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October 28, 2008

EX PARTE

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92
High-Cost Universal Service Support, WC Docket No. 05-337
IP-Enabled Services, WC Docket No. 04-36

Dear Chairman Martin:

The Commission has a unique opportunity to make progress on establishing a unified compensation regime, something that NCTA has supported for many years. However, our enthusiasm for that reform is tempered by significant concerns regarding some portions of the order, which would serve to undermine competition and create significant regulatory uncertainty.

In an effort to address these concerns, attached is a list of proposed changes to the proposal that we understand to be before the Commission.¹ As the Commission completes its work on this important order, we appreciate your consideration of this proposal.

Respectfully submitted,

Kyle McSlarrow

¹ To reduce the risk of unintended consequences, the Commission can and should address issues regarding dial-up ISP traffic in a separate order from the rest of the issues in this proceeding. Because of the requirement to provide the D.C. Circuit with an order on the ISP issues by November 5, a failure to address those issues in a separate document will create unnecessary pressure on the Commission to release a final order on intercarrier compensation and universal service reform immediately following the November 4 meeting. Given the massive volume of *ex parte* filings in the last two weeks, and the potential for last-minute changes to the draft item that was circulated, that is a recipe for disaster.

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cc: Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell
Dan Gonzalez
Amy Bender
Scott Deutchman
Scott Bergmann
Greg Orlando
Nick Alexander
Dana Shaffer
Don Stockdale

NCTA INTERCARRIER COMPENSATION PROPOSAL

1. **Clarify permissible rate changes during the transition.** NCTA supports the reduction of intercarrier termination charges to a single unified rate in each state that will apply to both circuit-switched and interconnected VoIP traffic. Intrastate access charges would be reduced to interstate levels as a first step, followed by a reduction of all termination to reciprocal compensation levels as a second step, and ultimately reduced to the unified state-wide levels established by state commissions. As between any pair of providers that exchange traffic, whether using circuit-switched or VoIP technology, the Commission should make absolutely clear that rates for terminating traffic will move in only one direction – down – over the course of the transition and that no provider may increase the termination rate it charges to any other provider for any type of traffic.
2. **Accelerate the transition period so that the unified state-wide levels would govern at the end of five years.** Although NCTA supports reducing and unifying termination rates, the 10-year transition currently proposed is too long. Given the widespread recognition that disparate termination rates lead to regulatory arbitrage, all providers will benefit from unifying terminating rates sooner rather than later. Accordingly, NCTA agrees with AT&T's proposal to shorten the 3-step transition to 1, 3, and 5 years.
3. **Defer issues regarding the regulatory classification of VoIP services.** The Commission should not compound the marketplace uncertainty that will result from reforming the intercarrier compensation and universal service regimes by also resolving issues regarding the classification of interconnected VoIP services. The Commission has imposed a range of obligations on interconnected VoIP without addressing the regulatory classification of the service, including E-911, CALEA, universal service, and disabilities access. It need not do so here, either. Classification of VoIP as an information service or telecommunications service raises a host of very important issues that could affect the ability of cable operators to continue providing competitively-priced service to millions of consumers.¹

In the four years that the Commission has been considering this issue, different companies have adopted different approaches to dealing with the uncertain regulatory classification of VoIP service. While some cable operators have chosen to provide VoIP service in conjunction with wholesale carriers,² other cable operators have operated as traditional CLECs. The Commission should not resolve the classification question without full consideration of the effect its decision would have on the various ways that companies offer VoIP service. Because of the Commission's recent focus on the details of intercarrier compensation and universal service reform, the record is inadequate to properly address the

¹ As noted by Free Press, for example, a finding that VoIP is an information service "has substantial implications for the ability of VoIP providers to obtain reasonable interconnection arrangements with other carriers." Letter from Ben Scott, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-92, et al. (filed Oct. 24, 2008) at 3.

² See *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007).

VoIP classification question at this time. Accordingly, NCTA agrees completely with Free Press that “[t]his element of the reform package *must* be reviewed in a Further Notice to prevent substantial unintended consequences.”³

4. If VoIP is classified as information service, the Commission should preserve compensation and interconnection arrangements.

