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October 28, 2008

Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45; IP-Enabled Services, WC Docket No. 04-36; In the Matter of Federal-State Joint Board on Universal Service, High Cost Universal Service Support, WC Docket No. 05-337; In the Matter of Universal Service Contribution Methodology, WC Docket No. 06-122*

Dear Chairman Martin and Commissioners:

No issue is more important to the future of telecommunications than comprehensive, sensible reform of the current intercarrier compensation and universal service regimes. As so many commenters have noted, the current systems are obstacles to the development of Internet Protocol ("IP")-based and broadband services. The press has reported that, after years of public comment and deliberation, the Commission is considering an order that makes substantial strides toward this reform goal. Although forging ahead and finding the right way to transition away from the policies of the circuit-switched world is difficult, the entire industry will benefit from the effort once it is completed. And, the longer policy makers and the industry try to sustain the old world, the more likely it becomes that the inevitable clash between old-world policies and new-world technology will wreak havoc on companies and their customers.

Verizon strongly supports adopting intercarrier compensation and universal service reform, and urges the Commission to act on these issues at its November 4 open meeting. In this letter, we briefly note certain key issues that should be addressed, and in some cases suggest modest modifications to the proposed order as it has been described in the press.

Why Reform Intercarrier Compensation and Universal Service – and Why Now?

The time has come for comprehensive reform of intercarrier compensation and universal service. Comprehensive reform is critical to remove regulatory obstacles to the next-generation technologies that consumers demand. Today, next-generation IP platforms offer incredible opportunities for consumers and businesses. These revolutionary new services challenge the traditional concepts of geography and location that are the cornerstones of the existing intercarrier compensation system. The current intercarrier compensation regime – with its many different rates based on arbitrary jurisdictional and technological distinctions – is fundamentally unworkable in today's new world of communications.

In considering reform, the Commission should not try to compare the results of intercarrier compensation reform to today's (or yesterday's) status quo; the world is changing dramatically every year. New world technologies and products are eating away at wireline carriers' access revenues. As consumers flock to wireless and IP services, carriers lose the access lines that provide the basis for access charges. Carriers are also increasingly unable to realize access revenues on their remaining lines because of the fraud and arbitrage schemes made possible by today's complicated, multi-tiered compensation system. The Commission must therefore consider what a future of continued intercarrier compensation losses means, for both carriers and consumers, in the absence of reform.

The new world of communications has also outpaced the antiquated universal service system. The current revenues-based contribution methodology was designed for a world where phone companies offered customers separate local and long distance services – not the “all distance” bundles offered by a variety of providers that dominate the market today. Under today's revenue-based system, companies that use different technologies to compete for the same customers pay into the fund in different ways, skewing the competitive landscape. Revenues-based contributions also require increasingly unworkable distinctions between interstate and intrastate services and between telecommunications and information services. The current universal service high cost distribution system is unsustainable as well – designed to support a one-network, wireline world that no longer exists.

The time for comprehensive reform of both of these regimes is *now*. The Commission must respond to the D.C. Circuit's mandamus order regarding ISP-bound traffic by November 5. But addressing Internet-bound traffic in a piecemeal fashion would merely perpetuate the cobbled-together patchwork of regulations that govern the industry today – thus fueling the fraud and arbitrage that plague the current system and speeding the already rapid decline in carriers' access revenues. Instead, the Commission should take the opportunity to address IP traffic and intercarrier compensation as a whole and to adopt comprehensive, sensible reform.

The Commission is ready. The industry is ready. The Commission has studied both of these issues for years, provided multiple opportunities for public review and comment, and received the benefit of thousands of filings by state regulators, consumers, and a multitude of

carriers and service providers, big and small.¹ Other parties who now question whether the Commission has undertaken a thorough review of the issues or whether it has solicited and received sufficient public comment are using misplaced concerns about “process” as an excuse to avoid long-overdue progress. The Commission is more than adequately prepared to adopt meaningful, comprehensive reform of both the intercarrier compensation regime and the universal service system. It should do so – now.

