Law Offices of Gregory J. Vogt, PLLC

2121 EISENHOWER AVENUE
SUITE 200
ALEXANDRIA, VA 22314

www.vogtlawfirm.com

Gregory J. Vogt
703.838.0115 (office)
703.684.3620 (fax)
gvogt@vogtlawfirm.com

October 20, 2008

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45.

Dear Ms. Dortch:

On October 17, 2008, Bob Currey, President & CEO of Consolidated Communications, Jeff Gardner, CEO of Windstream Corp., Tom Gerke, CEO of Embarq, Eugene B. Johnson, CEO of FairPoint Communication, Inc., Glen F. Post III, CEO of CenturyTel, Inc., Karen Puckett, President of CenturyTel, Inc., Alan Wells, CEO of Iowa Telecommunications Services, Inc., Maggie Wilderotter, CEO of Frontier Communications, Corp., their respective staffs, and I met by telephone with Chairman Kevin J. Martin in the above-referenced matters. The meeting addressed mid-size incumbent carrier's positions with respect to global reform of intercarrier compensation and universal service.

The mid-size carriers indicated that they support the efforts of the Commission to achieve a workable solution to intercarrier compensation issue. The different rates which apply to various types of intercarrier traffic are at the root of the problem facing the industry today. Intrastate access charges contain important implicit subsidies that support the cost of providing service in high-cost areas at affordable rates. Mid-size carriers, in particular, are dependent on access charge support as they typically draw relatively little explicit support to fulfill the federal- and state-imposed carrier of last resort obligations. The different intercarrier compensation rates also motivate many carriers in the industry to manipulate the true nature of their traffic so that it appears that lower rates apply. These fraudulent practices are technically difficult to detect and create lengthy and expensive litigation disputes. This instability in the intercarrier payment regime undermines cost recovery and thus harms the ability to maintain and build out the network, particularly in the mid-size carriers' primarily rural service areas.

As best as we can understand it given the lack of public visibility into and discussion of the contents of the proposed order, it appears that the proposal circulated to the commissioners would have devastating consequences for rural consumers. The current proposal to address intercarrier compensation reform, for example, inexplicably goes far beyond correcting this arbitrage issue, but instead will cause serious, and quite possibly unintended reductions in access charge revenue that supports consumers in rural America by making up the cost of affordable service at rates comparable to those offered in towns and cities. Rural residential and business customers deserve the Commission's careful attention to the details of this proposal before it is enacted. The carriers urged the Commission to exercise its stewardship of critical telecommunications infrastructure in a responsible manner in these difficult economic times.

Because of the potential for serious unintended consequences, the mid-size carriers urge the Commission to take more time in soliciting relevant stakeholder input on this completely new and very different proposal. From what we gather, it appears that the actual proposal has significant new elements that have never been subject to public comment and the proposal taken as a whole is very different than anything that has been publicly available or commented on over the course of the proceeding.

The current proposal for reform should not be adopted for five important reasons.

First, it appears to propose a rapid and dramatic shift in the responsibility to pay for billions of dollars in costs to rural consumers from large, integrated carriers who provide interexchange and wireless services, will harm rural ratepayers. This proposal will lead to significant increases in consumer prices at a time when they are reeling from severe economic conditions, which will cause them to scale back their telecommunications and broadband usage. The rapid reduction in revenues for mid-size carriers will reduce these carriers' investment in the network, will cause them to lay off personnel, and thus will be inconsistent with the goals that the Commission is trying to achieve in these proceedings. Consumers are not clamoring for further reductions in low long distance and wireless prices. But they do want reasonably priced broadband that today depends on a robust and modern rural wireline network.

Second, the proposal is inconsistent with the promotion of broadband and the availability of affordable and comparable telecommunications in rural America. Although the proposal apparently mandates broadband coverage in order to receive universal service, that laudable goal will not be reachable if intercarrier rates are cut drastically at the same time. Indeed, for many price cap carriers the capital costs alone of deploying broadband to 100 percent of their customers will far exceed the amount of universal service they receive. This does not take account the significant operational costs of providing broadband service in high-cost areas, including the high cost of transport. The proposal is thus flatly inconsistent with the congressional mandates of Section 254 of the Act, the universal service policy.

Third, given the recent meltdown in the credit and stock markets, this is absolutely the wrong time to be adopting a drastic change to intercarrier compensation. Mid-size carriers are already struggling to attract capital on reasonable terms that will permit them to continue to invest in rural networks and expand broadband services to customers. Current reasonable dividends demanded by equity investors, may be insufficient to continue to attract outside capital on reasonable terms if mid-size carrier revenues and cash flows are reduced in the manner proposed, and the regulatory environment is destabilized. Denying these carriers the opportunity of making up lost revenues through a universal service mechanism, will put these carriers under tremendous financial stress. Moreover, it represents a complete abdication of the Commission's responsibility under Section 254 of the Commutations Act to ensure rural America receives affordable and comparably priced telecommunications.

