



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

October 28, 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 27, 2008, representatives of the National Association of State Utility Consumer Advocates (“NASUCA”) met with Greg Orlando, Legal Advisor to Commissioner Deborah Tate. In person for NASUCA at the Federal Communications Commission (“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; Susan L. Satter, Public Utilities Bureau, Illinois Attorney General's Office 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. NASUCA has supported the request by the National Association of Regulatory Utility Commissioners (“NARUC”) for the FCC to address the remand issue in an order and then address the remaining issues by putting a specific proposal out for public comment in a Further Notice of Proposed Rulemaking (“FNPRM”). In that regard, NASUCA noted its participation on the morning of the 27th in a press conference along with representatives of NARUC, COMPTEL, rural mid-sized and small incumbent local exchange carriers, and wireless carriers to urge the FCC not to adopt a global order. NASUCA also noted that on February 24, 2008, the United States Telecommunications Association filed an ex parte stating,

[B]ased upon our understanding of the broad outline of the proposal and oral descriptions provided to date by Commission staff, we cannot support its adoption because it is clearly not in the overall best interests of consumers; nor will it advance the nation’s interest in rural broadband deployment. Based on numerous meetings with various Commission representatives, we believe the Commission is vastly underestimating the significant negative impact the proposal will have on rural consumers and their access not only to broadband services but also to the highest quality voice services as well.

- There are a number of process issues involved with the proposed order, 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 otherwise 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 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, the proposal again assumes that all of the lost revenue was implicit support.²

Due to the press of time, these were the issues NASUCA was able to discuss; there are many other issues surrounding the draft order that could not be discussed. NASUCA appreciates the opportunity to make its members' concerns known to Mr. Orlando, 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

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)).

² See CALLS Order, ¶ 202.

cc: Greg Orlando