



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

October 27, 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 24, 2008, representatives of the National Association of State Utility Consumer Advocates (“NASUCA”) met with Commissioner Robert M. McDowell and Nicholas G. Alexander, Legal Advisor.

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 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 containing proposals by Chairman Martin regarding intercarrier compensation and universal service, 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. That is why NASUCA strongly supports the motion filed by the National Association of Regulatory Utility Commissioners (“NARUC”) asking the Commission to issue two orders, one addressing the D.C. Circuit’s remand regarding Internet service provider (“ISP”)-bound traffic, and the other a Further Notice of Proposed Rulemaking (“FNPRM”) setting forth the details of the proposals, explaining their rationale and setting forth their basis in the record.

- There are a number of process issues regarding the draft order, including the Administrative Procedure Act (“APA”) issues raised in NARUC’s motion. Another issue is whether the draft order properly addresses the full range of the recommendations of the Federal-State Joint Board on Universal Service made in November 2007.
- NASUCA’s fundamental principles include: 1) Service providers should be required to compensate carriers whose networks they use; 2) 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.
- There has been mention that the draft order may include a provision that exempts Internet protocol (“IP”) traffic from paying any ICC. This violates the key principle that carriers should be compensated for the use of their networks, and will simply encourage carriers to move all traffic to an IP basis, wreaking havoc for carriers that must maintain the public switched telephone network.
- A ratesetting mechanism for the states that will produce rates for all traffic (or all non-IP 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 incumbent carriers will be allowed to increase residential SLCs by \$1.50, and business SLCs by \$2.30, 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 Under the proposal, the SLC is recovering *intrastate* revenues and costs.

- For the RBOCs, this increase ignores decreases in access costs due to the decline in rates paid to other carriers, 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 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.
- The proposed increase in the SLC ignores the post-CALLS cost studies on SLCs
- The recovery proposal also ignores continuing decline of access minutes

There was also discussion of possible limits on the revenue recovery.

NASUCA appreciates the opportunity to make its members' concerns known to Commissioner McDowell and his staff, 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: Commissioner McDowell, Nicholas Alexander

¹ CALLS Order, FCC 00-193, ¶ 76 (emphasis added) (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).