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October 22, 2008

**VIA ELECTRONIC FILING**

Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: *Developing a Unified Intercarrier Compensation Regime,*  
CC Docket No. 01-92**

Dear Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell:

The Commission has tentatively included a Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking concerning a comprehensive overhaul of intercarrier compensation and universal service on the agenda for its November 4 Open Meeting. Reform of the rules governing intercarrier compensation will have a material affect on the finances of virtually every telecommunications carrier in the United States. Intercarrier compensation represents an important source of revenue for most incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs), and they rely upon the resulting cash flow both to fund current operations and invest in new network facilities. Material reductions in intercarrier compensation revenue could significantly impair the profitability of carriers, particularly mid-sized ILECs, rural local exchange carriers (RLECs) and CLECs, and deter their future investment in broadband networks.

This is particularly true as the country experiences unprecedented economic turmoil and descends into recession. The undersigned companies respectfully submit that this is an especially poor moment in time to experiment with a radical restructuring of the current intercarrier compensation system. Simply put, although policy makers no doubt forecast in good

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faith that carriers will be able to recoup lost intercarrier compensation revenues elsewhere, this is not the moment to hope that economic theorists prove correct -- and the consequence of guessing wrong could prove disastrous for the domestic telecommunications industry.

It is very important to realize that no party has credibly suggested that the Commission faces a crisis situation that requires it to proceed immediately with comprehensive and radical reform of its intercarrier compensation rules. The industry has robust systems in place for billing access charges and reciprocal compensation that operate quite smoothly today. Although billing disputes inevitably arise, the vast majority of traffic terminated is billed and collected without problem or objection. Verizon, for example, reports that only twenty percent of terminating traffic lacks complete billing information, and that carriers successfully jurisdictionalize and bill most traffic with incomplete information through the use of contractual arrangements, tariff provisions and factors. (Verizon "Phantom Traffic" Solutions, Oct. 31, 2006 at pp. 11-14, filed in CC Docket No. 01-92 on Nov. 1, 2006.) While most observers agree that comprehensive reform should be implemented over time, there simply is no reason to rush, and to risk potentially disastrous missteps due to haste. Many believe that the recent meltdown of financial markets is at least partially attributable to ill conceived notions of financial institution regulatory reform, and we must take care not to repeat that mistake in telecommunications.

That said, there are in fact a few discrete intercarrier compensation related issues that need to be resolved in the near term. The good news is that each of these issues can be readily segregated, and can be decided without revamping the entire intercarrier compensation system at this time. The undersigned companies respectfully suggest that the Commission resolve these discrete issues now, and issue a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on the Commission's tentative conclusions on how intercarrier compensation rules should be reformed more broadly in the future. The specific items that can and should be resolved now include:

1. Reciprocal Compensation for ISP-Bound Traffic. The Commission must, of course, respond to the decision issued by the U.S. Court of Appeals for the District of Columbia Circuit in the Core Communications case. *In re: Core Communications, Inc.*, 531 F.3d 849 (Jul. 8, 2008). The Commission must respond to the Court on or before November 6, 2008 with a sustainable legal rationale in support of its existing rules governing the termination of ISP-bound traffic. But that issue can easily be handled separately from the issue of a comprehensive overhaul of the entire intercarrier compensation system. The Commission need only respond with either a more well reasoned legal basis for treating ISP-bound traffic as jurisdictionally interstate, *or* concede that it erred and vacate the special rules governing ISP-bound traffic. If the Commission wishes to reaffirm its existing rules governing ISP-bound traffic, parties have provided a number of potential legal justifications for such a result. (*E.g.*, Letter of Gary Phillips, of AT&T,

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to Marlene Dortch, FCC, CC Docket No. 01-92, May 9, 2008.) Alternatively, if the Commission believes the ISP-bound traffic rules are outdated, the Commission could simply include ISP-bound traffic in the general category of traffic terminated pursuant to Sec. 251(b)(5), and make clear that the rates for such traffic will be affected by any future orders reforming the pricing of interconnection services. Such an outcome would not be unduly disruptive, since the volume of dial-up ISP-bound traffic has declined enormously as consumers migrate to broadband Internet access platforms.

2. The Applicability of Switched Access Charges to VoIP. Proponents of comprehensive intercarrier compensation reform have argued that the lack of a unified rate has led to undesirable access charge arbitrage strategies. Their primary complaint has been that many VoIP providers complete IP-PSTN calls over local trunk groups at reciprocal compensation rates, and thereby bypass the switched access charge system. The legal uncertainty in this area has led to the filing of competing petitions for forbearance -- one which asks that VoIP traffic be made subject to switched access charges and the other requesting that it be made exempt -- that must be decided early next year pursuant to the statutory shot clock for forbearance requests. The Commission has ample record in those cases and others, including the Intercarrier Compensation Docket (CC Docket No. 01-92) and the IP-Enabled Services proceeding (WC Docket No. 04-36), to resolve this issue by making minor modifications to its existing access charge rules. Specifically, the Commission can simply add a phrase to its existing switched access charge rules that obligates interconnected VoIP providers as well as interexchange carriers to pay switched access charges on a *prospective* basis when terminating traffic into the public switched telephone network (PSTN)<sup>1</sup>. Just as the Commission did when subjecting interconnected VoIP providers to USF and 911 requirements, this can easily be accomplished separately from more comprehensive intercarrier compensation reform.

