Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
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Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
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COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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COMMENTS OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the Wireline Competition Bureau's Public Notice seeking to refresh the record on intercarrier compensation (ICC) reform related to the "network edge," tandem switching and transport, and transit services.[1]

I. INTRODUCTION AND SUMMARY

In 2011, in the landmark *USF/ICC Transformation Order*,[2] the Commission comprehensively reformed the ICC regime. The Commission had several policy goals in doing so. Among them, it sought to curtail "wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually."[3] It also endeavored to facilitate predictability and stability. Reform was designed to bring terminating end office rates to parity.

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[1] *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit,* Public Notice, 32 FCC Rcd 6856 (WCB 2017) (*Public Notice*).

[2] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom. In re: FCC 11-161,* 753 F.3d 1015 (10th Cir. 2014), *cert. denied,* 135 S. Ct. 2072 (2015).

[3] *Id.* at 17676, para. 33.

The Commission adopted a uniform national bill-and-keep framework, under which carriers look first to their subscribers to cover the costs of the network.[4]

In the companion *USF/ICC Transformation FNPRM*, the Commission sought comment on "interconnection issues likely to arise in the process of implementing a bill-and-keep methodology for ICC."[5] Nearly six years later – and well into the seven-year transition to bill-and-keep for price cap carriers – the Commission is now attempting to address these interconnection issues.

The Commission should codify that all carriers must make one or more network edge point(s) available such that carriers that interconnect at that point will pay nothing to the terminating carrier for terminating the traffic. The network edge for wireline LECs should be the called party's end office while other parties should establish a network edge point that makes sense for its network. The Commission should clarify and/or establish rules that terminating carriers are required to offer direct connection to parties who meet the terminating carrier at its network edge. The Commission should also minimize arbitrage and bring parity to tandem switching and transport functions for all terminating carriers by allowing all carriers to charge market rates for tandem switching and transit services.

Similarly, the Commission should clarify, to the extent necessary, that 8YY service providers can order direct connections to a carrier's network edge points. All carriers should be required to offer a network edge point for 8YY traffic where the interexchange carrier (IXC) would pay the originating switched access rates capped by the Commission in the *USF/ICC Transformation Order*. Finally, the Commission should decline to regulate the competitive market for transit services.

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[4] *See id.* at 17676-77, paras. 34-35.

[5] *Id.* at 17677, para. 35.

II. THE COMMISSION SHOULD DEFINE THE NETWORK EDGE AND CLARIFY THAT DIRECT CONNECTION TO IT IS REQUIRED

In the *USF/ICC Transformation FNPRM*, the Commission recognized that a "critical aspect" of the bill-and-keep scheme is defining the network edge, insofar as the network edge is "the point where bill-and-keep applies, [and] a carrier is responsible for carrying, directly or indirectly by paying another provider, its traffic to that edge."[6] Terminating carriers cannot charge other carriers to transport and terminate other carriers' traffic, on their network, beyond the network edge.[7] The *USF/ICC Transformation FNPRM* sought comment on how to define the network edge,[8] and the *Public Notice* seeks to refresh the record on this issue in light of regulatory and market developments since comments were received on the *USF/ICC Transformation FNPRM*, including the transition of certain terminating traffic to bill-and-keep.[9] The *Public Notice* also asks what other developments in the marketplace should guide the extent of bill-and-keep reforms,[10] and invites comment on any other issues raised with respect to the network edge, tandem switching and transport, and transit, or developments related to those issues, that should be considered in the context of further ICC reform.[11]

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[6] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18117, para. 1320 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2072 (2015).

[7] *See id.* (citing *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4774, para. 680 (2011)).

[8] *See id.* at 18117-18, paras. 1320-21.

[9] *See Public Notice*, 32 FCC Rcd at 6856-57.

[10] *See id.* at 6857.

[11] *See id.* at 6858.

A. The Commission Should Codify the Network Edge as the Called Party's End Office

The *USF/ICC Transformation FNPRM* sought comment on several different ways of defining the network edge.[12] One construct stands out by far as the most proper to ITTA: the called party's end office if it is an incumbent local exchange carrier (LEC), mobile switching center if it is a wireless provider, or competitive LEC point of presence.[13] For incumbent LECs, the end office is the last switching point in a call path, the actual point to which the subscriber connects.[14] Given the terminating carrier's responsibility for carrying traffic from the edge, combined with its inability to charge other carriers for carrying that traffic, it makes the most sense that the edge be delineated at the point where the terminating carrier's facilities are the only ones in the call path. This definition promotes certainty and simplicity,[15] properly aligns carriage responsibilities with the recovery of costs of fulfilling those responsibilities, and should help avoid disputes.

