or to the national benchmark levels. Rather, end-user revenues calculated at the SLC cap (assuming the national benchmark constraint) should be imputed to carriers seeking universal service funding. The Commission should enable carriers to recover lost revenue, but need not guarantee such recovery at levels below the rate benchmark. Given this approach, the Commission must ensure that carriers are not precluded from raising basic rates to the national benchmark.

D. Federal Universal Service Support Will Be Needed to Recover Some of the Cost Now Recovered Through Intercarrier Charges.

Although AT&T's proposal correctly recognizes the need for universal service support in the context of its unified terminating rate plan, the AT&T Benchmark Framework Ex Parte Letter provides little detail or indication of how this important "dial" should be set. AT&T merely provides that "the size of the federal universal service fund cannot be allowed to expand without limit."[24]

To provide clarity on the matter, Windstream urges the Commission to address this concern by setting the unified rate at a level that allows carriers, particularly those serving high-cost areas, to recover a fair portion of their network costs from other carriers using their network. This measure is necessary to satisfy the principles in Section 254 of the Act: Carriers in rural

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[23] AT&T Benchmark Framework Ex Parte Letter at 7.

[24] *Id.*

areas must be able to maintain affordable rates, without placing overwhelming demands on the Universal Service Fund.[25] An unreasonably low unified rate, such as $0.0007, otherwise would result in significant and unsustainable growth in the universal service fund, even after rural carriers reach or impute the national benchmark. If the $0.0007 unified terminating rate were adopted, SLCs were increased to the current caps, and a $25.00 national benchmark were effectively implemented, Windstream alone would require significant additional federal universal service/access replacement funding to maintain its current levels of service.

E. Comprehensive Reform Should Address Originating Access

Finally, AT&T has neglected to identify an important "dial" in its Benchmark Framework – originating access. Unlike the Missoula Plan, AT&T's alternative proposals only address the establishment of a uniform *terminating* intercarrier compensation rate. The same local exchange network is used to both originate and terminate traffic, so maintaining a disparity in originating and terminating rates does not make economic sense. Moreover, any reform that does not include originating access services will likely result in new arbitrage opportunities.

IV. VoIP Traffic Should Not Be Given Preferential Intercarrier Compensation Treatment

The Commission should not provide VoIP traffic special status, as recommended in AT&T's VoIP Preemption Ex Parte Letter.[26] Specifically AT&T asks the FCC to preempt the jurisdiction of state commissions to regulate VoIP services while recognizing that states may still assess state universal service and TRS contributions to VoIP providers.[27] Effectively AT&T would carve VoIP out from the intercarrier compensation rules to which all other traffic is

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[25] *See* 47 U.S.C. § 254(b) (calling for the Commission to ensure "reasonably comparable rates" across the United States and provide "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service").

[26] *See* Letter from Bob Quinn, AT&T, to Kevin Martin, Chairman, FCC, WC Docket No. 04-36, 06-122; CC Docket No. 96-45 (filed July 17, 2008) ("AT&T VoIP Preemption Ex Parte Letter").

subject. The Commission should deny this request and affirm that VoIP traffic is subject to the appropriate jurisdictionalized access rate based on the originating and terminating points of the traffic.

AT&T would have the Commission believe that the PSTN is "rapidly obsolescing" and suggests that applying juridictionalized access charges somehow could "retard" the transition to a broadband infrastructure.[28] These assertions are not supported by fact and could not be further from reality. AT&T ignores the ongoing need for the foreseeable future for PSTN facilities to provide voice and broadband services in high-cost areas.

Ensuring sufficient support for the PSTN is necessary to fulfill Congress's intent that consumers in all corners of the Nation have access to telecommunications and advanced services.[29] To the extent regulators still rely on rates for terminating calls as a means of recovering costs of providing those services, VoIP calls terminating on the PSTN must continue to contribute funding those obligations. Otherwise carriers serving consumers in high-cost areas will not be able to reasonably recover network costs required to provide affordable and comparable services. Reducing access charges and corresponding revenues will actually make it *more* difficult, not less, for Windstream to invest in additional broadband deployment.[30]

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[27] *See* AT&T VoIP Preemption Ex Parte Letter at 3.

[28] *See* AT&T July 17 Cover Letter at 1.

[29] 47 U.S.C. § 254(b).

[30] Windstream receives less than 1% of its total revenue from high-cost loop and model support, and less than 3% of its total revenues from all federal high-cost support combined. Since it receives relatively little high-cost universal service funding, Windstream – unlike small carriers that can apparently finance fiber to the home in high-cost, remote areas – must make a business case for broadband deployment based on revenues it receives from its retail and wholesale customers. *See* U.S. Government Accountability Office, *FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, GAO-08-633 (rel. June 2008), 22-23 ("In rural areas served by rural carriers, the high-cost program allows the carrier to recoup a large portion of the investment that facilitates broadband service since, as we mentioned earlier, these carriers receive high-cost program support based on their costs. Alternatively, in rural areas served by nonrural carriers, which generally do not receive as much funding as rural carriers and do not receive funding based on their costs, the network upgrades necessary for broadband service are less likely. As a result, the availability of broadband services to rural customers is largely determined by the type of carrier they are served by, and not where they are located.").

