Dustin Johnson, Chair
Steve Kolbeck, Vice Chair
Gary Hanson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

Capitol Office
(605) 773-3201
1-866-757-6031 fax

Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

December 23, 2008

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, SD 20554

Re: Ex Parte Communication, High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link Up, WC Docket No. 03-109; Universal Service Contribution Methodology, WC Docket No. 06-122; Numbering Resource Optimization, CC Docket No. 99-200; Implementation of the Local competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98; Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68; IP-Enabled Services, WC Docket No. 04-36

Dear Ms. Dortch:

On December 23, 2008, the South Dakota Public Utilities Commission sent the attached letter to all five FCC Commissioners. In accordance with section 1.1206 of the Commission's rules, this letter is being filed electronically.

Sincerely,

/s/ Rolayne Ailts Wiest
SDPUC Commission Counsel

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Steve Kolbeck, Vice Chair
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Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell

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Washington, D.C. 20554

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Dear Chairman Martin and Commissioners:

The South Dakota Public Utilities Commission ("SDPUC") is writing to express its support for the National Association of Regulatory Utility Commissioner's ("NARUC") comments filed in the dockets listed above. NARUC filed initial comments in response to the Federal Communications Commission's ("FCC" or "Commission") "*Order on Remand and Order and Further Notice of Proposed Rulemaking*" ("FNPRM").[1] In addition, the SDPUC wishes to convey its concerns regarding the detrimental effects the proposals would have on a rural state such as South Dakota.

Attached to the FNPRM were three separate proposals: Appendix A, Chairman's Draft Proposal; Appendix B, Narrow Universal Service Reform Proposal; and Appendix C, Alternative Proposal. Two of the proposals, Appendices A and C, set forth a new approach to intercarrier traffic by asserting that, at the end of a transition period, all telecommunications traffic will be treated as reciprocal compensation pursuant to section 251(b)(5).[2] This approach inexplicably, and with less than compelling legal support,

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[1] *See*, 73 Fed. Reg. 66821 (Nov 12, 2008) [<http://edocket.access.gpo.gov/2008/E8-26849.htm>].
[2] *FNRPM*, Appendix A, Chairman's Draft Proposal at ¶¶ 215-227; *FNRPM*, Appendix C, Alternative Proposal at ¶¶ 210-222.

reverses previous FCC findings that access does not fall under section 251(b)(5) reciprocal compensation. In its comments, NARUC provides compelling arguments as to why this approach is legally unsupportable.[3] The SDPUC agrees and urges the FCC to not attempt to preempt the states' jurisdiction over intrastate access.

The same two proposals seek to classify IP/PSTN traffic as information services.[4] NARUC's comments convincingly explain why the characteristics of IP/PSTN traffic do not meet the definition of an information service.[5] The SDPUC agrees that such a classification is not legally or factually supportable.

The SDPUC's objections are not limited to the erroneous legal assertions that seek to provide a framework for the proposals. The proposed changes to access rates also implicate the ability of our South Dakota rural telephone companies to continue to provide services to their customers. Although, the SDPUC has previously expressed support for intercarrier compensation reform, it has urged the Commission not to lose sight of the considerable costs of serving rural areas. South Dakota's sparse population and wide open spaces present many challenges to our telephone companies as they serve their rural customers. South Dakota is the 17th largest state with 77,121 square miles, has a small, primarily rural population, and is ranked 46th in population density. Our largest community is Sioux Falls with an approximate population of 150,000. To put the rural nature of our state into perspective, one need only look at the number of subscribers per square mile served by some of our carriers. For example, Golden West Telecommunications serves nearly one-third of the state's land mass (which is greater than the land mass of Rhode Island, Connecticut, New Jersey, and New Hampshire combined) and has only 1.79 subscribers per square mile of service area. West River Cooperative Telephone Company has 0.55 customers per square mile. Further, these networks are not only used to provide basic telephone services, but are necessary for the deployment of advanced services, such as broadband. These basic and advanced services are essential for economic development, health and safety, and quality of life issues, especially in rural states such as South Dakota. The economic effects of the proposals on rural carriers need to be carefully evaluated in any reform proposal.

The SDPUC urges the Commission to recognize the legal infirmities and the policy flaws of the proposals as set forth in NARUC's comments and this letter when considering intercarrier compensation reform.

Sincerely,

/s/ Rolayne Ailts Wiest
Commission Counsel
South Dakota Public Utilities Commission

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[3] NARUC's Initial Comments at 6-11.

[4] The proposals define IP/PSTN services as "those services that originate calls on IP networks and terminate them on circuit-switched networks, or conversely that originate calls on circuit-switched networks and terminate them on IP networks (collectively "IP/PSTN" service). *FNRPM*, Appendix A, Chairman's Draft Proposal at ¶ 209; *FNRPM*, Appendix C, Alternative Proposal at ¶ 204.

[5] NARUC's Initial Comments at 11-22.