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
Numbering Resource Optimization	)	CC Docket No. 99-200
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

COMMENTS OF FREE PRESS

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COMMENTS OF FREE PRESS

Free Press respectfully submits these Comments in response to the Further Notice of Proposed Rulemaking (FNPRM) regarding proposals for comprehensive reform of the rules governing Intercarrier Compensation and the Universal Service High Cost Fund (FCC 08-262, released November 5, 2008).

I. INTRODUCTION

A. THE PROPOSALS IN THE FNPRM REQUIRE SUBSTANTIAL MODIFICATIONS IF CONSUMERS ARE TO REALIZE ANY MEANINGFUL BENEFITS

The three draft proposals in the Commission's November 5th FNPRM certainly reflect a high level of skill within the Wireline Competition Bureau, and an agency with a keen dedication to fulfilling its roll as a responsive regulator. The Commission staff and the Chairman's office should be commended for their willingness to tackle the tough Gordian knot that is ICC and USF reform. But these proposals, while thoughtful and ambitious, also reflect the balancing act of an agency that is overly responsive to industry concerns, and somewhat myopic when it comes to protecting the public interest. For reasons we detail below in brief (and also discussed extensively in our previous filings)[1] we are unable to support many of the policies contained in these proposals unless they are substantially modified.

Specifically, the ICC reform proposals unfairly burden local ratepayers by failing to phase-in Subscriber Line Charge (SLC) increases, and propose SLC increases without any evidence that such increases are needed to adequately recover loop costs. The ICC reforms outlined in Appendix C result in substantial increases to the USF that are in no way justified by actual need. The ICC reform proposals fail to highlight any consumer benefits, offering only promises of universal broadband resulting from the proposed reforms to the USF. But if implemented, the USF reform proposals would not result in any appreciable deployment of reasonably comparable broadband services in rural America. Furthermore, these proposals

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[1] S*ee* Ex Parte communications of Free Press, WC Docket 05-337; CC Docket 96-45; WC Docket 06-122; CC Docket 01-92, October 13, 2008 and October 24, 2008 (attached herein as appendices). *See also* Reply Comments of Consumers Union, Consumer Federation of America, Free Press and New America Foundation, *In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, Notices of Proposed Rulemakings (*USF NPRMs*), WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule NPRM*), FCC 08-5 (*Reverse Auctions NPRM*), and FCC 08-22 (*Federal-State Joint Board NPRM*)(submitted June 2, 2008) (*June 2008 Reply Comments*).

would lock-in a regulatory model that is by all evidence fundamentally broken and imperfect for today's communications marketplace.

In these comments we highlight some of the concerns raised in our previous filings and urge the Commission to undertake ICC and USF reforms in a manner that adheres to the public interest principles of the Act. We also offer, with reservations, suggestions on a feasible compromise path for ICC reform. We then urge the Commission to reject the USF reforms outlined in the FNPRM, and instead suggest an alternative approach that will lead to meaningful change.

Ultimately, the Commission must recognize that we no longer live in the 20th century POTS world; we are in the converged broadband era. With this recognition comes the responsibility to launch a complete overhaul of the old regulatory model, which was built for carriers whose main income streams were earned in monopoly markets from price-regulated services. We believe the Commission can and should rationalize its regulatory structure in a manner that protects consumers and fosters the universal deployment of affordable advanced information and telecommunications technologies.

B. SETTING THE STAGE: IMPLICIT SUBSIDIES, ARBITRAGE AND CREATIVE DESTRUCTION IN THE INTERCARRIER COMPENSATION REGIME

Over the coming holiday season, millions of American's will communicate with friends and relatives who they could not be with. Just over a decade ago, nearly all of this holiday communication would have occurred over traditional wireline telephone networks, with calls originating from a monopoly Local Exchange Carrier (LEC), handed off to a Long Distance Interexchange Carrier (IXC), and terminated on the network of another (or perhaps the same) monopoly Local Exchange Carrier. This holiday weekend all indications are just as much, if not more communicating will take place, but substantially less will occur in the manner described

above. Millions of "long distance" voice calls will be placed; some of these calls will be between LEC customers, using either an IXC or vertically integrated LEC as the middle carrier; some will be between wireless customers on the same or different carrier networks; some will be between VoIP customers; some will be conducted via video/voice instant messaging; and of course millions of calls will involve a mix of all these scenarios on each end of the call. Many American's will avoid that awkward call to a distant relative by simply sending a short email over a broadband or dial-up Internet connection, or via a text message on a wireless network.

The commonality in this list of disparate communication methods is that consumers have no ability to understand *why* they are charged the amount they are charged for these differing services. Consumers simply lack the information needed to understand the explicit costs of communications, and consequently are not able to execute efficient purchasing decisions. But even lacking such information, over time, many savvy and able consumers will flock towards services with perceived lower prices. Some of this behavior may be due to real differences in economic costs, but some of it may be driven in part by regulatory arbitrage. As a regulatory authority, the Commission should be concerned with such arbitrage, because it distorts investment incentives and leads to inefficient investment. We suggest as the agency tasked by Congress with overseeing the reasonable and timely deployment of broadband technologies, the Commission should be very attentive to the impact that regulatory arbitrage has on broadband infrastructure investment decisions, and the subsequent welfare impacts this arbitrage has on consumers.

For example, consider a mother living in Oregon who is a Qwest wireline customer and makes frequent calls to her daughter, an AT&T wireline customer in California. The mother starts out on Qwest's "15 Cent Single Rate Plan", which costs her $2 per month plus 15 cents per

minute for long distance calls -- in addition to the near $26 per month (plus taxes and fees) she is paying for local service under the "Qwest Choice Home" service plan. Assuming the mother makes 900 minutes a month in long distance calls to her daughter, her total monthly bill is approaching $200. The mother finds this unacceptable, and opts for a better bundle from Qwest, and adds "unlimited" long distance service for a total monthly cost of $41 plus taxes and fees. The mother then decides she'll just use her Verizon wireless service (which she's paying $60 per month plus taxes and fees for 900 minutes), and drops the Qwest land line altogether. However, the spotty reception in her house causes the mother to rethink this move. The mother is then persuaded by an advertising bombardment to sign up for VoIP service from Comcast (at an introductory price of $25 per month, rising to $40 per month after a year) in order to take advantage of the "free" unlimited long distance service. She then decides to drop this cable-VoIP service altogether after her daughter informs her that she can make "free" calls just using her broadband connection and the Skype-Out service, for just $3 per month.

In this very realistic example, we see the additional cost that this mother incurs for making 900 minutes per month of calls to her daughter on the same AT&T wireline number varies between $3 and $135. This mother may wonder why the same call is priced so differently, and she should. What she and most other consumers are unaware of is the tortuous web of differing call termination rates the carriers involved in a simple voice call are subject to -- differing rates that are based solely on completely arbitrary regulatory distinctions. Depending on whether the mother in the example above used a LEC, mobile wireless, or VoIP service, the per minute termination rate paid by the terminating carrier could vary by as much as a factor of 10, despite the fact that the service provided (call termination) is identical in all cases.

The only reason prices differ so dramatically for the same exact service is some carriers are paying rates that are far above cost, as a form of implicit subsidies, while other carriers using newer technologies have not been caught up completely in this implicit subsidy system. If the Commission accepts the premise that implicit subsidies are something to be done away with, then at the heart of this proceeding lies the basic questions of what the "right" rates are, how large is the implicit subsidy, and how much of and by what manner should these subsides be recovered from end users (in the form of monthly rates or universal service contributions).

The overall telecommunications marketplace may be in the midst of an innovation-driven "creative destruction", where technologies like broadband (via applications such as email, IM, and VoIP), SMS and CMRS will -- by virtue of their lower cost structures and enhanced functionality -- will gradually erode the profits of, and may ultimately destroy the old regulated monopoly local exchange business.

If this is the case, what then is the impact of Commission inaction on the issue of Intercarrier Compensation? Current trends suggest that there will be continual consumer migration to non-LEC telephony services and a further erosion of LEC access lines and minutes. But it is unclear how much of this is migration is driven by differences in intercarrier compensation charges, and bringing ICC rates down to cost may do little to reverse this trend.

The differences between the reciprocal compensation and intra/interstate access rates that a particular terminating carrier charges will incentivize the companies who are paying for call termination to take steps to legally avoid the higher rates. So we should expect the current uncertainty around the appropriate rate that VoIP-to-PSTN traffic pays will cause large vertically integrated LECs to increasingly rely on VoIP as a call-origination technology. Likewise, there will be strong incentives to strip calls of identifying information.

Because small LECs access rates are substantially higher than the termination charges on all other networks, and because IXCs are prohibited by law from charging different rates to customers in different states, inaction on ICC reform will continue the current practice of all IXC users subsidizing the small subset of calls to rural carrier customers. This too will increase customer migration to VoIP and CMRS services.

Ultimately, Commission failure to bring ICC rates down to cost will have the greatest impact on the class of carriers who most vocally oppose ICC reform -- rural LECs. Price cap-regulated rural LECs will continue to lose access lines and access minutes, but because of the way USF is structured for this class of providers, these carriers will not see commensurate increases in high-cost support. Small rate-of-return-regulated rural carriers will experience similar declines in access lines and revenues, and will be able to offset the interstate portion of these losses through increased support from the Interstate Common Line Support fund (ICLS). However, recovery of intrastate losses will not be guaranteed, and these carriers will be increasingly reliant on USF support -- an uncomfortable prospect in an era of increased competition. Both rate-of-return and price cap rural LECs who face competition from non-price regulated providers in their lower-cost service areas will continue to lose customers to these providers, increasing their overall per-line costs as they are left serving the highest cost customers. There is also the perverse incentive for rural carriers to not deploy broadband services, for fear of losing even more access revenues if their customers use the broadband connections to receive VoIP calls.

Should any of this worry the Commission? The prospect of letting creative destruction and arbitrage run its course in the hopes of forcing the market to migrate to the most efficient technologies is tempting. But the reality is the market is still far from sufficiently competitive

for creative destruction to work efficiently, and it is almost certain that rural Americans will not benefit from merely letting present trends continue.

This last point deserves emphasis. While the majority of Americans have benefited from the marketplace changes brought on by broadband and CMRS service deployments, millions of rural American's have been left standing on the sidelines of this innovation revolution. This result stems from the failure to adequately implement the universal service principles of the Communications Act -- a failure that rests solely on the Commission's shoulders.

To overcome this failure the Commission will have to rationalize and modernize its entire regulatory model if it wishes to efficiently promote universal service in the broadband era. This will require a total reevaluation of the appropriateness of the current rate-of-return and price cap regulatory models in today's convergence market. This means for example, as the Joint Board has suggested, "considering unregulated revenues in calculating carriers' need for support"[2] -- something suggested in the current proposals but fiercely rejected by incumbent carriers. The need to consider all revenues does not mean an imposition of the rate-of-return regulatory regime on all revenue streams. But it does point to the need for a rational and coherent regulatory model that accounts for carriers' newfound ability to earn substantially higher revenues on the same basic infrastructure that just a decade ago was only capable of providing basic telephone service.

[2] *Federal-State Joint Board NPRM* ¶ 31.

II. DISCUSSION

A. ICC REFORM: ANY SLC INCREASES SHOULD BE JUSTIFIED WITH FORWARD LOOKING COST STUDIES. SLC INCREASES MUST BE PHASED IN GRADUALLY

At the center of the ICC reform debate is the basic assumption, made both by the Commission and by carriers, that the phasing down of access rates must be completely offset with other incoming revenue. But this assumption is only valid if the regulated carriers are not already over-recovering costs. In other words, the claim that carriers (and their investors) must be "made whole" should only be accepted if the amount implicit subsidies contained within the current access rate structure is the exact amount needed to recover costs under a proper economic regulatory model. If a carrier's current common line revenues are above true economic cost, then ensuring "revenue neutrality" as a part of ICC reform will maintain inefficiency.

