

October 23, 2008

VIA E-MAIL

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Room TW-325
445 12th Street, S.W.
Washington D.C. 20554

Re: WC Dkt. Nos. 05-337, 99-68, & 04-36; CC Dkt. Nos. 01-92 & 96-45

Dear Ms. Dortch:

On October 22, 2008, the undersigned and Jonathan Lechter representing tw telecom inc., One Communications Corp. and Integra Telecom, Inc., met separately with Scott Bergmann, Senior Legal Advisor to Commissioner Jonathan S. Adelstein and Scott Deutchman, Competition and Universal Service Legal Advisor to Commissioner Michael J. Copps.

The attached presentation formed the basis of the discussions. Those present also discussed two academic papers authored by Gerald Faulhaber, *Cross-Subsidy Analysis With More Than Two Services*, 1 J. of Competition L. and Econ. 441 - 448 (Issue 3, Sept. 2005); and *Cross-Subsidization: Pricing in Public Enterprises*, 65 Am. Econ. Review 966-77 (Issue 5, Dec. 1975). We argued there is no basis in the record to adopt a comprehensive intercarrier compensation pricing methodology based on these papers.

Please let us know if you have any questions or concerns in connection with this filing.

October 2, 2008
Page 2

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), a copy of this notice is being filed electronically in the above-referenced dockets.

Respectfully submitted,

/s/
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202-303-1111

Enclosures

cc: Scott Bergmann
Scott Deutchman

**PRESENTATION REGARDING REFORM OF
INTERCARRIER COMPENSATION AND UNIVERSAL SERVICE**

CC Docket No. 01-92, 96-45; WC Docket Nos. 05-337, 99-68, 04-36

(Oct. 22-23, 2008)

- **IT IS INAPPROPRIATE AND UNNECESSARY FOR THE FCC TO RUSH ADOPTION OF COMPREHENSIVE INTERCARRIER COMPENSATION AND USF REFORM BY THE NOV. 4th OPEN MEETING**
 - There is no way for the FCC to assess the implications of reform at this time for end user prices; this is especially true of end user rates regulated by states, since intercarrier compensation reform will require massive rate rebalancing at the state level
 - There is no record evidence to support the adoption of an alternative rate-setting methodology at this time, and adoption of such an alternative is unnecessary
 - the proposed glide path apparently already includes a multi-year transition to unified terminating rates similar to or equal to TELRIC-based rates before subsequent reductions to LRIC-based rates
 - adoption of the transition to TELRIC now and further study of possible adoption of a new methodology **would not slow down the transition currently contemplated**, but it would allow the FCC to thoroughly study the issue without rushing to judgment
 - If the FCC insists on avoiding application of TELRIC-based rates to ISP-bound traffic, the FCC can meet the D.C. Circuit mandamus deadline by forbearing from application of Section 251(b)(5) to ISP-bound traffic, thereby de-coupling comprehensive reform from the ISP-bound issue
- **THE COMPREHENSIVE REFORM PROPOSAL CURRENTLY UNDER CONSIDERATION DOES NOT INCLUDE A LAWFUL MEANS OF ADDRESSING THE ONLY ISSUE BEFORE THE FCC -- ISP-BOUND TRAFFIC**
 - The **only** issue the FCC must address in response to the D.C. Circuit mandamus order is ISP-bound traffic, **but the proposal being considered does not address that traffic in a lawful manner.**
 - The FCC may only establish a rate methodology for traffic subject to Section 251(b)(5) and 252(d)(2), it may not mandate a \$0.0007 rate for transport and termination of ISP-bound traffic:
 - on remand from the Supreme Court's decision in *AT&T v. Iowa Utils Bd*, the 8th Circuit overturned the FCC's proxy rates. "[T]he FCC does not have jurisdiction to set the actual prices for the state commissions to use. Setting specific prices goes beyond the FCC's authority to design a pricing

methodology and intrudes on the states' right to set the actual rates pursuant to § 252(c)(2)" *Iowa Utils. Bd. v. FCC*, 219 F.3d at 757.

