



August 26, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions.

WC Docket No. 08-160

Dear Ms. Dortch:

On August 1, 2008, the Embarq Local Operating Companies (Embarq) filed a Petition for Waiver of the Commission's price cap rules. Embarq seeks permission to unify its intrastate and interstate switched access charges on a study-area basis, pending comprehensive reform of the Commission's intercarrier compensation and universal service rules.¹ A similar petition was filed by AT&T on July 17, 2008.²

The undersigned associations filed comments supporting AT&T's petition. In AT&T's case, we agreed it would not be unreasonable, on an interim basis, to permit price cap carriers to reduce intrastate access rates to interstate levels and to recover shortfalls via increases to their subscriber line charges (SLCs) or originating access rates.

Embarq's approach to achieving unified rates also appears reasonable, at least for Embarq and similarly-situated price cap carriers. The Associations therefore support grant of Embarq's Petition for the reasons stated in our comments on AT&T's Petition. A copy of those comments is attached to this letter, and we ask they be included in the record of this proceeding as well.

As with AT&T's proposal, Embarq's approach would not be workable for rate-of-return (ROR) carriers. These companies simply have no "headroom" to raise SLCs under existing caps, and cannot raise other interstate access rates to offset intrastate access revenue shortfalls. Pending comprehensive reform of existing intercarrier compensation mechanisms, an alternative cost recovery mechanism is needed.

Our comments on AT&T's proposal outline one such mechanism. Accordingly, by this letter, the undersigned associations urge the Commission to grant both AT&T's and Embarq's petitions. At the same time, the Commission should permit all ROR incumbent local exchange carriers wishing to unify their interstate and

¹ *Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and Any Associated Rules Necessary to Permit It to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions*, WC Docket No. 08-160, (Aug. 1, 2008) (*Embarq Petition*).

² *Petition of AT&T Inc. For Interim Declaratory Ruling and Limited Waivers regarding Access Charges and the "ESP Exemption"*, WC Docket No. 08-152 (July 17, 2008).

intrastate access rates at interstate levels to recover resulting revenue shortfalls via the interim “LSS2” mechanism described in the attached comments.

Respectfully submitted,

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deployment. The time is long past due for the Commission issue a declaratory ruling confirming access charges apply to IP/PSTN traffic.

The Associations also agree it would not be unreasonable, on an interim basis, to permit AT&T and similarly-situated price cap carriers to reduce their intrastate access rates to interstate levels and recover intrastate access revenue shortfalls via increases in their subscriber line charges (SLCs) and originating access charges.³ But few rate-of-return (ROR) incumbent local exchange carriers (ILECs) have the ability to recover intrastate revenue shortfalls in this manner. To assure the benefits of AT&T's proposal apply nationwide, the Commission should permit ROR carriers who reduce intrastate access rates to interstate access levels to recover shortfalls in intrastate access revenues via targeted increases in interstate access support mechanisms. Potential methods for accomplishing this are discussed below.

I. THE COMMISSION SHOULD CONFIRM ACCESS CHARGES APPLY TO ALL INTEREXCHANGE TRAFFIC.

AT&T asks the Commission to declare, on an interim basis pending comprehensive reform of the intercarrier compensation rules, that interstate terminating access charges apply to "interstate" interexchange IP/PSTN traffic.⁴ With respect to "intrastate" IP/PSTN traffic, however, AT&T asks the Commission to declare that assessment of intrastate terminating access charges is permissible where the LEC's

³ *Id.* at 42.

⁴ *Id.* at 5. AT&T takes the position that VoIP services are jurisdictionally mixed but inseparable, and therefore subject to exclusive FCC jurisdiction. Therefore, references in its petition to "interstate" or "intrastate" traffic are solely for rating purposes. *Id.* at n. 15.

intrastate terminating per-minute access rates are equal to or less than its interstate terminating per minute access rates.⁵

AT&T's petition amply describes the difficulties large carriers face in attempting to collect access charges from entities sending interexchange traffic to the PSTN for termination, but refusing to pay access charges for a variety of false reasons, including claims such traffic is "enhanced" and therefore exempt from access charges under the Commission's Enhanced Services Provider (ESP) exemption.⁶

AT&T also explains how continuing uncertainty over the application of access charges to IP/PSTN traffic has led to numerous disputes before state regulatory bodies and federal district courts.⁷ These ongoing disputes have a significant adverse effect on competition and impede the development and deployment of broadband networks.⁸

Small telephone companies are facing the same problems as AT&T in collecting terminating access charges from carriers sending IP/PSTN traffic to their networks for termination. In the past several years the Associations and their member companies have repeatedly presented the Commission with examples of situations where small telephone companies have billed interconnecting carriers for terminating interexchange traffic, only

⁵ *Id.* at 5.