Thus, if the Commission is serious about implementing meaningful "reforms", then its first task is accurately quantifying the amount of implicit subsidies in the current access structure. Its second task is determining the appropriate level of the Federal Subscriber Line Charge (SLC), in order to ensure that there is no substantial over-recovery in this fixed end-user charge.

But the ICC proposals in the FNPRM do not attempt these important tasks. The proposals simply impose a $1.50 increase in the primary line SLC and a $2.30 increase in the business line SLC. This amounts to an estimated $2.8 billion dollar annual revenue increase[3] -- nearly the entire amount needed to offset a shift to reciprocal compensation levels.[4] But these

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[3] The Commission estimates there were about 81 million primary lines, 9.7 non-primary residential lines, and 40 million multi-line business lines that companies reported as qualified to receive Subscriber Line Charges in 2006. See Table 1.3 in "Trends in Telephone Service", Industry Analysis Division, August 2008.

[4] AT&T has filed several estimates of the total amount of annual access shift resulting from ICC reform. A September 12th *ex parte* put the values of moving to a zero terminating rate at $4.3 billion, and estimated a $2.9 billion annual shift from a move to reciprocal compensation rates.

increases in the SLC ignore the reality that the current charges likely already lead to an over-recovery of costs for a substantial majority of lines. In the cost studies that followed the *CALLS Order*[5] (which imposed the current $6.50 SLC cap) the Commission concluded that approximately 82 percent of residential and single-line business price-cap lines had forward-looking costs below $6.50.[6] Because of substantial improvements in technology, this 2002 results is likely an underestimate of the proportion of lines that are over-recovering. Therefore, it appears that a $1.50 primary line SLC increase is too high, as it would not only offset the full value of moving to a reciprocal rate, but also fails to account for the current level of SLC over-recovery.

Therefore, we would prefer that the Commission revisit this issue in a comprehensive manner prior to implementing any SLC increases. We caution the Commission that over-recovery of loop costs for loops that offer unsubsidized services (such as DSL or IPTV) is a

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An October 6th presentation put the value of a shift to a "unified" target at $2.6 billion, and a shift to a "recip comp proxy" (the 3 "Track" approach at $0.0025/$0.0100/$0.0150) was valued at $2.3 billion. An October 27th presentation valued the shift to a "recip comp proxy" (of $0.0025/$0.0050/$0.0090) was valued at $1.977 billion. *See Ex Parte* communications of AT&T, Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Universal Service Contribution Mechanism*, WC Docket No. 06-122; Intercarrier Compensation for ISP-Bound Traffic, WC Docket 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, September 12, 2008; October 20, 2008; October 27, 2008.

[5] *Access Charge Reform,* 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 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), cert. denied, Nat'l Ass'n of State Util. Consumer Advocates v. FCC, 70 U.S.L.W. 3444 (Apr. 15, 2002).

[6] See footnote 82, *In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers,* CC Docket Nos. 96-262, 94-1, Order, FCC 02-161, rel. June 5, 2002.

possible violation of Section 254(k) of the Act.[7]

If the Commission declines to conduct forward-looking cost studies, or implements SLC increase prior to completing such studies, then it is absolutely imperative that SLC increases be phased-in in parity with the phase-down of access charges. A gradual phase-in/phase-down of SLCs and access charges is perfectly consistent with previous Commission action. As a result of the *CALLS Order*, primary line SLCs increase from $3.50 to $6.50 over a three-year period ($3.50 to $4.35 over one month; $4.35 to $5.00 over another 1-year period; $5.00 to $6.00 over another 1-year period; and $6.00 to $6.50 over the final 1-year period).[8]

If the Commission agrees to reduce intrastate rates to interstate levels, then according to AT&T's October 27th *ex parte* presentation, the entire value of this access shift (over a two year period) is $1.217 billion. This assumption was based on the proposed $1.50 and $2.30 SLC increases, and assumed rate parity. When AT&T assumed the SLCs were phased in over the two-year period, they calculated that the *average* primary line SLC increase in year one would be $0.31, and in year two would be $0.61. Based on this calculation, only 1% of primary lines experienced a SLC increase greater than $1 in year one, and 32% had a SLC increase greater than $1 in year two.

Now of course the CMT revenue bounds the SLC increases during the transition, but we would prefer that the SLC cap is itself phased in explicitly. Thus, if the primary line SLC was increased to $8.00, then that increase should be stepped up over the transition period (similar to

[7] 47 U.S.C. § 254(k) states that a "telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocations rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."
[8] *CALLS Order*, Appendix C, Chart 1.

"Scenario B" in AT&T's October 27th presentation, which moved SLCs immediately up to $8.00/$11.00 and moved intrastate rates halfway to interstate, as opposed to "Scenario A" which moved the SLCs first to $7.25/$10.35 as access rates were reduced halfway, then to $8.00/$11.00 in a second step where access rates moved all the way down to interstate levels).

Thus, for the sake of argument, let's assume the Commission orders intrastate rates to be reduced to interstate levels over a four-year period, and determines that a primary line SLC increase of $0.80 is an appropriate amount that does not result in substantial cost over-recovery. The Commission should then change the primary line SLC to $6.70 in year 1; $6.90 in year 2; $7.10 in year 3; and $7.30 in year four.

If this Commission is determined to move forward with SLC increases as a part of a compromise ICC reform package, we would urge the Commission to act as it did in the *CALLS Order* and only permit a minor initial SLC increase. Any further increases would only be implemented if a forward-looking cost study found them to be appropriate. The proposals in the FNPRM associated a $1.50 primary line SLC increase with the phase down of all access and reciprocal compensation rates to the "additional cost" standard. Thus if the Commission only orders a reduction of intrastate rates to interstate levels, the primary line SLC increase should be appreciably lower than $1.50. Likewise, if the Commission orders reductions to TELRIC-based reciprocal compensation levels, the primary line SLC increase should be lower than $1.50.

B. ACCESS RECOVERY FUNDS SHOULD BE BASED ON ACTUAL NEED AND LIMITED TO THE EXTENT NECESSARY TO ENSURE SUFFICIENT SUPPORT FOR REASONABLY COMPARABLE SERVICES

As discussed above, all of the industry ICC reform proposals treat this exercise as a "make whole" proceeding. Every carrier is given revenue neutrality via SLC increases or increased universal service payments (or both). For carriers in high-cost areas, it is assumed that the "make whole" increases in USF payments are needed, and will not result in overpayments.

This is simply incorrect. Bloating the Fund without any attempt to justify this action based on cost-based need is dangerous, as it will further destabilize this important program.

Just this week, the Commission's Office of the Inspector General revealed that during the 2006-2007 period, there were an estimated $970 million dollars in High Cost Fund (HCF) overpayments.[9] This was up 57% from just the year prior. Let's be clear about this: these were overpayments based on the *current* rules, which already lead to above-cost payments for carriers (because rate-of-return carriers are supported based on embedded, not forward-looking costs; and because large price cap carriers receive excessive payments from the Interstate Access Support (IAS) program). Thus, according to the OIG's study, <u>one out of every four dollars allocated for high cost support is an overpayment</u> -- based on the current over-generous rules. The OIGs report stated that the "principle causes of erroneous payments were inadequate documentation (25.3% of beneficiaries); inadequate auditee processes and/or policies and procedures (24.6% of beneficiaries); weak internal controls (12.4% of beneficiaries); disregarded FCC Rule/s (10.1% of beneficiaries); failure to review/monitor work submitted by consultant/agent (9.5% of beneficiaries); and inadequate systems for collecting, reporting, and/or monitoring data (7.5% of beneficiaries)." But it is telling that "the proportion of improper over payments out of total improper payments is 98.2%." That is to say, 98 times out of 100 the "errors" committed benefited the USF-supported carrier.

Thus, the proposed hundreds of millions of dollars in annual HCF increases contained in the FNPRM proposals are staggeringly arrogant in light of the fact that carriers are already taking in on average 23% more than the current rules entitle them to receive.

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[9] "The High Cost Program Initial Statistical Analysis of Data from the 2007/2008 Compliances Attestation Examinations", Office of Inspector General, Federal Communications Commission, November 26, 2008.

In our previous *ex parte* filings we adamantly opposed further increased USF payments to carriers unless all of their revenues were considered. We still believe this is appropriate, but recognize that effective implementation of this approach will require dramatic alteration to the current regulatory structure. Thus, we recognize that rate-of-return regulated carriers will be compensated to the extent needed to earn their common line revenue requirements. Price cap regulated carriers however have no such regulatory protection, and we strongly encourage the Commission to adopt the approach to access recovery for these carriers that was outlined in Appendix A of the FNPRM.[10]

However, we recognize that the Commission may not have the gumption to apply an appropriate cost-based need test to price cap carriers. Thus, with reservations, we suggest the following compromise path were the Commission inclined to increase USF payments to all carriers.

First, according to AT&T's October 27th presentation, SLC increases to $8.00/$11.50 with a reduction of rates to reciprocal compensation proxy levels ($0.0025/$0.0050/$0.0090) would result in a net access shift of $1.977 billion, with $1.45 billion recovered by SLC increases and the remaining $527 million recovered in USF increases. Under this scenario, the increased USF for "Track 1" carriers is 42 million; for "Track 2" carries it is $156 million; and is $329 million for "Track 3" carriers (though they don't define it, we assume AT&T is using the same "Track" terminology contained in the *Missoula Notice*, where Track 2 are midsized price cap rural carriers, and Track 3 are small rural rate-of-return carriers).

[10] *ICC-USF FNPRM*, Appendix A, ¶ 314. The process outlined in Appendix C for price-cap carriers (¶ 318) is also acceptable, as it incorporates consideration of USF need for earning a "normal profit."

Based on this data, we suggest that if the Commission is determined to write checks to offset access charge reductions, that Track 1 carriers be deemed ineligible for increased USF support (Track 1 includes the vertically integrated Regional Bell Operating Companies (RBOCs), IXCs, CLECs and CMRS). For Track 2 carriers, the amount of additional USF support (disbursed via a supplement to IAS -- "sIAS") should be capped at $150 million, and phased up then down over a 5-year period (thus, the maximum sIAS in year one would be $50 million; $100 million in year 2; $150 million in year 3; $100 million in year 4; and $50 million in year 5). After five years, the sIAS would drop to zero. We also strongly recommend that the Commission complete the *CALLS* proceeding, and consider phasing out all IAS support.

For Track 3 carriers, we expect that absent any USF or other rate-regulatory reform, that the current ICLS and High Cost Loop (HCL) programs will continue to operate as normal, allowing these carriers to earn the common line revenues needed to collect their guaranteed returns. Because the proposed ICC reforms will cause reductions in intrastate rates, "natural" increases to ICLS may not be enough to guarantee revenue neutrality, and growth indexes on the HCL program (which offset the intrastate portion on the loop cost) may also prevent "full" recovery. Depending on the final rate ordered by the Commission, we should expect this sICLS to be not much more than $300 million.

However, in keeping with the principles of the Act, we strongly recommend the Commission finish the *Rural Task Force* proceeding[11] and determine rural carriers' needs based on a forward-looking cost standard. There is near universal agreement in the regulatory

[11] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order and Twenty- Second Order on Reconsideration, *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, Report and Order, 16 FCC Rcd 11244 (released May 23, 2001) (*Rural Task Force Order*). In this proceeding the Commission promised to revisit the issue of embedded versus forward-looking cost support for small rural carriers.

economics community that forward-looking cost, and not embedded costs are appropriate lens for determining efficient support needs.[12] The protectionism that the embedded cost approach provides rural carriers is ultimately harmful to rural consumers in the long run, as it discourages efficient investment and precludes efficient market entry. For these reasons, and for reasons related to USF modernization described below, we strongly urge the Commission to reject the OPASTCO/WTA deal incorporated into Appendix C. On its face, it reflects the worst attributes of an agency that pays more attention to the politics of backroom negotiations and little attention to the guiding statutes. The deal would lock the Commission into an USF broadband support approach that is flawed, and perpetuates the current flawed non-cost-based support system.