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<sup>1</sup> Section 69.5 of the Commission's rules, "Persons to be assessed," could simply be amended to add the following new subsection (d):

(d) Terminating switched access charges shall apply to all interexchange voice traffic regardless whether-

(1) the technology used to originate the traffic is circuit-switched and the technology used to terminate the traffic is circuit-switched or Internet Protocol; or

(2) the technology used to originate the traffic is Internet Protocol and the technology used to terminate the traffic is circuit-switched.

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3. Resolution of the Phantom Traffic Problem. Advocates of intercarrier compensation reform also have contended that some companies regularly avoid access charge obligations by employing strategies which effectively disguise the jurisdictional character of traffic delivered to LECs for termination. They claim that these techniques can be used to misrepresent long distance traffic as local, or intrastate traffic as interstate. This problem, too, can be easily rectified without advancing to a comprehensive overhaul of the entire intercarrier compensation system. There is an industry consensus that relatively simple modifications to rules governing call signaling and routing would render these access avoidance opportunities obsolete. Indeed, USTelecom has suggested a set of specific rule modifications which (with relatively minor modifications) would solve the problem, and which have received wide support. (Letter of Thomas Cohen, Kelley Drye & Warren LLP, to Marlene Dortch, FCC, CC Docket No. 01-92 (filed March 11, 2008); Letter of Glenn Reynolds, USTelecom, to Marlene Dortch, FCC, CC Docket No. 01-92 (filed Feb. 12, 2008).) Again, a technical fix can be implemented to resolve the issue of so-called "phantom traffic," without needing to implement more radical reforms at this time.

4. Curbing Uneconomic Traffic Stimulation. The Commission has expressed concern about business plans that are designed to generate substantial growth in access traffic from long-distance companies. Last year the Commission tentatively concluded that it must revise its rules so that tariffed rates remain just and reasonable even if a carrier experiences significant increase in access demand, and issued a Notice of Proposed Rulemaking (NPRM) soliciting comment on several possible approaches to address alleged access stimulation strategies. (NPRM, Docket No. 07-135 (Oct. 2, 2007).) Numerous parties commented, and suggested or supported multiple potential fixes for the problem. The record is complete, and the Commission can now select the solution that it deems most appropriate without having to proceed at this time with a complete overhaul of the intercarrier compensation system.

There are problems with the existing intercarrier compensation system that need to be addressed. However, the problems are not nearly so dire, immediate or all encompassing as the beneficiaries of dropping termination rates to extremely low levels suggest. As outlined above, the significant immediate problems all can be resolved on a targeted basis without unduly derailing the existing business models of mid-size LECs, RLECs and CLECs during extremely turbulent economic times, and without running the risk of making a fundamentally erroneous policy choice in a rush to judgment. *The undersigned respectfully suggest that the Commission should resolve the four issue areas discussed above on a discrete basis now, and issue a FNPRM seeking public comment on plans for a more dramatic re-*

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*examination of the intercarrier compensation system.* In calling for the Commission to issue a FNPRM seeking comment on its more comprehensive intercarrier compensation reform plan, *we join the growing chorus of organizations that believe that such further comment is urgently required, including industry trade associations such as COMPTTEL, NARUC, NASUCA, NCTA, and NTCA.* All of these industry groups, and many more individual companies<sup>2</sup>, have made clear that proceeding with a comprehensive overhaul without seeking industry input on the specifics of the plan would be dangerous, ill advised and unlawful – simply put, we agree.

Sincerely,



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<sup>2</sup> Companies that have urged the Commission to issue a FNPRM seeking comment on its specific comprehensive reform proposals includes: Broadview Network, Cavalier Communications, NuVox, XO Communications, Earthlink, Granite Telecommunications, PAETEC, RCN Telecom Services, U.S. Telepacific, Zayo Group LLC, CenturyTel, Consolidated, Windstream, Embarq, Fairpoint, Iowa Telecom, Frontier, Venture Communications, 360networks (USA), Bluegrass Wireless, Carolina West Wireless, Cellular South, DeltaCom, Hypercube, Integra Telecom, One Communications, Southern Communications Services, tw telecom and YourTel America.

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cc: Dan Gonzalez  
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