There is no rational basis for treating PSTN and VoIP traffic differently for intercarrier compensation purposes. VoIP traffic terminating on the circuit switched network uses the same network components, and the terminating carrier incurs exactly the same costs as terminating a call that originated instead as a circuit switched call. The primary difference between PSTN and VoIP traffic is that VoIP traffic originates on an IP network rather than a circuit switched network. From a customer's perspective, VoIP providers offer voice services that are virtually identical to the ones offered by traditional wireline providers and, in fact, such services are marketed as substitutes for switched telecommunications services. In light of these substantial similarities, the Commission already has determined that VoIP services must comply with CALEA,[31] E911,[32] and USF contributions,[33] and recently it supported the Nebraska Public Service Commission's efforts to assess state universal service contributions to VoIP services.[34]

At the moment, the primary (albeit improper) advantage held by VoIP providers is the perception of some of its purveyors that they may subvert the payment of properly jurisdictionalized access charges for the use of the PSTN. This refusal to pay gives VoIP-based voice telephony providers a cost advantage over PSTN-based service and at the same time undermines fair competition. It is incorrect for VoIP providers to repeatedly assert that applying the same rules to them when they use the PSTN as all other carriers that use the PSTN would

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[31] *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, WC Docket Nos. 04-36, 05-196 (rel. June 3, 2005), *petitions for review denied*, Nuvio Corp. v. FCC, 473 F.3d 302 (D.C. Cir. 2006).

[32] *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 05-153, ET Docket No. 04-295, RM-10865 (rel. Sept. 23, 2005), *petitions for review denied*, American Council on Educ. v. FCC, 451 F.3d 226 (D.C. Cir. 2006).

[33] *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, WC Docket Nos. 06-122, 04-36; CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170; NSD File No. L-00-72 (rel. June 27, 2006), 34, *petitions for review granted in part and vacated in part*, Vonage Holdings Corp. v. FCC, 489 F.3d 1232 (D.C. Cir. 2007).

somehow "saddle" IP-based voice services with legacy regulation.[35] Although it may not be necessary for access charges to apply to IP-to-IP traffic that does not touch the PSTN, the fact remains that calls to PSTN customers are terminated no differently than any other traffic terminating over the PSTN. Permitting such traffic to pay a different amount merely because they originate in an IP platform would not be competitively or technologically neutral.

Although AT&T correctly asserts that the existing compensation regime has resulted in numerous disputes resulting from the numerous rates assessed to the various traffic types, creating a different compensation mechanism for another class of traffic will exacerbate the very problem AT&T is purportedly trying to resolve. Many more carriers will assert, as they do today, that the traffic they are terminating is VoIP originated and therefore the lower rate (or no rate) would apply. Most carriers do not provide any evidence that their traffic is in fact VoIP originated and the terminating carrier has no ability to verify these claims. Creating a special category for VoIP traffic will only aggravate the problem. For this and other reasons cited above, the Commission should deny any request to treat VoIP services as a separate class of traffic subject to different intercarrier compensation requirements.

V. Other Issues Raised in AT&T's Filing

AT&T raises additional issues regarding intercarrier compensation that need the Commission's action for clarification. Windstream agrees that clarification is needed to create a more stable and predictable intercarrier compensation system. In particular, Windstream urges the Commission to address treatment of Internet Service Provider-bound ("ISP-bound") traffic and phantom traffic.

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[34] Brief for Amici Curiae United States and Federal Communications Commission Supporting Appellants' Request for Reversal, Vonage Holdings Corp. and Vonage Network, Inc. v. Nebraska Pub. Serv. Comm'n (8th Cir. 2008) (No. 08-1764).

[35] *See* August 6 Joint Filing at 3.

ISP-bound traffic:

Windstream supports AT&T's position that the Commission should consider adopting bill-and-keep for dial-up ISP-bound traffic. At a minimum, the Commission should affirm that the jurisdiction of a call is determined by the originating and terminating points and that, therefore, virtual NXX calls are deemed interexchange and not subject to reciprocal compensation charges. This clarification is an appropriate response to marketplace conditions. From Windstream's experience, there is an increasing amount of ISP-bound traffic in rural areas, and some forms of this traffic are an ongoing source of arbitrage. For example, certain CLECs offer services only to ISP providers and do not offer any services to the community at large. Their business plan is premised on the CLECs' ability to collect reciprocal compensation charges, even when the traffic is interexchange but provided via a virtual NXX arrangement.

Phantom traffic:

Windstream, like AT&T, fully supports US Telecom's proposal to assure that carriers have the ability to identify and track traffic on their network. Adoption of the proposal will ensure carriers are able to appropriately bill and collect intercarrier compensation. Without repeating the extensive record support for that proposal, Windstream reiterares that adopting rules for the proper identification of traffic will greatly help to eliminate intercarrier compensation billing disputes.

VI. Conclusion

For the reasons discussed above, the Commission should deny the AT&T petition and instead adopt the Missoula Plan. In any case, the Commission should adopt comprehensive intercarrier compensation reform that carefully balances end-user rates, intercarrier rates, and universal service support. Such reform is long overdue and would benefit consumers by

maintaining adequate revenue streams for carriers to support affordable, quality service in high-cost rural areas.

Respectfully submitted,

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Dated: August 21, 2008

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	**WC Docket No. 05-337**
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Lifeline and Link Up	)	**WC Docket No. 03-109**
	)	
Universal Service Contribution Methodology	)	**WC Docket No. 06-122**
	)	
Implementation of the Local Competition	)	**CC Docket No. 96-98**
Provisions in the Telecommunications Act of 1996	)	
	)	
Developing a Unified Intercarrier Compensation	)	**CC Docket No. 01-92**
Regime	)	
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	**CC Docket No. 99-68**
	)	
IP-Enabled Services	)	**WC Docket No. 04-36**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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BEFORE THE
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High-Cost Universal Service Support	)	**WC Docket No. 05-337**
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Implementation of the Local Competition	)	**CC Docket No. 96-98**
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Developing a Unified Intercarrier Compensation	)	**CC Docket No. 01-92**
Regime	)	
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	**CC Docket No. 99-68**
	)	
IP-Enabled Services	)	**WC Docket No. 04-36**
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following reply comments in response to the request by the Federal Communications Commission ("Commission") for comment on its Further Notice of Proposed Rulemaking ("FNPRM") and three attached proposals on intercarrier compensation and universal service reform.[1]

[1] *See Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (*"Core Remand Order"*).

