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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
AND
THE NEW JERSEY DIVISION OF RATE COUNSEL
ON SECTION XV OF THE NPRM

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SUMMARY

Initial comments generally support the timely adoption by the Federal Communications Commission ("FCC" or "Commission") of measures to remedy blatant and harmful distortions in the intercarrier compensation ("ICC") market in three general areas – mispriced voice over Internet protocol ("VoIP") traffic, phantom traffic, and traffic pumping. Contrary to the recommendations of some, however, the FCC should not postpone adopting rules to address these areas pending its more comprehensive reform of the ICC market. Delay is not necessary and would simply postpone the elimination of skewed and harmful economic incentives. Instead, carriers should pay fair amounts for their use of the public switched network.

VoIP traffic is telecommunications traffic and should be treated unambiguously as such. The FCC should not require bill-and-keep for VoIP traffic, but instead should require VoIP traffic to be afforded the same treatment as is other telecommunications traffic, and should prohibit carriers from unilaterally deciding how to compensate other carriers for VoIP traffic.

Adequate call signaling information should be required for all portions of a call's transit over the network to ensure that all carriers pay their fair share for using the public switched telephone network.

Business plans that rely on traffic pumping harm consumers, because a subset of callers impose costs that others must bear. "Mileage pumping" similarly rewards business models by which carriers inflate transport charges. The FCC should adopt rules that discourage traffic pumping and inefficient traffic routing.

The financial incentives to game the intercarrier compensation system are compelling, and, therefore, the FCC may need to adopt a myriad of solutions in order to minimize the possibility of loopholes emerging in any set of rules that the FCC adopts. Initial comments offer various proposals that merit consideration. In any event, the industry has had ample notice of the likelihood of regulatory clarification and the adoption of rules to address these long-brewing and intensifying problems. Therefore, the FCC should adopt remedies for these long-standing market distortions now. Subsequently, the FCC can separately focus on addressing the more complex aspects of comprehensive ICC reform, particularly after it completes its long-overdue reform of the separations process.

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates ("NASUCA") and the New Jersey Division of Rate Counsel ("Rate Counsel") hereby reply to comments regarding Section XV of the FCC's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking ("NPRM") seeking input on the transformation of the Universal Service Fund

("USF") and ICC regime.[1] Numerous initial comments were submitted, including those by incumbent local exchange carriers ("ILEC"), competitive local exchange carriers ("CLEC"), audio-conferencing providers, regulators, and consumer advocates. Many comments support the FCC's adoption of rules to clarify intercarrier compensation obligations for voice over Internet protocol ("VoIP") traffic, prevent phantom traffic, and discourage traffic stimulation.[2]

II. INTERCARRIER COMPENSATION OBLIGATIONS FOR VOIP TRAFFIC

NASUCA and Rate Counsel reiterate their view that the FCC should treat VoIP traffic as it does other traffic (and therefore subject to the same intercarrier compensation ("ICC") rules as other intrastate, interstate and local traffic) and should reject proposals for VoIP-specific rates.[3] The Commission should immediately clarify that VoIP providers have an obligation to pay ICC rates.[4] Similarly, VoIP carriers should be subject to whatever long-range changes the FCC orders for ICC. NASUCA and Rate Counsel concur with the Iowa Utilities Board ("IUB") that the "Commission needs to settle the VoIP compensation issue in order to restore regulatory

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[1] / *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, rel. February 9, 2011 ("NPRM").

[2] / See, e.g., T-Mobile USA, Inc. ("T-Mobile"), at 1; Time Warner Cable Inc. ("Time Warner"), at 3-4; Big Bend Telephone Company, Brantley Telephone Company, Hill Country Telephone Cooperative, Inc., Horry Telephone Cooperative, Inc., Industry Telephone Company, Mid-Plains Rural Telephone Cooperative, Inc., Pembroke Telephone Company, Inc., Pineland Telephone Cooperative, Inc., Riviera Telephone Company, Sandhill Telephone Cooperative, Inc., Waverly Hall Telephone Company, LLC, and Wilkes Telecommunications ("Rural LECs"), at iv; Verizon and Verizon Wireless ("Verizon"), at 2.