C. RATIONALIZING, MODERNIZING AND EFFICIENTLY PROMOTING UNIVERSAL SERVICE IN THE BROADBAND ERA

i. THE ACT REQUIRES THE COMMISSION TO ENSURE THAT ALL AMERICANS HAVE ACCESS TO AFFORDABLE AND ROBUST BROADBAND SERVICES

There can be no doubt that the phenomenon of convergence has radically transformed the underpinnings of the Commission's telecommunications regulatory structures, forcing the agency to rethink its entire system if it wishes to remain effective. The chief culprit behind this upheaval is the Internet. When Congress passed the 1996 Telecommunications Act, Internet access was an application that used telephony as an infrastructure. Today, telephony is one of

[12] By way of an extremely simplistic analogy, let's say you bought a Victorian in San Francisco at the height of the housing bubble. One year later, the identical house next door sales for 40 percent below what you paid for your house, and your new neighbor's mortgage payment also happens to be 40 percent less than yours. Let's then say that you and your new neighbor both decide to move, and want to rent your houses. Let's also assume that you and your neighbor are both oblivious to market economics, and you both price your rentals to cover the cost of your mortgage -- i.e. your respective *embedded* costs. You get absolutely no inquires, and your neighbor just gets one. You both wonder what is wrong, until you see the rental across the street has attracted multiple prospective tenants at an open house. You then find out that the asking price for a property similar to yours and your neighbors is a further 10 percent below what your neighbor is asking for. Because of *market* conditions, the *market clearing* price -- i.e. the ***efficient*** price -- is well below your and your neighbor's respective embedded costs.

many applications that are supported by broadband Internet infrastructure. Even though the word "Internet" is used just 11 times in the 1996 Act, and the word "broadband" is mentioned only once, Congress did have the foresight to construct the Act in a way that required the Commission to respond to a rapidly changing marketplace. Specifically, Congress intended for rural Americans to be a part of the coming tech revolution, and crafted the universal service directives of the Act in a manner that ordered the Commission to treat universal service as an evolving level" of services that accounts for advances in the communications and information technology marketplace.

As consumer advocates, Free Press holds a strong belief that the goal of universal service is noble and should be pursued. We believe that broadband infrastructure is to the 21st century what copper wire infrastructure was to the 20th century. The principle outcome goal of the USF should be universal deployment of affordable, next-generation, future-proof, high-speed Internet infrastructure and services. We strongly feel that Section 254 of the Act already embodies this outcome goal. Thus, the fact that millions of rural consumers remain on the wrong side of the digital divide while the Commission spends $4.5 billion each year on telephony is a glaring testimony of the failures of the current universal service model and the need for modernization.

But as consumer advocates we are also keenly cognizant of the fact that the $4.5 billion annual USF burden is placed for the most part on the backs of urban consumers, who only realize indirect benefits from the program. It is therefore vital that these consumer's monies are spent in the most efficient manner possible, and that the gains in added rural subscribers not come at the expense of losses in urban subscribership.

With these facts and principles in mind, we suggest that the Commission must approach universal service in a manner that abandons the old school regulatory approach. The

Commission must recognize the reality that in many high cost areas, other unsubsidized providers are offering services with enhanced functionality at lower prices than those charged by subsidized carriers. This reality means that subsidies in some areas are distorting the market and sending the wrong price signals to investors and consumers. A new regulatory paradigm must accounts for these realities; it must account for the increased revenue streams that modern technology has brought to traditional carriers-of-last-resort (COLRs); and it must rethink the entire COLR concept in today's marketplace. We have outlined a potential new approach to high cost support in our June 2008 Discussion Proposal. We feel that the Commission is going to have to move to a disaggregated and targeted system of support that is primarily focused on providing narrowly targeted support for initial construction costs, and move away from the ongoing support model. In short, a bold paradigm shift is needed in order to efficiently realize the universal service goals of the Act.

Unfortunately, while bold, the USF reform proposals contained in the FNPRM are not paradigm shifting, as they just perpetuate most of the worst flaws of the current model. Furthermore, as written, these proposals have almost no hope of achieving their stated goals.

ii. THE USF REFORM PROPOSALS OUTLINED IN THE FNPRM CONTAIN SUBSTANTIAL DESIGN FLAWS AND WILL NOT ACHIEVE STATED GOALS

At their core, the USF reform proposals in the FNPRM embody a carrot-or-stick approach in order to achieve universal deployment of "broadband" services. The problem is, the "stick" is essentially a hollow threat.

The approach of the Appendix A and Appendix C USF reform proposals is to demand that USF-supported carriers deploy 768kbps (kilo-bit-per-second) broadband services to 100 percent (98 percent in the case of Appendix C) of their service territories in a five-year period, or face the prospect of losing their USF support in a reverse auction. Setting aside the substantial

potential issues with reverse auctions themselves,[13] the structure of these proposals is such that these reverse auctions are unlikely to attract bidders in many areas. This is simply because the Commission defined the auction geography as the incumbent's study area. For some incumbents, this geography encompasses the majority of residences in a single state. For other incumbents these study areas are non-contiguous, crossing multiple political geographies. In such circumstances potential bidders will be few and far between, leaving the "stick" of this approach with no force.

The unwillingness of the Commission to disaggregate service territories prior to auction is surprising, as the proposals actually require incumbent carriers to disaggregate their costs for accounting purposes prior to a reverse auction. If the Commission were serious about the "stick" of its approach, its reverse auctions would be conducted on a disaggregated basis, because this would encourage competitive bidding, and lead to more efficient support of the truly high cost areas. Disaggregation would enable the Commission to divert scares USF monies to the highest cost areas that need them the most, leaving the lower cost areas to enjoy the benefits of undistorted market competition (albeit limited competition).

The Commission's auction design is also flawed for other reasons. The lack of study area disaggregation will result in the situation where winning new entrants will take over support of the losing incumbent's lowest cost areas first, only completely taking over the study area and its highest cost customers after 10 years. This process will result in the losing ILEC having to cross-subsidize their highest cost COLR customers with increases on the unregulated revenues of their lower cost customers. In other words, because the losing ILEC will maintain its COLR

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[13] *See e.g.* Comments of Consumers Union, Consumer Federation of America, and Free Press, *In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, *(2007 Joint Board Notice*), WC Docket No. 05-337, CC Docket No. 96-45, May 31, 2007, at 51.

obligations to serve its highest cost customers as the winning ETC slowly builds out through the study area, and because the COLR services will continue to be rate-regulated, the losing ILEC will need to raise its unregulated revenue streams in order to maintain revenue neutrality. This process will harm the competitive process in the lower cost regions of the study area, and will ultimately harm consumers.

Another design flaw lies in the way the proposals have incumbents disaggregate their study areas for accounting purposes prior to a reverse auction. The Commission takes this approach because it wants to have some idea of the amount of funding to award to a winning bidder as they proceed through the 10-year process of building out to the entire study area. But this approach creates the perverse incentive for an ILEC to inflate the proportion of study area support that goes to the highest cost lines, and lowball the proportion of support that goes to the study area's lowest cost lines. This is because the ILEC knows that if it loses the reverse auction, the winning ETC is likely to build in the lowest cost areas first, waiting until the end of the 10-year period to begin serving the highest cost customers. Thus, if the ILEC inflates the proportion of study area support allocated to the highest cost lines, it will be able to enjoy above cost support as the winning ETC completes the 10-year buildout process. Conversely, this "gaming" will result in the winning LEC receiving proportionally lower support for the areas that it builds in first, undermining their ability to adhere to their auction commitment.

The FNPRM's reverse auction structure is also flawed in how it sets the reserve price. In rural study areas, the reserve price will be based on the incumbent's embedded cost. Thus, unless there is substantial amount of bidders (which is highly unlikely), the non-incumbent

bidder may win the reverse auction with a subsidy that is still well above the efficient forward-looking cost amount.[14]

Finally, the biggest flaw in the Commission's USF broadband proposals is the speed standard. It is hard to fathom how the Commission could consider that 768kbps would be "reasonably comparable" to the level of broadband services that will be available to urban consumers in 10 years. In many urban areas, this speed is already *below* the lowest available speed offered by commercial cable modem providers. Also, the proposals make no mention of advertised versus actual speeds, which opens a large loophole for carriers to exploit. We suggest that whatever broadband USF support scheme the Commission eventually adopts, that this be based on the Act's "reasonably comparable" standard, and not a specific standard that is already well below what is subscribed to by urban consumers.

iii. THE COMMISSION SHOULD CONCLUDE THAT BROADBAND IS A SUPPORTED SERVICE AND BEGIN THE PROCESS OF TRANSITIONING THE USF TO A BROADBAND-ONLY INFRASTRUCTURE SUPPORT FUND

Ultimately, we believe the USF reform proposals in the FNPRM are completely beyond repair. Furthermore, we are aware of the political reality that in just over 50 days, a new administration will take over the Commission, and that this administration has expressed strong opinions on how to implement USF modernization reform. Given these realities, we think it is prudent for the Commission to reject the USF reform proposals contained within the FNPRM.

However, we do feel that there is no reason why the Commission should not take the opportunity to immediately move the USF reform issue forward. We strongly urge the Commission to defer to the Joint Board's expertise, and immediately issue an Order ruling that

[14] This may be somewhat mitigated by the fact that in these proposals, the bid is for 768kbps broadband service, in addition to the current list of supported services. Since the reserve is based on the incumbents cost to provide the current list of supported services to the entire study area (they may already offer 768kbps broadband to a substantial portion of the territory), then the reserve price is completely disconnected from the true efficient economic price.

broadband is a supported service. In that Order, this Commission should declare that the USF system will fully transition to a broadband-only fund within no more than ten years. The Order should initiate a proceeding that solicits detailed transition plans from all interested parties, i.e. it will be a "Transition NPRM".

In the Transition NPRM we suggest that the Commission set a high bar for the definition of "broadband" that is in line with a reasonable prediction of what will be "reasonably comparable" at the time of deployment.

In the Order and Transition NPRM, the Commission should conclude that all future USF support will be prioritized to fund up-front infrastructure costs, and that any ongoing support will be based on a forward-looking cost standard, and will consider all costs and revenues.

We do support the goals contained in Appendix A and C, which extend low-income USF support to broadband. However, we think this proposal deserves more consideration. Thus, we recommend that the Transition NPRM seek detailed input on how to incorporate broadband into the Lifeline and Linkup programs.

The Transition NPRM should also solicit input on the impact of the uncompetitive transport market on rural ISPs, and conclude that fair, non-discriminatory cost-based pricing in this market segment is of critical importance for the purposes of achieving universal service.

We recognize that a full transition to a broadband-only USF is complicated by state Carrier of Last Resort obligations. Thus, as a part of the Transition NPRM, the Commission should ask the Federal-State Joint Board to review the continued usefulness of COLR obligations as currently defined, and offer recommendations on how to transition these obligations to be appropriate for an IP-world and a broadband-only FUSF.

Finally, the Transition NPRM should seek input on the appropriate regulatory model in today's market reality of price regulated and non-price regulated services being offered on the same infrastructure. Is the current system of Part 32 and Part 64 accounting working properly? We suggest it is not, and that the old rate-of-return and price cap regulatory models may have outlived their usefulness on today's modernized telecom plant.

III. CONCLUSION

We greatly appreciate the Commission's willingness to take on the difficult issues of ICC and USF reform. We also applaud the Commission for recognizing that USF must play an active role in ensuring universal broadband deployment. In these proceedings there has been no shortage of mud slinging and hand wringing, but thoughtful policy ideas are far and few between. Thus, the offering of the detailed and thought-out proposals contained in the FNPRM has substantially moved the ball forward.

But ultimately, these proposals are plagued with flaws that if not addressed, will lead to substantial consumer harm. We have offered suggestions on how to improve the ICC reform proposals -- improvements that will mitigate consumer harm and improve economic efficiency. By initiating a new SLC cost-proceeding, completing the *Rural Task Force*, *CALLS*, and *MAG* proceedings, phasing in any SLC increases, and limiting supplemental USF support, the Commission can bring intercarrier compensation charges to the economically efficient level while protecting consumers from carrier over-recovery.