What Are the Key Components of Reform?

Broadband and IP-based Services

The most important task before the Commission is to get the rules right for the services of the future: broadband and IP-based services. This will provide certainty for the marketplace and make sure that outdated rules designed for old-world services in a different era do not hinder the development and growth of VoIP (“Voice over Internet Protocol”) and IP-enabled services. As described in the press, the proposed order generally establishes the appropriate framework for these new-world technologies – but leaves open a few essential questions that the Commission should resolve now.

First, the Commission should explicitly reaffirm that all VoIP and IP-enabled services, regardless of provider or technology, are subject to the Commission’s exclusive jurisdiction – *not* to more than 50 different sets of economic regulation. These are multi-faceted, any-distance services that cannot practicably be separated into intrastate and interstate components. These services are being deployed nationally, using national systems and platforms. A single federal regime will provide efficiencies that would be lost if these services are potentially subjected to more than 50 different sets of rules. Indeed, states today are not regulating these advanced services – and 13 states have adopted legislation precluding their state commissions from regulating VoIP.

In addition, such a uniform regime will provide a level playing field for all VoIP providers, so that none are saddled with regulations designed for old-world services from a different era. This in turn will facilitate competition and consumer choice, spur technological innovation and the deployment of broadband infrastructure, and promote the use of broadband services and the Internet. Consumers will be the winners from such further investment and innovation. The Commission has already found that VoIP services are subject to its exclusive federal jurisdiction, but it should explicitly reaffirm in this order that that finding applies to *all* VoIP and IP-enabled services, regardless of provider or technology.

¹ See Attachment A for a chronology of the Commission’s requests for comment on the issues addressed in the Commission’s proposed order.

Second, the Commission should resolve the long-running dispute over the appropriate regulatory classification of VoIP. Determining the appropriate classification will resolve issues that have led to disputes among industry participants and diverted attention and resources from developing and deploying these advanced services. Determining the appropriate regulatory classification for VoIP will not impair the Commission's ability to address public interest issues as they relate to VoIP services. Indeed, the Commission has already addressed universal service, E911, the Communications Assistance to Law Enforcement Act ("CALEA"), disability access, and local number portability ("LNP") requirements as they apply to VoIP services. Moreover, if the Commission decides that VoIP should be classified as an information service, it should also make clear that these services are not subject to archaic rules designed for a different world, including in particular the Commission's *Computer Inquiry* rules. The Commission has already determined that application of these rules to broadband services generally – including services offered by both cable providers and wireline companies – is inconsistent with the public interest. The Commission determined in those cases that the *Computer Inquiry* obligations impeded efficient and innovative technological developments, and that eliminating the requirements was warranted, among other reasons, by the growth and development of new competing broadband platforms and the need for parity among them, as well as the public interest in allowing providers the flexibility to respond more rapidly and effectively to new consumer demands. The same conclusion applies with respect to all VoIP and IP-enabled services.

Third, because the Commission to date has expressly declined to decide the appropriate classification of VoIP, there has been significant uncertainty in the industry over how to deal with this issue. Parties have therefore had to address this issue as best they could. As a result, the Commission should make clear that any decision it makes on this issue here has prospective effect only.

Finally, there is no dispute that the Commission must respond by November 5 to the D.C. Circuit's mandamus order regarding the compensation due for ISP-bound traffic. The Commission has already recognized that this traffic, bound for the Internet, is interstate, and no court has questioned that determination. The Commission should reaffirm that conclusion in responding to the court's order, and should retain the current compensation regime, including the mirroring rule. It does not make sense, however, for the Commission to address this one type of IP traffic without also addressing other IP traffic, including VoIP. If the Commission addresses only some IP traffic, but not all of it, or maintains inconsistent rules, it will undoubtedly lead to more confusion about the proper treatment of IP traffic and will risk yet another court remand to address the entirety of the issue. This could lead to even more confusion and litigation in an industry already struggling with an archaic intercarrier compensation system. The Commission therefore should not address only ISP-bound traffic in its November 4 meeting, but rather should conclude that *all* IP traffic is interstate.