[3] / See also, Cbeyond, Inc., Integra Telecom, Inc., and tw telecom inc. (collectively, "Cbeyond/Integra/tw telecom"), at 4, urging the FCC to subject interconnected VoIP tariff to the same intercarrier rates (intrastate access, interstate access, and reciprocal compensation) as other voice telephone traffic.

[4] / National Exchange Carrier Association, Inc, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Western Telecommunications Alliance, Eastern Rural Telecom Association, the Rural Alliance, and the Rural Broadband Alliance ("the Rural Associations"), at 5.

certainty, to promote investment, and to eliminate a major opportunity for arbitrage in the telecommunications arena."[5] Specifically, the IUB recommends that "functionally equivalent interconnected VoIP services should be classified as telecommunications services, they should be subject to state commission certification authority, and they should be subject to the same ICC obligations as traditional telecommunications services (unless carriers have entered into private agreements covering the exchange of traffic)."[6] NASUCA and Rate Counsel disagree with commenters such as Level 3 Communications, LLC ("Level 3"), which argues that the Commission should defer the issue of the appropriate compensation for VoIP until the Commission addresses long-term compensation reform issues simply because, according to Level 3, the issues are complex.[7]

MPower Communications Corp. and U.S. Telepacific Corp., and RCN Telecom Services, LLC ("Facilities-Based CLECs") support a focus on the goal of bringing all rates to cost-based rates and state that there is "no reason to single out so-called 'arbitrage traffic' for a faster transition."[8] Specifically, Facilities-Based CLECs suggest that there should not be a VoIP-specific rate, and that instead VoIP traffic should be subject to existing TDM intercarrier compensation charges in the interim until a unified rate is adopted.[9] NASUCA and Rate Counsel agree.

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[5] / IUB, at 4.

[6] / IUB, at 7. The IUB distinguishes functionally equivalent telecommunications services from "enhanced substitutes" for telecommunications, services, such as nomadic VoIP. *Id.*, at 7-8.

[7] / Level 3, at 11.

[8] / Facilities-Based CLECs, at i.

[9] / Facilities-Based CLECs, at ii.

By contrast, the Voice on the Net Coalition ("VON Coalition") recommends that the Commission adopt bill-and-keep for interconnected VoIP traffic immediately,[10] stating: "Bill-and-keep is vastly superior to other options under consideration, as it will hasten construction of broadband networks, promote competition, protect consumers and safeguard technological innovation."[11] VON Coalition argues that further that "the superior efficiency and quality of service" provided by broadband will shine in a bill-and-keep system but would apparently be erased under a system where VoIP traffic would be treated the same as other traffic.[12] NASUCA and Rate Counsel disagree with this rationale. Mandated bill-and-keep treatment for VoIP traffic "will only lead to further distortions in the market as carriers seek to push costs onto other carriers by dumping traffic onto others' networks, while attempting to prevent traffic from being terminated on their own networks."[13] As the Rural Associations explain, "treating a minute of VoIP traffic differently from any other minute of traffic traversing the PSTN will take control of ICC reform entirely out of the Commission's hands and leave it instead at the whim of providers who will self-declare traffic as VoIP and dare others to prove the contrary."[14]

Furthermore, if, as the VON Coalition contends, broadband voice service is superior in efficiency and quality, applying the same charges to VoIP traffic as is applied to "traditional" telecommunications traffic should not threaten the survival of broadband voice offerings. VON

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[10] / VON Coalition, at 2. VON Coalition supports bill-and-keep for all traffic, but wants, in the interim, to ensure that the Commission is not "raising" rates on interconnected VoIP before a comprehensive solution is reached. VON Coalition, at 5-6.

[11] / Id., at 2.

[12] / Id., at 5.

[13] / NASUCA and Rate Counsel, at 4. See also, Cbeyond/Integra/tw telecom, at 6; Rural Associations, at 5-6. T-Mobile proposes a bill-and-keep system for the entire ICC regime (a proposal not contemplated in Section XV of the NPRM, but nonetheless put forth in T-Mobile's April 1st comments). See T-Mobile, at 2. NASUCA and Rate Counsel disagree that bill-and-keep eliminates all arbitrage and solves regulatory burdens.

[14] / Rural Associations, at 14.