⁶ *Id.* at 12.

⁷ *Id.* at 12, 18-20.

⁸ *Id.* at 20-23. Recent reports of slowdowns in broadband deployment emphasize this concern. *See, e.g.*, Raymond McConville, *Carrier Scorecard: Broadband Blues*, Light Reading, August 14, 2008, available at http://www.lightreading.com/document.asp?doc_id=161625&f_src=lightreading_section_5; *Broadband Slowdown Confirmed*, Telecompetitor.com, August 12, 2008, available at <http://www.telecompetitor.com/node/764>; Eric Eldon, *U.S. Broadband Growth Off to a Slow Start This Year*, VentureBeat (July 3, 2008) available at <http://venturebeat.com/2008/07/03/us-broadband-growth-off-to-a-slow-start-this-year/>; Betsy Schiffman, *Broadband Boom May Be Over*, Wired Blog Network, (July 23, 2008), available at <http://blog.wired.com/business/2008/07/the-broadband-g.html>.

to be met with claims the traffic is “IP originated” and therefore exempt from access charges.⁹

VoIP providers and their competitive local exchange carrier (CLEC) partners routinely claim IP-originated traffic qualifies as “enhanced” because it supposedly undergoes a net protocol conversion (from IP to circuit-switched) over the course of a call.¹⁰ But as AT&T shows, the ESP exemption was never intended to, and in fact does not exempt service providers from paying terminating access charges for long distance voice telephone calls simply because those calls originate in one transmission format and are converted to another format for delivery to the PSTN.¹¹

Interconnected VoIP providers and their CLEC partners also claim these services qualify as “enhanced” because they provide additional features and functions supposedly not available with traditional long distance telephony.¹² The Commission has recognized, however, that interconnected VoIP services are “increasingly being used as a substitute for traditional telephone service” and are “virtually indistinguishable” from circuit-switched services from a consumer perspective.¹³ The fact is, interconnected

⁹ E.g., Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC. WC Docket No. 04-36, CC Docket No. 01-92 (May 23, 2008); Letter from Joe A. Douglas, NECA, to Kevin J. Martin, Chairman, FCC, CC Docket No. 01-92 (Nov. 13, 2007); Letters from Joe. A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 16, 2007 and May 2, 2007).

¹⁰ E.g., Letter from Kristopher E. Twomey, Regulatory Counsel, CommPartners Holding Corp., to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Dec. 12, 2007), at 1.

¹¹ AT&T Petition at 16-19, 26-29. See also, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (*IP-in-the-Middle Order*).

¹² See, e.g., VoIP: Why is it not your parents' Plain Old Telephone Service (POTS), Internet Caucus Advisory Committee, Written Statement by the VON Coalition; Written Statement by Vonage (Mar. 16, 2004), <http://www.netcaucus.org/events/2004/voip/>. See also, Feature Group IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 07-256 (Oct. 23, 2007); Level 3 Reply Comments, WC Docket No. 04-36 (July 14, 2004), at 20.

¹³ E.g., *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20

VoIP providers offer end-to-end long distance (*i.e.*, interexchange) telecommunications services, and rely on the PSTN for terminating long-distance calls, in the same manner as traditional long distance providers and should therefore be required to pay access charges on the same basis.

Thus, the Associations agree with AT&T that there is no basis under the Commission's rules for interconnected VoIP providers or their CLEC partners to claim the benefits of the ESP exemption. The Commission can significantly assist the industry, state regulators, the courts and consumers by promptly confirming the ESP exemption does not apply to interexchange IP/PSTN traffic, and access charges do apply to such traffic.

