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October 27, 2008

Dana R. Shaffer
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime,
CC Docket No. 01-92; Universal Service Contribution Methodology, CC Docket
No. 96-45; IP-Enabled Services, WC Docket No. 04-36.

Dear Ms. Shaffer:

Thank you for taking the time to meet with NECA representatives on Friday of last week.

From our discussions it appears the Commission is strongly considering prescribing a uniform rate for transport and termination of telecommunications traffic applicable to all carriers. This raises significant concerns among rural rate of return local exchange carriers (RLECs), who typically have higher costs than large integrated carriers.¹

It also appears the Commission is considering freezing universal service support to all carriers on a study area basis. This action would deny many RLECs any reasonable opportunity to recover their interstate-allocated revenue requirements, raising serious issues of unlawful confiscation. In fact, NECA estimates that approximately 800 out of about 1200 rural companies would not recover their interstate-allocated common line revenue requirements under this approach. A Commission order that both caps rates at below-cost levels and prevents carriers from recovering residual costs via USF would, in effect, terminate rate of return regulation entirely for rural carriers – a result entirely beyond the scope of any prior Commission notices in this proceeding.

During our meeting you expressed concern that the Commission may have no choice but to prescribe a uniform rate for all carriers in order to comply with court decisions remanding

¹ See e.g., Letter from Richard A. Askoff, NECA to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 6, 2008) (*NECA Oct. 6 Letter*); Letter from Richard D. Coit, SDTA, et al., (Midwest Telecom. Executives), to Chairman Martin, and Commissioners Copps, Adelstein, Tate and McDowell, CC Docket No. 01-92 and WC Docket Nos. 04-36 and 06-122 (Oct. 15, 2008); Letter from Ken Pfister, Great Plains Communications, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 99-68 (Sept. 17, 2008); Letter from Tom Karalis, Fred Williamson & Associates, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 26, 2008) (on behalf of the Rural Alliance, *et al.*); Letter from Daniel Mitchell, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92, WC Docket No. 04-36 (Sept. 12, 2008); Letter from Joshua Seidemann, ITTA to Marlene H. Dortch, FCC, CC Docket Nos. 01-92 and 96-45 and WC Docket No. 05-337 (Oct. 10, 2008); and Letter from Eric Einhorn, Windstream, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 99-68, 96-45 and WC Docket Nos. 06-122, 05-337, 08-152 and 07-135 (Oct. 17, 2008).

the Commission's ISP-bound traffic rules.² Many parties have explained that the Commission has ample legal basis for maintaining existing rate caps for ISP-bound traffic.³ But even if the *Bell Atlantic* and *WorldCom* decisions could be read to preclude the Commission from establishing specific rates for ISP-bound traffic, the court's remand decisions cannot be read to prohibit the Commission from establishing different rates for specific carriers or groups of carriers based on cost characteristics. To the contrary, as NECA has previously explained, the "pricing standards" of section 252(d)(2) of the Act expressly contemplate consideration of individual carrier costs in establishing charges for transport and termination of traffic.⁴

Far from complying with the court's decisions in *Bell Atlantic* and *WorldCom*, the order as described appears to face a high risk of being overturned on a variety of constitutional, procedural and statutory grounds. Should this occur, the Commission's existing ISP-bound traffic rules would almost certainly be vacated permanently by the DC Circuit – precisely the result the Commission hopes to avoid by way of comprehensive ICC reform.

NECA strongly urges the Commission to follow a more moderate course. Specifically, it should issue an order adopting a tiered default rate structure, as proposed by the Missoula group and numerous other parties in this proceeding. Such an order could reasonably establish default rates as low as \$0.0007/minute for larger carriers and for competitive local exchange carriers primarily serving ISPs. (Other carriers, including RLECs, would be permitted to charge higher default rates based on established costs.) Carriers objecting to the default rate would, of course, have the opportunity to agree to a different rate or to charge a higher rate upon an adequate showing of higher costs.

Furthermore, as discussed in our meeting last week, we continue to urge the Commission to approach changes to existing accounting, separations, access charge and universal service rules with care. Because of the complex interrelationships between these rules, changes made in haste and without adequate review and analysis are almost certain to cause unintended adverse consequences to RLECs, their customers, and the Commission's universal service goals. The Commission should accordingly refrain from taking any final action in this proceeding with

² *Bell Atlantic Telephone v. Federal Communications Commission*, 206 F.3d 1 (D.C. Cir. 2000); *WorldCom v. Federal Communications Commission*, 288 F.3d 429 (D.C. Cir. 2002).

³ *E.g.*, Letter from Donna Epps, Verizon to Marlene H. Dortch, FCC, CC Docket No. 01-92, WC Docket Nos. 06-122 and 04-36 (Sept. 19, 2008), at 1; Letter from Melissa E. Newman, Qwest, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 96-45 and 99-68, WC Docket Nos. 05-337, 04-36, 06-122 and 05-195 (Oct. 7, 2008), at 10; and Letter from Brian J. Benison, AT&T, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92 and 99-69, WC Docket Nos. 05-337, 06-122 and 07-135 (Oct. 20, 2008).

⁴ *NECA Oct. 6 Letter* at 3.

respect to RLEC funding mechanisms until effects of specific proposals can be analyzed via additional notice and comment.

Sincerely,

A handwritten signature in cursive script that reads "Regina McNeil". The signature is written in black ink and is positioned below the word "Sincerely,".

Cc: Kevin Martin, Chairman
Jonathan Adelstein, Commissioner
Michael Copps, Commissioner
Robert McDowell, Commissioner
Deborah Taylor Tate, Commissioner
Nick Alexander
Amy Bender
Scott Bergmann
Scott Deutchman
Greg Orlando
Don Stockdale
Randy Clarke