The FNPRM's USF reform proposals are however, beyond repair. We therefore strongly urge the Commission to instead adopt our proposal for a Transition NPRM and conclude that the USF will transition to a broadband-only support fund, and seek further comment on how to accomplish this transformation.

Respectfully submitted,

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Dated: November 26, 2008

APPENDIX A - OCTOBER 13, 2008 WRITTEN *EX PARTE*

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

October 13, 2008

Re: Notice of *Ex Parte* Presentation (WC Docket 05-337; CC Docket 96-45; WC Docket 06-122; CC Docket 01-92)

Dear Ms. Dortch,

Free Press submits this *ex parte* filing to update the record on particular issues in the Commission's open dockets on Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92), and related Universal Service Fund (USF) dockets (WC Docket No. 05-337 and CC Docket No. 96-45). In this *ex parte* we outline a comprehensive policy framework that will reform the systems of intercarrier compensation (ICC) and universal service in a manner that is fair, efficient, reasonable, and consumer friendly.

We understand that the Commission is currently working with speed to draft a comprehensive ICC and USF reform Order -- action that the Commission indicated this past May would be expeditiously forthcoming.[15] All of the ICC reform plans recently filed by industry groups have one element in common: consumers end up footing the bill for changes in the terminating access payment system.[16] While we discuss this aspect in detail below, it seems that whatever changes are made, millions of consumers will see increases in their monthly telephone bills, especially rural consumers.

These increases may be inevitable—though the burden rests on the agency to demonstrate how changes to ICC policy leave consumers better off than the status quo. Having made this case, the Commission must treat this need to reform ICC as an opportunity to modernize the outdated universal service system. The Commission must ensure that as a result of the changes to ICC, that the short-term "pain" of reform will be followed by long-term consumer benefits in the form of universal affordable broadband. The Commission's job is not done if it merely brings down access charges, increases Subscriber Line Charges (SLCs) and allows rural carriers to draw more money from the USF in order to be "made whole."

The Commission must declare that broadband is *the* supported service, and that the transition to a broadband-only USF is coming. The Commission must make clear that any changes made now to ICC, SLCs and the USF are just temporary steps on the path of this transition.

[15] "Interim Cap Clears Path for Comprehensive Reform: Commission Poised to Move Forward on Difficult Decisions Necessary to Promote and Advance Affordable Telecommunications for All Americans", FCC News Release, May 2nd 2008.
[16] See for example proposals filed by AT&T (July 17, 2008); Verizon (September 12, 2008); OPASTCO (September 16, 2008); Independent Telephone & Telecommunications Alliance (September 19, 2008).

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Introduction

When Congress enacted the Telecommunications Act of 1996 ("The Act"), the Internet was merely an emerging technology – one that relied on the infrastructure of the Public Switched Telephone Network (PSTN) to reach most end-users. At the time, Congress saw change on the horizon, and tried to build flexibility into the law. But even Congress couldn't anticipate just how rapid the pace of technological development would be, and how quickly this development would render some of the legal constructs of the Act artificial and outdated. For example, as Congress held hearings on the Act during 1995, the first consumer technology for engaging in a computer-to-computer voice "call" was brought to market. But one month after the Act's passage technological progress was already poking holes in the regulatory framework. The same company that had brought IP-to-IP voice technology to the market a year earlier unveiled an IP-to-PSTN product, opening one of the many doors to arbitrage that would emerge over the next decade.[17]

There appears to be consensus in the record that the regulatory framework put in place by the Commission to implement the interconnection and universal service provisions of the Act is being overtaken by innovation, progress, and arbitrage. On the issue of intercarrier compensation (ICC) reform, the debate centers on the appropriate policies to bring the rules back in line with reality. And on this, there is little agreement among interested parties on the details. The fact that there's consensus that something needs to be done, but nothing has been done in the seven years since this proceeding was initiated,[18] illustrates the need for bold Commission action to cut through the self-interested rhetoric of varied industry proposals.

As consumer advocates and advocates of universal affordable broadband, we support regulatory policies that encourage competition, efficiency and modernization, for these are attributes that lead to the best outcomes for consumers. As we have discussed in recent comments, the current Universal Service Fund (USF) is in dire need of modernization in order to fulfill the central goals of the Act.[19] We also agree that the current system of Intercarrier Compensation (ICC) is inefficient and completely divorced from reality. It makes little sense for the same function (e.g. call termination) to have wildly different prices based solely on a call's geographic origin or the legacy classification of the originating or terminating carrier.

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[17] Israeli-based VocalTec released "Internet Phone" in the spring of 1995. It transmitted highly compressed low-quality voice signals over IP, requiring only 28.8 kilobit per second (kbps) modems. At the CT Expo in Los Angles in March of 1996 they demonstrated the first ever IP-to-PSTN gateway.

[18] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*).

[19] *See e.g.*, Reply Comments of Consumers Union, Consumer Federation of America, Free Press and New America Foundation, *In the Matter of High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, Notices of Proposed Rulemakings (*USF NPRMs*), WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4 (*Identical Support Rule NPRM*), FCC 08-5 (*Reverse Auctions NPRM*), and FCC 08-22 (*Federal-State Joint Board NPRM*)(submitted June 2, 2008) (*June 2008 Reply Comments*).

But consumers are not responsible for the creation of this mess of inefficiency and regulatory arbitrage, and they deserve to be treated fairly in the solution process. In fact, the cost-based, explicit pricing that the act promised consumers was never delivered. In most segments of today's residential telecom market nothing is at priced at economic cost simply because the type of competition the act envisioned was not allowed to grow strong enough to allow market forces to take over. Because of the lack of meaningful competition and the lack of proper cost-based pricing and cost allocation, consumers have been overpaying for telecommunications services for years.

We are not suggesting that consumers be completely shielded from any "pains" of transition – only that their burden not be unduly high. The basic principle of fairness requires that those companies that have profited tremendously from the current inefficiencies, and those companies who will profit tremendously from the "solution", also bear their fair share of the burden of this transition. If the burden is not shared, we do not see how the proposed changes could leave consumers in a better position than retaining the status quo.

ICC Reform is Needed. But the Commission Should Protect Consumers And Establish a Regulatory Policy For the Broadband World

The Need For ICC Reform

The regulatory arbitrage created by the current ICC system is well documented and is reason enough alone for the Commission to enact reforms.[20] But technological progress is also forcing the Commission's hand. Consumers are increasingly relying on mobile wireless and Voice-over-IP (VoIP) as their sole means of voice communications, and both largely bypass the legacy access regime. And other IP-based technologies like email, Instant Messaging (IM), and mirco-blogging offer consumers avenues for communication that bypass voice altogether. This move away from a reliance on the Plain-Old-Telephone-Service (POTS) functionality of the PSTN has a direct consequence on the old business models that relied on per-minute access revenues. Access is in decline, thus access revenues are in decline.

Declining access minutes have a direct impact on the bottom line of those who receive these revenues – Local Exchange Carriers (LECs). It has an even larger impact on rural LECs (RLECs), who have been largely shielded from some of the past efforts to bring down access charges, and who claim to rely on above-cost access charges as an implicit universal service subsidy.

While rural carriers may be right to dispute the appropriateness of a single $0.0007 per minute access rate, they may just be putting off the inevitable. In an all-IP world the rate for access will be zero, because the entire concept of access minutes will cease to exist. In the post-1984 POTS

[20] *See, e.g.*, Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime*, Federal Communications Commission, OPP Working Paper No. 33, Dec. 2000.

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world of regulated local exchanges with terminating access monopolies and interexchange long-distance carriers (IXCs), access charges were necessary. This is because the calling-party-pays principle was reasonable and fair, and customers had specific financial relationships with the IXCs that carried voice calls from a calling- to a called-party. But in the IP-world customers pay for access to an interconnected, always-on network. This is a system in which the old POTS calling-party-pays principle has less relevance than considerations of network effects. In the IP-world customers pay a last-mile Internet Service Provider (ISP) for access to the network, and that ISP makes financial arrangements with transport carriers to send and receive data onto and from the "network of networks." There is no long-distance provider to pay access, because an unknown number of providers in the middle of an end-to-end IP transaction may carry the data of that communication. End-users simply have no financial relationships with any carrier other than their own last-mile ISP.

This changing market structure does not mean that a pure bill-and-keep interconnection system should replace the old per-minute access regime. Nor does it mean that regulators should cease to be concerned about terminating access monopoly power. It simply means that the old regulatory and pricing models are no longer workable.

The changing market structure also does not mean we need to abandon our commitment to universal service. If above-cost access revenues were a means of implicit universal service support in the POTS world, we should ensure that carriers are supported in an efficient manner to the extent needed to ensure that "advanced telecommunications and information services [are] provided in all regions of the Nation."[21]

Indeed, as rural carriers move away from the POTS world to the IP world, they replace an incoming revenue stream (access minutes) with an outgoing cost (transport). For many of these carriers, the transport market they face is essentially an unregulated originating access monopoly. Thus we urge the Commission to place just as much emphasis on correcting this market failure as they do on reforming the failed access market. Getting both right is critically important. This approach also sends clear signals to the market that agency rules will be fair and equitable across the marketplace for all parties.

ICC Policy Changes: Terminating Access Rates

We agree that the current system of artificial distinctions that result in wildly different terminating access rates based not on cost, but on regulatory labels, is in need of reform. We also agree that the declining cost of technology likely means that many of today's terminating rates are probably well above cost and should be priced significantly lower. And as stated above, the concept of a unified rate of zero is likely inevitable on the path to the all IP-world.

But the Commission is bound by the framework established in the Act. Specifically, Section 251 of the Act puts much of the authority on where to land on rates in the hands of state authorities.

[21] 47 U.S.C. §254 (b) (2).

Also, perhaps most importantly, the Act directs that interconnection pricing standards be cost-based. Section 252's emphasis is on the actual "additional costs of terminating" calls ("determined without reference to a rate-of-return or other rate-based proceeding"). We feel that this is a sensible standard, one that should be carefully considered in any attempt to mandate a single rate for all carriers.

It may be the case that from a pure cost perspective, that a small rural carrier serving a sparse area might require a higher terminating access rate than a large urban ILEC. In such a situation, a "multi-track" approach like that of the Missoula plan may be appropriate (though the rates for the tracks in that plan may themselves have little relationship to actual costs). In this light it may be appropriate to distinguish the cost of termination from the cost of transport, as the former does not have as large a variation among carriers as the latter. In the end, if the Commission chooses to deviate from cost-based principles and establish a single uniform rate, it should justify how this particular deviation is in the public interest (i.e. the benefits of a uniform rate may outweigh the costs, but this should be demonstrated and not merely assumed).

First and foremost we urge the Commission to adhere to the Act's cost-based principles. If the Commission does mandate a single unifying rate, or provides a narrow framework for individual states to bring down access charges to a low unified rate, we hope that such action adheres to cost-based principles, and does not land on a rate that is either below cost (thus unfairly increasing the burden on rural ratepayers and potentially increasing the demands on the USF) or above cost (thus perpetuating the current system's inefficiencies and providing an incentive to maintain reliance on the dying POTS access market).

This latter point illustrates why *sensible* cost-based access charge reform is needed. At a time when our national leaders are calling for the deployment of universal affordable broadband, rural carriers are reliant on explicit support that excludes broadband as a supported service, and partially reliant on implicit subsidies from telephone access charges. Thus, if the Commission simply implements an access revenue offset system of increased SLCs and higher payments from the USF, it leaves in place the strong incentive for rural carriers to delay the full transition to the broadband world. Thus we strongly recommend that the changes to the access payment system be one part of a comprehensive plan to transition the Universal Service Fund to a broadband support system for rural America.

ICC Policy Changes: SLC Increases and Access Charge Recovery from the USF

Most of the USF reform plans before the Commission seek to achieve revenue neutrality for LECs. That is, they all assume that carriers are entitled to recover the revenues "lost" from access charge reductions. The reality however, is that access minutes are declining. Yet none of these plans are structured so that the access "recovery" (from increased SLCs and higher USF draws) declines as access minutes decline.