I. INTRODUCTION AND SUMMARY

These reply comments are consistent with Windstream's prior submission of a proposal outlining recommendations for comprehensive intercarrier compensation reform. Windstream repeatedly has urged the Commission to adopt a measured approach to reforming intercarrier compensation and has supported a number of different reasonable approaches, in addition to the one it proposed.[2] All of these proposals would unify and significantly reduce intercarrier compensation rates while permitting affected carriers to recover associated revenue reductions to a significant degree through subscriber line charge ("SLC") increases and an alternative recovery mechanism ("ARM"). Windstream also endorses more limited measures that would enable proper billing by addressing phantom traffic and clarifying that compensation is due for traffic generated by interconnected Voice over Internet Protocol providers.

Windstream's repeated calls for such fair and balanced reforms are reinforced by comments submitted in response to the FNPRM. Many commenters ask the Commission to adopt unified, but varying terminating rates for different classes of carriers, in recognition of significant disparities in costs incurred to provide quality and affordable service in rural and urban areas.[3] A wide variety of parties criticize the new "additional

[2] The details of Windstream's proposal are outlined in an ex parte filed on October 28, 2007, as well as in comments filed in response to the FNPRM. Letter from Eric N. Einhorn, Windstream Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 06-122, 99-68, 08-152, 07-135 (filed Oct. 28, 2008) ("Windstream Intercarrier Compensation Ex Parte"); Comments of Windstream Communications, Inc. ("Windstream Comments").

[3] *See, e.g.*, Comments of CenturyTel, Inc. ("CenturyTel Comments") at 12; Comments of Cincinnati Bell Inc. ("Cincinnati Bell Comments") at 13-14; Joint Comments of Citynet, LLC, Granite Telecommunications, Inc., PAETEC Communications, Inc., RCN Telecom Services, Inc. and U.S. Telepacific Corp. ("Citynet et al. Comments") at 11-12; Comments of Embarq ("Embarq Comments") at 7; Comments of Frontier Communications ("Frontier Comments") at 5; Comments of Iowa Telecommunications Services, Inc. ("Iowa Telcom Comments") at 5; Comments of the Independent Telephone & Telecommunications Alliance ("ITTA Comments") at 8; Comments of the National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Maryland Office of Peoples' Counsel, The Utility Reform Network, and the Utility Consumer Action Network on Further

costs" standard proposed by the FNPRM.[4] Moreover, multiple commenters underscore the importance of making a reasonable and significant ARM available to mid-sized price cap carriers.[5]

Without these modifications, the reform proposals attached to the FNPRM would have devastating consequences for telecommunications and broadband services offered in rural regions. Since the majority of mid-sized carriers' revenues are spent to meet fixed carrier of last resort expense obligations, the staggering revenue reductions resulting from the proposed reforms would cripple mid-sized price cap carriers. The weakened carriers would be unable to deploy new broadband services to their customers, let alone maintain the prices and quality of services offered to their customers today. The impact of the proposed revenue reductions is especially significant now that the United States is experiencing one of the largest economic crises in its history.

Notice of Proposed Rulemaking ("NASUCA et al. Comments") at 16; Comments of the National Exchange Carrier Association, Inc. ("NECA Comments") at 25-26; National Telecommunications Cooperative Association Initial Comments ("NTCA Comments") at 42; Comments of TW Telecom Inc., One Communications Corp. and Cbeyond Inc. ("TW Telecom et al. Comments") at 6.

[4] *See, e.g.*, Comments of Broadview Networks, Inc., Cavalier Telephone, Nuvox, and XO Communications, LLC at 29-35; CenturyTel Comments at 16; Cincinnati Bell Comments at 10-13; Citynet et al. Comments at 19-20; Embarq Comments at 42-50; Frontier Comments at 14-17; Iowa Telecom Comments at 3-4; ITTA Comments at 10-13; NASUCA et al. Comments at 9-16; NECA Comments at 26-29; NTCA Comments at 40-41; TW Telecom et al. Comments at 5-6.

[5] *See, e.g.*, CenturyTel Comments at 14-18, 22-24; Cincinnati Bell Comments at 2-3; Embarq Comments at 7, 26; Frontier Comments at 5, 8-10; ITTA Comments at 5-9; Iowa Telecom Comments at 4-5; Comments of the United States Telecom Association ("USTelecom Comments") at 6. *See also* Letter from Larry Cohen, Communications Workers of America, President, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 3 (asking the Commission to "establish a supplementary explicit universal service fund available to mid-size carriers for broadband build-out"); Letter from Brian Mefford, Connected Nation, Chairman and CEO, to Kevin Martin, Chairman, FCC, WC Docket Nos. 06-122 and 05-337, CC Docket Nos. 96-45 and 01-92 (Oct. 27, 2008), at 2 (urging the Commission to establish universal service recovery mechanisms that are "available to all carriers of last resort, regardless of company size, structure or regulatory classification"); Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, et al. to Kevin Martin, Chairman, FCC, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan) (proposing a plan that included a recovery mechanism, which could be used by mid-sized carriers).