Coalition asserts that applying intercarrier compensation rates to VoIP is applying the highest regulated rates for switched traffic, which would reduce innovation and harm consumers.[15] Similarly, T-Mobile asserts that applying the "antiquated" intercarrier compensation regime to VoIP would harm consumers and that applying mandatory bill-and-keep to VoIP instead would "facilitate the migration" to an all-IP network.[16] Similarly Verizon opposes applying "the existing dysfunctional intercarrier compensation regime to innovative new services" and contends that new services "should not be shoehorned into legacy regulatory silos."[17]

NASUCA and Rate Counsel do not seek to prolong the lifespan of a broken intercarrier compensation system, but disagree with those seeking to carve out a special exemption for VoIP traffic. The migration to an all-IP network is well underway, and neither needs to be nor should be artificially assisted by disparate ICC treatment. NASUCA and Rate Counsel agree with Rural LECs that VoIP is "no longer a nascent technology deserving of special (i.e., artificial) regulatory advantages."[18] Furthermore, Rural LECs make a compelling case that adopting a special bill-and-keep system just for VoIP traffic would be detrimental to the PSTN.[19] Rural LECs urge the Commission to find that VoIP traffic, when terminating on the PSTN, is subject to the same intercarrier compensation charges that apply to voice traffic.[20] NASUCA and Rate Counsel agree. Moreover, bill-and-keep would create incentives to label traffic as VoIP, further skewing incentives based on artificial distinctions. In this first phase of reform, the FCC should

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[15] / VON Coalition, at 4. The VON Coalition sates that "legacy access charges" for VoIP service should be viewed as barriers to entry. Id.

[16] / T-Mobile, at 3.

[17] / Verizon, at 6.

[18] / Rural LECs, at 7.

[19] / See Rural LECS, at 7.

[20] / Rural LECs, at 2.

take steps to treat VoIP traffic as it does all other telecommunications traffic. In the subsequent phase, the FCC can set rates for intercarrier compensation that are more rational… but not necessarily those proposed in the NPRM.

NASUCA and Rate Counsel disagree with VON Coalition's recommendation that the Commission "confirm" that interconnected VoIP is an interstate information service.[21] First, contrary to VON Coalition's argument, the FCC has expressly not ruled on this issue – this is not a matter of making a prior decision more clear. Second, the substance of VON Coalition's argument is not persuasive. Although NASUCA and Rate Counsel agree with VON Coalition that varying regulatory designations for types of traffic and varying rates have caused disputes and certainly led to added costs,[22] carving out special treatment for VoIP traffic would only exacerbate those problems.

Time Warner Cable supports the Commission's proposals and recommends that the Commission treat traffic similarly instead of using "artificial regulatory and jurisdictional distinctions among various categories of traffic . . ."[23] Time Warner Cable does not support carving out VoIP traffic for special treatment,[24] and also points out that the FCC has already determined that interconnected VoIP traffic is telecommunications traffic.[25] NASUCA and Rate Counsel agree with Time Warner Cable that "the regulatory classification of the end-user service

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[21] / VON Coalition, at 2.

[22] / Id., at 3.

[23] / Time Warner Cable, at 2.

[24] / Id., at 3.

[25] / Id., at 6.

(in this case, VoIP) is irrelevant to a separate entity's obligation to pay access charges or reciprocal compensation based on the telecommunications service component of that service."[26]

At the FCC's recent ICC workshop, XO Communications ("XO") stated: "There is no nexus between telephone numbers assigned and actual geographic locations of VoIP customers when they place or receive communications to or from the PSTN" and further stated that "[v]irtually all VoIP services offer consumers any distance calling, making no distinction between local and long distance calls, let alone intrastate and interstate."[27] NASUCA and Rate Counsel acknowledge that distance may no longer be as relevant for retail pricing of switched services, but the objective for this first phase of reform should be to treat VoIP traffic the same as other telecommunications traffic. In the next phase of reform, the FCC can consider measures to remove distance-sensitivity as an element of the rates that are set for ICC.

NASUCA and Rate Counsel also recommend that the Commission address the "self-help" issues that commenters have raised, such as Cbeyond/Integra/tw telecom's concern that Verizon has failed to pay the tariffed access charges for Verizon's long-distance calls that originate or terminate on Cbeyond's IP network, but instead have unilaterally "re-rated" Cbeyond's access service to $0.00007 per minute for interstate and intrastate calls.[28] Facilities-Based CLECs contend that carriers must pay applicable charges while they dispute those charges and suggests that some carriers refuse to pay any charges while claiming that a portion of the

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[26] / Id., at 8 (citation omitted).