But this assumption of entitlement that has framed ICC reform as a zero-sum-game has no basis in the law. While it is assumed that the current above cost access rates are an implicit but

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necessary subsidy to achieve universal service, no one in this proceeding has offered evidence that the reduction of these rates require a dollar-for-dollar offset in order to ensure that rural rates and services are reasonably comparable to urban rates and services.[22] Contrary to the claims of NTCA, FCC-mandated reductions in access rates do not constitute a *per se* regulatory confiscation, because to make that case a carrier would have to "open its books" and show all costs and revenues (both regulated and unregulated).

The 500 pound gorilla in the room here is the unregulated revenue streams of rate-of-return and price cap Local Exchange Carriers serving in high-cost areas. Many of these carriers have deployed broadband and television services, allowing them to earn substantial unregulated revenues. Yet these revenues are not considered in the discussions of "need" for the purposes of universal service. Indeed, there are many instances where a USF-supported rural LEC provides a triple-play of voice, video and data in direct competition with a non-USF supported cable company. This raises the question of the extent of USF support actually needed in order for a rural LEC to meet its Carrier of Last Resort (COLR) obligations.

These concerns notwithstanding, we expect the Commission will move forward with some level of SLC increases as a part of its ICC reform package. If SLC changes are made in the context of a national benchmark, then these potential increases are reasonable from a fairness standpoint. That is to say – we accept that a national benchmark rate would reveal many lines with below-benchmark prices that could reasonably bear an increase. The Act requires rates for services in rural and high-cost areas to be "reasonably comparable to rates charged for similar services in urban areas."[23] We recognize that comparability runs both ways, and that it is unreasonable for rural rates to be substantially lower than urban rates.

But in today's era of technological progress and declining costs, we should expect SLCs to be *decreasing* in order to avoid over-recovery of costs on access lines nationwide. A national benchmark approach that leads to an average of $2 or less in per month increases to the Federal SLC could arguably be characterized as fair, but not cost-based. Thus we urge the Commission to pay close attention to the level of over-recovery these changes in SLC bring. Also, claims that competition will prevent carriers from increasing SLCs to the new capped level should be met with skepticism. There is absolutely no evidence that the current level of competition has prevented carriers from pricing SLCs at the current cap.

While we'd like the Commission to consider a carrier's entire revenue stream before allowing increased USF support to offset lost access revenues, we recognize that this is politically problematic. Thus, we expect that there will be some increased burden on the Fund as a result of ICC reform. We suggest that such changes be a temporary (perhaps partial) revenue offset during the transition of the USF to a broadband-only support fund. We also suggest that these

[22] We question whether price-cap carriers should (as a result of this ICC reform effort) be allowed to "offset" their "lost" revenues, as these carriers already operate under incentive-based regulation. Indeed, we question the continued need for these carriers to receive support from the IAS and ICLS funds.
[23] 47 U.S.C. §254 (b) (3).

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access revenue replacements be confined to rate-of-return carriers only. In order to avoid the creation of a new path-dependent sub-USF funding program, we suggest that these new access revenue replacement funds be distributed through the ICLS program.

Since it is apparent that there is no stomach among policymakers for seeing the size of the Fund increase, the Commission may face a challenge in finding a source for the estimated $600 million to $1.8 billion in annual revenue needed for this new access revenue offset fund.[24] One possible source would be money diverted from payments to CETC wireless carriers who no longer qualify for support as a result of the elimination of the identical support rule (see further discussion below).

As a part of an overall transition of the USF to broadband, all access replacement components of the USF should sunset no more than seven years from the adoption of the forthcoming ICC/USF reform Order. These funds (which currently amount to $2.2 billion per year, and could total as much as $3.5 billion per year after ICC reform) should be transitioned to supporting broadband infrastructure deployment in unserved areas.

**Comprehensive USF Reform that Leads to
Universal Affordable Broadband Must Accompany ICC Reform**

Depending on where the terminating access rate is set, there will be a wealth transfer from rural ratepayers and USF contributors to the current payers of access charges (primarily long-distance companies) in the amount of $2 to $4 billion dollars per year. This transfer may be needed in the name of preventing regulatory arbitrage, but consumers are not responsible for the creation of this problem and their expected shouldering of the burden of the solution should be accompanied by a meaningful change in policy that will lead to universal affordable broadband.

We have previously outlined our discussion proposal to transition the current POTS-based USF to a broadband-only fund.[25] Our approach is based on the principles of universal service established in the Act, and is a rational, practical and fair approach to universal service in the 21st century communications marketplace. It has elements that will likely seem unworkable to big LECs, rural LECs, CETCs, and even other consumer advocates. This is simply a consequence of the need to move past self-interested politics and towards the common goal of a modernized and efficient fund. But our discussion proposal is by no means the “right” approach or the only approach. We attempted to use data to provide a detailed transition proposal that arrived at universal broadband in a timely fashion using the current level of USF funding. We welcome other such proposals.

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[24] *See* Ex Parte Communication of AT&T, September 12, 2008. In this letter, AT&T estimated that at a level of zero cents per minute and a national benchmark of $25, the increase in the fund would be $1.8 billion annually. If the benchmark were $27 and the rate set to reciprocal compensation, the increase in the fund would be $500 million annually.
[25] *Supra* note 5.

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At the base of our proposal is the central premise that broadband technology is an infrastructure that can support many essential applications, including telephony. If this premise is accepted, then it makes absolutely no sense to follow the approach outlined by the Joint Board and others who simply "bolt" a minimal level of broadband service obligations and support on top of the current system of POTS USF support. That approach merely bloats the fund by ignoring technological realities in the name of maintaining as much of the status quo as possible. This may be necessary in order to foster consensus among the various industry factions, but it is not good public policy.

This is where the FCC can play a leadership role and move this proceeding beyond the current impasse. The Commission should rule that broadband is a supported service, and declare that the USF system will fully transition to a broadband-only fund within no more than ten years. The Commission should initiate a proceeding that solicits detailed transition plans from all interested parties ("Transition NPRM"). These transition plans should be bound by a set of standards and goals for the new broadband USF. For example, the Commission should provide guidelines for adequate broadband capability and define terms such as "reasonably comparable rates and services" and "unserved" and "underserved" areas.

We recommend that in the ICC Reform Order and USF Transition NPRM, the Commission set a high standard for broadband in order to ensure the deployment of future-proof networks whose capabilities are in line with those defined by Congress in Section 706 of the 1996 Act.

We also recommend that the Commission conclude that all future USF support will be based on actual need that considers all costs and revenues. This approach is critical to ensuring that every dollar of USF is put to its most efficient and highest-need use.

As stated above, the starting point of the ICC Reform Order and Transition NPRM should be the ruling that broadband is a supported service. This conclusion not only impacts the structure of the High-Cost fund, but also the Low-Income program. Thus the Transition NPRM must seek detailed input on how to incorporate broadband into the Lifeline and Linkup programs. In fact, as we discuss below, this aspect could be dealt with in an expedited fashion and be resolved far in advance of the High-Cost Fund transition issues.

The Transition NPRM should also solicit input on the impact of the uncompetitive transport market on rural ISPs, and conclude that fair, non-discriminatory cost-based pricing in this market segment is of critical importance for the purposes of achieving universal service.

We recognize that a full transition to a broadband-only USF is complicated by state Carrier of Last Resort obligations. Thus, as a part of the Transition NPRM, the Commission should ask the Federal-State Joint Board to review the continued usefulness of COLR obligations as currently defined, and offer recommendations on how to transition these obligations to be appropriate for an IP-world and a broadband-only FUSF.

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The path to a full transition must be set in place in the upcoming ICC reform order, and be one that must be followed through on by the Commission seated next January. Since consumers will be feeling a substantial amount of immediate "pain" resulting from ICC reform, it is critical that the long-term reward for this pain be more than just a mere promise of universal affordable broadband. This is why the Transition NPRM must be specific and firm in its tentative conclusions. The timeline should be firm. No more than four months for submission of transition plans, and then two additional months for further public comment. A six month window for the move to a final transition order would then follow. Thus, by December 2009 the transition would be fully underway.

Short-Term Issues for the Next 12 Months

We agree with the Commission's tentative conclusions that the identical support rule should be eliminated, and that wireless carriers should not be eligible for support from the IAS, ICLS and LSS programs. As stated above, we expect that the Commission will use some or all of the estimated billion-plus dollars in funds freed up by this move to plug the "hole" created by ICC reform. We again stress that the Commission should avoid guaranteeing revenue neutrality and establish a cost-based standard for need of access revenue offset funds.

If it can keep the amount of the freed-up funds earmarked for access offsets to a minimum, we would urge the Commission to immediately redirect these funds for use in the newly structured broadband Low-Income program (see above), and/or for use in a pilot broadband infrastructure deployment fund for unserved areas. This pilot fund could be established in the ICC Reform Order and Transition NPRM based in part on the parameters established by the Joint Board in its recent recommendations. It is critical to begin funding infrastructure deployment in unserved areas, and the pilot fund would provide a valuable opportunity to learn how to best structure the transition to a broadband-only USF.

In the process of transitioning to a broadband-only support fund, the Commission should solicit guidance from Congress on the issue of voice mobility, which may serve a unique purpose separate from that envisioned by the Act (as written). In the interim, the Commission should cease to fund any mobile carrier in an area where there is service available from one or more unsubsidized mobile voice provider(s).

If the Commission decides to modify the current system of USF contributions, it should take special care to avoid stunting the growth in consumer adoption of broadband by placing a USF assessment on residential broadband connections. As we discussed in our June 2008 Reply Comments, consumers -- especially those in rural areas -- are far more sensitive to increases in the price of broadband than they are to increases in the price of telephone service (wireline or wireless). Assessing broadband for the purposes of funding a broadband-USF program could actually lead to a net loss of rural (and even urban) subscribers, a result that is in direct conflict with the central purposes of Section 254 of the Act.

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Finally, we strongly recommend that in declaring that broadband is a supported service, that the Commission affirm that all recipients of USF that offer Internet services must adhere to the Commission's *Internet Policy Statement*.

Conclusion

Policymaking by *ex parte* is far from ideal, but we recognize that the current hastened schedule presents the opportunity to move issues that have only festered as they lay dormant. Reforming Intercarrier Compensation is something that we as consumer advocates agree is necessary. But we are steadfast in our belief that reforms should be based upon principles contained in the Act -- principles of cost-based compensation, comparability of rates and services, modernization, and promoting consumer welfare and the public interest.

No one is disputing the fact that access charge reform will shift billions of dollars from one segment of the industry to another -- billions that will likely come out of the pockets of consumers. This transfer of wealth may at this point be inevitable, but the Commission has the duty to ensure that the shifting of the burden is conducted in as fair a manner as possible. In the long-term, the burden that ICC reform places on consumers must be offset with commensurate or greater benefits. The Commission must take action to modernize the USF in order to bring rural America the ultimate payoff: universal affordable broadband.

Respectfully submitted,

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Dated: October 13, 2008

APPENDIX B - OCTOBER 24, 2008 WRITTEN *EX PARTE*

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
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October 24, 2008

Re: Notice of Written *Ex Parte* Presentation (WC Docket 05-337; CC Docket 96-45; WC Docket 06-122; CC Docket 01-92)

Dear Ms. Dortch,

Free Press submits this written *ex parte* filing to update the record on particular issues in the Commission's open dockets on Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92), and related Universal Service Fund (USF) dockets (WC Docket No. 05-337 and CC Docket No. 96-45).

In this *ex parte* we provide our analysis and recommendations on the draft ICC-USF reform proposal ("Draft Proposal") currently scheduled for a full Commission vote on November 4th. We first outline the Draft Proposal (as we understand it), then offer recommendations on how to modify and implement this plan in a manner that is fair, efficient, reasonable, and consumer friendly.