Following its prior critique of proposals attached to the FNPRM,[6] Windstream submits reply comments in response to parties' arguments regarding core elements of intercarrier compensation reform. Windstream addresses only three items: (1) the amount of the terminating rate, (2) the necessity of an ARM for mid-sized price cap carriers, and (3) increases to SLCs. These reply comments – given the voluminous record in this proceeding – are by no means intended to be comprehensive, but they nonetheless demonstrate that the Commission must make significant modifications before adopting comprehensive reforms considered by the FNPRM.

II. SUPPORTERS OF A UNIFORM NEAR-ZERO TERMINATING RATE STILL FAIL TO PRODUCE DATA THAT JUSTIFY ITS ADOPTION.

Comments by the leading proponents of a uniform terminating rate at or below $0.0007 fail to establish a rational basis for applying this rate to all carriers. Like the Commission's proposals, parties' comments in support of this low rate are based on unsupported assertions,[7] or rely upon facts that only apply to the very largest incumbent local exchange carriers ("ILECs"). This paltry support does not provide legitimate ground for adopting a uniform, near-zero rate.

A. Negotiated Market Outcomes Indicate that Mid-Sized Carriers Warrant a Terminating Rate Significantly Higher Than $0.0007.

Verizon asserts that "evidence of negotiated, market outcomes" supports a uniform $0.0007 terminating rate.[8] But the evidence cited by Verizon fails to demonstrate that $0.0007 is an appropriate compensable rate for all carriers. At best

[6] *See* Windstream Comments at 27-47; Windstream Intercarrier Compensation Ex Parte at 3-4.

[7] *See, e.g.,* Comments of Sprint Nextel Corporation at 6-7 (relying on statements in the Appendix A draft order to support adoption of the proposed additional costs standard); Comments of Comcast Corporation at 6 (offering its support for the new pricing methodology, but not citing any evidence that would provide a rational basis for this new methodology).

[8] Comments of Verizon and Verizon Wireless ("Verizon Comments") at 49.

Verizon's market evidence suggests that Regional Bell Operating Companies ("RBOCs") like Verizon could appropriately be subject to a uniform $0.0007 rate.

Verizon's evidence is limited to interconnection agreements that it has entered into with (premerger) AT&T and Level 3 for terminating local traffic and ISP-bound traffic, and 25 competitive local exchange carriers ("CLECs") for terminating traffic generally.[9] Such evidence is far from representative for small or mid-sized ILECs. Verizon fails to provide any evidence that small or mid-sized carriers – which realize far smaller economies of scale – have agreed to exchange local traffic at the $0.0007 rate in their interconnection agreements or that such rates reflect these carriers' circumstances. Moreover, most of the CLEC agreements cited by Verizon are bill and keep arrangements,[10] which typically are entered into when traffic is mostly in-balance.[11] It would be inappropriate for the Commission to conclude that those arrangements should be the basis for establishing a uniform rate for all carriers within a state.

With respect to small and mid-sized carriers, evidence of negotiated rates for local traffic, using Verizon's logic, indicates that these carriers should *not* be subject to a uniform near-zero terminating rate. Most of these carriers have lawfully negotiated interconnection rates that are significantly higher, in the range of $0.005 to $0.012. Their reciprocal compensation rates are set closer to interstate terminating access levels. In particular, reciprocal compensation rates lawfully negotiated by Windstream are no

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[9] *Id.* at 49-50.

[10] *See id.* at 50, n.65 (noting that 22 of 25 CLEC agreements cited are bill and keep arrangements).

[11] *See* 47 U.S.C. § 252(d)(2)(B)(I) (describing "bill and keep" as "arrangements that waive mutual recovery" of costs through "offsetting of reciprocal obligations").

where near $0.0007 for any agreement. Windstream's composite reciprocal compensation billing rate is $0.0089.[12]

B. The Proposed Methodological Shift, Coupled with the Absence of a Meaningful Alternative Recovery Mechanism, Would Indiscriminately Punish All Mid-Sized Carriers Primarily Focused on Serving Rural Areas.

AT&T asserts that the Commission's proposed "methodological shift will reward efficient carriers and punish inefficient ones" by "compelling most carriers to rely primarily on their own end users for recovery of their network costs . . . ."[13] This claim, however, overlooks the fact that carriers serving primarily rural areas incur substantially greater costs than those in urban areas. When this significant difference is taken into account, it is evident that the primary impact of the proposed methodological shift would be to reward urban carriers at the expense of rural carriers, efficiency notwithstanding.

The RBOCs – as compared to small and mid-sized ILECs – are subject to significantly different cost characteristics. Costs on a per line basis are much higher for carriers that serve primarily rural areas. A comparison of Windstream and AT&T is illustrative. Subscriber density is far lower for Windstream: Windstream's average subscriber density is approximately 21 lines per square mile, while AT&T's is approximately 99 lines per square mile.[14] Windstream, therefore, cannot benefit from the same economies of scale as AT&T. Windstream on average serves approximately 2,700

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[12] The cited composite billing rate is based upon 11 months actual billing from January through November, 2008.

[13] Comments of AT&T Inc. ("AT&T Comments") at 11.

[14] These subscriber density statistics are based upon an analysis conducted in December, 2007. Verizon's subscriber density at that time was even greater than AT&T's: Verizon's subscriber density was approximately 120 lines per square mile.

lines per exchange, and 70 percent of its exchanges serve less than 2,000 lines.[15] AT&T's average exchange, in contrast, serves more than 12,000 lines. So even if Windstream is operating at the same level of efficiency as AT&T, Windstream will have significantly higher per line operating costs than its urban counterpart.

