**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| A National Broadband Plan for Our Future | ) | GN Docket No. 09-51 |
| | ) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers | ) | WC Docket No. 07-135 |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Developing an Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Lifeline and Link-Up | ) | WC Docket No. 03-109 |
| | ) | |
| Universal Service Reform – Mobility Fund | ) | WT Docket No. 10-208 |

# REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

**Adopted: October 27, 2011** **Released: November 18, 2011**

**Comment Date on Sections XVII.A-K: January 18, 2012**
**Reply Comment Date on Sections XVII.A-K: February 17, 2012**
**Comment Date on Sections XVII.L-R: February 24, 2012**
**Reply Comment Date on Sections XVII.L-R: March 30, 2012**

By the Commission: Chairman Genachowski and Commissioners Copps and Clyburn issuing separate statements; Commissioner McDowell approving in part, concurring in part and issuing a statement.

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CN field.[1217] According to these parties, the proposed requirement is problematic because intermediate providers may not be able to pass the CN field in some instances,[1218] and the requirement would prevent intermediate providers from modifying the CN for their own purposes.[1219]

714. We adopt the proposal contained in the *USF/ICC Transformation NPRM* to require that the CN be passed unaltered where it is different from the CPN. We believe that this requirement will be an adequate remedy to the problem of CN number substitution that disguises the characteristics of traffic to terminating service providers. Additionally, we note that the CN field may only be used to contain a calling party's charge number, and that it may not contain or be populated with a number associated with an intermediate switch, platform, or gateway, or other number that designates anything other than a calling party's charge number. We are not persuaded by objections to this requirement. First, unsupported objections that there may be "circumstances where a CN may be different from the CPN but cannot be easily transmitted" are unpersuasive without more specific evidence.[1220] Second, we note that the Commission addressed similar circumstances in the 2006 *Prepaid Calling Card Order*, and prohibited carriers that serve prepaid calling card providers from passing the telephone number associated with the platform in the charge number parameter.[1221] In this case, we agree with the analysis of the *Prepaid Calling Card Order* that "[b]ecause industry standards allow for the use of CN to populate carrier billing records ... passing the number of the [] platform in the parameters of the SS7 stream to carriers involved in terminating a call may lead to incorrect treatment of the call for billing purposes."[1222] In sum, the record demonstrates that CN substitution is a technique that leads to phantom traffic, and our proposed rules are a necessary and reasonable response.[1223]

715. *Multi-Frequency (MF) Automatic Number Identification (ANI).* As noted in the *USF/ICC Transformation NPRM*, some service providers do not use SS7 signaling, but instead rely on Multi-Frequency (MF) signaling.[1224] The *USF/ICC Transformation NPRM* proposed that service providers using MF Signaling pass the CPN, or the CN if different, in the MF Automatic Number Identification (MF ANI) field.[1225]

716. We amend our rules to require service providers using MF signaling to pass the number of the calling party (or CN, if different) in the MF ANI field. This requirement will provide consistent treatment across signaling systems and will ensure that information identifying the calling party is included in call signaling information for all calls.[1226] Moreover, this requirement responds to the

[1217] *See, e.g.*, PAETEC et al. Section XV Comments at 8-9; PAETEC et al. Section XV Reply at 6-7.

[1218] *See* Verizon Section XV Comments at 49 n. 69; HyperCube Section XV Reply at 12-13.

[1219] PAETEC et al. Section XV Reply at 6-7.

[1220] Verizon Section XV Comments at 49 n.69.

[1221] *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7302-03, para. 34 (2006) (*Prepaid Calling Card Order*).

[1222] *See id.*

[1223] *See, e.g.*, Windstream Section XV Comments at 15-17.

[1224] Some providers also use IP signaling. *See infra* para. 717.

[1225] *See* Core Section XV Comments at 11("Identifying the calling party's number in the SS7 context, and the ANI and/or Caller ID in the MF signaling context, will certainly help carriers reduce and narrow call rating disputes."); *but see* AT&T Section XV Comments at 25.

[1226] As a result, we decline to adopt AT&T's suggestion that we broadly exempt MF signaling. *See* AT&T Section XV Comments at 25.

compensation reforms.[1867] The jurisdictional separations process, which has been frozen for some time, is currently the subject of a referral to the Separations Joint Board.[1868] Any carrier seeking additional recovery will be required to conduct a separations study to demonstrate the current use of its facilities. Although this is a burdensome requirement, it is not unduly so given the importance of protecting consumers and the universal service fund.