Regulatory classification. Many companies reasonably responded to the uncertain classification of VoIP service by choosing to offer service as telecommunications carriers. These companies obtained state certification, negotiated interconnection agreements, offer service pursuant to state and federal tariffs, and in some cases receive federal universal service support. If the Commission finds that VoIP should be classified as an information service, it must provide a means for these companies to continue operating as they do today, just as it did for ILECs when it classified DSL services as information services. A failure to grandfather companies that chose to operate in this way would needlessly jeopardize the provision of service to millions of consumers.

Compensation. Any decision classifying VoIP services as interstate information services should clearly state that the same unified rate for call termination and the same rules for permissible rate changes during the transition, as described in (1) above, shall apply to VoIP and circuit-switched traffic, notwithstanding such classification.

Interconnection and other Section 251 rights. Any decision classifying VoIP as an information service must preserve current arrangements to exchange VoIP-originated traffic pursuant to Section 251/252 interconnection agreements, whether the VoIP provider itself operates as a carrier and connects directly with an ILEC or uses the services of an affiliated or unaffiliated wholesale telecommunications carrier to obtain interconnection. It also must preserve the right of carriers to negotiate or opt in to new arrangements under Sections 251 and 252 to replace expired or expiring agreements. Similarly, all other rights granted under Sections 251 and 252 (*e.g.*, number portability, directory listings, and access to rights-of-way) should continue to apply to a VoIP provider that operates as a carrier or to a VoIP provider’s affiliated or unaffiliated wholesale carrier.

5. Provide certainty regarding interconnection arrangements.

No immediate changes in interconnection rules or transit rates. There should be no change to current rules regarding physical interconnection and the establishment of POIs. Access traffic will continue to be terminated pursuant to access tariffs and non-access traffic will continue to be terminated pursuant to Section 251 interconnection agreements. In addition, during the transition, there should be no change to existing rates for transit services.

Rural transport issues. There are a number of long-standing issues regarding responsibility for transport costs when competitive providers exchange traffic with rural incumbent LECs (RLECs) through indirect interconnection arrangements. A recent AT&T proposal would

³ Free Press Letter at 3 (emphasis in original).

resolve these issues by requiring competitive providers to bear the majority of the cost of these indirect interconnection arrangements.⁴ NCTA generally opposes this special treatment of RLECs because it provides them an artificial advantage over competitive providers that are investing in rural networks. It also provides an incentive for RLECs to delay or deny requests for direct interconnection. At a minimum, if the Commission adopts an asymmetric rule with respect to rural transport costs, it should be conditioned on a commitment to allow direct interconnection on request, *i.e.*, an RLEC that delays or denies direct interconnection is not entitled to favorable treatment with respect to the costs of indirect interconnection.

The Commission should issue a Further Notice on interconnection issues. A number of important interconnection issues have been raised in this proceeding that would best be addressed in a Further Notice. Among the issues that should be considered are:

- In a recent ex parte proposal, AT&T and Verizon proposed a new set of default interconnection rules that would apply when all traffic is exchanged at a uniform rate pursuant to Section 251(b)(5).⁵ The Commission would benefit from the opportunity to receive additional comment on that proposal, which was not filed until the day a draft order was circulated. The Commission should complete its consideration of that proposal before the final phase of the transition to a uniform rate so that state commissions can take into account the results in setting rates.
- As documented by AT&T and Verizon, all providers are incorporating IP equipment in their networks, particularly softswitches. The Commission should consider in this Further Notice issues surrounding the interconnection of IP equipment, including the technical feasibility of interconnection and the costs associated with it. Today, incumbent LECs generally refuse to provide IP to IP interconnection and instead require VoIP providers to convert their traffic to TDM format, imposing unnecessary costs and reducing efficiencies. Revising interconnection to accommodate the rapid shift toward IP technology should be at the forefront of the Commission's efforts. The Commission should complete its consideration of these issues before the final phase of the transition to a uniform rate so that state commissions can take into account the results in setting rates.

⁴ See Letter from Brian Benison, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Sept. 12, 2008) at 4.

⁵ See Letter from Donna Epps, Verizon, and Hank Hultquist, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed Oct. 14, 2008).