Due to different cost characteristics and the absence of a meaningful ARM, *all* mid-sized carriers primarily focused on serving rural areas, and their customers in these areas, would be punished by the one-size-fits-all, near-zero rates under the new methodology. These carriers would suffer substantial revenue reductions, which would directly impact consumers served by affected carriers. In particular, Windstream estimates that the Commission's proposed intercarrier compensation reforms would reduce Windstream's revenues by hundreds of millions of dollars over the foreseeable future, with little or no ability to recoup much of these substantial losses.[16] These reductions would be felt directly be consumers through higher rates and service impacts.

Mid-sized carriers would struggle to offset these losses. AT&T fails to appreciate the cost characteristics of mid-sized carriers when it suggests efficient carriers would be rewarded when carriers are forced to either "reduce their costs to the prescribed compensation level or incorporate those costs in their own retail rates."[17] AT&T's claim does not hold true for any mid-sized carrier.

[15] Exchange figures referenced are based upon an analysis conducted in December, 2007. Aggregate statistics for the same time period are similarly revealing. Windstream has approximately 23 percent of the exchanges that AT&T has (approximately 1,100 as compared to 4,700), but 5 percent of the lines (approximately 3.1 million lines versus 57.2 million lines).

[16] For 2008, Windstream's terminating intercarrier compensation revenues will comprise roughly six percent of its annual revenues, whereas all of its federal high-cost support will comprise less than three percent of its annual revenues.

[17] AT&T Comments at 11.

First, mid-sized carriers cannot reduce costs to the prescribed compensation level. Network maintenance costs and deployment needs do not go away if intercarrier compensation revenues are eliminated. In order to reduce costs anywhere near the suggested compensation level, mid-sized carriers would have to effectively stop maintaining some of their existing networks and cut back on purchases of new equipment. Both of these measures would jeopardize not only the terminating switching services provided to other carriers, but also basic dial-tone service offered to end users.

Second, mid-sized carriers would be challenged by regulatory and economic factors if they sought to incorporate the joint and common costs in their retail rates. From a regulatory standpoint, state commissions are not likely to allow end user rate increases that would enable carriers to recover the revenue reductions resulting from the proposed new cost methodology. In addition, even if the states were to allow such increases, it would be near impossible for mid-sized carriers like Windstream to recover these sizable costs from their far smaller pool of end users, or for those rural consumers to afford the burden – an issue that AT&T glosses over.

C. The Commission Is Capable of Policing Artificial Traffic Stimulation Schemes Without Moving Compensation to a Near-Zero Level.

Commenters' suggestions that a single statewide rate is needed to stop arbitrageurs that specialize in terminating traffic schemes, such as free chat lines and teleconferencing services, is shallow.[18] Such parties are essentially arguing that the only way to stop the small minority of LECs that are cheating is to force every other LEC, i.e.,

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[18] *See, e.g.*, Verizon Comments at 41 (asserting that "it is only through a uniform rate – applied equally to all carriers and all traffic – that the Commission can . . . eliminate the fraud and arbitrage that plague today's intercarrier compensation regime"); AT&T Comments at 9 (arguing that "the proposed 'incremental cost' standard is far superior to TELRIC as a means of setting intercarrier compensation rates . . . because it will dramatically reduce the competitive distortions that can arise from any regulatory rate-setting regime").

the vast majority of carriers that are abiding by the rules, to give access to the terminating network for free. While this measure may substantially eliminate the possibility of such cheating, the intercarrier compensation response endorsed by these commenters is an overly broad solution to address the problem at hand, unduly harmful to LECs providing the terminating services, and excessively generous to carriers using those terminating services.

The Commission does not need to condition elimination of traffic stimulation on larger intercarrier compensation reforms. Traffic stimulation schemes violate the Commission's rules requiring just and reasonable rates, and should be eliminated immediately.[19] Specifically the Commission should require suspected violators to include terms and conditions in their access tariffs that require carriers to recalculate access rates if they meet certain thresholds for abnormal increases in access minutes.[20] This reform would prevent carriers from reaping the profits associated with illegal traffic stimulation by triggering an immediate recalculation of their access rates. Qwest proposes additional, appropriate safeguards that the Commission could use to curtail

[19] *See* Letter from Trent Boaldin, EpicTouch Co., et al. to Kevin Martin, Chairman, FCC, et al. (dated April 30, 2007) (industry letter opposing traffic pumping, which was signed by Windstream and fourteen other telecommunications companies).

[20] Language included in access tariffs could mirror language adopted by carriers subject to an access stimulation investigation last year. After the Commission suspended their tariff filings in response to access stimulation concerns (*July 1, 2007 Annual Access Charge Tariff Filings*, Order, 22 FCC Rcd 11619, ¶ 7 (rel. June 28, 2007)), some of the carriers involved agreed to recalculate local switching and transport rates if their monthly interstate local switching minutes exceeded a 100 percent increase over the same month the previous year. *See Investigation of Certain 2007 Annual Access Tariffs*, Order, 22 FCC Rcd 21261, ¶ 2 (rel. Nov. 30, 2007) (terminating the access stimulation investigation when all ILECs involved either rejoined the NECA pool or adopted "tariff language that committed them to modify their local switching and transport rates in the event they experience an increase in demand above a threshold level"). Carriers modifying their tariff language stated they would make rate revisions within 60 days of meeting the above threshold.

these illegal practices.[21] Such measures would stop destructive arbitrage activity, without making innocent carriers and customers the casualties of overbroad reform.