## XIV. INTERCARRIER COMPENSATION FOR VOIP TRAFFIC

933. Under the new intercarrier compensation regime, all traffic—including VoIP-PSTN traffic—ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, we adopt a prospective intercarrier compensation framework for VoIP traffic. In particular, we address the prospective treatment of VoIP-PSTN traffic by adopting a transitional compensation framework for such traffic proposed by commenters in the record.[1869] Under this transitional framework:

- We bring all VoIP-PSTN traffic within the section 251(b)(5) framework;
- Default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates;
- Default intercarrier compensation rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates; and
- Carriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation.

We also make clear providers' ability to use existing section 251(c)(2) interconnection arrangements to exchange VoIP-PSTN traffic pursuant to compensation addressed in the providers' interconnection agreement, and address the application of Commission policies regarding call blocking in this context.

934. Although we adopt an approach similar to that proposed by some commenters, our approach to adopting and implementing this framework differs in certain respects. For one, we are not persuaded on this record that all VoIP-PSTN traffic must be subject exclusively to federal regulation, and as a result, to adopt this prospective regime we rely on our general authority to specify a transition to bill-and-keep for section 251(b)(5) traffic.[1870] As a result, tariffing of charges for toll VoIP-PSTN traffic can occur through both federal and state tariffs.[1871] In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters.[1872] We do, however, recognize concerns regarding providers' ability to distinguish VoIP-PSTN traffic from other traffic, and,

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[1867] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4730, para. 563. *See also, e.g., 2008 Order and USF/ICC FNPRM*, 24 FCC Rcd at 6632, App. A, para. 304 (seeking comment on an approach that would refer certain recovery questions to the Separations Joint Board give the cross-jurisdictional implications of the possible approach to recovery).

[1868] *See, e.g., Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011)

[1869] ABC Plan, Attach. 1 at 10; Joint Letter at 3; NCTA July 29, 2011 *Ex Parte* Letter at 2; New York PSC *August 3 PN* Comments at 18-19; TCA *August 3 PN* Comments at 10-11.

[1870] *See infra* paras. 954-955.

[1871] *See infra* paras. 961-963.

[1872] *See infra* para. 962.

consistent with the recommendations of a number of commenters, we permit LECs to address this issue through their tariffs, much as they do with jurisdictional issues today.[1873]

935. We believe that this prospective framework best balances the competing policy goals during the transition to the final intercarrier compensation regime. By declining to apply the entire preexisting intercarrier compensation regime to VoIP-PSTN traffic prospectively, we recognize the shortcomings of that regime. At the same time, we are mindful of the need for a measured transition for carriers that receive substantial revenues from intercarrier compensation. Although our action clarifying the prospective intercarrier compensation treatment of VoIP-PSTN traffic does not resolve the numerous existing industry disputes, it should minimize future uncertainty and disputes regarding VoIP compensation, and thereby meaningfully reduce carriers' future costs.[1874]

### A. Background

936. Questions regarding the appropriate intercarrier compensation framework for VoIP traffic have been raised in a number of previous rulemaking notices from varying perspectives and in varying levels of detail.[1875] Most recently, in the *USF/ICC Transformation NPRM* the Commission sought "comment on the appropriate treatment of interconnected VoIP traffic for purposes of intercarrier compensation," asking about "a range of approaches, including how to define the precise nature and timing of particular intercarrier compensation payment obligations."[1876] To inform this analysis, the Commission sought comment on how best to balance competing policy concerns, the possible need to clarify or modify any aspects of existing law to enable the adoption of a particular VoIP intercarrier compensation regime, and how any such regime would be administered, including the appropriate scope of traffic that should be addressed by the Commission.[1877] In addition, in the *August 3 PN*, we sought comment on measures to clarify the operation of one proposed approach to intercarrier compensation for VoIP-PSTN traffic.[1878]

### B. Widespread Uncertainty and Disagreement Regarding Intercarrier Compensation for VoIP Traffic

937. As the Commission recognized in the *USF/ICC Transformation NPRM*, the lack of clarity regarding the intercarrier compensation obligations for VoIP traffic has led to significant billing

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[1873] *See infra* para. 963.