In confirming access charges apply to interexchange IP/PSTN traffic, the Commission should also confirm reciprocal compensation arrangements apply only to non-access traffic, as AT&T's Petition suggests.¹⁴ In this regard, the Commission should make clear interconnected VoIP providers are required to transmit call signaling information with their traffic; such signaling information must reflect the "true" originating North American Numbering Plan (NANP) telephone number of the calling party (not an intermediate switch or "IP gateway"); intermediate carriers must transmit such information without alteration; and IP-based calls are continuous communications

FCC Rcd 14989 (2005), at ¶ 42; *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Portability*, CC Docket No. 95-116, *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues Final Regulatory Flexibility Analysis Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order, Declaratory Ruling, Order on Remand and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007), at ¶ 28; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *IP-Enabled Services*, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007), at ¶ 56.

¹⁴ *AT&T Petition* at 5.

(i.e., they originate at the location of the calling party and terminate at the location of the called party).¹⁵ The Commission should clarify further that, in the absence of negotiated agreements governing the application of factors, carriers may continue to rely on analysis of calling and called numbers to determine whether particular calls are “interexchange” or “local.”¹⁶

II. APPLICATION OF ACCESS CHARGES TO INTRASTATE INTEREXCHANGE TRAFFIC AT INTERSTATE LEVELS REQUIRES AN ALTERNATE COST RECOVERY MECHANISM FOR RATE OF RETURN CARRIERS.

As noted above, AT&T’s petition does not seek a broad ruling as to the applicability of intrastate access charges to IP/PSTN traffic, but instead only asks the Commission to declare a LEC may assess terminating access charges on intrastate IP/PSTN traffic where its intrastate terminating per-minute access rates are equal to or less than its interstate terminating per minute access rates.¹⁷ In those states where its intrastate access rates are currently higher than interstate, AT&T intends to reduce rates for all interexchange traffic to interstate levels. To offset revenue losses incurred as a result, AT&T asks the Commission to grant waivers of its price cap rules, so as to permit AT&T (and similarly-situated carriers) to recover foregone intrastate revenues by increasing federal SLCs up to current cap levels.¹⁸

¹⁵ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826 (2005), at ¶ 28.

¹⁶ These clarifications are described in detail in a Petition for Interim Order filed by NECA on January 22, 2008 in CC Docket No. 01-92 (*NECA Petition*). Absent these clarifications, small companies are likely to continue to be embroiled in disputes with interconnected voice service providers attempting to avoid application of access charges by terminating interexchange traffic over local trunk facilities.

¹⁷ *AT&T Petition* at 27.

¹⁸ To the extent that additional revenues remain unrecovered after SLC increases, AT&T seeks permission to increase its interstate originating switched access charges up to the maximum amount permitted under the CALLS order for low-density price cap carriers (i.e., \$0.0095/minute).

AT&T acknowledges grant of its requested relief will do little to resolve the many access charge disputes plaguing smaller, high-cost companies.¹⁹ Unlike AT&T, these companies typically have no “headroom” between current SLC levels and current SLC caps.²⁰ A ruling limiting carriers to charging only interstate access rates for intrastate interexchange traffic could thus substantially disadvantage rural RoR carriers and their customers.²¹

On the other hand, it would be possible, as AT&T suggests, for smaller, high-cost carriers also to achieve access charge parity via relief from existing limits on interstate access support mechanisms.²² Just as AT&T proposes to recover intrastate access revenue differentials via increases to its interstate SLC and originating access rates, ROR carriers could recover these revenue differentials via targeted increases in either Interstate Common Line Support (ICLS) or Local Switching Support (LSS) funding.²³

¹⁹ See *AT&T Petition* at 6, n. 18 (“in areas where the LEC’s intrastate terminating access rates are above its interstate terminating access rates . . . the *status quo* (*i.e.*, regulatory uncertainty) would prevail . . .”).

²⁰ These companies also typically have originating access charge levels that are above the \$0.0095 CALLS rate proposed by AT&T.

²¹ In comments filed in this proceeding on August 8, 2008, the Washington Independent Telecommunications Association, Inc. (WITA) correctly points out that, where a telephone company has an effective tariff on file applying intrastate access charges to IP/PSTN traffic, those access charges should apply until such time as the FCC takes action on comprehensive intercarrier compensation reform. WITA further states, again correctly, “[t]here certainly is no logical reason, as AT&T’s position would lead to, that if an intrastate access rate is higher than the interstate access rate, then the rural carriers in that state cannot apply any access charges to intrastate, interexchange IP/PSTN traffic.” WITA Comments, CC Docket Nos. 01-92, 96-45, and 99-68, WC Docket Nos. 05-337, 07-135 and 04-36 (Aug. 8, 2008), at 3, citing *AT&T Petition* at 35.