A fundamental component of this definition of the network edge is that a carrier's network edge lies within its network. In the *USF/ICC Transformation Order*, the Commission recognized that moving to a bill-and-keep methodology "raises issues regarding the default point at which financial responsibility for the exchange of traffic shifts from the originating carrier to

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[12] *See id.* at 6857 (citing *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18117-18, paras. 1320-21 & accompanying notes).

[13] *See id.* (citing *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18117, para. 1320).

[14] Newton's Telecom Dictionary 354 (22nd ed. 2006) (the end office is the "last central office before the subscriber's phone equipment. The central office which actually delivers dial tone to the subscriber."). *See also USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18112, para. 1306, Fig. 13 (illustrating how tandem routed access elements may be structured in a carrier's network).

[15] *See USF/ICC Transformation Order and/or FNPRM*, 26 FCC Rcd at 17676-77, para. 35 (one of goals of transition to bill-and-keep is to "facilitate predictability and stability").

the terminating carrier."[16] Noting that this issue particularly arises in the context of the exchange of traffic between rural LECs and wireless providers, the Commission adopted Section 51.709(c) to allocate responsibility for transport costs applicable to non-access traffic between wireless providers and rural, rate-of-return LECs.[17] Section 51.709(c) provides that, for such traffic, the rural rate-of-return LEC is responsible for transport to the wireless provider's chosen interconnection point *when it is located within the LEC's service area*. When it is located outside the LEC's service area, the rule provides that the LEC's transport and provisioning obligation stops at its meet point and the wireless provider is responsible for the remaining transport to its interconnection point.[18] While casting this as an interim rule, the Commission should now codify it as permanent in conjunction with defining the network edge. As with ITTA's advocated definition of the network edge and as the Commission acknowledged, this would provide certainty that rural, rate-of-return LECs are not responsible for incurring costs of delivering traffic beyond their networks, and would help minimize disputes.[19]

The *USF/ICC Transformation FNPRM* also sought comment on the Commission's "belie[f]" that states should establish the network edge "pursuant to Commission guidelines."[20] ITTA urges the Commission instead to adopt a rule defining the network edge.

ITTA recognizes that in several places in the *USF/ICC Transformation Order and/or FNPRM*, the Commission essentially treated states determining the network edge for purposes of bill-and-keep as a foregone conclusion.[21] However, at the same time the Commission specified

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[16] *Id.* at 18039, para. 998.

[17] *See id.*; *see also* 47 CFR § 51.709(c).

[18] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18040, para. 999; *see also* 47 CFR § 51.709(c).

[19] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18040, para. 999.

[20] *Id.* at 18117, para. 1321.

[21] *See, e.g., id.* at 17922, 17932, paras. 776, 796.

that it was seeking comment on whether *rules* – not merely additional Commission guidance – would be appropriate.[22] Moreover, the Commission found independently that adoption of a bill-and-keep approach did not encroach on states' statutory rate-setting authority under Section 252 of the Communications Act of 1934, as amended (Act).[23]

In fact, as the Commission recounted, "the Supreme Court made clear that the Commission may, through rulemaking, establish a 'pricing methodology' under section 252(d) for states to apply in arbitration proceedings."[24] Commission definition of the network edge is eminently appropriate as part and parcel of its establishment and implementation of bill-and-keep.[25] Even with Commission codification of a definition of the network edge, states would retain authority to arbitrate any disputes arising out of implementation of that definition. As the *USF/ICC Transformation Order* also points out, depending upon how the edge is defined in particular circumstances and how carriers physically interconnect their networks, reciprocal compensation could still apply even under a bill-and-keep methodology where, for instance, an IXC pays a terminating LEC to transport traffic to the edge of the LEC's network, and states likewise will continue to have the responsibility to address these issues in state arbitration proceedings.[26]

Above all, codifying the definition of the network edge would help ensure certainty regarding what providers' carriage responsibilities are and where bill-and-keep applies regardless of which state they are serving. This would be consistent with the Commission's conclusion in

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[22] *See id.* at 17922, para. 776 n.1413.

[23] *See id.* at 17920-23, paras. 773-76; 47 U.S.C. § 252.