[1874] This Order does not address intercarrier compensation payment obligations for VoIP-PSTN traffic for any prior periods. *See, e.g.*, Letter from Grace Koh, Policy Counsel, Cox, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Attach. at 1 (filed July 1, 2011) (Cox July 1, 2011 *Ex Parte* Letter).

[1875] *See, e.g.*, *Intercarrier Compensation NPRM*, 16 FCC Rcd at 9613, 9621, 9629, para. 6 n.5, paras. 24, 52 (seeking comment on comprehensive intercarrier compensation reform, including issues presented by "IP telephony"); *IP-Enabled Services NPRM*, 19 FCC Rcd at 4904-05, paras. 61-62 (seeking comment on the application of intercarrier compensation charges to VoIP or other IP-enabled services); *Intercarrier Compensation FNPRM*, 20 FCC Rcd at 4710, 4722, 4743-44, 4750, paras. 51, 80, 133 & n. 384, 148; *2008 Order and ICC/USF FNPRM*, 24 FCC Rcd at 6589-91, 6594, App. A, paras. 209-11, 218 n.703; *id.* at 6787-89, 6792, App. C, paras. 203-06, 213 n.1844.

[1876] *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4745, para. 609.

[1877] *Id.* at 4747-48, paras. 612-13.

[1878] *See August 3 Public Notice*, 26 FCC Rcd at 11128. For instance, we sought comment on mechanisms for distinguishing "toll" VoIP-PSTN traffic from other traffic, including possible alternatives to the use of call detail information as proposed by the ABC Plan and Joint Letter. *Id.* at 11129.

### c. Implementation

960. As discussed below, carriers may tariff charges at rates equal to interstate access rates for toll VoIP-PSTN traffic in federal or state tariffs but remain free to negotiate interconnection agreements specifying alternative compensation for that traffic instead.[1973] Other VoIP-PSTN traffic will be subject to otherwise-applicable reciprocal compensation rates. Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call, we do not mandate their use. However, to address concerns about identifying VoIP-PSTN traffic, we allow LECs to include tariff language addressing that issue, much as they do to address jurisdiction questions today.

961. *Role of Tariffs*. During the transition, we permit LECs to tariff reciprocal compensation charges for toll VoIP-PSTN traffic equal to the level of interstate access rates.[1974] Although we are addressing intercarrier compensation for all VoIP-PSTN traffic under the section 251(b)(5) framework, we are doing so as part of an overall transition from current intercarrier compensation regimes—which rely extensively on tariffing specifically with respect to access charges—and a new framework more amenable to negotiated intercarrier compensation arrangements. We therefore permit LECs to file tariffs that provide that, in the absence of an interconnection agreement,[1975] toll VoIP-PSTN traffic will be subject to charges not more than originating[1976] and terminating interstate access rates. This prospective regime thus facilitates the benefits that can arise from negotiated arrangements[1977] without sacrificing the

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[1973] Consistent with the ABC Plan's proposal, nothing in our VoIP-PSTN intercarrier compensation framework alters or supersedes the reciprocal compensation rules for CMRS providers, including the intraMTA rule. ABC Plan, Attach. 1 at 10 n.6. *See also* Section XV.D.

[1974] CMRS providers currently are subject to detariffing, and nothing in our intercarrier compensation framework VoIP-PSTN traffic disrupts that regulatory approach. *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192, 13198, para. 12 (2002) (*Sprint/AT&T Declaratory Ruling*), *petitions for review dismissed, AT&T Corp. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003). Under our permissive tariffing regime, providers likewise are free not to file federal and/or state tariffs for VoIP-PSTN traffic, and instead seek compensation solely through interconnection agreements (or, if they wish, to forgo such compensation).

[1975] We use the term "interconnection agreement" broadly in this context to encompass agreements that might not address all aspect of section 251's requirements beyond intercarrier compensation, and regardless of the terminology that the parties use to describe the arrangement. *See, e.g.*, Texas Statewide Telephone Cooperative Aug. 19, 2002 Reply at 4 (describing a "template Transport and Termination Agreement . . . developed at the direction of the Texas Public Utility Commission" that was an "abbreviated 251(b)(5) transport and termination agreement").