[27] / FCC Workshop on Intercarrier Compensation Reform, Session 1: Intercarrier Compensation Arbitrage Issues and ICC Obligations for VoIP, Lisa R. Youngers, Vice President, Federal Affairs, XO.

[28] / Cbeyond/Integra/tw telecom, at 5, and Attachment A; see also Rural Associations, at 6-7.

traffic is VoIP traffic.[29] Of course, much of this "self-help" should be minimized if the Commission unambiguously applies current intercarrier compensation rates to VoIP traffic.

NASUCA and Rate Counsel concur with Cbeyond/Integra/tw telecom that it would be beneficial for the Commission simply to clarify that interconnected VoIP service is a telecommunications service because it would bolster the Commission's legal authority to determine VoIP intercarrier compensation and also would eliminate any lingering uncertainty regarding competitors' rights to interconnection and unbundled network elements necessary for providing interconnected VoIP.[30] However, regardless of when and whether such a clarification occurs, NASUCA and Rate Counsel support the FCC's rules to apply intercarrier compensation to VoIP traffic *now*, and agree with AT&T that the Commission's authority to adopt interim rules does not depend on the regulatory classification of VoIP services.[31]

There is ample evidence and there are ample arguments in this proceeding to enable the FCC expeditiously and unambiguously to clarify that VoIP traffic should be treated the same as all other telecommunications traffic under the ICC system. NASUCA and Rate Counsel urge the FCC to do so without further delay.

III. RULES TO ADRESS PHANTOM TRAFFIC

NASUCA's and Rate Counsel's review of initial comments does not alter their full-fledged support for the FCC's proposal to address so-called "phantom traffic," specifically to require that the calling party's telephone number be provided by the originating provider and to

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29 / Facilities-Based CLECs, at 15-16. See, e.g., *Ex Parte* of Cox Enterprises, Inc., Brighthouse Networks, Cablevision Systems Corporation, and Charter Communications, CC Docket No. 01-92 (filed Feb. 1, 2011).

30 / Cbeyond/Integra/tw telecom, at 7-9, 15-16.

31 / AT&T, at 26; see, also Rural Associations, at 12.

prohibit altering or stripping call signaling information.[32] NASUCA and Rate Counsel continue to support the FCC's timely adoption of call signaling rules. The industry has had more than adequate time to prepare for the inevitable adoption of such requirements.[33] As previously noted, there is already ample support on the record for call signaling rules[34] and this most recent round of comments simply further confirms the need to move forward expeditiously.[35] Adopting measures now to discourage phantom traffic will enable the FCC then to focus on longer term reform measures.[36]

The Rural Associations state that a "sizable portion of traffic now terminating on rural local exchange carrier (RLEC) networks is either not being billed or being billed incorrect rates due to missing or inaccurate signaling and billing information and regulatory arbitrage."[37] Phantom traffic interferes with universal service requirements: Rural carriers' inability to bill for traffic could create unnecessary demands for universal service support, which, in turn, harms all consumers.

Time Warner expresses concern, however, that the middle (or transiting) carrier not be held responsible if the originating carrier fails to provide the requisite signaling information,[38] and contends that the responsibility for identification rests solely with the originating carrier. It would seem, however, that the transiting carrier has more ability to identify the originating

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[32] / NPRM, at para. 626.

[33] / NASUCA and Rate Counsel, at 6.

[34] / Id., at 8, citing November 26, 2008 comments of Broadview, et al., CPUC, Qwest, Verizon and Verizon Wireless, and Embarq and NPRM, at para. 620 (citation omitted).

[35] / See, e.g., Time Warner Cable, at 3, 12; Rural LECs, at 10-11; Facilities-Based CLECs, with modification, at 13-14; AT&T, at 21-25; Verizon, at 46.

[36] / Rural Associations, at 3.

[37] / Id., at 18.