D. Commission Precedent Regarding Rate Symmetry Does Not Support Establishment of One Terminating Rate Per State.

Despite AT&T's suggestion to the contrary,[22] there is no current Commission practice or rule that sets a precedent for establishing one terminating rate per state. The Commission has never required rate uniformity for intrastate and interstate access, when the termination of traffic at issue is between two totally different geographic regions (within a state) with distinct cost characteristics.[23] Instead, Commission requirements for rate symmetry are limited to reciprocal compensation – and are based upon the assumption that both carriers have similar switching investment and costs in the same local calling area due to similar subscriber density, carrier size, and calling scopes.[24]

Expanding the logic for the symmetry rule to all terminating traffic (access and local) across an entire state at the same rate is illogical and inconsistent with past American practice regarding rate development. The Commission has a longstanding

[21] *See* Comments of Qwest Communications International Inc. ("Qwest Comments") at 11-14 (proposing multiple rule changes that "deal individually with the access stimulation issue," because "the intercarrier compensation reforms proposed in the ICC proposal will not have a meaningful impact on access stimulation for several years").

[22] AT&T Comments at 14 (contending that the Commission should "adhere to the consistent American practice of ensuring rate uniformity for all carriers within a given geographic area – and . . . extend that practice to all traffic").

[23] For example, Windstream operates two operating companies in the state of Ohio. Each has its own interstate and intrastate access rates, notwithstanding the fact that they operate in the same state. Because Windstream has not adopted $0.0007 for reciprocal compensation, each has its own reciprocal compensation rates. Neither the Commission nor the Public Utilities Commission of Ohio has implemented this so-called symmetry practice. At best, some state commissions have required ILECs to mirror some of their interstate access rate elements.

[24] *See* 47 C.F.R. § 51.711 (the symmetry rule for reciprocal compensation); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 1085 (rel. Aug. 8, 1996) (explaining the rationale for the symmetry rule).

practice of recognizing cost differences in the context of not only intercarrier compensation, but also in the context of universal service support.[25] Failure to continue recognizing this distinction would be contrary to economic reality for any type of switching, through softswitches or through traditional time division multiplexing ("TDM") switches.[26]

III. COMMENTS OFFER SIGNIFICANT SUPPORT FOR PROVIDING MID-SIZED CARRIERS WITH ACCESS TO AN ALTERNATIVE RECOVERY MECHANISM.

Multiple commenters, in addition to Windstream, have produced significant record evidence in support of an ARM for mid-sized price cap carriers. Both the Independent Telephone & Telecommunications Alliance ("ITTA") and the United States Telecom Association ("USTelecom") explain that these carriers need a viable revenue replacement opportunity to continue to meet their voice service obligations and deploy new broadband services.[27] Absent adequate recovery mechanisms, ITTA reports that

[25] *See, e.g.*, 47 CFR 54.301(a) and *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 212 (rel. May 8, 1997) (establishing local switching support in recognition that carriers serving rural areas must incur higher switching costs to provide voice service to an individual customer); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*; Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45; 15 FCC Rcd 12962, ¶ 162 (rel. May 31, 2000) (recognizing differences between urban and rural price cap ILECs when establishing different interstate average traffic sensitive charges for different classes of carriers). *See also* C. A. Bush et al., Computer Modeling of the Local Telephone Network, App. B, 39 (Oct. 1999), *available at* http://www.fcc.gov/wcb/tapd/hcpm/welcome.html (describing how the forward-looking universal service cost methodology responds to differences in switching costs incurred by carriers of different sizes).

[26] The incremental cost of termination is near zero under the proposed additional costs standard not due to the degree of blocking or scalability of a type of switch, but instead due to the fact that the proposed standard classifies a much greater proportion of switching-related costs as joint and common and then excludes these costs from the calculation of additional costs. *See* Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 01-92; WC Docket Nos. 99-68, 05-337, 06-122, 07-135, and 08-152 (Oct. 27, 2008) (explaining how the proposed standard would overlook significant costs incurred in switching traffic via softswitches, as well as traditional TDM switches).

[27] ITTA Comments at 9 (proposing an ARM for mid-sized price cap carriers to provide them with an opportunity to recover revenue reductions from access rate reductions); USTelecom Comments at 6 (stating that mid-sized price cap carriers deserve a viable replacement opportunity for mandated rate reductions).

mid-sized price cap carriers would have to cut capital and operational costs and increase prices.[28] It asserts that the proposed reforms, as a result, would "retard broadband deployment, rather than promote it . . . ."[29] In addition, USTelecom finds that the proposed revenue mechanism for mid-sized price cap carriers fails to recognize carrier of last resort obligations.[30] USTelecom concludes that the proposed reforms would diminish these carriers' "ability to maintain the prices and quality of services currently offered to their customers and will severely harm their ability to further deploy advanced services."[31]

Individual carriers also provide noteworthy support for an ARM. First, Embarq endorses both USTelecom's and ITTA's proposals to implement an ARM for mid-sized price cap carriers.[32] It observes that Commission precedent recognizes that "a sufficient, reliable recovery mechanism is a vital component of any intercarrier compensation reform plan that reduces intercarrier compensation revenues."[33] Second, CenturyTel, in support of the ITTA plan, explains that the Commission in the past always has indicated that some form of access replacement fund may be necessary whenever considering reductions to intercarrier compensation rates.[34] CenturyTel adds that such a mechanism is important to a wide variety of carriers, as high-cost characteristics exist regardless of whether a carrier is price cap or rate of return regulated, or whether the company is public

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[28] ITTA Comments at 7.