[1976] As the Commission has observed, "section 251(b)(5) refers only to transport and termination of telecommunications, not to origination." *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4713-14, para. 517. The Commission also has held that origination charges are inconsistent with section 251(b)(5). *See, e.g., Local Competition First Report and Order*, 11 FCC Rcd at 16016, para. 1042 ("Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic."). Although we consequently do not believe that a permanent regime for section 251(b)(5) traffic could include origination charges, on a transitional basis we allow the imposition of originating access charges in this context, subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM. *See infra* Section XVII.M. *See also USF/ICC Transformation NPRM*, 26 FCC Rcd at 4713-14, para. 517.

[1977] Both the Commission and commenters previously have considered deviating from a pure tariffing regime in favor of more expansive use of negotiated arrangements as part of intercarrier compensation reform. *See, e.g.*, (continued...)

revenue predictability traditionally associated with tariffing regimes.[1978] For interstate toll VoIP-PSTN traffic, the relevant language will be included in a tariff filed with the Commission, and for intrastate toll VoIP-PSTN traffic, the rates may be included in a state tariff.[1979] In this regard, we note that the terms of an applicable tariff would govern the process for disputing charges.[1980]

962. Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information.[1981] For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call.[1982] Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances.[1983] Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined.[1984] We find this approach appropriate here, as well.

963. We do, however, clarify the approach to identifying VoIP-PSTN traffic for purposes of complying with this transitional intercarrier compensation regime. Although intercarrier compensation rates for VoIP-PSTN traffic during the transition will differ from other rates for only a limited time, we recognize commenters' concerns regarding the mechanism to distinguish VoIP-PSTN traffic, and thus

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*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9656-57, para. 130. *See also, e.g.*, AT&T *USF/ICC Transformation NPRM* Comments at 30-31 (advocating detariffing of access charges); AT&T Section XV Comments at 13-15; Verizon *Intercarrier Compensation FNPRM* Comments at 6-14.

[1978] *See, e.g.*, XO Section XV Comments at 32 (arguing that the Commission should ensure that terminating carriers have the right to assess intercarrier compensation charges for VoIP-PSTN traffic "even in the absence of an agreement so that VoIP providers cannot refuse to negotiate a reciprocal compensation agreement to avoid paying any rate for termination of their traffic"); NECA *et al.* Section XV Reply at 6 (arguing that small carriers can have difficulty getting larger carriers to come to the negotiating table at all).

[1979] We note that the Commission has, in the past, regulated services that were offered through state tariffs. *See, e.g., Wisconsin Public Service Commission*, 17 FCC Rcd 2051, 2060-71, paras. 31-65 (2002) (regulating BOCs' state-tariffed payphone access line rates); *Open Network Architecture Plans of the Bell Operating Companies*, 4 FCC Rcd 1, 162-71, paras. 309-25 (1988) (regulating state-tariffed ONA services in various respects).

[1980] *See supra* para. 700.

[1981] *See, e.g.*, ABC Plan, Attach. 1 at 10; Joint Letter at 3.

[1982] *See, e.g., Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123 & CC Docket No. 92-105, Order, 23 FCC Rcd 5707, 5712-13, paras. 9-10 (CGB Oct. 9, 2007); ABC Plan, Attach. 5 at 22. *See also, e.g.*, CRUSIR *August 3 PN* Comments at 20-21; Sprint *August 3 PN* Comments at 17; CenturyLink Section XV Comments at 23; CTIA Section XV Comments at 9-10; TEXALTEL Section XV Comments at 2; Verizon Section XV Comments at 24; ZipDX Section XV Comments at 4.

[1983] *See supra* Section XI.B.

[1984] *See supra* para.959. *See also, e.g.*, Level 3 *August 3 PN* Comments at 25; NECA *et al. August 3 PN* Comments at 50; Bright House Section XV Comments at 5 n.7; CenturyLink Section XV Comments at 23; CTIA Section XV Comments at 10; XO Section XV Comments at 33; Letter from Charon Phillips, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 1-2 (filed Mar. 13, 2007).

compensation between LECs and CMRS providers.[2116] Indeed, in *Iowa Utilities Board*, the Eighth Circuit specifically upheld Commission rules regulating LEC-CMRS reciprocal compensation based on these provisions.[2117]

1002. In the *North County Order*, the Commission found that any decision to reverse course and regulate intrastate rates under section 20.11 at the federal level was more appropriately addressed in a general rulemaking proceeding.[2118] Now that we are considering the issue in the context of this rulemaking proceeding, we find it appropriate to take this step for the reasons discussed above, and we conclude that our decision to establish a federal default pricing methodology for termination of LEC-CMRS intraMTA traffic as part of our broader effort in this proceeding to reform, modernize, and unify the intercarrier compensation system is consistent with our authority under the Act.