[24] *USF/ICC Transformation Order*, 26 FCC Rcd at 17921, para. 773 (citing *AT&T v. Iowa Utilities Board*, 525 U.S. 366, 384 (1999)).

[25] *See Public Notice*, 32 FCC Rcd at 6857 (Commission analysis of where the network edge lies delineates the extent of bill-and-keep reforms).

[26] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17922-23, para. 776.

the *USF/ICC Transformation Order* that "a uniform, national framework for the transition of intercarrier compensation to bill-and-keep . . . best advances [its] policy goals of accelerating the migration to all IP networks, facilitating IP-to-IP interconnection, and promoting deployment of new broadband networks by providing certainty and predictability to carriers and investors."[27] The Commission should do so. Carriers that mutually agree to interconnect on different rates terms and conditions would be free to do so, but the Commission should establish default network edge definitions.

B. The Commission Should Diminish Arbitrage By Clarifying that Direct Interconnection is Required

Section 251(a)(1) of the Act provides that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[28] During the transition to bill-and-keep, where some interconnection is subject to bill-and-keep and some still subject to reciprocal compensation, opportunities for arbitrage abound and, in fact, are frequently seized upon. In order to substantially curtail arbitrage, the Commission should clarify that a carrier's duty under Section 251(a) is to interconnect directly where technically feasible.

1. The Commission Should Clarify that Every Carrier Has the Right to Terminate Traffic to Another Carrier's Network Edge

Some ITTA members have been prevented from terminating traffic directly to wireless networks. Instead of terminating traffic at the wireless carrier's network edge, where bill-and-keep would apply, they are forced by the wireless carrier to terminate traffic at a third-party tandem, thereby incurring tandem terminating access charges that they cannot avoid. This

[27] *Id.* at 17929, para. 790.

[28] 47 U.S.C. § 251(a).

obstructionism by some wireless carriers artificially inflates transport costs in contravention of Sections 251(a) and 201[29] of the Act.

In the immediate aftermath of enactment of the Telecommunications Act of 1996, the Commission interpreted Section 251(a) as permitting carriers to provide interconnection either directly or indirectly, "based upon their most efficient technical and economic choices."[30] Distinguishing Section 251(a) from 251(c), the latter of which applies exclusively to incumbent LECs, the Commission also found that indirect interconnection satisfies a carrier's duty to interconnect pursuant to Section 251(a) "[g]iven the lack of market power by telecommunication carriers required to provide interconnection via section 251(a)."[31] Over two decades later, with dramatically different market conditions, the time is ripe for the Commission to revisit these findings. For one thing, in the scenario described above, the most efficient technical and economic choice is for the wireless carrier to permit the LEC to terminate traffic directly to its network via direct interconnection. In addition, it is no longer credible to suggest that a wireless carrier suffers a market power deficit relative to a LEC.[32] Moreover, the very nature of the scheme, which relies on the existence of competitive transport providers to carry the traffic from the third-party tandem to the wireless carrier's network, demonstrates the LEC's lack of market power with respect to such transport routes.

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[29] 47 U.S.C. § 201.

[30] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 15969, para. 997 (1996).

[31] *Id.*

[32] In June 2016, there were 338 million mobile subscriptions in the United States, as compared to only 123 million wireline retail voice telephone service connections (including both switched access lines and interconnected VoIP subscriptions). *See* FCC, Voice Telephone Services: Status as of June 30, 2016 at 2 (WCB 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344500A1.pdf. If trends continue in their recent trajectory, *see id.* at Fig. 1, the next Voice Telephone Services Report will show another increase in that disparity.

The refusal by wireless carriers to directly interconnect, leading to wasteful inflation of transport costs, also presents an exemplary case of an unjust and unreasonable practice under Section 201. It creates competitive market distortions between wireline and wireless services, an outcome that the Commission's ICC reforms were precisely designed to eliminate.[33] The Commission should rectify the situation by clarifying that, pursuant to Sections 251(a) and 201, every carrier has the right to terminate traffic directly to other carriers, as long as the carrier bears responsibility to transport the traffic to the terminating carrier's network edge.

