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September 24, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Developing A Unified Intercarrier Compensation Regime, CC Docket 01-92; Intercarrier Compensation for ISP-Bound Traffic, WC Docket 99-68; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Universal Service Contribution Methodology, WC Docket No. 06-122; High-Cost Universal Service Support, WC Docket 05-337; Petition of AT&T for Declaratory Ruling and Limited Waivers Regarding Access Charges and "ESP Exemption," WC Docket No. 08-152; and Establishing Just And Reasonable Rates for Local Exchange Carriers, WC Docket 07-135

Dear Ms. Dortch:

Yesterday, Cesar Caballero, Bill Kreutz, and I, all of Windstream, met with Scott Deutchman, Legal Advisor to Commissioner Michael Copps. We discussed Windstream's proposal for reforming intercarrier compensation and universal service, as outlined in the attached document.

Please feel free to contact me if you require additional information.

Sincerely,

/s/

Eric Einhorn

Attachment

cc: Scott Deutchman

## Intercarrier Compensation and Universal Service Reform

### I. Background

- Intercarrier compensation and universal service are interrelated and both are in need of comprehensive reform.
  - Arbitrage opportunities abound in the current intercarrier compensation system and increasingly users of termination services are taking advantage of them (e.g., Phantom Traffic, traffic pumping) or even baldly refusing to pay lawful charges (e.g., IP-to-PSTN). Carriers are spending significant resources addressing these disputes and many remain unresolved. Revenues lawfully due but not collected divert resources from network operation and investment, including broadband deployment. This is especially important to carriers like Windstream that serve rural areas as Carrier of Last Resort.
  - Universal service support mechanisms are outdated and do not provide adequate support to many high-cost rural areas of the Nation. Averaging of costs and inconsistencies between universal service support calculations and rate regulations are some of the issues the Commission should address to ensure all high-cost rural areas are adequately supported regardless of the carrier serving them.
- **Reform must:** help not hinder broadband deployment in rural areas; maintain revenue streams adequate to support affordable, quality services by carriers of last resort in high-cost rural areas; reduce or eliminate arbitrage opportunities; ensure universal service support is targeted to high-cost areas (not merely to small carriers); and provide for reasonable transitions for consumers and carriers.

### II. Intercarrier Compensation Reform

- **Broadband Deployment Impact** – It is a patently absurd and unsupported argument that the current access regime is somehow “retarding” broadband deployment. Broadband is available to approx. 85% of Windstream’s customers at speeds of at least 3Mbps and up to 12 Mbps. Almost 1 million customers subscribe. Material reductions in terminating revenues will actually make it *more* difficult, not less, for Windstream and other mid-sized price-cap carriers serving many millions of rural consumers to invest in additional broadband deployment.
- **Dial Focused Plan** – The Commission should expeditiously adopt a “dial focused” intercarrier compensation fix that fairly balances end user rates, intercarrier rates and universal service support such as the ITTA Plan or Missoula Plan. This is the logical next step following the trajectory of the CALLS and MAG reforms. Any plan that would require bill and keep or a near zero rate like \$0.0007 (such as the Verizon Plan or VON “proposal”) would hobble mid-sized carriers’, like Windstream, ability to serve rural America and would illegally mandate uncompensated, below-cost terminating service.
- **Equitable Consumer Burden** – Reform should establish a *national benchmark* and *reasonable SLC caps* to help ensure all end-users are paying reasonably comparable and affordable rates. This will also result in less of a burden on the universal service fund. Carriers should not be obligated to go to the SLC caps, but as long as the carrier is below the national benchmark the SLC revenue should be imputed when calculating Recovery Mechanism support for that carrier. The FCC should not require, as the Verizon plan appears to, carriers to increase or impute SLCs to the cap in the Recovery Mechanism calculations even if the increase or imputation results in rates exceeding the national benchmark.