Ultimately, with our recommendations incorporated, we feel that the Commission can and should adopt both a Report and Order *and* a Further Notice of Proposed Rulemaking at the November 4th open meeting. We recommend that the Report and Order establish a solid framework for transitioning the ICC system to cost-based rates and establish a solid framework for incorporating broadband into the USF. The Further Notice should then deal with most of the implementation details of these frameworks (and do so in a three to six month comment cycle with three to six additional months to move to a final Order). While there is general consensus in the record that ICC rates should be lowered and that USF must be modernized, the implementation details that achieve these outcomes are what causes much of the dispute. A Report and Order with a solid transition framework and a Further Notice with firm tentative conclusions will move this debate beyond the current impasse while still addressing many of the concerns of the commenters who would rather the Commission delay this entire matter.

Bifurcation of Commission action on November 4th into these two items recognizes that even if every element of the policy were to be contained in a single Order, the administrative mechanisms needed to implement the Order and transition the regulatory regimes would take time and further input to devise and settle. An Order will delimit the start and end points of reform, establishes the first steps, and chart a clear path forward—while an FNPRM opens an opportunity for further deliberation on the means.

Our primary interest in these proceedings is to ensure consumers are treated fairly and not unduly burdened. We want to make certain that consumers, not just particular private companies, benefit from these reforms. With the appropriate changes made to the Draft Proposal, the Commission can usher in long-overdue reforms that are equitable, minimize consumer burden, increase efficiency, and bring affordable high-quality broadband to every region of the nation.

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The Commission's Draft ICC-USF Reform Proposal

The draft ICC-USF reform proposal on circulation at the Commission is designed to achieve two important policy objectives: reforming the system of intercarrier compensation (albeit only on the terminating side) and modernizing the Universal Service Fund. Our understanding of the elements of the Draft Proposal is based on our conversations with the Chairman's office on October 17, 2008, and on various media reports and analyst statements.[26] Trying to glean the details of such a comprehensive proposal in this fashion is far from ideal. However, we recognize that most of the ideas on the table are present in the record in some form. Based on what we do know, the proposal needs further modifications in order to adequately achieve the policy objectives in a manner that is consistent with the public interest principles of the Communications Act.

ICC Reform Elements of the Commission's Draft Proposal

The Commission proposes a 10-year phase down of all terminating access rates to a unified reciprocal compensation rate within each state, set by state regulators. In the first two years of the 10-year path, intrastate rates are lowered to interstate levels. In the fifth year, the states will have set a rate that is close to reciprocal compensation levels (RC). By the end of the 10-year process, all rates within each state must be uniform, at a level of forward-looking reciprocal compensation.

This lowering of terminating access charges will result in a reduction in revenues for those companies who are current net recipients of access fees -- local exchange carriers (though we should note here that access minutes will likely continue to decline as the rates are phased down, an aspect we comment on in detail below). In order to "offset" this decline in revenue, the Commission proposes to raise the Federal Subscriber Line Charge (SLC) for primary residential and single-line businesses by $1.50, to a total of $8.00 per month. The multi-line business SLC will increase to $11.50 per month. These increases will come as the Federal-State Joint Board is tasked with the determining an appropriate national rate benchmark, and deciding whether further SLC increases will be allowed.

Since there is a widely-held belief that above-cost access charges are an implicit subsidy for universal service, the Commission's Draft Proposal also offers a recovery mechanism for certain carriers operating in high-cost areas. Rate-of-Return (RoR) carriers operating in these areas will be able to access increased universal service support from the interstate common line support program (ICLS). The Commission estimates that this will amount to $500 million in total additional funds over the entire first 5-year period, and will be approximately $200 million to $300 million in each year following. We do not know if this additional funding is capped, or

[26] *See* Ex Parte communication of Free Press, WC Docket 05-337; CC Docket 96-45; WC Docket 06 122; CC Docket 01-92, October 20, 2008; *see also e.g.*, Joelle Tessler, "FCC chair eyes fallow TV airwaves for broadband", *Associated Press*, October 15, 2008. Therefore, we alone are responsible for the characterization of the Commission's Draft Proposal in this *ex parte*, and make no claims as to the accuracy of our characterization, since we have never actually seen the circulated draft.

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remains uncapped like the current ICLS funds. We also do not know the details on how the amount of support for each carrier is calculated (i.e. whether or not it is based on forward-looking costs, or embedded costs as currently calculated for ICLS). Under the Draft Proposal, price-cap (PC) regulated carriers will not be able to obtain any access recovery funds (ARF) unless they petition the Commission and show their costs. It is unclear to us whether this cost-showing process will rely solely on the regulated cost-structure of a carrier's business, or if it considers all revenue and costs (e.g. broadband, IPTV, directory services, etc...)

We understand the Draft Proposal will deal with the issue of phantom traffic by requiring that all providers identify their traffic, or face the possibility of being charged the highest possible access rate.

We also understand that voice-over-Internet-protocol (VoIP) traffic will be classified as an information service. This change in policy has substantial implications for the ability of VoIP providers to obtain reasonable interconnection arrangements with other carriers. This move would likely increase the level of uncertainty in the access charge regime precisely at a time when the Commission is seeking to provide certainty. By declaring VoIP an information service, the structure of Section 251 and the entire industrial interconnection regime is called into question. This is a very dangerous move, as there is no parallel regime under Title I to ensure competitive access. This element of the reform package ***must*** be reviewed in a Further Notice to prevent substantial unintended consequences.

USF Reform Elements of the Commission's Draft Proposal

The Commission's Draft Proposal aims to reform the Federal Universal Service Fund (USF) by making fundamental changes to the contribution methodology, and requiring the offering of broadband service as a condition for USF support.

First, the Commission proposes to move the contributions system away from reliance on interstate telecommunications revenues to a numbers-based assessment. As we understand it, there will be a flat $1 per month fee assessed on all assigned telephone numbers, exempting pre-paid wireless numbers and Lifeline program numbers, but no exemption for additional "family-plan" numbers. According to NRUF, this amounts to nearly 617 million numbers.[27] At a $1 per month per number, this equates to about $7.4 billion per year, or approximately $100 million short of the 2008 projected total size of the Fund. Because of this and likely future shortfalls, the Commission's Draft Proposal will place some revenue-based assessment on businesses. The Commission believes that under this methodology the consumer's USF burden will decrease from approximately 48 percent of the fund to 42 percent of the fund.

On the distributions side, the Commission's Draft Proposal will freeze High Cost Fund support at the current level for each study area. The Commission will eliminate the Identical Support Rule (see below). The Commission's proposal will require that all USF-supported providers

[27] "Numbering Resource Utilization in the United States, NRUF data as of December 31, 2007", Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, August 2008.

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offer broadband to 100 percent of customers in their service areas within 5-years, with broadband defined as a service capable of providing a 768 kilobit per second (kbps) or higher connection in one-direction. Carriers are obligated to cover at least 20 percent of their unserved territory in the first year, and an additional 20 percent in each of years 2-5 (leading to 100 percent at the end of year five).

If a carrier is unable to meet these obligations at the current level of study-area level support, then the study area is put up for a reverse auction, with the reserve price being the current level of support. Bidders who participate in the reverse auction will be first ranked by the speed of their proposed broadband service, then by the level of their bid (i.e. broadband speed is given priority over the bid price). If a winning bidder is a new entrant, they will not be under the same buildout timeline as the incumbent. We are uncertain as to the length in time between reverse auctions, or if there will be future auctions at all for a given study area.

If no entity bids to offer support, then the study area is declared unserved. We understand that in this situation, the current carrier of last resort (COLR) for an un-bid study area will maintain their current level of High Cost support and will not be under any broadband obligations for that study area.

The Commission's Draft Proposal also creates a $300 per year Broadband Low-Income pilot project. We are uncertain as to how this program will be administered, but we believe it is intended to lower the cost of residential broadband for qualifying participants to the same price as lifeline-supported telephony service.

Finally, we understand that while the Commission's Draft Proposal eliminates the current Identical Support Rule, it does not envision a one-supported-provider per study area approach. The proposal caps the level of wireless CETC support at $1.25 billion per year (the estimated current level), but requires all CETCs to file cost studies to determine if they qualify for support. Support will only be provided if a CETCs costs exceeds a national benchmark (we believe in the Draft Proposal this is established as the average cost per line benchmark of approximately 135 percent).[28] We are uncertain as to the details of the process for a CETC to file cost information.

If in a given study are no wireless CETC agrees to make a cost-showing, then that study area undergoes a mobility reverse auction with the reserve price set at the lowest total amount of support given to a CETC in a particular study area.[29] CETCs would still have the same broadband obligations as incumbents.

Ultimately, it is assumed that the total amount of money going to wireless CETCs will be reduced substantially, and these funds redirected to meet the increased obligations on ICLS due to the changes in ICC.

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[28] We are actually unsure if this was the benchmark (i.e. the *Ninth Order* benchmark) or if it was the 138 percent national urban rate benchmark established in the 2003 *Order on Remand*, or some other benchmark entirely.

[29] We are uncertain about this particular aspect, since under the Identical Support Rule, per-line support is identical across CETCs in a given study area. However, it could be that since each ETC serves a different amount of customers, the reserve price to serve the entire area would be set at the least total amount of support among current CETCs (i.e. the amount going to the CETC with the fewest amount of customers), with the winner required to offer service to any requesting customer within the study area.

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Free Press' Assessment of and Recommendations to Improve
The Commission's Draft ICC-USF Reform Proposal

Below we offer our opinions on the Commission's Draft Proposal and recommendations for improving the plan in a manner that is consistent with the public interest principles of the Communications Act. We must stress that the recommendations we offer here are bound by the framework of the current Draft Proposal. That is, were we starting from scratch and working in a world free of path-dependency, we would likely offer a substantially different-looking package of reform policies. However, it is clear that idealism is not a luxury we can afford at this point. We are choosing to participate constructively in this process in an effort to minimize the burden that this reform package will place on consumers, and to ensure that these policy changes result in substantial long-term benefits for all consumers.

Improving the ICC Reform Elements of
The Commission's Draft Proposal: Terminating Access Rates

At its core, the ICC reform elements of the Commission's Draft Proposal results in a very-low terminating access rate that is uniform among all carriers within a given state. We fully support the notion that the price of terminating a call should not differ based solely on the arbitrary regulatory classification of the carriers involved in the transaction, nor should it differ based on the calls geographic origin.

However, this does not mean that we should throw the cost-based principles of the Act out the window. If a proper forward-looking cost study demonstrates a real difference in call termination cost between certain exchanges, then a unified rate across all calls fails to adhere to the cost-based principles of Section 252 and is economically inefficient. However, it may be the case that the transaction costs associated with a varying (but cost-based) rate structure exceed the efficiency gains from having cost-based rates. It is plausible that a unified rate structure reduces transaction costs and discourages arbitrage opportunities at a level that outweighs the efficiency losses and equity concerns of a unified rate. This is a central question that must be addressed.

Thus, we recommend that the Commission establish a framework that drives terminating access rates lower, but relies on the states to decide the issue of where the final rates should land. Thus, working within the structure of the current Draft Proposal, state regulators would establish a process where rates would decline in years 1 and 2 to the current interstate level; in years 3, 4 and 5 they would decline further to a carrier-specific, cost-based reciprocal compensation rate. The states would then decide whether or not to move to a unified forward-looking reciprocal compensation rate across all carries over the following 5-year period. We envision that in the November 4th Report and Order, the Commission puts a firm rule on the years 1 and 2 process, and seeks input on the implementation for years 3-10.

This approach to shaping the path to lower rates should address many of the concerns of the non-RBOC carriers, who don't dispute the need for a lower rate, but are opposed to a uniform $0.0007 rate.