2. The Commission Should Continue to Accept Terminating Carrier Tariffs Requiring Carriers to Purchase Direct End Office Trunks for Excessive Traffic Terminations

Some ITTA members also, in their capacity as terminating carriers, have been forced to incur the cost of transport of significant amounts of traffic from their tandem to their end office. In this scenario, carriers are terminating vast volumes of traffic at the terminating carrier's tandem, and claiming that is where bill-and-keep applies, rather than the terminating carrier's end office. For price cap carriers, this scenario is soon to be exacerbated by the Commission's determination in the *USF/ICC Transformation Order* that tandem switching and transport charges will go to bill-and-keep in the final year of the transition where the terminating carrier owns the tandem.[34]

In the *USF/ICC Transformation Order*, the Commission foresaw the possibility of bill-and-keep implementation leading to such traffic "dumping."[35] The Commission recognized that this practice would lead to tandem exhaust, forcing the terminating LEC to invest in additional switching capacity.[36] To help address the issue, the Commission confirmed that a LEC "may

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[33] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34.

[34] *See id.* at 17943, para. 819; *see also Public Notice*, 32 FCC Rcd at 6857.

[35] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17912, para. 754.

[36] *See id.*

include traffic grooming requirements in its tariffs. These traffic grooming requirements specify when a long distance carrier must purchase dedicated . . . trunks to deliver traffic rather than pay per-minute transport charges, a determination based on the amount of traffic going to a particular end office."[37]

Unless and until the Commission grants the relief discussed below with respect to tandem switching and transport,[38] ITTA urges the Commission to combat the traffic "dumping" that is occurring and may intensify. The Commission should do so by continuing to accept tariff changes that include grooming requirements specifying that if a carrier's terminating traffic to an end office exceeds a certain threshold number of minutes, the terminating carrier may require the other carrier to purchase a separate direct end office trunk for termination of the traffic to that end office.

3. The Commission Should Require 8YY Traffic Originators to Provide a Direct Interconnection Point

This past summer, the Commission invited interested parties to refresh the record on issues raised by the Commission in the *USF/ICC Transformation FNPRM* with respect to access charges for 8YY calls.[39] The *8YY Access Charge PN* specifically cited an *ex parte* letter filed by the Ad Hoc Telecommunications Users Committee, which itself noted AT&T's recent allegation that arbitrage and access stimulation schemes are increasingly shifting to 8YY service.[40] In its comments in response to the *8YY Access Charge PN*, ITTA demonstrated how "Ad Hoc's argument that significant 8YY arbitrage and access stimulation opportunities exist that the

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[37] *Id.*

[38] *See infra* Sec. III.

[39] *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, Public Notice, 32 FCC Rcd 5117 (WCB 2017) (*8YY Access Charge PN*).

[40] *See id.* (citing Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. at 2 (filed May 19, 2017)).

Commission can reduce, if not eliminate, by effectively transitioning originating 8YY traffic to bill and keep misses the mark," while at the same time encouraging the Commission to take action to address 8YY abuses.[41]

In its pending petition for forbearance,[42] AT&T laments that "IXCs generally must pay properly tariffed and billed tandem and transport charges, but are not always clearly permitted to select . . . the most efficient means to transport traffic," and that carriers have continued "to rely on inflated transport charges to replace arbitrage revenues that were reduced because of the reforms the Commission made in 2011."[43] To cure the problem, AT&T urges the Commission to "issue reasonable rules to define the 'network edge,'" which "would in most cases . . . ensure that IXCs would not be charged unreasonable transport charges to carry traffic to the 'edge.'"[44] Without taking a more general position on the merits of the AT&T Forbearance Petition, ITTA agrees with these particular points.

One part of the solution is for the Commission to rule that any originator of 8YY traffic must also provide a direct interconnection point, so that the IXC or other carrier transporting the traffic has a right to direct end office termination without having to pick up that traffic from an aggregator. The same authority and rationale, as discussed above,[45] for the Commission to clarify that every carrier has the right to terminate traffic directly to other carriers, as long as the carrier bears responsibility to transport the traffic to the terminating carrier's network edge, applies here. The most efficient technical and economic choice is for the IXC to be able to

[41] ITTA Comments, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, at 5 (July 31, 2017) (ITTA 8YY Access Charge Comments).

[42] Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363, (filed Sept. 30, 2016) (AT&T Forbearance Petition).

[43] *Id.* at 8, 9.

[44] *Id.* at 8-9.

