

# Nebraska Public Service Commission

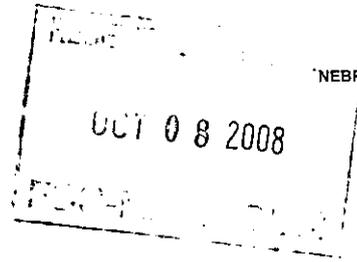
**COMMISSIONERS:**

ANNE C. BOYLE  
ROD JOHNSON  
FRANK E. LANDIS  
TIM SCHRAM  
GERALD L. VAP



300 The Atrium, 1200 N Street, Lincoln, NE 68508  
Post Office Box 94927, Lincoln, NE 68509-4927  
Website: [www.psc.state.ne.us](http://www.psc.state.ne.us)  
Phone: (402) 471-3101  
Fax: (402) 471-0254

**EX PARTE OR LATE FILE**



NEBRASKA CONSUMER HOTLINE:  
1-800-526-0017

**EXECUTIVE DIRECTOR:**

MICHAEL G. HYBL

September 30, 2008

**EX PARTE PRESENTATION**

**ORIGINAL**

The Honorable Kevin Martin, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

*Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; IP-Enabled Services, WC Docket No. 04-36; Universal Service Contribution Methodology, WC Docket No. 06-122.*

Dear Chairman Martin:

The Nebraska Public Service Commission (NPSC) submits this written ex parte presentation to voice its concerns with regard to the AT&T and Verizon intercarrier compensation proposals filed in the above-referenced dockets. The NPSC is already on record recommending the Commission adopt a comprehensive approach to intercarrier compensation rather than to adopt an ad hoc approach based on individual carrier interests.

While AT&T and Verizon have recently filed proposals with the Commission that appear comprehensive in scope, we have concerns that adopting either of these carriers' proposals would leave the areas served by rural carriers in peril. The proposals submitted by AT&T and Verizon, which recommend a \$.0007 terminating access rate for all price cap and rate-of-return carriers, would undermine the cost recovery mechanisms for many carriers. While the Verizon proposal creates a new Replacement Mechanism to provide support to carriers that lose access revenues as a result of the plan, the proposal does not quantify the amount of support that would be needed nor does it discuss the funding source for the new support mechanism. Given that the Commission has recently imposed an interim cap on the high-cost universal service support for competitive eligible telecommunications carriers due to rapid growth in the fund and the need for excessive contributions from consumers to pay for this fund growth, it seems unlikely that a new support mechanism that would likely require large and growing contributions will be established. It appears that the AT&T proposal would leave carriers without a way to recoup intercarrier compensation losses. We believe a more rational approach to

No. of Copies made \_\_\_\_\_  
List A B C D E

intercarrier compensation reform would fairly take into account the economies of scale and scope of the affected carriers and would eliminate the "one size fits all" ideology.

The NPSC disagrees with Verizon's September 19, 2008, ex parte which purports to give a legal rationale for adopting the reform plan Verizon filed. Simply put, we don't agree with Verizon's basis for preemption of state commission intrastate access ratemaking authority. Verizon's interpretation of the Commission's authority would render 47 U.S.C. § 152(b) a complete nullity. Such intrastate matters are "fenced off" from FCC regulation. See *Louisiana Pub. Ser. Comm'n v. FCC*, 476 U.S. 355, 106 S.Ct. 1890, 90 L.Ed.2d 396 (1986). Moreover, the impossibility exception is a narrow one. *Louisiana*, 476 U.S. at 375-76 n. 4, 106 S. Ct at 1902 n. 4. Verizon's strained interpretation extends this doctrine far beyond the confines of the *Vonage* decision it references in support of its preemption argument.

In addition to the legal shortcomings, the AT&T and Verizon proposals go far beyond the issues of the ISP Remand Order. Intercarrier compensation reform deserves a purposeful, dedicated review and should not be added as an afterthought to rulings on other issues. Commissioners should bear in mind that the proposed \$.0007 rate is extremely controversial and the burden of such a ruling would fall largely on the small and mid-sized telecommunications carriers and the rural customers they serve. In turn, these charges will be passed through to rural consumers. Pressures leading to higher local rates on rural customers may make it difficult for the Commission to comply with its requirement to maintain reasonably comparable rates among the states. Such pressure on local rates may also spur more migration to wireless making wired service less affordable in comparison.

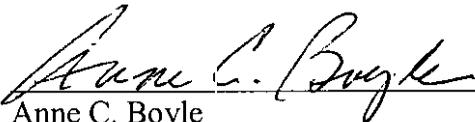
As a practical matter, however, wireless is not yet a reliable service in rural areas. Wireless build-out is still occurring with the assistance of federal and state universal service funds. In Nebraska there are many rural areas which have no service or unreliable service. The need for better wireless service is confirmed from the applications received to date for support from the NPSC's dedicated wireless universal service fund program.

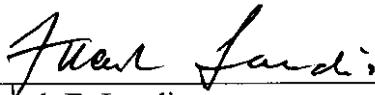
Broadband networks are also at risk. Cost recovery for all carriers is especially critical in today's uncertain era of market instability and potential regulatory reform. It is even more critical for rural carriers who expand broadband coverage while struggling to meet their carrier-of-last-resort responsibilities. Forcing the type of change demanded by Verizon's and AT&T's proposals at a financially tumultuous time for consumers is a burden that should not be imposed. There are too many unknowns at this time to risk a policy mistake.

Please consider shelving the proposed \$.0007 reform idea and other eleventh-hour attempts to craft national policy that would shift the burden of providing rural telecommunications service squarely on the backs of rural consumers. The responsibility for oversight of intrastate cost-based rates should be left to state regulatory officials so that we can continue to safeguard consumers' interests in our states.

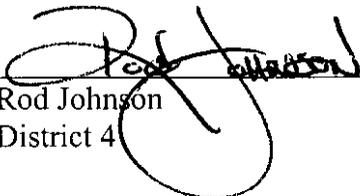
As previously stated, wireless is not all pervasive or dependable in many rural areas. Our government should not add the risk of additional costs and possibly jeopardize consumer access to public safety and commerce because of unreliable service nor should it risk being out of compliance with federal law that dictates comparable services at comparable rates. We urge you to set aside the proposals and to continue to safeguard consumers' interests in our nation.

Sincerely,

  
Anne C. Boyle  
District 2  
Chair

  
Frank E. Landis  
District 1  
Vice Chairman

  
Tim Schram  
District 3

  
Rod Johnson  
District 4

  
Gerald L. Vap  
District 5

cc: Commissioner Copps,  
Commissioner Adelstein,  
Commissioner Tate,  
Commissioner McDowell,  
Congressman Jeff Fortenberry,  
Congressman Lee Terry,  
Congressman Adrian M. Smith,  
Senator Chuck Hagel,  
Senator E. Benjamin Nelson,  
Governor Dave Heineman,  
Senator Deb Fischer,  
OPASTCO,  
NTA,  
ITTA,  
Rural Alliance,  
NTCA,  
Pete Larson, Omaha World Herald  
Nancy Hicks, Lincoln Journal-Star  
Dick Piersol, Lincoln Journal-Star  
Jamie Wenz, KOLN/KGIN