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Improving the ICC Reform Elements of
The Commission's Draft Proposal: Subscriber Line Charge Increases

A central feature of the Commission's Draft Proposal is a $1.50 increase in the Subscriber Line Charge (SLC), to a maximum of $8.00 per primary residential line, and to $11.50 for business lines. The Commission has the statutory authority to impose Subscriber Line Charges to recover the portion of loop costs placed in the interstate jurisdiction. Thus, in the Draft Proposal, we have increases in the SLC designed to offset reductions in all terminating access charges -- both inter- and intrastate.[30]

SLCs are appropriate if they do not result in an over-recovery of costs. However, we are concerned that the current SLCs charged by carriers already result in an over-recovery of costs on a substantial portion of lines, and any further increases -- while offsetting access charge reductions -- could result in an even greater level of over-recovery. When the Commission adopted the current $6.50 SLC cap in the *CALLS Order*[31] it ruled that a further cost review proceeding would have to be undertaken in order to determine if SLCs should rise above $5.00. Specifically, the Commission stated that in this cost review proceeding it would "examine, forward-looking cost information associated with the provision of retail voice grade access to the public switched telephone network."[32] When the review proceeding was concluded, it became apparent that very little verifiable actual forward-looking cost information had been submitted to the Commission.[33] In the June 2002 *Order*, the Commission ruled that the $6.50 cap was reasonable, despite the conclusion that approximately 82 percent of residential and single-line business price-cap lines had forward-looking costs below $6.50.[34]

Therefore, we would prefer that the Commission revisit this issue in a comprehensive manner prior to implementing any SLC increases. However, we recognize the high likelihood of the Commission acting as it did in the *CALLS Order*, where it ordered an immediate SLC increase. If the Commission is determined to act in this fashion, we have several recommendations that will mitigate consumer harm.

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[30] Because of this, the Commission must be explicit as to why this particular SLC increase is allowed under current law. *See* 47 U.S.C. §§ 4(i), 201-205; see also *National Association of Regulatory Utility Commissioners v. Federal Communications Commission*, 737 F.2d 1095, 1114 (D.C. Cir. 1984) (NARUC v. FCC).
[31] *Access Charge Reform,* 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 (2000) (*CALLS Order*), *aff'd in part, rev'd in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), *cert. denied*, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 70 U.S.L.W. 3444 (U.S. Apr. 15, 2002).
[32] *Ibid.* ¶ 83
[33] In his dissenting statement, Commissioner Michael J. Copps stated, "[a] significant number of carriers, however, submitted summary data without disclosing the inputs used, cost models that were not transparent, or in some cases, models that have been rejected by the state commissions... The Commission then failed to conduct its own independent analysis of the cost data. By failing to undertake the thorough analysis of cost data that was promised in the access reform order, we are neglecting our obligation to consumers."
[34] See footnote 82, *In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers,* CC Docket Nos. 96-262, 94-1, Order, FCC 02-161, rel. June 5, 2002.

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First, given that the Draft Proposal calls for a phase in of access rate reductions, there should be a commensurate phase in of SLC increases. There is absolutely no reason why LECs should be permitted on day one to charge a full $1.50 in additional SLCs when they have not experienced *any* declines in access revenues. If the Commission is adamant that a $1.50 SLC increase is appropriate while the Federal-State Joint Board (FSJB) considers the issue of a national rate benchmark, then the Commission needs to provide some justification of how this $1.50 increase relates to reduced access charges, and phase in the SLC increase commensurate with the access charge decreases.

For example, in a recent *ex parte,* AT&T provides some estimates of the potential access shifts resulting from a move to a "recip comp proxy" to be $2.3 billion per year.[35] They also estimate that there are 81 million primary residential lines. Thus, under this scenario a SLC increase of $1.50 results in an offset of $1.46 billion annually from primary residential lines alone (we can also assume a substantial additional offset revenues from the increase in the multi-line business SLC from $9.20 to $11.50 -- perhaps as much as $1.1 billion annually).[36] But the full force of the $2.3 billion in annual access revenue reductions resulting from a decline to a "recip comp proxy" won't even be felt for many years -- potentially 10 years.

Why then should SLCs increase now? Plainly, they shouldn't. If they do, it should be very little while the access charges are phased down. Thus for example, if the phase down of access charges in year one results in a $500 million annual access shift, then the SLC increase for primary residential and single-line businesses should be no more than 25 cents.[37]

Therefore we request that in addition to delegating to the FSJB the issue of determining a national rate benchmark and final SLC cap, that the Commission, in the forthcoming Report and Order and Further Notice, begin a cost-review proceeding to determine the proper level for SLCs, based on forward-looking cost models that are detailed and transparent (and available for public review under cover of confidentiality).

We also strongly recommend that the Commission determine the net access shift that will result from a reduction in access rates to interstate levels by the end of year two of the ICC transition plan. We then recommend the Commission calculate the appropriate temporary SLC increase (for these two years) based on this amount of access revenue shift (minus any imputed to vertically integrated LECs; see below) -- and that this SLC increase be itself phased in over the

[35] *Ex Parte* communication of AT&T, Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Universal Service Contribution Mechanism*, WC Docket No. 06-122; *Intercarrier Compensation for ISP-Bound Traffic*, WC Docket 99-68; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, October 20, 2008.
[36] The Commission estimates there were about 40 million multi-line business lines that companies reported as qualified to receive Subscriber Line Charges in 2006, and another 9.7 non-primary residential lines. See Table 1.3 in "Trends in Telephone Service", Industry Analysis Division, August 2008.
[37] Here we assume 86 million SLC-qualified primary residential and single line business lines, 9 million non-primary residential lines, and 40 million multi-line business access lines. Based on the current ratios of the residential-to-multi-line SLCs ($6.50/$9.20 = 0.7), the increase in the multi-line business SLC under this scenario would be about 40 cents per month.

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two year period. The Commission ***must*** approach the initial SLC increases in this fashion, for if it does not it is harming consumers by saddling them with plainly unjustifiable SLC increases. This method of parallel phase-in (access charges declining as SLC charges increase) represents a fair and reasonable way to ensure that the burden of regulatory change is shared and not borne disproportionately by rate-payers.

Our second recommendation is based upon the principle of fairness. We feel that the Commission must recognize the massive changes that have occurred in the telephony industry since it last undertook access charge reform in 2001. Since then, vertical integration between RBOCs, IXCs and wireless carriers has nearly reconstituted the former Ma Bell monopoly. Verizon and AT&T dominate the local exchange, long-distance and mobility markets. Their respective long-distance and wireless businesses will benefit substantially from the lowering of access charges. While it is true that the LEC side of their businesses will have declines in access revenues, it is a safe assumption (based on their eagerness for the Commission to lower access rates) that they stand to reap substantial net benefits from ICC reform.

Therefore we strongly urge the Commission to only allow a carrier to increase their SLCs if they can show their business experiences a net decline in revenues as a result of ICC reforms. Thus, wireline customers of AT&T and Verizon should not be subjected to SLC increases unless those carriers are able to demonstrate net access revenue declines as well as rates that are below the benchmark set by the FSJB. In the event of such a showing, the increases should proceed on the parallel phase-in method described above.

Improving the ICC Reform Elements of
The Commission's Draft Proposal: Access Recovery from USF

The other major feature of the Commission's Draft Proposal -- and most other ICC reform proposals -- is an Access Recovery Fund (ARF) for carriers who do not recover all of their revenue declines in increased SLCs. The reasoning here is that access charges contain an implicit universal service subsidy for high-cost carriers. However, there is no evidence whatsoever that the amount in ARF needed to "make a carrier whole" is in any way related to the amount of implicit USF support contained in access revenues. Therefore we are strongly opposed to any reform proposal that attempts to play a zero-sum-game.

The Commission must be guided by the Act. Universal service support should be explicit, and sufficient enough to ensure reasonably comparable rates. It should not be excessive. In this light, we remind the Commission of the wild range various parties attributed to the implicit USF component of price cap carrier interstate access charges in the CALLS proceeding. Some claimed the amount was as high as $3.9 billion annually, while others claimed a low of $250 million. The Commission ultimately settled on a value of $650 million -- a number suggested by industry and not calculated by the Commission. This pool of Interstate Access Support (IAS) was due to be reevaluated after 5 years, with acknowledgement that the $650 million amount might be excessive after that time.[38] This never happened, despite the fact that interstate access

[38] Supra note 6, at ¶203.

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minutes have declined some 40 percent since then, and despite the fact that technology costs have continued to decline.

The Commission's Draft Proposal would establish an ARF for rate of return carriers that would amount to a maximum of $200 million to $300 million per year. This pool of funds would be incorporated into the current program to offset reductions in interstate rates paid to rate-of-return carriers -- the Interstate Common Line Support program (ICLS). It is not clear to us what this $300 million in increased ICLS ARF is based upon. If it is the total amount that rate-of-return carriers will need to be "made whole" after a SLC increase, then it is an inappropriate deviation from the cost-based and sufficiency principles of the Act.

Under the Commission's Draft Proposal, price-cap regulated carriers will not be able to access this pool of money without first making a cost-showing (though we're uncertain as to how this would actually be structured; e.g. would a carrier have to "open the books" on all revenue and cost streams, or merely on the regulated side of the business). We support this approach, and believe it should apply to all carriers, including rate-of-return carriers. However, we understand the concerns the Commission has in regards to triggering potential confiscation claims by rate-of-return regulated carriers (though we still feel a cost-showing is appropriate in all cases).

Because the increased ICLS ARF will not be made available to price-cap carriers, the Commission must be cognizant of how this will impact these businesses. A quick look at the bottom line net profit margins (NPM) and Return on Equity (RE) of several major mid-size price cap carriers reveals that most of these companies are already fairing better than the average for this industry sector (which is approximately 9.6 percent NPM over the past 5-years and a 11.9 percent RE over that time). Take for example the carrier Windstream. Their 5-year average NPM is above 17 percent, nearly two times the industry sector average. Windstream's 5-year average Return on Equity is 50.2 percent, nearly five times the industry sector average. At the other extreme is a company like Fairpoint Communications, whose 5-year average NPM is 2.5 percent, with a 5-year average RE of 16 percent. Also worth noting is the fact that many of these carriers have long-distance business segments that stand to reap substantial access charge savings.

Since many of the price cap regulated companies earn returns far higher than the 11.25 percent for rate-of-return carriers, is it fair for USF funds to be awarded to these companies to offset revenue losses from reductions in above-cost access charges -- revenues that are in a natural free fall as a result of changing market conditions? Is it fair for these USF funds to be locked in and awarded in perpetuity despite the fact that the returns of many of these companies would still remain well above the industry sector average even in the absence of additional USF support?

These companies chose the path of price cap incentive regulation -- a path that has rewards and risks. Thus, merely requiring them to show a true need of additional explicit subsidies for the purposes of universal service seems reasonable. After all, price cap carriers are generally less reliant than rate-of-return carriers on access revenues and are also able to take advantage of economies of scale, unlike smaller RoR carriers.

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However, we must avoid punishing the customers of these companies, and therefore must provide a "safety net" -- not necessarily in the form of access recovery funds, but in a one-time path back to rate-of-return regulation. Thus we propose the Commission establish a forbearance mechanism for distressed price cap companies to violate the "permanent choice rule" and return to rate-of-return status.[39] However, to avoid the enriching that the permanent choice rule was originally established to prevent, the rate-of-return allowed for a carrier exercising this option should be substantially lower than 11.25 percent.

Ultimately, we recommend that any new access recovery funds be based on forward-looking cost estimates, even ARFs for rate-of-return carriers. The current ICLS funds available to rate-of-return carriers are based on embedded costs[40], despite the fact that the Commission has previously concluded that "universal service support for all carriers should be based on the forward-looking economic cost of constructing and operating the network used to provide the supported services, rather than each carrier's embedded costs".[41] When the Commission created the ICLS, it concluded that it was appropriate to base this support on embedded costs, but that this issue would be revisited in 5-years. Like the promise to revisit IAS, this never happened.

We also recommend that as a part of the Further Notice issued in this proceeding, the Commission seek input on the continued need for locking in "frozen" implicit access revenue subsidies even as access minutes are in rapid decline. We proffer that the current $650 million in IAS (established in 2000) and the current $1.5 billion in ICLS (established in 2001) are far in excess of actual need. The Further Notice should concur with this conclusion, and seek input on a phase down and eventual termination of these programs -- offset if needed with explicit broadband infrastructure support.