New Terminating Rate Regime

The proposed order, as reported, also takes substantial steps toward rationalizing the terminating compensation regime. The order ultimately achieves what is the only workable end result: a uniform terminating rate for all carriers and all traffic. It is only through a uniform rate – applied equally – that the Commission can provide a level playing field for all carriers and all technologies and eliminate the fraud and arbitrage that plague today’s intercarrier compensation regime. The Commission should make minor modifications to the order as it has been reported, however, to ensure that consumers and the industry receive the full benefits of this reform.

First, the Commission should ensure a reasonably prompt transition to the final, uniform terminating rate in order to provide timely relief from the market distortions caused by today’s disparate rate structure. Given the rapid pace of change in the communications industry, the ten-year transition period reported in the press is too long, and should be shortened to no more than five years. One way to structure the transition would be to cap intrastate terminating access rates at interstate levels by the end of the first year; to cap terminating rates at a rate no higher than the state’s average reciprocal compensation rate by the end of the third year; and to unify all terminating rates at the final terminating rate by the end of the fifth year. At the end of the third year, when access traffic is no longer subject to today’s separate access regime, the Commission should institute a uniform set of “network edge” rules in order to clarify which network functions are (and are not) covered by the interim and final terminating rate and to allocate financial responsibility among carriers. As Verizon has previously explained, such “network edge” rules merely allocate carriers’ financial responsibility for getting traffic to and from points of interconnection or “network edges.” But that does not alter carriers’ ability to interconnect to an incumbent carrier’s network at “any technically feasible point” as provided in the Act, nor does it alter carriers’ ability to use the state arbitration process to resolve interconnection disputes under the Act. On the contrary, we do not propose to modify the existing interconnection rights of any party, and it is our understanding that proposed order does not do so.²

Second, the Commission should ensure that carriers do not undermine the goals of intercarrier compensation reform by raising some rates while the Commission lowers others. Carriers should not be permitted to backslide on reform in this manner. The Commission should therefore make clear that throughout any transition period, no carrier may raise any rates, including those rates that may be lower than the maximum that would otherwise be permitted under the transition scheme.

Third, the Commission should identify a default terminating rate of \$0.0007 per minute of use that will apply as the final uniform rate if the state does not conduct cost proceedings by a date certain. Cost proceedings are burdensome and expensive for *all* parties involved – including both

² See Ex Parte Letter from Donna Epps to Marlene Dortch, CC Docket No. 01-92, WC Docket No. 04-36 (Oct. 3, 2008).

state commissions and carriers. The Commission should not require states to bear this burden without providing an alternative. Identifying a default rate that would apply if a state chooses not to conduct cost proceedings would allow each state to determine for itself whether to rely on the default rate or to conduct cost proceedings. The \$0.0007 per minute rate is an appropriate and market-based default rate, given its wide use in commercially-negotiated agreements, including by carriers who have chosen to invoke the Commission's mirroring rule.

Fourth, to the extent that the Commission decides to address "phantom traffic," the Commission should be sure that any extraordinary remedies provided to terminating carriers for "unlabeled" traffic are properly limited to only those extraordinary circumstances where the third party tandem transit providers provide no information to identify the originating or interexchange carrier for each transited call.

Finally, the Commission should make clear that the new terminating rate regime is a default regime only – carriers would be free to negotiate commercial agreements that may depart from the default regime. This approach ensures that the industry continues to move toward market-based rates and provides carriers the flexibility to adapt their agreements in response to changing business needs and evolving technologies. Permitting negotiated agreements also reduces the regulatory burden on state commissions, by eliminating the need for regulatory involvement where the parties are able to reach mutually beneficial agreements on their own.