[45] *See supra* Sec. II.B.1.

receive the 8YY traffic directly from the originator and avoid unnecessary and unreasonable tandem and transport charges. At the same time, as ITTA has emphasized, the 8YY traffic originator should still be compensated by the IXC for its originating traffic.[46]

This would go far towards addressing the continued arbitrage from which AT&T seeks relief, without having to revisit access charges for origination of 8YY calls, as ITTA has advocated that the Commission refrain from doing.[47] It would also be consistent with ITTA's recommendations for the Commission's implementation of Sections 251(a) and 201 of the Act, as discussed above, as well as Section 251(b)(5) of the Act, which requires all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[48] Furthermore, as advocated in the ITTA 8YY Access Charge Comments, the Commission should not reduce or eliminate originating switched access charge rates for 8YY traffic or other originating switched access traffic without establishing reasonable recovery mechanisms for affected carriers. Such recovery mechanisms could include adding the revenue to Eligible Recovery, subject to recovery through existing ARC rates and ARC rate caps, as well as additional CAF-ICC funding.

Ironically, wireless carriers and 8YY aggregators point the finger at each other for practices that prohibit access to a network edge point and require each party to deal with a third party aggregation point where additional unregulated charges are applied. The network edge plan proposed by ITTA would solve both sides of this equation on an equitable basis. For example, Carrier A (a national wireline and wireless carrier) provides 8YY traffic and some of this traffic is routed through Carrier B, who provides wireline services, long distance services and 8YY aggregation. Carrier A complains that Carrier B charges unregulated switching and

[46] *See generally* ITTA 8YY Access Charge Comments.

[47] *Id.*

[48] 47 U.S.C. § 251(b)(5).

8YY data charges. Carrier B terminates originating long distance traffic to Carrier A and is forced by Carrier A to send all traffic bound for a wireless carrier to a third party aggregator – that charges unregulated switching to Carrier A. ITTA's plan would solve both sides of this equation by requiring Carrier A to provide network edge points to Carrier B for access to its wireless operations and by requiring Carrier B to allow Carrier A to access network edge points of the networks that originate 8YY traffic. Each carrier would then have the option to directly access the network edge point of other carriers or to transfer traffic at a third-party transit provider.

III. THE COMMISSION SHOULD REVERSE THE BILL-AND-KEEP TRANSITION FOR TANDEM SWITCHING AND TRANSPORT AND BRING PARITY TO TANDEM PROVIDERS

As noted in the *Public Notice*, the rate transition adopted in the *USF/ICC Transformation Order* reduced tandem switching and transport charges only when the terminating price cap carrier also owns the tandem in the serving area.[49] The *Public Notice* seeks to refresh the record on issues surrounding transition of the remaining tandem switching and transport charges to bill-and-keep, in light of developments since the *USF/ICC Transformation Order* was adopted.[50] It also invites comment "on any issues and impacts brought to light by the existing transition of these elements and whether the Commission should consider any definitional issues with regard to tandem switching and transport," and asks whether changes to ICC for tandem switching and transport would lead to inadequate revenues for any type of service provider and, if so, how the Commission should address such shortfalls.[51] ITTA submits that in light of developments that have occurred since the *USF/ICC Transformation Order* was adopted, rather than transitioning

[49] *See Public Notice*, 32 FCC Rcd at 6857 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17943, para. 819).

[50] *See id.*

[51] *Id.*

the remaining elements associated with tandem switching and transport to bill-and-keep, the Commission should revisit the transition to bill-and-keep of tandem switching and transport charges when the terminating price cap carrier also owns the tandem in the serving area.

As ITTA member CenturyLink explained earlier this year, the transition to bill-and-keep of tandem switching and transport charges when the terminating price cap carrier also owns the tandem in the serving area is rife with ambiguities and inequities.[52] For instance, the rules codified to implement the bill-and-keep transition of tandem switching and transport charges reference traffic traversing a tandem switch that the terminating carrier "or its affiliate[s]" own(s), though nowhere in the *USF/ICC Transformation Order and/or FNPRM* or the Commission's rules does the Commission define what "affiliates" are referred to in this context.[53] This led CenturyLink to urge the Commission to more carefully consider the best ICC approach to deal appropriately with "the entire suite of tandem services."[54] ITTA supported the CenturyLink ICC Transition Petition, and called upon the Commission to consider whether the transition for tandem switching and transport services is functioning as intended.[55]

As CenturyLink argued, the ambiguities surrounding application of the transition rules to the price cap terminating carrier's affiliates "will lead to fundamental asymmetry in ICC treatment" and, thereby, competitive harm.[56] This asymmetry contravenes the *USF/ICC Transformation Order*'s goal of bringing terminating end office rates to parity.[57] In addition, as

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[52] *See* CenturyLink Petition for Limited Stay of Transformation Order Years 6 and 7 ICC Transition – As it Impacts a Subset of Tandem Switching and Transport Charges, WC Docket No. 10-90 et al. (filed Apr. 11, 2017) (CenturyLink ICC Transition Petition)

[53] *See* CenturyLink ICC Transition Petition at 5; *see also* 47 CFR § 51.907(g)(2), (h).

