



**NOTICE OF *EX PARTE*
PRESENTATION; electronic filing**

October 21, 2008

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW B204
Washington, DC 20554

Re: Intercarrier Compensation and Universal Service, WC Dockets Nos. 08-152, 07-135, 06-122, 05-337, and 04-36; CC Dockets Nos. 01-92, 99-68, 96-262, and 96-45

Dear Ms. Dortch:

Please be advised that on October 20, 2008, representatives of the National Association of State Utility Consumer Advocates (“NASUCA”) met with the following Wireline Competition Bureau staff: Claude Aiken, Jay Atkinson, Randy Clarke, Lynne Engledow, Victoria Goldberg, Rebekah Goodheart, Greg Guice, Al Lewis, Jeremy Marco, Erica Myers, Carol Pamponio, Doug Slotten, Cindy Spiers, and Matthew Warner.

In person for NASUCA at the FCC was Charles Acquard, NASUCA Executive Director. Participating by telephone were David C. Bergmann of the Office of the Ohio Consumers’ Counsel, chair of the NASUCA Telecommunications Committee; Regina Costa of TURN; and Christopher White of the New Jersey Division of Rate Counsel.

The discussion centered around what the NASUCA representatives have learned about the draft order regarding intercarrier compensation and universal service, containing proposals by Chairman Martin, and the many questions raised by the news accounts of the draft order. The following points were made by the NASUCA representatives during the discussion:

- A surgical approach, addressing Internet Service Provider (“ISP”)-bound traffic per the remand from the D.C. Circuit and perhaps phantom traffic, without raising the jurisdictional and other questions involved in a global order, is preferable.
- There are a number of process issues, including access to back-up information and whether there is support in the record for key parts of the proposals. The proposals should be put out for public comment.
- NASUCA’s fundamental principles include: 1) Although a unified and uniform ICC rate might be a good thing, it should not be done by setting a rate below cost or by trampling on state jurisdiction; 2) There should be no guaranteed recovery of access charge revenue reductions; 3) There should be no recovery through the SLC; 4) There should be no recovery through the USF without a showing that rural rates would not be reasonably comparable to urban rates; and 5) There is no need for a numbers-based mechanism.
- A ratesetting mechanism for the states that will produce rates for all traffic for all carriers between \$0 and \$0.0007 ignores differences in carriers’ costs (rural/non-rural, small/large, PSTN/IP)
- It also appears that all carriers will be allowed to increase residential SLCs by \$1.50, and business SLCs by \$5, in order to recover lost ICC revenue. This ignores:
 - In the CALLS order, the Commission increased SLCs to make up for access charge declines, stating: “[T]his action is within the Commission’s statutory authority to order proper recovery of the portion of common line costs that has been allocated to the interstate jurisdiction through charges imposed on telephone subscribers, and that doing so does not violate the Communications Act of 1934, as amended.¹ Here the SLC is recovering intrastate revenues and costs.
 - For the RBOCs, this increase ignores decreases in access costs due to the decline in rates, and increases in revenues due to applicability to IP calling.
 - For RBOCs, this ignores that most intrastate rates have been deregulated, so they have the capability to recover losses.
 - This also ignores 271 entry and mergers (yielding dominance in

¹ CALLS Order, FCC 00-193, ¶ 76 (citing *National Association of Regulatory Utility Commissioners v. Federal Communications Commission*, 737 F.2d 1095, 1114 (D.C. Cir. 1984) (*NARUC v. FCC*) (Commission may properly order recovery, through charges imposed on telephone subscribers, of the portion of loop costs placed in the interstate jurisdiction)).

long distance calling), classification of DSL as information service, and the separations freeze.

- Simply put, reliance on fixed end-user charges is a signal of a lack of competition... or an acknowledgement that profit opportunities are greater in the RBOCs' other services, i.e., wireless and broadband.
 - This ignores the post-CALLS cost studies on SLCs
 - This also ignores continuing decline of access minutes
- As for the USF:
 - Again, assumes that all of the lost revenue was implicit support²
 - Cap high-cost fund at current amounts, except for ICC revenue recovery
 - Approve of elimination of identical support rule
 - Approve of AK/HI/PR exemption
 - Broadband requirement for USF
 - Does it apply only to rurals, or to all carriers receiving USF?
 - If only rurals, note that they have a much better track record for deployment than the RBOCs; so rural customers of RBOCs will continue to be left behind
 - If all carriers, does it include all carriers receiving high-cost USF? I.e., IAS?
 - Reverse auctions -- again, would they only apply to rurals? Would they address both POTS service and broadband? Would they cover the entire study area or just the parts where broadband is not deployed within 5 years?
 - We support Lifeline broadband, but note the rural/non-rural disparity; is it in addition to voice or in place of voice?
 - USF contribution mechanism:
 - This is not an integral part of the ICC/USF

² See CALLS Order, ¶ 202.

- We have demonstrated over and over again -- most recently on 9/30/08 -- that there is no pressing need for changing the contribution mechanism
 - Why treat business and residentially differently?
 - What is the \$1 per line based on?
 - No exemption for wireless family plans; what about exemptions Community Voice Mail and separate treatment for prepaid wireless?
- Finally, if the USF is to be explicitly used to fund broadband, broadband should be assessed for support

NASUCA appreciates the opportunity to make its members concerns known to the Wireline Competition Bureau, and also to raise questions provoked by the news accounts of Chairman Martin's proposal.

Sincerely,

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee

cc: Claude Aiken, Jay Atkinson, Randy Clarke, Lynne Engledow, Victoria Goldberg, Rebekah Goodheart, Greg Guice, Al Lewis, Jeremy Marco, Erica Myers, Carol Pamponio, Doug Sloten, Cindy Spiers, Matthew Warner