[29] *Id.*

[30] USTelecom Comments at 6.

[31] *Id.*

[32] Embarq Comments at 7.

[33] *Id.* at 26.

[34] CenturyTel Comments at 12, 14.

or private.[35] Third, Frontier calls upon the Commission to recognize challenges facing mid-sized price cap carriers and the need to ensure these carriers have an opportunity to recover network costs.[36] Frontier supports ITTA modifications that would implement an ARM for mid-sized price cap carriers.[37] Finally, Cincinnati Bell declares that "recovery mechanisms are inadequate, particularly for mid-size ILECs."[38] "If the Commission truly wants to make broadband available to all Americans," Cincinnati Bell asserts that the Commission "must reexamine the impacts of its ICC reform proposals on the mid-size companies, particularly the mid-size ILECs, which have long held carrier of last resort obligations that place extra burdens on them, but will likely suffer the most significant uncompensated and unrecoverable losses . . . ."[39]

Commenters opposing meaningful recovery do not identify any legitimate policy rationale for distinguishing mid-sized price cap carriers from mid-sized rate of return carriers.[40] Free Press, for example, fails to establish a rational basis for distinguishing price cap carriers from rate of return carriers, as proposed in the ill-considered "compromise path" suggested in its comments.[41] This path would afford rate of return carriers a revenue neutral mechanism, while price cap carriers' recovery would be limited to a $150 million ARM that would be eliminated after five years. The impact of this

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[35] *Id.* at 15.

[36] Frontier Comments at 9 (citing "problems of areas served with low customer densities and networks with long transport routes that are dependent on the tandem of others").

[37] *Id.* at 9.

[38] Cincinnati Bell Comments at iv.

[39] *Id.* at 2-3.

[40] Indeed, many parties – both proponents and opponents of an ARM for mid-sized carriers – agree that price cap and rate of return carriers should be treated the same for cost recovery purposes. *See, e.g.*, Mercatus Center Public Interest Comment on Intercarrier Compensation and Universal Service at 10 (arguing that all mid-sized carriers should be subject to a single mechanism and that mechanism should not consider non-regulated revenues/costs in its determination of whether an ARM is warranted).

proposal would be disastrous for mid-sized price cap carriers and their customers.[42] The ARM recommended would not provide the financial stability needed to continue investing in the network. This temporary support would have a negative impact on rural consumers and further broadband deployment – contrary to the very principles Free Press endorses.[43]

IV. AFFORDABILITY CONCERNS ARE BETTER ADDRESSED WITH A RATE BENCHMARK, RATHER THAN UNDUE CONSTRAINTS ON SUBSCRIBER LINE CHARGES.

Many parties offer general support for using SLC increases as the first source of funding recovery of intercarrier compensation reductions.[44] Specifically Windstream supports the proposal to increase SLCs by $1.50 for residential and single line businesses and by $2.30 for multi-line businesses.[45] Although competition restrains full recovery of permitted SLC increases in many circumstances,[46] allowing carriers to increase SLCs in this manner would give them the opportunity to recover at least some of their reduced intercarrier compensation through increases to their end user rates.

To the extent there is opposition to SLC increases, much of this opposition is focused on affordability and comparability of consumer rates. For example, Free Press

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[41] Comments of Free Press ("Free Press Comments") at 16.

[42] *Id.* at 17.

[43] *See id.* at 5 (arguing the Commission should "rationalize its regulatory structure in a manner that protects consumers and fosters the universal deployment of affordable advanced information and telecommunications technologies"). Free Press also recommends that the Commission "consider phasing out all IAS support." Free Press Comments at 17. Only price cap carriers receive IAS support, thus adopting this recommendation would only exacerbate problems created by the proposed order.

[44] *See, e.g.*, CenturyTel Comments at 23; Embarq Comments at 7; Frontier Comments at 6; ITTA Comments at 9; NECA Comments at 6; Qwest Comments at 5-9; TW Telecom et al. Comments at 9; USTelecom Comments at 7.

[45] *See Core Remand Order*, App. A at ¶ 298, App. C. at ¶ 293 (proposing these SLC increases).

[46] Rate increases are restrained by competition, because consumers will leave carriers if their services are not competitively priced.

voices concerns that SLC increases would "unfairly burden local ratepayers."[47] Some state commissions likewise worry about how consumers would be impacted by SLC increases.[48] The National Association of State Utility Consumer Advocates, joined by other consumer advocacy organizations, adds that proposed SLC increases should not allow customers in one state to replace revenue losses from another state.[49]

Reducing the level of all possible SLC increases, however, is not the best way to address these concerns regarding consumer rates. A preferable route is to use rate benchmarks.[50] As noted in proposals considered by the FNPRM, the Commission could establish a national benchmark for affordability and comparability, and then constrain SLC increases that would cause customers' rates to exceed the benchmark.[51] If a carrier would require revenue recovery in addition to increases above a SLC cap or rate benchmark, it then could look to the ARM. This benchmark could be set at $20.76, the amount that represents the national average urban residential rate as determined by the Commission,[52] or at some other reasonable level. Using such a benchmark would begin to eliminate existing, significant rate inequities between consumers of different carriers

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[47] Free Press Comments at 4. *See also* Letter from Chris Murray, Consumers Union, and Mark Cooper, Consumer Federation of America, to Kevin J. Martin, Chairman, FCC, et al., CC Docket Nos. 01-92, 96-45 (filed Oct. 27, 2008) at 1 (questioning whether a SLC increase is "fair for consumers").