[54] CenturyLink ICC Transition Petition at 11.

[55] *See* ITTA Reply Comments, WC Docket No. 10-90 et al., at 8 (May 11, 2017).

[56] CenturyLink ICC Transition Petition at 8.

[57] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17677, 17937-38, paras. 35, 808.

CenturyLink maintained, a key policy underpinning of the ICC transition was the Commission's "desire to eliminate the confusing market signals and other competitive harm and the variety of arbitrage schemes that result when there is disparity in rates for identical services."[58] As discussed above,[59] terminating carriers already are encountering an overload of traffic dumped at their tandems – which will get worse under the current rules once the transition to bill-and-keep is complete – as carriers endeavor to foist upon terminating carriers the cost of transporting this traffic from the tandem to the network edge. This arbitrage will only continue so long as tandem services are subject to bill-and-keep. Instead, all tandem services should be compensable based on market forces.

Therefore, in order to effectuate the Commission's avowed ICC reform goal of eliminating, or at least minimizing, arbitrage, the Commission should refrain from transitioning the remaining elements associated with tandem switching and transport to bill-and-keep. The Commission should also reverse the bill-and-keep transition for tandem switching and transport when the terminating price cap carrier also owns the tandem in the serving area. And, ultimately, all tandem services should be compensable based on market forces. These companion measures would place all tandem providers on equal footing, thus fulfilling the parity goal also underlying ICC reform. They are also reasonable since all carriers will have network edge points that operate under bill and keep compensation and therefore no carrier will be forced to use tandem switching or transiting services. Finally, to the extent the Commission has noted that tandem switching and transport for price cap carriers when the tandem owner does not own

[58] CenturyLink ICC Transition Petition at 8-9 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17929-30, paras. 790-92); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 35 ("We focus initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today.").

[59] *See supra* Sec. II.B.2.

the end office "is typically considered a transit service,"[60] applying bill-and-keep would be inappropriate, as discussed below.

IV. RATE REGULATION OF THE COMPETITIVE MARKET FOR TRANSIT SERVICES IS INAPPROPRIATE

The *Public Notice* seeks comment on whether the Commission should adopt regulations governing the rates for transit. It further asks parties to comment on the current market for transit services and the effects of competition among transit service providers.[61] ITTA urges the Commission to refrain from regulating transit rates.

As the Commission has explained, "transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network."[62] The Commission also has observed properly that transit service is typically offered via commercially-negotiated interconnection agreements rather than tariffs.[63] ITTA members frequently compete with numerous alternative providers to supply transit services.

There are two fundamental reasons why the Commission should not regulate transit rates. First, the Commission has not addressed whether transit services must be provided pursuant to Section 251 of the Act.[64] Second, the Commission has noted that "transit service includes the same *functionality* as the tandem switching and transport services subject to a default bill-and-keep methodology."[65] While the functionality may be the same, there is a crucial distinction rendering a bill-and-keep regime inappropriate with respect to transit: because transit involves

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[60] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18114-15, para. 1312.

[61] *See Public Notice*, 32 FCC Rcd at 6858.

[62] *Id.* (citing *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18114, para. 1311).

[63] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18114, para. 1311 n.2366.

[64] *See id.* at para. 1311.

[65] *Id.* at 18115, para. 1313 (emphasis added).

the exchange of non-access traffic, the transit provider has no end users from whom to recoup its costs. However, like with tandem services, all transit should be compensable – which, in fact, it is currently, via commercially-negotiated interconnection agreements.

In sum, the transit market is competitive, the status of transit under the Section 251 framework is unclear, and a bill-and-keep regime is inappropriate for it. The Commission should decline to regulate transit rates.

V. CONCLUSION

In reforming ICC, the Commission endeavored to achieve the laudable goals of diminishing arbitrage, facilitating predictability and stability, and bringing terminating end office rates to parity. The Commission can now further these aims by codifying the network edge as the called party's end office, clarifying that direct interconnection is required under Section 251(a) of the Act, and placing all tandem providers on equal footing with respect to being able to charge for tandem switching functions. The Commission should also refrain from regulating transit rates.

Respectfully submitted,

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