- **Unified, Not Uniform, Terminating Rates:**
  - Unify intercarrier rates for carriers in three tracks (such as in the ITTA proposal) to ensure network owners reasonable revenue streams for the use of their networks. Appropriately recognizes different obligations and circumstances of classes of carriers. Windstream supports a unitary rate for transport and termination such as \$0.0095 for all types of traffic terminating to mid-sized price-cap ILECs (e.g., ITTA Track 2). It is reasonable to unify the terminating rates first and then originating.
  - Not legal or necessary to require all carriers to have one low rate. Adopting a \$0.0007 terminating rate would result in a windfall for current access payers with no public benefit, would undermine voice and broadband service in rural areas, and would overburden the universal service fund. Significantly, the Verizon Plan would illegally deny reciprocal compensation to Windstream and many other price cap ILECs that have not adopted the \$0.0007 rate. This would *undermine, not enhance*, broadband deployment in rural areas.
  - **Residual Recovery Mechanism** – Revenue shortfall must be recovered through a recovery mechanism (“RM”). RM support should be disaggregated and frozen on a per-line basis.
- **Minimum “Must Do” ICC Reform**
  - **IP-to-PSTN Must Pay Jurisdictionalized Terminating Charges** – The Commission should clarify that VoIP originated traffic terminating on the public switched network (“PSTN”) must pay jurisdictionalized terminating charges. VoIP-originated traffic is terminated to the PSTN in exactly the same way as circuit-switched traffic and is not subject to the ESP exemption. VoIP carriers choose to send traffic to the PSTN and must play by the rules of the PSTN. Doing so no more imposes legacy rules on VoIP traffic than requiring a British car in the USA to drive on the right. Once rates are unified, VoIP would pay the terminating unitary rate for all traffic terminated to the PSTN.
  - **One-Way Traffic By Design** – Traffic pumping and dial-up ISP traffic should not be subject to intercarrier compensation.
    - Dial-up ISP traffic is, by design, comprised of large volumes of one-way traffic and continues to be significant in rural areas (several billions of minutes annually for Windstream alone).
    - The Commission should affirm that ISP bound traffic delivered to a Virtual NXX (VNXX) is interexchange traffic and not subject to reciprocal compensation.
  - **Phantom Traffic** – The FCC must adopt the USTelecom Phantom Traffic proposal to ensure that carriers can be identified and appropriately billed.

### III. Universal Service Reform

- **Forward-Looking Support, Targeted to High-Cost Areas:**
  - At a minimum, the Commission should act now to place all price cap companies under a forward-looking mechanism, and reform the mechanism to eliminate eligibility requirements based on statewide average costs. These concurrent reforms would better direct funds to areas most in need of support.
  - Continued reliance on implicit support through cost averaging over large geographic areas (in some cases entire states) is not sustainable. Carriers cannot sufficiently raise prices in urban or more populated areas to offset higher costs incurred in rural areas. Many states have failed to rebalance rates within their borders.

- In place of its current regime, the Commission should base high-cost support on an objective review of which individual communities are the most expensive to serve. Communities, for the purposes of this analysis, should be defined at the wire center or sub-wire center level. In assessing cost to serve these areas, the Commission should focus on population density, topography, and other regional features that determine the amount of money a provider of last resort must spend to offer service to the community.
- When high-cost funding is a function of carriers' historical costs, carriers are encouraged to keep costs high to justify the need for continued, substantial support.
- Merely disaggregating support (i.e., shifting a carrier's funds within its service area) fails to address the fundamental misallocation of funding resulting from the current system.
- **Support No More Than One Fixed and One Mobile Provider In an Area** – The exorbitant growth in the universal service fund may be attributed in large measure to multiple carriers receiving support in the same geographic area. Universal service support should only be available to one fixed and one mobile provider per geographic area.
  - Universal service should not be used to fund intra-mobile competition. On a trial basis, the FCC should assess whether auctions may be useful for reducing the number of multiple mobile CETCs to one per area. Auctions may also prove to be better way to determine CETC costs. The current rule irrationally allows multiple CETCs to receive support as a function of other carriers' costs, which are unrelated to the CETCs' costs and often are based on different technologies.
  - CETCs have no legitimate need for access charge replacement funding or local switching support. This support is premised upon regulatory and financial conditions inapplicable to largely unregulated CETCs.
  - The Commission could designate funds made available from eliminating unnecessary CETC funding to support under-funded high-cost areas.
- **Direct Broadband Funding, if Any, to Where It Can Greatest Impact Broadband Adoption**
  - As we move to a network based on broadband and IP technology, it is imperative that the Commission foster a stable environment for carriers to continue the efficient deployment of broadband and advanced telecommunications networks in rural America.
  - If the Commission merely extended the current distribution mechanism to include broadband, many carriers would receive funds for serving existing broadband customers while other carriers with unserved high-cost areas would not be eligible for meaningful per line support.
  - If the Commission decides to expand universal service to support broadband, such a reform should: (1) narrowly target support to high-cost areas where *no* broadband is deployed and (2) provide discounts to *low income* consumers to offset the cost of broadband where it is available (e.g., Lifeline/Link-Up).
  - **Limit Voice Support to the Amount Necessary for Offering Service at a Benchmark Rate** – Since the passage of the 1996 Act, some states have not taken steps to rebalance rates, remove implicit support, and/or establish explicit universal service funds. A benchmark rate would encourage reasonable and comparable rates across the nation and would help ease the burden on the universal service fund.