[48] Comments of the Nebraska Public Service Commission ("NPSC Comments") (worrying that consumers could be "unfairly penalized" by SLC increases); Comments of the Pennsylvania Public Utility Commission at 14 (expressing concerns that SLC increases could signify a "considerable cost increase" for consumers).

[49] NASUCA et al. Comments at 20.

[50] Many commenters suggest that the Commission should consider using some form of a rate benchmark. *See, e.g.*, CenturyTel Comments at 23; Comments of CTIA—The Wireless Association at 36; NECA Comments at 6-7; NTCA Comments at 3, 10-11; USTelecom Comments at 7-8.

[51] *Core Remand Order*, App. A at ¶ 307, App. C. at ¶ 302.

[52] *See* Letter from Joshua Seidemann, Independent Telephone and Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45; WC Docket No. 05-337 (filed Oct. 20, 2008) at 2 (proposing a SLC benchmark rate that excludes taxes and fees, but includes SLCs).

and consumers in different states. Such disparities are the product of the different local rate setting policies in individual states.

Comments of the Nebraska Public Service Commission ("NPSC") provide useful elaboration on why a national rate benchmark is needed.[53] NPSC argues that "[c]onsumers should not be burdened with rate increases, particularly in states where rates are high in comparison to other states' rates."[54] As explained by NPSC, increasing SLCs without regard to a national benchmark would penalize consumers residing in states like Nebraska, which already have reduced state access with application of local rate benchmarks and state universal service funding.[55] In contrast, NPSC observes that "[c]onsumers in surrounding states" would "benefit[] from their states not taking the initiative to rebalance rates and reduce access charges consistent with the 96 Act."[56]

V. CONCLUSION

The Commission should act now to adopt fair and balanced reforms supported by Windstream. The record before the Commission provides significant reinforcement for a more measured approach to reforming intercarrier compensation and universal service. Reforms recommended by Windstream would remove implicit subsidies and tighten the link between costs and rates, without jeopardizing communications services offered in rural areas.

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[53] NPSC Comments at 8-10.

[54] *Id.* at 2.

[55] *Id.* at 9-10.

[56] *Id.* at 10.

Respectfully submitted,

/s/ Jennie B. Chandra

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December 22, 2008

Its Attorneys

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PUBLIC SERVICE COMMISSION

Request No. 16

Please provide the percentage of Windstream switched access lines in Kentucky that are presubscribed to Windstream long distance service offered by Windstream Communications, Inc. or any other Windstream entity or affiliate, whether facilities-based or through a third party IXC wholesale long distance arrangement.

RESPONSES: This question is in excess of a reasonable number of discovery questions that should be allowed under law. Without waiving the foregoing objections, Windstream East and Windstream West state as follows:

16(a) Windstream West - estimated [REDACTED]

16(b) Windstream East - estimated [REDACTED]

Windstream East / Windstream West Respondent: Cesar Caballero

Request No. 17

Please provide the percentage of Windstream's Kentucky residential customers:

a) that purchase a service bundle

b) that purchase basic local service only

c) that purchase basic local service and at least one additional local service

OBJECTION: This question is in excess of a reasonable number of discovery questions that should be allowed under law and further is wholly irrelevant to the matters set forth in Verizon's Complaint.

Answer prepared by counsel for Windstream East / Windstream West

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COMMISSION

Request No. 18

Please provide the amount of intrastate switched access cost Windstream's long distance operations in Kentucky, including Windstream Communications, Inc. or any other Windstream entity, were billed by the three Windstream local companies in Kentucky in 2006, 2007 and 2008. If the access bills were rendered to a third party IXC providing wholesale long distance service to Windstream's long distance operations, please provide the amount of access revenue billed to that interexchange carrier in 2006, 2007 and 2008.

RESPONSE: This question is in excess of a reasonable number of discovery questions that should be allowed under law and seeks information from an entity that is not a party to this proceeding. Further, Sprint's use of the terms "cost" and "third party" are vague and ambiguous. Without waiving the foregoing objections, Windstream East and Windstream West state that Windstream Communications, Inc. is an interexchange reseller and frequently uses Sprint as its underlying carrier. To the extent that Sprint served as Windstream Communication Inc.'s underlying carrier in Kentucky, then Sprint would have been the party to have billed Windstream Communications, Inc. the appropriate access charges and, therefore already should have the information requested.

Windstream East / Windstream West Respondent: Cesar Caballero

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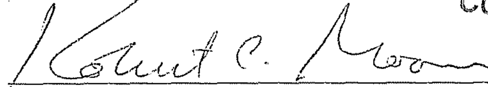
Date: March 5, 2010

Respectfully submitted,



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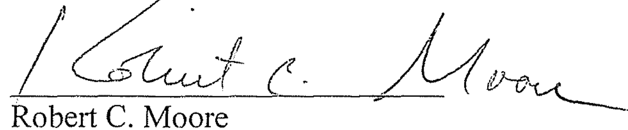
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Windstream's Responses and Objections to Sprint Nextel's Initial Request for Information to Windstream has been served upon Douglas F. Brent and C. Kent Hatfield, Stoll, Keenon Ogden, PLLC, 2000 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Dulaney L. O'Roark III, Vice President and General Counsel - Southern Region, Verizon, 5055 North Point Parkway, Alpharetta, Georgia 30022, John N. Hughes, 124 West Todd Street, Frankfort, Kentucky, 40601, and Mary K. Keyer, General Counsel/AT & T Kentucky, 601 West Chestnut Street, Room 407, Louisville, Kentucky, 40203, by placing same in the U.S. Mail, postage pre-paid, this the 5th day of March, 2010.



Robert C. Moore