- The FCC could not rely on the "interim" nature of the \$0.0007 rate prescription for ISP-bound traffic:
 - the rates overturned by the 8th Circuit were interim
 - the FCC has already retained the \$0.0007 for seven years, the D.C. Circuit overturned retention of the interim Residual Interconnection Charge for four years as arbitrary and capricious, *see CompTel v. FCC*, 87 F.3d at 532
- The FCC may not mandate that all LECs charge the same rate for terminating traffic subject to Section 252(d)(2); each LEC must be permitted to charge transport and termination rates based on the "additional costs" of transporting and terminating traffic on that LEC's network
 - Section 252(d)(2)(A) requires "recovery by each carrier of costs" associated with transport and termination "on each carrier's network facilities"
 - there is no basis for concluding that \$0.0007 would allow each LEC to recover its "additional costs"
 - while it is appropriate to retain the presumption that CLEC transport and termination costs equal ILEC transport and termination costs, there is no basis for eliminating CLECs' right to rebut that presumption by showing that the "additional cost" of terminating traffic on a CLEC network are higher than the additional cost of terminating traffic on the ILEC network
- **THERE IS NO BASIS FOR FREEZING TANDEM TRANSIT SERVICE AT EXISTING ACCESS CHARGE LEVELS.**
 - Singling out transit service to allow ILECs to charge current access rates only for transit service (as Verizon suggests) represents an unjustified wealth transfer from competitors to ILECs.
- **THERE IS NO BASIS FOR CHANGING THE RULES GOVERNING NETWORK INTERCONNECTION IN THIS PROCEEDING.**
 - The Verizon proposal is unlawful and unreasonable
 - by defining the location and number of permissible POIs on the ILEC network, the proposal deprives CLECs of their right to interconnect at any technically feasible point without limit on the number of interconnection points

- by defining locations at which a CLEC must offer interconnection on its network, the proposal unreasonably (and for the first time) regulates interconnection points CLECs offer on their networks; Verizon has not offered any legal basis for this regulation
 - by applying rate regulation only to the interconnection arrangements described in the proposal, the proposal seems to leave the ILECs free to charge monopoly rents for any other form of interconnection
 - by apparently limiting the interconnection architecture to TDM, the proposal appears to dictate the technology that CLECs must use when interconnecting with ILECs
 - There is no need to revise interconnection architecture rules now; the existing arrangements have stood the test of time and are the result of several generations of state arbitrations
- **THERE IS NO BASIS FOR ADOPTING TELEPHONE NUMBERS-BASED USF CONTRIBUTION METHODOLOGY FOR BUSINESS SERVICES**
 - As tw telecom and One Communications have shown, reliance on numbers-based contributions at \$1.00 per number for business customers would result in massive increases in the USF contributions for hospitals, government agencies, universities and non-profits
 - The recent AT&T/VZ proposal to reduce the per number contribution by 15 percent to \$.85 for all numbers (including those used by both residential and business customers) would do little to reduce the harm associated with applying numbers-based contributions to businesses; tw telecom's calculations indicated that business customers' contributions would increase by as much as approximately 100 times current levels under a scheme in which contributions were required at \$1.00 per number; reducing the per number amount by 15 percent does not sufficiently address this problem
 - AT&T/VZ offer no basis for the per connection contributions they propose for businesses
 - This is clearly an issue that requires further study and should at most be included in a further notice
- **THERE IS NO BASIS FOR EXTENDING THE HOLDING OF THE *VONAGE* ORDER TO FIXED VOIP SERVICE OFFERED BY ILECS THAT ARE DOMINANT PROVIDERS OF VOICE SERVICE**
 - There is no "inseparability," since interstate and intrastate calls made by fixed VoIP subscribers are readily distinguishable; in fact, they are no less or more distinguishable than traditional circuit-switched calls

- There is no negation of a federal policy; the FCC applies dominant carrier economic regulation to ILEC telephone service offerings (e.g., SLC charge) today; application of state economic regulation to ILEC fixed VoIP service would not negate federal policy