Fourth, price cap carriers would be singled out for different treatment from rate-of-return carriers, without justification. The mid-sized price cap carriers are not able to make up the difference in lost access revenues from other services that are subject to competitive market forces, such as video and Internet services. The Commission has often noted that services subject to competition must be priced in accord with these market forces and cannot support implicit subsidies to regulated services. Since rate-of-return carriers are not being asked to subsidize their telecommunications services with non-regulated revenue sources, price cap carriers should not be asked to do so either. In any case, mid-sized price cap carriers have flat to declining revenues. It is simply not true that there are new revenues to make up for this significant looming revenue reduction. And even if there were alternative revenue sources, the government should not force anybody to provide below-cost regulated service and cross-subsidize it with non-regulated revenue.

Fifth, it is our understanding that the proposal mandates that eventual intercarrier compensation rates be based on a state-wide averaged figure set at very low levels (offering virtually zero compensation). Such rates have no relationship to costs and thus are unfairly low to compensate providers for the intercarrier and Internet services to customers who use rural networks to originate and terminate voice and data calls. This is particularly true for rural providers, such as mid-size carriers, which have longer transport and loop lengths, and fewer lines per switch. Although individual states may be given the option to address these situations, the preemption of state activities as to methodology, and the economic realities of serving customers, are likely to place states in a no-win situation, leaving them unable to create any workable solution for either consumers or carriers.

The mid-sized carriers believe that a more balanced approach to reform is achievable that would (1) reduce arbitrage through a unified rate structure for all carriers that would reflect underlying costs and is lower than some rates are today; (2) protect consumers from unreasonable rate increases; (3) avoid significantly increasing the size of the universal service fund; and (4) enable additional broadband deployment in rural markets. The key to achieving this more balanced solution is determining a meaningful compensation rate unified by track that is lower than today to reduce long distance and wireless costs, but also provide sufficient revenues for telephone companies to serve America's rural and high cost areas of the country. Mid-size carriers have proposed a method to do this, through the ITTA proposal filed in the above-captioned dockets on September 19, 2008, which will preserve the universal service mandate and continue to promote the interests of rural customers.

Until the global solution can be adequately discussed and analyzed, adoption of three straightforward rulings now would significantly address the arbitrage problem, the true problem facing the industry today.

First, the mid-size carriers are aware that the Commission must address the D.C. Court of Appeals' second remand in the *ISP Remand* proceeding. Dial up ISP-bound traffic, to which this proceeding relates, is still a significant portion of traffic in rural America, and is growing in some jurisdictions. The original *ISP Remand* decision represented a substantial compromise from the general rule that applies to all other traffic of paying originating access and contributing to the cost of universal service on traffic that does not terminate locally. The mid-size carriers believe that the Commission should reaffirm the existing rules with respect to ISP-remand traffic until a more reasonable, holistic solution can be adopted in the intercarrier compensation proceeding. There are a number of legal justifications to support this result, which have been provided on the record by a number of parties.

Second, some companies providing Internet Protocol-enabled ("IP-enabled") services to consumers who make regular voice telephone calls and otherwise use the public telephone network, refuse to pay the appropriate charge for that usage. These carriers claim that the same type of intercarrier compensation does not apply to IP-enabled traffic as for existing network usage. This refusal to pay applicable intercarrier charges flies in the face of the Commission's end-to-end analysis for the application of intercarrier compensation. Simple equity dictates that IP-enabled traffic service providers should have to bear their fair share of the costs of using telephone networks—and paying implicit support for universal service—just like other carriers do and follow the same rules. In fact, in 2004 the Commission tentatively concluded that all should pay similar charges, but this issue has been delayed as the Commission attempts to craft a holistic approach to the entire intercarrier compensation problem, leaving this relatively simple issue unattended. Exacerbating this problem, IP-enabled traffic is growing in significance. The mid-size carriers are very concerned how the Commission may be addressing this issue in the upcoming order. The Commission should complete this rulemaking and conclude that IP-enabled traffic should pay the same jurisdictionally based charges as other network users. Without this ruling, existing network users are stuck with the bill for free riders, which harms consumers and undermines network build out.

Third, the "phantom traffic" problem can be substantially mitigated if all carriers are required to follow simple technical rules for correctly identifying the origin of traffic. There has in fact been an industry proposal at the Commission for a number of months that has not yet been adopted. The mid-sized carriers, in addition to much of the industry, are on record as strongly supporting the prompt adoption of workable "phantom traffic" rules that will help to root out these fraudulent practices. This issue is ripe for Commission action and these carriers applaud the Commission's efforts to adopt workable rules in this area.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this summary is included in the dockets of the above-captioned proceedings.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for CenturyTel, Inc.

cc: Kevin J. Martin