[38] / Time Warner Cable, at 12-13.

provider than the terminating carrier. Rate Counsel and NASUCA agree with Time Warner Cable, however, that at "a minimum, the Commission should separately identify the duties of originating and transiting providers in its rules…."[39] but do not necessarily agree that the Commission should "make clear that neither may be held liable for the rule violations of another."[40]

In contrast, however, Rural LECs and Facilities-Based CLECs make a good case for the transiting, or intermediate, carrier to also take responsibility for traffic that it terminates.[41] The example provided by Rural LECs suggests that intermediate carriers are providing originating party information without jurisdiction information.[42] Rural LECs also suggest that Calling Party Number ("CPN") is not sufficient information, but that carriers must also know the originating carrier (for billing purposes), jurisdictional information, and carrier billing address.[43] Facilities-Based CLECs also suggest a modification to FCC proposed rules to include all signaling call detail including carrier identification codes, jurisdiction information parameters, calling party numbers, charge numbers and automatic numbering information.[44]

Rate Counsel and NASUCA are sympathetic to the concerns put forth by the Rural LECs, but disagree with the Rural LECs that carriers should be able to "disconnect" the originating party and block traffic.[45] Time Warner Cable also questions whether carriers will drop calls that

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[39] / Id., at 13.

[40] / Id.

[41] / See Rural LECs, at 11. See, also, Facilities-Based CLECs, at 4,11.

[42] / Rural LECs, at 11-12.

[43] / Id., at 11. Rural LECs suggest that much of the information is already available in IP signaling, but that it needs to be mapped to the billing record. Rural LECs suggest that the Alliance for Telecommunications Industry Solutions ("ATIS") work on a billing standard. Id.

[44] / Facilities-Based CLECs, at 4.

[45] / Rural LECs, at 13.

lack identifying information.[46] Dropping calls harms the caller, whose only error may be relying on an originating carrier that does not fulfill its signaling duties. The NPRM notes (at paragraph 628) that the rules are not intended to interfere with traffic reaching the intended recipient, but the rules are seemingly not clear as to how carriers should handle calls that lack call signaling information.[47]

A reasonable "compromise" or default rule may be the one suggested by Rural LECs that requires the transit provider to pay the highest possible termination rate for the traffic (if not properly identified) thereby providing "a financial incentive to make sure that their agreements will all connecting parties include receiving all the appropriate signaling information for billing, and appropriate records are passed to the terminating parties in the call path."[48] This preserves the caller's right to be connected, but should cause the offending carriers to expeditiously correct their errors.

Although T-Mobile does not object to call signaling requirements, it asserts that some call signaling requirements may be overly burdensome and objects to using CPN to establish jurisdiction.[49] NASUCA and Rate Counsel agree with T-Mobile that the CPN is not necessarily a reliable indicator of calling party's location, particularly with mobile service.[50] Yet T-Mobile also recognizes that wireless providers mostly rely on negotiated agreements which the proposed rules would not effect.[51]

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46 / Time Warner, at 13.

47 / Id.

48 / Id., at 24.

49 / T-Mobile, at 13.

50 /. Id.

51 / Id. T-Mobile again expresses a preference for bill-and-keep which would supposedly obviate the need for call signaling rules. Id., at 14. As explained above, NASUCA and Rate Counsel oppose mandatory bill-and-keep.

Comments identify aspects of call signaling that deserve further resolution in the FCC's proposed rules. For example, Facilities-Based CLECs include specific and detailed information about signaling. Facilities-Based CLECs recommend:

- Although the text of the NPRM recognizes in a number of places that all call signaling data should be passed, the text of the proposed rule appears to be limited to CPN, CN, and ANI. Other call signaling fields, such as CIC, OCN and LRN, would be useful to determine the appropriate rate and party to bill for the call. The rule should require passage of all such signaling fields, where technically feasible.
- Proposed rule 64.1601(a)(2) should be amended to delete "published." Some carrier practices may deviate from the rules by following "widely-used industry standards" that have not yet been formalized in published standards.
- To ensure cooperation between terminating carriers, intermediate providers, and originating providers, the Commission should adopt a rule under section 222(b) that requires every intermediate provider to share information necessary to identify from which service provider the intermediate provider received the traffic. The Commission should also require the originating provider to identify the intermediate provider to whom the originating provider delivered the call. All providers should be required to share information necessary to rate traffic.
- The FCC should amend rules 64.1601(c) to prohibit changes for providing and/or passing not only CPN, but also all call signaling, switch records, and information about intermediate carriers.[52]

These are reasonable descriptions of the issues.