### D. IntraMTA Rule

1003. In the *Local Competition First Report and Order*, the Commission stated that calls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time that the call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.[2119] As noted above, this rule, referred to as the "intraMTA rule," also governs the scope of traffic between LECs and CMRS providers that is subject to compensation under section 20.11(b). The *USF/ICC Transformation NPRM* sought comment, *inter alia,* on the proper interpretation of this rule.

1004. The record presents several issues regarding the scope and interpretation of the intraMTA rule. Because the changes we adopt in this Order maintain, during the transition, distinctions in the compensation available under the reciprocal compensation regime and compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. We therefore take this opportunity to remove any ambiguity regarding the interpretation of the intraMTA rule.

1005. We first address a dispute regarding the interpretation of the intraMTA rule. Halo Wireless (Halo) asserts that it offers "Common Carrier wireless exchange services to ESP and enterprise customers" in which the customer "connects wirelessly to Halo base stations in each MTA."[2120] It further

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[2116] *See supra* para. 779 .

[2117] In *Iowa Utilities Board v. FCC*, the Eighth Circuit found that "[b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by [CMRS] providers . . . and because section 332(c)(1)(b) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue the rules of special concern to the CMRS providers." *Iowa Utils Bd. v. FCC*, 120 F. 3d 753, 800 n.21 (8th Cir. 1997) (vacating the Commission's pricing rules for lack of jurisdiction except for "the rules of special concern to CMRS providers" based in part upon the authority granted to the Commission in 47 U.S.C. § 332(c)(1)(B)). *See also Qwest v. FCC*, 252 F.3d 462, 465-66 (D.C. Cir. 2001) (describing the Eighth Circuit's analysis of section 332(c)(1)(B) in *Iowa Utils. Bd. v. FCC* and concluding that an attempt to relitigate the issue was barred by the doctrine of issue preclusion). On this basis, the court upheld several rules relating to reciprocal compensation for LEC-CMRS traffic, including rules governing charges for intrastate traffic. For example, the court upheld on this basis the adoption of section 51.703(b) of our rules, which prohibits LECs from assessing charges on any other telecommunications carrier for non-access traffic that originates on the LEC's network. 47 C.F.R. § 51.703(b).

[2118] *North County Order*, 24 FCC Rcd at 14039-40, para. 10, 14042, para. 16 (internal quotations omitted).

[2119] *Local Competition First Report and Order*, 11 FCC Rcd at 16014, para. 1036; 47 C.F.R. § 51.701(b)(2). The definition of an MTA can be found in section 24.202(a) of the Commission's rules. 47 C.F.R. § 24.202(a).

[2120] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 7; *see also* Halo Oct. 17, 2011 *Ex Parte* Letter. Halo is a nationwide licensee of non-exclusive spectrum in the 3650-3700 MHz band.

asserts that its "high volume" service is CMRS because "the customer connects to Halo's base station using wireless equipment which is capable of operation while in motion."[2121] Halo argues that, for purposes of applying the intraMTA rule, "[t]he origination point for Halo traffic is the base station to which Halo's customers connect wirelessly."[2122] On the other hand, ERTA claims that Halo's traffic is not from its own retail customers but is instead from a number of other LECs, CLECs, and CMRS providers.[2123] NTCA further submitted an analysis of call records for calls received by some of its member rural LECs from Halo indicating that most of the calls either did not originate on a CMRS line or were not intraMTA, and that even if CMRS might be used "in the middle," this does not affect the categorization of the call for intercarrier compensation purposes.[2124] These parties thus assert that by characterizing access traffic as intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite compensation to terminating rural LECs for a very large amount of traffic.[2125] Responding to this dispute, CTIA asserts that "it is unclear whether the intraMTA rules would even apply in that case."[2126]

1006. We clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Where a provider is merely providing a transiting service, it is well established that a transiting carrier is not considered the originating carrier for purposes of the reciprocal compensation rules.[2127] Thus, we agree with NECA that the "re-origination" of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation and we disagree with Halo's contrary position.[2128]

1007. In a further pending dispute, some LECs have argued that if completing a call to a CMRS provider requires a LEC to route the call to an intermediary carrier outside the LEC's local calling area,[2129] the call is subject to access charges, not reciprocal compensation, even if the call originates and

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[2121] Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 8.

