

STATE MEMBERS
of the
FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

1101 Vermont Avenue, N.W. Suite 200
Washington D.C. 20005

NOTICE OF WRITTEN EX PARTE PRESENTATION (47 C.F.R. § 1.1204(10))

October 28, 2008

The Honorable Kevin Martin, Chairman
The Honorable Deborah Taylor Tate, Commissioner
The Honorable Michael Copps, Commissioner
The Honorable Jonathan Adelstein, Commissioner
The Honorable Robert McDowell, Commissioner

Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

RE: *In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, In the Matter of Petition of AT&T Inc., for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption, CC Docket No. 08-152, In the Matter of IP-Enabled Services, WC Docket No. 04-36, In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122, In the Matter of Petition for Declaratory Ruling Filed by CTIA, WT Docket No.05-194, In the Matter of Jurisdictional Separations & Referral to the Federal-State Joint Board, CC Docket No. 80-286.*

Chairman Martin and Commissioners,

The State Commissioners and the Consumer Representative of the Federal-State Joint Board on Universal Service (Joint Board) would like to take this opportunity to respectfully identify what we believe is a viable and effective approach for the Federal Communications Commission's (FCC) consideration related to the above-referenced matter. On November 20, 2007, the Joint Board voted unanimously in favor of a comprehensive plan for Universal Service reform¹. In that Recommended Decision, the Joint Board recommended that the Commission address the long-term reform issues facing the high-cost universal service support system and make fundamental revisions in the structure of existing Universal Service mechanisms. In that recommendation, the Joint Board also noted the need to seek additional input from parties to explore transitional issues associated with distribution reform. As you are aware, the Joint Board recommended establishing three separate "funds" with distinct budgets and purposes. The new proposed classification sought to achieve two principal purposes. First and foremost, it recognized the arrival of, and the public demand for, infrastructure build-out of broadband Internet services in high-cost rural areas. Second, it controlled the overall cost of the fund. Third, it allowed the Commission to substantially increase the effectiveness of funding now awarded to wireless carriers.

The State Joint Board members, both individual State Commissioners and the Consumer Representative strongly support the Commission's effort in attempting to resolve these complex, interrelated and financially significant issues in a holistic manner. As such, it is timely to reiterate that the Commission has before it a

¹ *Federal-State Joint Board on Universal Service, Recommended Decision, FCC07J-4, WC Docket No. 05-337, CC Docket No. 96-45 (Fed.-State Jt. Bd., rel. Nov. 20, 2007). ("Recommended Decision")*.

comprehensive plan for Universal Service reform. This Recommended Decision was put forward from a consensus building process with a unanimous vote².

While we recognize that USF reform is only half of the equation at best, with regard to Intercarrier Compensation, it certainly goes a long way to resolve many of the broader issues at stake for consumers and the industry. The Recommended Decision evolved from a well-developed and robust record of evidence and resolves key concerns about the exponential growth in high-cost funding by instituting a cap³ in addition to eliminating the identical support rule⁴. It also provides a practical and legally defensible framework for future broadband deployment without compromising carrier's revenue streams, which could adversely affect consumer access to advanced services at reasonably comparable prices⁵.

With regard to the Core⁶ remand issues, the Commission is facing the November 5th court deadline upon which to resolve the future treatment of compensation for termination of ISP-bound traffic. We believe it is in the public interest for the Commission to move forward with its analysis and determination without delay to bring certainty and transparency on this issue.

As the Commission will note, NARUC has weighed in on the Intercarrier Compensation matter in recent weeks. NARUC's position offered in its letter to Chairman Martin dated October 21, 2008, suggests a more tempered and deliberative approach for reform. NARUC leadership has provided the Commission with additional guidance in this regard through its citation of the Federal Administrative Procedures Act (APA). Adequate notice, fair opportunity to challenge the evidence submitted and appropriate consideration of alternative views or arguments are key principals for any rulemaking process.

We are seriously concerned at the impact this 165+ page order may have on consumers and on carriers. These concerns are further heightened by the uncertainties caused by the current state of the credit markets and uncertainties as to the impacts on residential and business consumers.

To that end, the Joint Board state members respectfully urge the Commission to adopt the Recommended Decision, thereby addressing inequities and inefficiencies in current distribution mechanisms, and to address the outstanding ISP remand issue.

² The FCC is obligated to act on Joint Board recommendations within 12 months, pursuant to § 254(a)(2) of the Telecommunications Act of 1996. Without having reviewed the complete and final proposal being circulated at the FCC, the State Members are concerned that recommendations contained in the November 2007 Recommended Decision may not be fully addressed.

³ *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*, 22 FCC Rcd 8998 (2007) (“*Interim Cap Recommended Decision*”).

⁴ *See*, 47 C.F.R. § 54.307.

⁵ *See*, 47 U.S.C. § 254(b)(3).

⁶ *In re Core Communications, Inc.*, 531 F.3d 849, 862 (D.C. Cir. 2008) (“*2008 Core Mandamus*”).

If you have any questions about the positions referenced above, please do not hesitate to contact any of the undersigned or Brad Ramsay at 202.898.2207 or jramsay@naruc.org.

Sincerely,

/s/ Ray Baum, Commissioner

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