²² *AT&T Petition* at 42, n.122.

²³ Following AT&T’s filing, the Embarq local operating companies filed a Petition for Waiver requesting permission to unify their interstate and intrastate access rates on a study area basis. *Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules, and Any Associated Rules Necessary to Permit It to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions*, WC Docket No. 08-160, (Aug. 1, 2008) (*Embarq Petition*). Under Embarq’s proposal, each of its price cap operating companies would be permitted to accommodate intrastate switched access charge reductions through offsetting, revenue-neutral increases in interstate switched access rates. *Id.* at 19. While the Commission has established a separate docket for Embarq’s Petition, the Associations note herein that Embarq’s approach to achieving unified rates may also be reasonable, at least for price cap carriers with cost and demand similar to Embarq’s. As with AT&T’s proposal, however, it is unlikely that

ICLS was designed to replace revenues lost when the Commission phased out per-minute carrier common line access charges for ROR carriers as part of the MAG proceeding.²⁴ Under the ICLS rules, ROR carriers recover the difference between their interstate common line revenue requirements and revenues recovered via end user common line rate elements (primarily SLC revenues).²⁵

The Commission's rules also permit ROR carriers with fewer than 50,000 lines to assign an additional portion of their traffic sensitive local switching costs to the interstate jurisdiction, for recovery via the LSS component of the federal universal service high cost fund. The balance of these carriers' local switching revenue requirements assigned to the local switching rate element is recovered via tariffed access charges.²⁶

One potential way for the Commission to permit high-cost ROR carriers to unify their access rates, at least on an interim basis, would be through the adoption of a new Local Switching Support component (LSS2) that would permit recovery of foregone intrastate switched access revenues from the interstate jurisdiction.²⁷ Like AT&T and similarly-situated price cap carriers, ROR companies would have the ability to assess all

rural ROR carriers would be able to achieve unified rates in the manner proposed by Embarq without an alternative cost recovery mechanism.

²⁴ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (*MAG Order*).

²⁵ See 47 C.F.R. §§ 54.901 – 54.904.

²⁶ See 47 C.F.R. §§ 36.601, 54.301.

²⁷ See, e.g., Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, CC Docket No. 01-92, (July 24, 2006) (*Missoula Plan*), at 73-74 (describing a proposed Restructure Mechanism to recover intrastate revenues foregone as a result of rate unification).

interexchange traffic at interstate rates.²⁸ In the case of ROR carriers, however, the revenue differential resulting from moving to interstate access rate levels would be recovered via the LSS2 mechanism.

Adding a new interim component to LSS not restricted by line size recognizes that all rural RoR carriers have a need for additional federal support for foregone intrastate switched access revenues to the extent they exceed revenues obtained at interstate switched access rate levels.²⁹ Given the original purpose of LSS, and the fact it is currently trending downward as carriers migrate their networks from traditional circuit switched technology to IP broadband technology, it appears logical to utilize this mechanism to achieve rate parity on an interim basis for rural ROR carriers.³⁰

Regardless of specific methodology chosen, however, a mechanism for replacing foregone intrastate access revenues is vital for assuring the continued provision of advanced services in rural areas. Existing intrastate revenues are an important cost

²⁸ As in AT&T's proposal, participation by individual carriers in the new LSS2 fund would be contingent on actual implementation of revisions to intrastate rate tariffs or comparable rate setting mechanisms to reflect application of interstate access rates.

²⁹ Under this proposal, the existing LSS mechanism would remain in place and an additional component (LSS2) would be added. This approach would be similar to the Commission's addition of safety net and safety valve components to the high cost program in 2001. *See Federal-State Joint Board on Universal Service, 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, 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No 00-256, 16 FCC Rcd 11244 (2001).

³⁰ The proposed additional temporary LSS2 component could also serve as a source of funds if the Commission elects to cap interstate switched access rates at current levels, as proposed by the Rural Alliance and NTCA. *High-Cost Universal Service Support and the Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Interim Universal Service and Intercarrier Compensation Reform Proposal (July 11, 2008), at 4, 7 (*NTCA Proposal*). Further, this approach would not preclude the Commission from implementing a Federal Benchmark Mechanism, as described in the Missoula Plan and in the Rural Alliance's June 27th comments and AT&T's July 17, 2008 ex parte letter in this proceeding. *See* Letter from Missoula Plan Supporters, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Jan. 30, 2007), at 1-2 (*Missoula Plan Amendment*); Rural Alliance Comments, CC Docket No. 01-92, (June 27, 2008), at 8 (*Rural Alliance Comments*); Letter from Robert Quinn, AT&T, to Chairman Kevin Martin, FCC, CC Docket Nos. 01-92, 96-45, and 99-68 and WC Docket Nos. 05-337, 07-135 and 04-36 (July 17, 2008), at 5.

recovery component for ROR companies who serve as “carriers of last resort” in rural communities and must be maintained if they are to be successful in building the multi-use telecommunications infrastructure needed to deliver advanced services throughout the nation.