[2122] *Id.* Attach. at 9.

[2123] ERTA July 8, 2011 *Ex Parte* Letter, at 3.

[2124] NTCA July 18, 2011 *Ex Parte* Letter at 7.

[2125] NTCA July 18, 2011 *Ex Parte* Letter at 1; ERTA *Ex Parte* Letter at 1, 3 (traffic from Halo includes "millions of minutes of intrastate access, interstate access, and CMRS traffic originated by customers of other companies;" one day study of Halo traffic showed traffic was originated by customers of "176 different domestic and Canadian LECs and CLECs and 63 different Wireless Companies").

[2126] CTIA *August 3 PN* Comments at 9.

[2127] *See Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp,* Order on Reconsideration, 17 FCC Rcd 6275, 6276 para. 4 (2002) ("Answer Indiana's argument assumes that GTE North receives reciprocal compensation from the originating carrier, but our reciprocal compensation rules do not provide for such compensation to a transiting carrier."); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177 n.70 (2000).

[2128] *See* NECA Sept. 23, 2011 *Ex Parte* Letter Attach. at 1; Halo Aug. 12, 2011 *Ex Parte* Letter at 9. We make no findings regarding whether any particular transiting services would in fact qualify as CMRS. *See* CTIA *August 3 PN* Comments at 9 & n.29 ("the information available does not reveal whether [Halo's] offering is a mobile service").

[2129] This occurs when the LEC and CMRS provider are "indirectly interconnected," i.e. when there is a third carrier to which they both have direct connections, and which is then used as a conduit for the exchange of traffic between them.

**STATEMENT OF**
**COMMISSIONER MICHAEL J. COPPS**

*Re:* *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Mobility Fund*, WT Docket No. 10-208

A lot of folks bet we couldn't get here today. They said Universal Service was too complicated and Intercarrier Compensation too convoluted ever to permit comprehensive reform. Universal Service was sadly out of step with the times, Intercarrier Comp was broken beyond repair. Yet here we are this morning, making telecommunications history with comprehensive reform of both Universal Service and Intercarrier Compensation. The first thing I want to do is congratulate Chairman Genachowski for the leadership he brought to bear in getting us to a place where no previous Chairman has managed to go. Today, thanks to his leadership, we build a framework to support the Twenty-first century communications infrastructure our consumers, our citizens and our country so urgently need. So mighty praise is due the Chairman, and even those who may take exception to parts of what we approve today will join me in thanking him for his commitment, courage and herculean effort to make this happen.

In the face of the complex systems we modernize today, it is all too easy to forget the simple, timeless goal behind our policies: all of us benefit when more of us are connected. The principle of Universal Service is the life-blood of the Communications Act—a clarion call and a legislative mandate to bring affordable and comparable communications services to ***all*** Americans—no matter who they are, where they live, or the particular circumstances of their individual lives. So it is altogether fitting as we move away from support designed primarily for voice to support for broadband, that we bear witness to the accomplishments USF has made over the years to connect America with Plain Old Telephone Service. The Fund has achieved truly laudable success. Thanks to both high cost support and low income assistance, we now have voice penetration rates in excess of 95% nationally. No other infrastructure build-out has done so much to bind the nation together. Additionally it has enabled millions of jobs and brought new opportunities to just about every aspect of our lives. Some stark challenges remain, of course, particularly in Native areas. The shocking statistic in Indian Country is a telephone penetration rate that at last report hovers in the high 60th percentile. Getting voice service and broadband to Indian Country and other Native areas is a central challenge to implementing the reforms we launch today. Bringing Universal Service into the Twenty-first century is the only way we can extend the full range of advanced communications services to places those services will not otherwise go.