Improving the USF Reform Elements of
The Commission's Draft Proposal: Broadband

The Commission's Draft Proposal requires all USF-supported carriers to deploy broadband, at a minimum level of 768 kbps, to 100 percent of their service areas within a 5-year period. Carriers are required to cover their unserved areas at a rate of 20 percent per year over the 5-years. If the USF-supported carrier fails to meet this obligation, the area is put up for a reverse auction, with the reserve bid price set at the current study area per-line support level.

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[39] 47 CFR 69.3(i)(4).

[40] 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, FCC 01-304 (2001) (*MAG Order*); at ¶125.

[41] MAG Order at ¶56 referencing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9164-65 (1997).

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While we support modernizing the fund by incorporating broadband, we have serious concerns about the practical outcomes of this particular proposal.

First, we don't envision any non-rural carrier being able to meet their 100 percent obligation at the current level of support (which for most of these carriers consists of only minimal High-Cost Model (HCM) support and IAS support for geographically large study areas). We also don't envision other providers showing up to the reverse auction and meeting the reserve bid. This is simply because many of the non-rural study areas are geographically massive, such as the old Pac Bell study area which consists of 14 million access lines.

In these situations with no bidder, there is no improvement in broadband deployment from the status quo. This is what we call the "dead-end" scenario. Because carriers in such study areas face no penalties from failure to meet the 100 percent broadband deployment benchmark, they have no incentive to deploy based on the current level of support. Furthermore, even in study areas where a non-incumbent bidder wins the reverse auction, there's a high-likelihood that USF monies will be used to build or maintain broadband infrastructure in locations where other unsubsidized services already exist. This outcome would result in an unnecessary use of scarce resources.

The "dead-end" scenario is a very likely outcome. It is worth noting that no carrier has publicly stated that they will be able to meet the Draft Proposal's 100 percent benchmark at current support levels; and we should assume that this silence means that they cannot or will not.

If the Commission is determined to adopt a USF reform plan similar to that in the Draft Proposal, then we recommend the following changes.

First, the Commission should not use a specific speed benchmark of 768kbps. Instead, the standard should be service speeds and qualities (i.e. latencies) that are reasonably comparable to those available in that particular state.[42] This standard should also be flexible for the small portion of homes that are defined as "extremely high cost" (see next item). We recommend this issue be addressed in the Further Notice.

Second, the Commission should recognize that a very small percent of homes might be prohibitively expensive to serve. In this instance, the cost of serving the last one percent of unserved homes could dwarf the other 99 percent. Thus we recommend the Commission establish a case-by-case forbearance process where these extremely high-cost homes can be served using alternative technologies such as fixed wireless or satellite. The Commission should seek input in the Further Notice as to what the cost-differential should be in order to qualify for forbearance. A reasonable value may be on the order of 5 to 10 times the current average per-line cost for a given study area.

[42] The issue of latency is perhaps just as important as speeds. While some satellite broadband offerings may have speeds that exceed 768kbps, the latency of these services results in a user experience that is far different from those using low-latency technologies.

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Third, carriers should be required to offer buildout plans once a year for the 5-year period leading to 100 percent service deployment. If a carrier does not meet or does not plan to meet its obligations in any of the 5-years, then the auction process should commence immediately. Thus, if from day zero a carrier declares they cannot meet the buildout requirements, then the auction process should begin.

Fourth, in order to avoid the "dead-end" scenario describe above, if a study area is put up for reverse auction and receives no winning bidders, then the study area should be disaggregated. We recommend disaggregation into Census Block Groups (CBGs). Then, using the new Form 477 availability data (that we and others have urged the Commission to collect in a separate proceeding)[43], the Commission should identify the CBGs within a particular study area that are not served by any broadband provider.

Once the served and unserved areas of a study area are identified, the Commission or a state Commission should then designate a current broadband provider in the served portions of the study area as the Carrier of Last Resort (COLR). If there is one or more USF-supported broadband providers and one or more unsubsidized broadband providers in these served portions of a study area, then the unsubsidized provider should be designated by the Commission or state Commission as the COLR, either based on authority under Section 214(e)(3) of the Act or by negotiation. This newly designated COLR will not be eligible for USF support absent a showing of need (and need will be based on the cost of providing broadband and voice-grade service at retail rate reasonably comparable to the statewide average).

The USF monies that were previously distributed to the COLR in these served portions of the study area will then be redirected to supporting broadband in the unserved portions of the study area. The unserved portions of a study area will be bid out in a request for proposal (RFP) process, with a general cost-guideline used instead of a reserve bid (i.e., support will not be bound by the current POTS per-line support amount, recognizing that these areas will require increased USF support).

The scheme proposed in the above paragraphs is a carrot-and-stick approach that we believe will provide substantial incentives for current USF-supported carriers to meet the original 100 percent buildout obligations in order to avoid a "dead-end" first round auction and subsequent potential loss of support. This proposal -- by recognizing that many rural areas already have unsubsidized cable broadband service -- efficiently targets resources in the areas where the current USF-supported COLR cannot meet the buildout requirements. It also increases the amount of USF support available in the truly unserved areas by redirecting support away from areas where it is not needed.

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[43] See for example Comments of Consumers Union, Consumer Federation of America, Free Press and Public Knowledge, In the Matter of *Deployment of Nationwide Broadband* Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38, July 17, 2008.

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We strongly recommend the Commission adopt this disaggregation approach. While we recognize that some carriers may be worried about a net loss in USF support under this approach, we believe that most rural and non-rural carriers will actually see little net change as a result of a more precise targeting of USF support. If the Commission simply adopts the current Draft Proposal without making these modifications, the end result will be no meaningful increase in broadband deployment and continued misallocation of scarce USF resources.

Improving the USF Reform Elements of
The Commission's Draft Proposal: Mobility

The Commission's Draft Proposal caps support for mobile wireless CETCs at the current total level ($1.25 billion annually), but eliminates the Identical Support Rule (ISR). This means that in order for a wireless CETC to continue to receive support, they must participate in a cost proceeding. We are uncertain if this requires a CETC to file part 32 accounting and part 64 allocation documentation, or if the Commission will create a new cost-showing mechanism. However a CETC makes a cost showing, support will not be available unless it substantially exceeds a national benchmark. If no CETC in a study area undergoes a cost showing, the Commission's Draft Proposal designates that area for a reverse mobility auction, with the reserve price set at the lowest total CETC support for that study area. CETCs are required to meet the same 100 percent broadband benchmarks as incumbent carriers.

As supporters of universal affordable communications technologies, we support the idea that rural consumers should have access to mobility services at reasonably comparable qualities and rates. However, the framework established in the 1996 Act does not appear to square with the realities of today's communications marketplace, where mobility services are not in direct competition with wireline services; but are instead complementary services. Under the structure of the Act, if the Commission is forced to make choices on how to allocate scarce resources, we feel that the Act's principles lead the Commission down a path of supporting robust advanced telecommunications infrastructure, which may or may not have a mobility component.

This is why we ultimately think Congress must directly address the issue of a separate mobility support structure. However, in the interim, as the Commission makes changes to the Universal Service Fund, it must ensure a basic level of universal mobile voice service. Thus we recommend that the Commission, during the first year interim transition period, determine the populated areas where no mobile voice service would be available absent USF support. The Commission should then target its mobility funds towards those areas. Thus, if an area is served by one or more unsubsidized mobility providers, then no USF support should be provided in that area (irrespective of a CETC cost-showing). In areas with only unsubsidized mobility providers, support for the lowest cost-carrier should be awarded. And in the areas where no provider currently exists, mobility funds should be targeted for voice-grade infrastructure investments.

While we understand the Commission's desire to fund mobile broadband services, we don't think the case has been made that this is a necessary and efficient use of scarce USF resources. This is ultimately a threshold question that Congress must answer.

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Conclusion

If the Commission makes the necessary changes outlined above, we believe it should move forward and adopt a Report and Order and Further Notice of Proposed Rulemaking at the November 4th open meeting. The question of which elements fall into which item remains open and to be determined by the commissioners. However, we favor a model in which the framework (starting points, end points, principles, and time-table) and initial steps appear in the Order, paired with an FNPRM that contains strong tentative conclusions for implementation and administration.

On the issue of ICC rate reform, the Commission should rule that access rates will be set on a path of reduction, and delegate the decisions about where final rates should land to the states. States should have the flexibility to decide whether the final cost-based reciprocal compensation rate should be uniform across all carriers, or if it is economically appropriate to have some level of variation. A path to an intermediate step of interstate rates over two years can be firmly established in the Order, and the details of the states' implementation process in the years after that can be examined in a Further Notice.

On the issue of SLC increases, we strongly urge the Commission to undergo a cost-review process before implementing any such increases. However, if it does rule that a SLC increase is appropriate while the FSJB decides the issue of a national benchmark, then the SLC increases must be commensurate with the declines in access charges. The Commission **must not** allow an across the board SLC increase of $1.50 in the initial years of the access transition, because this (along with the proposed increase in the business SLC) would result in an immediate offset of the full value of the access shift -- a shift that will not occur for many years. Allowing the full SLC increases in the early years of the transition gives LECs additional revenues that have not yet been lost, and this is simply unacceptable.

If the Commission is intent on immediate changes to the SLC, we urge it to determine the amount of access shift that will occur in the first two years of the transition (as rates go to interstate levels), and only allow SLC increases that offset this access decline. We estimate, based on very crude data, that the SLC increase needed during the first two years would be approximately 20 to 30 cents for primary residential lines. Finally, vertically integrated carriers who will be net beneficiaries of the decline in access charges should not be allowed to increase their SLCs.

On the issue of access recovery funding for the purposes of universal service, we strongly recommend that such funding be based on actual need, not a desire to make a carrier whole. All carriers should be required to quantify the actual amount of implicit support contained within their current access revenues, and then demonstrate this support is actually needed, and is not already offset by off-the-books unregulated revenue streams. If the Commission establishes an additional access recovery mechanism, then the support should be based on a carriers forward-looking cost, and take into account declining access minutes. The Commission should conclude that these new funds, and all access replacement funds will sunset in five years, absent further Commission action. If a price cap carrier cannot or will not make a needs-based cost showing,

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then a one-time path back to rate of return regulation (at a rate lower than 11.25 percent) should be permitted.

On the issue of declaring VoIP an information service, we **strongly** urge the Commission to leave this monumental decision to a Further Notice, as this change will completely upend the structure of Section 251 and create massive uncertainty as to the future of the entire industrial interconnection regime. There is simply no interconnection regime under Title I to ensure competitive access. Therefore this move would jeopardize the future of the advanced telecommunications market, something that is in direct conflict with Section 706 of the 1996 Act.

On the issue of universal service reform, we support the Commission's general goal of modernizing the USF to support broadband. But we have substantial concerns that the current framework in the Draft Proposal will not result in much change from the status quo. Indeed, the fact that no carrier has indicated their willingness to meet the 100 percent benchmark outlined in the Draft Proposal is indicative that no such outcome should be expected.

We feel that the reasonable comparability standard of the Act means that a 768kbps standard is arbitrary. A better approach would be to require services that are reasonably comparable those available in other areas within a given state. This, combined with a flexible approach to serving the last few very high-cost customers, will ensure that a substantial majority of consumers in a given study area have access to broadband services that are not of a quality which is years behind that available in urban areas.

We recommend a carrot-and-stick incentive-based approach that leads to study area disaggregation in the instances where there is no winning bidder. Under this approach, current USF funding will be diverted away from areas where broadband services are currently deployed by unsubsidized carriers, to the truly unserved areas.

Ultimately, we feel that the Commission should establish a solid framework in an Order, and issue a Further Notice with strong tentative conclusions that addresses the more difficult implementation issues. This approach is prudent, as many of the implementation details will need to be sorted out over the next year even if the Commission chooses to only issue a Report and Order. Thus many of the details that commenting parties are most concerned about (and are asking for an additional comment cycle on) can be dealt with in the Further Notice. We recommend a 3 to 6 month comment cycle and a 3 to 6 month deliberation cycle, culminating with a final Order on November 4th 2009.

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