Universal Service Reform

The proposed order also reportedly recognizes the critical need to reform the universal service fund at the same time the Commission reforms the intercarrier compensation regime. These reforms are sensible, but merit some modifications.

First, as the Commission moves forward with changes to the universal service fund, it should keep in mind the recent history of the fund. Until this year's cap on support for competitive eligible telecommunications carriers ("CETCs"), the high cost fund increased steadily, and consumers saw higher and higher charges on their bills to pay for it. An overall cap on the high cost fund is a reasonable way to protect consumers going forward.

Second, if the Commission chooses to eliminate the "identical support" rule and reduces CETC support from the universal service fund, the Commission should adopt a transition to phase down that support over time. Regardless of how the Commission decides to proceed with reform – *i.e.*, through reverse auctions or some other system – Verizon agrees with the proposal by CTIA – The Wireless Association that if the Commission reduces CETC support this funding should be phased down over a five-year period.³ Phasing in any such reductions would help ensure that

³ See Ex Parte Letter from Paul Garnett, CTIA – The Wireless Association, to Marlene Dortch, FCC, WC Dockets Nos. 01-92, 04-36, 05-337, 06-122 (Oct. 27, 2008).

universal service support will be available where needed and would help preserve wireless service in high cost areas.

Third, any attempt at reform of universal service contributions that continues to rely on revenues – in whole or in part – remains fundamentally unworkable. Verizon has supported a contribution system based on telephone numbers or a combination of telephone numbers and network connections. With services sold in bundles, and new technologies combining information services with traditional telecommunications functions, distinctions between interstate and intrastate revenues and between telecommunications and information services have become complex and arbitrary. As a result, universal service assessments have destabilized the contribution process and distorted the competitive market. A new numbers-based (or numbers- and connections-based) contribution system would help fix these problems. The system should include a transitional discount for secondary wireless family plan lines, which, with low-cost additional lines, help keep families connected to each other and to elderly relatives. If the Commission is concerned about the impact of numbers-based contributions on colleges and universities, the system could also allow these schools to seek refunds from USAC for a portion of their contributions.⁴

* * * * *

In short, the Commission should be commended for making bold strides toward comprehensive reform of the current intercarrier compensation and universal service systems. This proceeding reflects years of work by the Commission, carefully considering and balancing concerns and issues raised by the industry, state regulators, and other interested parties in dockets that have been open and active for years. The Commission should continue this important work by making the modest modifications discussed above to ensure that the reforms achieve their intended purpose. Specifically, the Commission should:

- Explicitly reaffirm that the Commission has exclusive jurisdiction over *all* VoIP and IP-enabled services;
- Determine the appropriate regulatory classification of VoIP going forward, while ensuring that archaic regulatory requirements such as the *Computer Inquiry* rules do not burden these next-generation services;
- Shorten the transition period to the new terminating rate from ten years to five years, for all traffic and all carriers;
- Establish a default terminating rate of \$0.0007 per minute that will apply if a state chooses not to conduct cost proceedings;

⁴ See Ex Parte Letter from Mary Henze, AT&T, and Kathleen Grillo, Verizon, to Marlene Dortch, FCC, *Universal Service Contribution Methodology*, WC Docket No. 06-122, at 5 n.5 (Oct. 20, 2008).

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- Limit phantom traffic remedies such that terminating carriers cannot seek payment from a tandem transit provider that identifies the financially responsible carrier;
- Clarify that the new terminating rate regime is a default regime only;
- Cap the high cost fund and, to the extent CETC support is reduced, adopt a transition to phase down support over a five-year period;
- Adopt a universal service contribution methodology that is based on telephone numbers or telephone numbers and network connections – but not revenues.

The Commission should then adopt the proposed order, with the above modifications, at the open meeting on November 4.

Sincerely,

A handwritten signature in black ink that reads "Susanne Guyer". The signature is written in a cursive, flowing style.