The big news here, of course, is that Universal Service is finally going broadband. This is something I have advocated for a long, long time. It is something a decade and more overdue and a step that the Joint Board on Universal Service strongly backs. These new tools of advanced communications technologies and services are essential to the prosperity and well-being of our country. They are the essential tools of this generation like the hoe and the plow, the shovel and the saw were to our forebears. No matter if we live in city or hamlet, whether we work in a factory or on a farm, whether we are affluent or economically-disadvantaged, whether we are fully able or living with a disability—***every citizen*** has a need for, and a right to, advanced communications services. Access denied is opportunity denied. That applies to us as individuals and as a nation. America can't afford access denied—unless we want to consign ourselves and our children to growing, not shrinking, digital divides. We are already skating around the wrong side of the global digital divide in many ways, when we should have learned by now that the rest of the world is not going to wait for America to catch up. But here's the good news. If we seize the power of this technology, and build it out to every corner of the country and make it truly

needed discipline into the system. It is another really important component of our actions today and, strongly enforced, one that will inspire more confidence in the new system than we ever had in the old.

Today is also historic because we finally take on the challenge of Intercarrier Compensation. We take meaningful steps to transform what is badly, sadly broken. This item puts the brakes on the arbitrage and gamesmanship that have plagued ICC for years and that have diverted private capital away from real investment in real networks. By some estimates, access stimulation costs nearly half a billion dollars a year, and phantom traffic affects nearly one fifth of the traffic on carriers' networks. Today, we say "no more." We adopt rules to address these arbitrage schemes head on. And, very importantly, we chart a course toward a bill-and-keep methodology that will ultimately rid the system of these perverse incentives entirely.

My enthusiasm here is tempered by the fact that end-user charges (under the label of "Access Recovery Charges") are allowed to increase, albeit incrementally, for residential consumers. My first preference was to prevent any increase. Alternatively, we could require individual carriers to demonstrate their need for additional revenues before imposing the ARC. Perhaps some of the largest and most profitable companies should not be able to charge the ARC. However, the Commission does adopt some important measures to protect consumers even as it allows additional charges. In particular, consumers already paying local phone rates of $30 or more cannot be charged the ARC. The use of this ceiling recognizes that some early adopter states have already tackled intrastate access rates, and their citizens may already be footing a reasonable part of the bill. In the end, I am grateful that, at the very least, additional charges to end-users are not as great as they might have been, are spread over a longer period of time, and should be offset (and hopefully more than matched) by savings and efficiencies realized because of the more rational programs we begin to put in place. And I am hopeful the Commission will do everything it can to assure that these savings are passed on to consumers, although I continue to lament that the fact that we don't have a more competitive telecommunications environment that would better ensure consumer-friendly outcomes.

While "The Inside-the-Beltway" crowd and the armies of industry analysts and assorted other savants will be parsing today's items with eyes focused exclusively on which company or industry sector is up or down, who gains the most or least, and on all the other issues that will cause forests to be chopped down and vats of ink drained, I hope we can keep the focus on the consumer benefits of what we are doing. I would not—could not—support what we do today unless the expected consumer benefits are real enough to justify the effort—and, yes, the risks—of so sweeping a plan. Much will depend upon our implementation and enforcement—and I am sure some mid-course corrections—but I believe there are real and tangible consumer benefits in the framework items before us. More broadband for more people is at the top of the list. As just one example, we anticipate significant new investment with over seven million previously- unserved consumers getting broadband within six years. That means more service, more jobs, more opportunities.

Building critical infrastructure—and broadband is our most critical infrastructure challenge right now—has to be a partnership. The states are important and essential partners as we design and implement new USF and ICC programs. I have been a strong advocate for closer federal-state regulatory partnerships since I arrived here more than ten years ago. I have had the opportunity to serve on the Joint Boards with our state colleagues, to be a part of their deliberations, to appreciate the tremendous expertise and dedication they bring to their regulatory responsibilities, and to have learned so much from them. It is just plain good sense to maximize our working relationships with them. More even than my personal preference, which is deeply-held, this is the mandate of the law. Section 254 of the Act is clear—the states have a critical role in the preservation and advancement of Universal Service. While I understand the need for predictability in an ICC regime, I am pleased that my colleagues have retained a key role for states, including arbitrating interconnection agreements; monitoring intrastate access tariffs during the