The Rural Associations support the Commission's immediate adoption of rules to apply call signaling requirements to all forms of traffic originating or terminating on the PSTN as well as to all interconnected voice service providers, regardless of jurisdiction or technology, but cautions that the NPRM's proposed rule amendments may not completely address all the relevant issues regarding phantom traffic.[53] The Rural Associations propose several additional requirements for signaling information that merit the Commission's attention: providers transmit in signaling and billing records the carrier identification code or operating company number;

[52] / Facilities-Based CLECs, at 13-14.

[53] / Rural Associations, at 17.

providers not be allowed to substitute the number of a calling "platform" or "gateway" for the CPN or calling number associated with the originating caller; in the absence of more accurate information or an agreement, terminating carriers may rely on a call's originating and terminating numbers to determine jurisdiction for billing purposes; and allow terminating carriers to charge their highest terminating rate to the service provider that delivers unidentified traffic on their networks.[54] Again, these are reasonable descriptions of the issues. The FCC could encourage industry members to work out these additional technical details, bringing any unresolved matters to the Commission for resolution on an expedited basis.

Level 3 supports the Commission's propose rules that require originating providers to pass along the calling party's telephone number and for intermediate carriers to pass along identifying information, but raises the concern that the NPRM does not address the scenario where the originating providers does not pass on the calling party number because no such number exists, such as when a non-interconnected VoIP provider transmits traffic to a telecommunications provider for delivery on the public switched telephone network.[55] Level 3 recommends that the Commission clarify that its rules apply only where the caller has a telephone number and the rules would not require a caller to be assigned a telephone number.[56] The lack of a telephone number should not, however, allow the VoIP provider to avoid paying for this traffic.

NASUCA and Rate Counsel submit that, in any event, at a bare minimum, the Commission should adopt a rule that prohibits carriers from **charging** a higher rate for terminating a PSTN-to-IP call than they **pay** when they originate a similar IP-to-PSTN call and

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[54] / Id., at 18.

[55] / Level 3, at 10; see also, Verizon, at 50.

[56] / Level 3, at 11.

send it to the PSTN.[57] Furthermore, enforcement mechanisms and Commission-developed "fast track" dockets to resolve disputes are essential to ensure compliance with any Commission requirements.[58]

IV. RULES TO REDUCE ACCESS STIMULATION

Initial comments support the FCC's proposed revisions to its interstate access rules to address access stimulation, a scheme that enables providers to "take advantage of intercarrier compensation rates by generating elevated traffic volumes to maximize revenues."[59] The FCC proposes to rely on the existence of access revenue sharing arrangements to "trigger" the application of "modified access charge rules."[60] Initial comments also identify additional mechanisms for detecting and preventing access stimulation, which merit consideration.

As NASUCA and Rate Counsel pointed out, the mere act of revenue sharing does not necessarily indicate access stimulation.[61] Like NASUCA and Rate Counsel, AT&T recommends that the FCC issue a rule prohibiting any access revenue sharing arrangement in which the LEC becomes a net payor of revenues to a customer.[62]

Various concerns are raised with the FCC's proposed use of "the existence of access revenue sharing agreements,"[63] as a trigger. AT&T supports the proposal, but not as the sole trigger "particularly in light of the traffic pumpers' long history of ingenuity in devising new

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[57] / AT&T, at 30.

[58] / Rural Associations, at 26, 37.

[59] / NPRM, at para. 636.

[60] / Id., at para. 659.

[61] / NASUCA and Rate Counsel, at 9-10.

[62] / AT&T, Inc. ("AT&T"), at 12-13.