Susanne A. Guyer

Attachment

cc: Daniel Gonzalez
Amy Bender
Scott Deutchman
Scott Bergmann
Greg Orlando
Nick Alexander
Matthew Berry
Dana Shaffer
Don Stockdale

Chronology of Intercarrier Compensation, VoIP and Universal Service Proceedings

A. Intercarrier Compensation (CC Docket No. 01-92)

(Parties have filed over 2,700 submissions in this proceeding since its inception.)

- Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001 NPRM).
- Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005 FNPRM).
- Public Notice, DA 06-150, 21 FCC Rcd 8524 (2006) (*Missoula Plan Public Notice*).
- Public Notice, DA 06-2294, 21 FCC Rcd 13179 (2006) (*Missoula Plan Phantom Traffic Public Notice*).
- Public Notice, DA 07-738, 22 FCC Rcd 3362 (2007) (*Missoula Plan Federal Benchmark Mechanism Public Notice*).
- Refresh the Record News Release (May 2, 2008).

B. Voice over Internet Protocol (WC Docket No. 04-36)

(Parties have filed over 1,600 submissions in this proceeding since its inception.)

- The Commission opened its IP-Enabled Services proceeding, WC Docket No. 04-36, over four years ago, in the Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP Enabled Services NPRM*).
- The IP-Enabled Services NPRM sought comment on both the classification of VoIP services and intercarrier compensation for VoIP services.
- In many other proceedings, both before and after the Commission opened the IP-enabled services docket, it compiled an extensive record dealing with issues related to the classification of VoIP services and intercarrier compensation for VoIP. See, e.g., Universal Service Report to Congress, 13 FCC Rcd 11501 (1998); Vonage Order, 19 FCC Rcd 22404 (2004).
- In addition to the IP-Enabled Services docket, the Commission has been examining issues related to the classification of IP-enabled services and intercarrier compensation for VoIP traffic in several other proceedings.

Chronology of Intercarrier Compensation, VoIP and Universal Service Proceedings

C. Universal Service (CC Docket No. 96-45, WC Docket 05-337, and WC Docket No. 06-122)

(Parties have filed over **5,000** submissions in WC Docket 05-337, and WC Docket No. 06-122 alone)

Reform of universal service support distribution:

- Public Notice, 18 FCC Rcd 1941 (Jt. Bd. 2003) (*2003 Portability-ETC Public Notice*).
- Notice of Proposed Rulemaking, 18 FCC Rcd 2932 (2003).
- Notice of Proposed Rulemaking, 19 FCC Rcd 10800 (*2004 NPRM*).
- Public Notice, 19 FCC Rcd 16083 (Jt. Bd. 2004).
- Public Notice, 20 FCC Rcd 14267 (Jt. Bd. 2005).
- Public Notice, 21 FCC Rcd 9292 (Jt. Bd. 2006) (*2006 Reverse Auctions Public Notice*).
- Public Notice, 22 FCC Rcd 9023 (Jt. Bd. 2007) (*2007 Public Notice*).
- Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (*May 2007 NPRM*).
- Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support NPRM*).
- Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*).
- Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Comprehensive Reform NPRM*).

Chronology of Intercarrier Compensation, VoIP and Universal Service Proceedings

<u>Multiple Recommended Decisions by the Joint Board regarding the distribution of universal service support, including:</u>
▪ Recommended Decision, 17 FCC Rcd 14095 (2002).
▪ Recommended Decision, 19 FCC Rcd 4257 (2004).
▪ Recommended Decision, 22 FCC Rcd 8998 (2007).
▪ Recommended Decision, 22 FCC Rcd 20477 (2007).
<u>Issues related to universal service contribution reform:</u>
▪ Notice of Proposed Rulemaking, 16 FCC Rcd 9892 (2001).
▪ Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002).
▪ Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 17012 (2002).
▪ Public Notice, 18 FCC Rcd 3006 (2003).
▪ Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (<i>VoIP/Wireless Safe Harbor NPRM</i>).
▪ Refresh the Record News Release (May 2, 2008).