III. LONGER TERM, THE COMMISSION MUST CONSIDER THE IMPACTS OF BROADBAND MIGRATION ON INTERCARRIER COMPENSATION REFORM.

AT&T’s Petition is one of a number of filings submitted in recent months “refreshing the record” in the Commission’s Intercarrier Compensation and Universal Service Reform dockets.³¹ Accompanying AT&T’s Petition were two detailed *ex parte* letters, one requesting the Commission take action by the end of 2008 to unify terminating intercarrier compensation rates via a federal benchmark approach, the other asking the FCC to extend the preemptive effect of its 2004 *Vonage Order*³² to fixed-location VoIP services.³³

On June 27, 2008 the Rural Alliance filed comments describing specific interim measures to be taken in the event the Missoula Plan cannot be implemented at the present time.³⁴ These included “mirroring” of interstate access rate levels and structure for intrastate access; adoption of a Restructure Mechanism to preserve rural RoR carrier revenues lost as a result of reducing intrastate access charges; implementation of a

³¹ *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*, News Release (May 2, 2008).

³² *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, 19 FCC Rcd 22404 (2004) (*Vonage Order*).

³³ See Letters from Robert Quinn, AT&T, to Chairman Kevin Martin, FCC, CC Docket No. 96-45, and WC Docket Nos. 06-122 and 04-36 (July 17, 2008).

³⁴ See *Rural Alliance Comments* (June 27, 2008).

Federal Benchmark Mechanism to establish equity between states that have already undertaken intercarrier compensation reform and those that have not; and the capping of interstate switched access rate levels for rural RoR ILECs (with recovery of any revenue requirement shortfalls through a universal service element).³⁵

These filings as well as other “refresh the record” proposals³⁶ demonstrate clearly the need for immediate interim action by the Commission to resolve pressing intercarrier compensation reform issues. It has now been two years since the Missoula Plan was filed. At the time, the Plan was described as “a significant step forward in reforming yesterday’s regulations — designed for the legacy narrowband world — to accommodate today’s intermodal, competitive, and increasingly Internet-oriented communications environment.”³⁷ In the two years following submission of the Plan the problems it was designed to address have only grown worse. Virtually all commenters now agree on the need for immediate interim action to address rate arbitrage problems, application of

³⁵ The Rural Alliance also suggested the Commission take specific actions to resolve interconnection disputes and ease implementation of interconnection agreements. These included a request for clarification that rural ILECs do not have an obligation to provide interconnection and pay for transport at points beyond their network facilities; confirmation ILECs may utilize originating and terminating telephone numbers to jurisdictionalize calls and determine intercarrier compensation payments; and modification of the intraMTA rule to preserve rural ILECs’ local calling areas. Other components of the Rural Alliance’s filing included a request to implement the Missoula Plan’s Comprehensive Solution for Phantom Traffic and NECA’s petition on call signaling requirements; grant of Embarq’s petition seeking forbearance from enforcement of the ESP exemption on IP voice calls that terminate to the PSTN; confirmation that all interconnected interexchange voice service calls terminating on the PSTN are subject to access charges; and revisions to the USF recovery mechanism to apply to working telephone numbers and connections, including all broadband services and connections. *Id.* at 9-10.

³⁶ *See, e.g.*, Western Telecommunications Alliance (WTA) Comments to Refresh Record, CC Docket No. 01-92 (Aug. 14, 2008) (urging adoption of the Missoula Plan but supporting earlier adoption and enforcement of call signaling and call record requirements that address phantom traffic problems); *NTCA Proposal*, in WC Docket Nos. 05-337 and CC Docket Nos. 01-92 and 96-45. (July 11, 2008) (suggesting the Commission deal with declining switched access usage by capping interstate access charges at current levels and permit ROR carriers to recover revenue shortfalls via universal service support. NTCA’s proposal). NTCA also urges the Commission to commence a proceeding to develop a transition from the PSTN universal system to an IP/broadband USF mechanism. *Id.* at 4, 14.