[63] / NPRM, at para. 659.

schemes and practices to evade the Commission's rules."[64] NASUCA and Rate Counsel agree with AT&T's concerns and with T-Mobile's similar concern that the adoption of a revenue sharing trigger may simply move such arrangements further underground and "inspire further creativity.[65]

T-Mobile suggests that the revenue sharing arrangement trigger would be administratively difficult to enforce because the arrangements are not always obvious.[66] Facilities-Based CLECs convincingly make a case that the revenue sharing arrangements trigger will put the FCC in the same position as it is currently: "investigating and adjudicating individual complaints."[67] Time Warner Cable suggests that simply ending these sharing arrangements would not be sufficient to limit traffic pumping because profit-seeking companies will seek new arrangements that use loop holes in the new rules.[68]

The Rural Associations are concerned that the use of a revenue sharing trigger is "imprecise" (because traffic pumping could occur without revenue sharing, and also because an RLEC could obtain long distance service for its own business activities from a long distance providers, which in turn would result in the long distance company paying access charges to the RLEC)[69] and also urges the Commission "to distinguish between situations where traffic levels are artificially inflated and situations where traffic increases as a result of legitimate and much-

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64 / AT&T, at 18.

65 / T-Mobile, at 7.

66 / T-Mobile, at 6. T-Mobile notes "most known revenue sharing agreements have been uncovered only after extensive discovery." Id.

67 / Facilities-Based CLECs, at 22.

68 / Id.

69 / Rural Associations, at 32-33.

needed economic activity in rural areas."[70] The Rural Associations describe as a legitimate example a call center that "offshores" to a rural area, creating economic development and broadband deployment opportunities, and states that the carrier that serves such a call center should not be penalized.[71] The Rural Associations support a volume-based trigger to deter traffic pumping.[72] NASUCA and Rate Counsel concur with this approach.

Furthermore, as NASUCA and Rate Counsel indicated in initial comments, prohibiting all revenue sharing arrangements may be overkill.[73] Facilities-Based CLECs also contend that not all revenue sharing arrangements are inherently bad, citing university and hotel contracts.[74] Facilities-Based CLECS argue that:

> Because CLECs are capped at the same rate level as the competing ILEC, access charge revenue sharing that merely incents a customer to move from one LEC to another within the same territory is harmless to IXCs and end users, and a legitimate means of promoting competition between LECs. Access charge revenue sharing alone is therefore not the root cause of the problem the Commission is seeking to address in this proceeding. That problem only arises under circumstances where revenue sharing becomes an incentive for portable, high volume customers to locate in areas with extraordinarily high access charge rates based directly or indirectly on assumed higher costs and lower volumes. Any solution adopted by the Commission should target only the problem scenario and not revenue sharing in general.[75]

T-Mobile observes that revenue sharing arrangements will be difficult to spot, and proposes to use the 3:1 traffic imbalance ratio of terminating to originating traffic that is

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[70] / Id., at 32.

[71] / Id., at 32.

[72] / Id., at 34.

[73] / NASUCA and Rate Counsel, at 9. See, also, Facilities-Based CLECs' discussion of lawful use of revenue sharing agreements at 26-27.

[74] / Facilities-Based CLECs, at 21.

[75] / Id., at 28-29,

currently applied to ISP-bound traffic.[76] T-Mobile supports the 3:1 ratio, but also states that a simplified trigger such as the 3:1 ratio or a specified spike in LEC access traffic during a specified period would be a more effective tool against traffic pumping.[77] Facilities-based CLECs propose using NECA minutes of use cap as the trigger.[78] Time Warner Cable supports the use of additional triggers such as a "dramatic increase" in traffic.[79]

In initial comments, NASUCA and Rate Counsel supported the adoption of a trigger based on a fifty-fold increase in traffic.[80] Under that proposal, if a carrier drops out of the NECA pool, the carrier must include a provision in its tariff that upon significant increases in traffic (on a per-access line basis) the carrier would file a "mid-course correction" before the two-year period of review ends. The IUB has adopted a trigger in Iowa that is tied to a sudden major increase (in excess of 100 percent in less than six months) in intrastate access billings, and observes that that there have been no requests filed with the Board to revisit this trigger.[81]

Time Warner Cable opposes automatic triggers and proposes that the providers should always have an opportunity to show why the rules should not apply (within a certain timeframe).[82] It seems unlikely that under any of the proposed triggers that a non-traffic-pumping LEC would be affected, but the Commission could certainly include a rule that permits

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[76] / T-Mobile, at 2. T-Mobile proposes that the LEC would then be required to terminate traffic at the $0.0007 per MOU rate. Id., at 2-3. See, also, AT&T, at 19, recommending that the Commission adopt a trigger based on minutes of use per access line per month.