³⁷ *Missoula Plan*, Executive Summary at 1.

access charges to IP/PSTN traffic, and the various problems associated with identifying and billing intercarrier compensation charges described above.

Beyond such immediate interim action, however, the Commission should turn its attention towards addressing the truly seismic changes facing existing intercarrier compensation mechanisms. Filings by AT&T and others make clear that as wireline carriers migrate from traditional circuit-switched to IP-based broadband networks, existing intercarrier compensation models must evolve as well.

To meet the needs of rural customers, promote local economic development, and ensure public safety, the Associations' member companies must continue to build networks capable of supporting next-generation services. Yet, rural ILECs are increasingly being required to transport and deliver traffic for retail service providers who generate significant revenue from their services, who place significant importance on optimum delivery of content via high-capacity broadband networks, and yet bear no responsibility for the costs imposed on local networks. Continued "free" use of rural networks by such providers can only result in abuse of network capacities, service degradation, and increased pressure on high-cost funding mechanisms.

The Associations have long advocated the need to maintain a reasonable balance between existing cost recovery mechanisms – end-user charges, intercarrier compensation, and high-cost universal service funding.³⁸ Failure to maintain this reasonable balance will not only place unreasonable burdens on end users as well as the Universal Service Fund but will distort the link between network usage and recovery of costs driven by that usage.

³⁸ *E.g.*, NECA Comments, CC Docket No. 01-92 (May 23, 2005), at 11; *See also* Iowa Telecommunications Association Comments, CC Docket No. 01-92, at 4; (May 23, 2005); Wyoming Office of Consumer Advocate Comments, CC Docket No. 01-92 (May 23, 2005), at 6.

ILEC networks are evolving, and it is becoming increasingly difficult to determine what to bill and to whom. Nevertheless, existing intercarrier compensation mechanisms must evolve to address appropriate costs to be recovered for IP-based broadband networks (including, *e.g.*, “middle mile” transport to Internet backbone nodes) and the development of charges to recover costs based on cost causation and usage. Successful evolution of the existing intercarrier compensation system should result in a model supporting wholesale pricing which drives efficient, cost-causative use of the network.

Inter-carrier compensation and universal service reform proposals currently “on the table” only hint at ways to address the above goals. Beyond taking the immediate interim steps described above to reduce or eliminate rate arbitrage and access avoidance, the Commission must also undertake a significant effort to consider how intercarrier compensation can work in the broadband age. In this regard, the Associations strongly urge the Commission to initiate a proceeding as soon as possible designed to focus on ways to adapt intercarrier compensation to the IP-based broadband world.

Successful evolution of existing intercarrier compensation systems will be measured by availability of state-of-the-art broadband services in rural areas at rates comparable to those charged in urban areas, achievement of public policy goals, and the promotion and efficient use of constantly-improving, multi-use networks that contribute significantly to the growth and vitality of the rural regions of America.

IV. CONCLUSION

The Commission should issue a declaratory ruling as requested by AT&T confirming access charges apply to all IP/PSTN traffic. The Associations also agree it would not be unreasonable, on an interim basis, for the Commission to permit AT&T and similarly-situated price cap carriers to recover intrastate access revenue shortfalls resulting from application of unified interstate/intrastate rates via increases in SLCs and originating access charges. Since ROR carriers do not have the ability to recover intrastate revenue shortfalls in this manner, the Commission should permit ROR carriers that reduce intrastate access rates to interstate access levels to recover shortfalls in intrastate access revenues via targeted increases in interstate access support mechanisms. This will allow consumers in all areas of the country to achieve the benefits of AT&T's proposal.

Longer term, the Commission should focus on adapting intercarrier compensation mechanisms to IP-based broadband environments. After taking the interim actions described above, the Commission should promptly initiate a proceeding to consider how existing intercarrier compensation mechanisms should be revised so that rural carriers may recover the costs of providing broadband services in a manner that reflects economic

cost causation. Such reforms are urgently needed to assure the continued availability and deployment of broadband-capable networks and advanced services throughout the nation.

Respectfully submitted,

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August 20, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 20th day of August, 2008 by electronic filing and email to the persons listed below.

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