[77] / T-Mobile, at 7.

[78] / Facilities-Based CLECs, at 22-23.

[79] / Id.

[80] / NASUCA and Rate Counsel, at 10.

[81] / IUB, at 13-14.

[82] / Id., at 16.

LECs to petition for a waiver.[83] A carrier that seeks an after-the-fact waiver from a trigger should be entitled to request one (whether by request to the carrier that applied the trigger or to the Commission), but this does not remove the necessity for the triggers to be automatic.

With regard to the rates that would apply when the trigger was met, AT&T proposes that the Commission establish a benchmark rate of $0.0007 for traffic pumping minutes, rather than the benchmark rate that corresponds with the rate of the Bell operating company or the LEC with the largest number of access lines if the state if there is no BOC operating in the state.[84] According to AT&T, although the BOC-based benchmark would be an improvement over the status quo it would still be excessive and would therefore encourage traffic pumping.[85]

Level 3 raises the concern that the lack of clarity about which ILEC rates are used to set the benchmark undermine the purpose of the benchmark, and also contends that the transport rates that are charged are subject to abuse – among other things, carriers can engage in inefficient traffic routing to drive up mileage.[86] Level 3 proposes that the Commission compute the CLEC benchmark by using the mileage between the CLEC end office/subtending carrier switch and the closest ILEC tandem, using the appropriate V&H coordinates to compute air miles, in order to avoid relying on the distance that a CLEC may assert is required for transport.[87] AT&T also urges the FCC to address "mileage pumping" and proposes a rule that would require the LEC to

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[83] / AT&T, at 20.

[84] / Id., at 16-17.

[85] / Id., at 17. See also Level 3, at 3-4 (supporting the Commission's proposal that when CLECs engage in revenue sharing, they be required to benchmark to the BOC or largest independent ILEC). NASUCA and Rate Counsel also concur with AT&T that ILECs should not be permitted to recover the costs of traffic stimulation activities (such as the revenue sharing payments to their free calling providers), from their ratepayers. AT&T, at 18.

[86] / Level 3, at 6-10.

[87] / Id., at 9-10.

select the point of interface closest to its end office with which it can practicably connect.[88] NASUCA and Rate Counsel support measures to encourage efficient network design and to eliminate incentives for CLECs to engage in inefficient traffic routing in order to generate excessive tandem transport costs.

AT&T also proposes that the FCC prohibit LECs from filing tariffs that encompass calls that are associated with traffic stimulation, and instead, require LECs to negotiate market-based agreements for intercarrier compensation with IXCs to cover such traffic.[89] Tariffing would only be permitted when a CLEC provides services that are “functionally equivalent” to those of the ILEC (in contrast with the services performed by traffic-pumping CLECs).[90] Alternatively,Cbeyond/Integra/tw telecom recommend that the FCC adopt a rule that prohibits CLECs from charging any reciprocal compensation until an agreement governing the exchange of local traffic is reached.[91] These proposals seem over-reaching, and not designed to address access stimulation *per se*.

As noted in initial comments, NASUCA and Rate Counsel support some specific items in the Commission’s proposed rules including those regarding the deemed lawful considerations and also the strict prohibition on recovering the “cost” of the shared revenues in a carrier’s revenue requirement.[92] Furthermore, NASUCA and Rate Counsel continue to recommend that the FCC dismiss arguments that access stimulation can provide revenues for public goods.[93]

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[88] / AT&T, at 30-35.

[89] / Id., at 13.

[90] / Id., at 14.

[91] / Cbeyond/Integra/tw telecom, at 17.

[92] / NASUCA and Rate Counsel, at 10.

[93] / NASUCA and Rate Counsel, at 11-12.

Measures to discourage access stimulation are important to prevent the transfer of monies "from long distance consumers to LECs and providers and users of high call volume operations."[94] NASUCA and Rate Counsel reiterate their support for rules to remedy traffic pumping.

V. CONCLUSION

NASUCA and Rate Counsel urge the FCC to adopt rules without further delay to impose intercarrier compensation obligations on VoIP traffic, to require carriers to include complete call signaling information on all traffic, and to prevent traffic pumping.

Respectfully submitted,

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[94] / Level 3, at 2.

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