



September 11, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW B204
Washington, DC 20554

RE: WC Docket Nos. 04-36, IP-Enabled Services; 01-92, Developing a Unified Intercarrier Compensation Regime; CC Docket No. 96-45, Federal-State Joint Board on Universal Service EX PARTE COMMUNICATION

Dear Ms. Dortch:

In recent months, the National Association of State Utility Consumer Advocates (“NASUCA”)¹ has filed a number of letters as ex parte communications objecting to the content of filings by other parties.² These letters, filed without in-person meetings at the Federal Communications Commission (“FCC” or “Commission”), are a key means by which NASUCA, which relies on the volunteer efforts of its members, can bring those members’ views to the Commission’s attention.

¹ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² See CC Docket No. 96-45, WC Docket No. 05-337, NASUCA ex parte (June 19, 2009) (opposing Rural Cellular Association filing on removal of cap on competitive ETC payments); WC Docket No. 06-122 NASUCA ex parte (July 27, 2007) (opposing AT&T petition for immediate adoption of numbers-based universal service fund contribution mechanism); CC Docket No. 96-45, WC Docket No. 05-337, NASUCA ex parte (August 7, 2009) (opposing Qwest filing on changes to the non-rural carrier high-cost fund); *id.*, NASUCA ex parte (August 17, 2009) (replying to RCA response to NASUCA ex parte).

In light of those recent filings, we are happy to make this ex parte presentation, which involves **support** for an earlier filing. That is the August 12, 2009 ex parte communication from the National Exchange Carrier Association (“NECA”) and some of its members, discussing access arbitrage by interconnected voice over Internet protocol (“VoIP”) providers and other carriers.

The August 12 filing “discussed the rapid growth of access minutes terminating on ... company networks by interconnected VoIP providers and other carriers which refuse to pay.”³ As NECA stated, “This growth is part of a national trend to send voice traffic to [incumbent local exchange carrier] ILEC networks without compensation for use of those networks.... [T]his trend will continue as VoIP inevitably enjoys broader adoption.”⁴ The NECA ex parte provided graphic examples from New York and Georgia of the impact this access charge avoidance has had on NECA members.

NASUCA has long supported the proposition that, if a carrier uses another carrier’s network for transport or termination of a call, the carrier whose network is used should be compensated – by the using carrier – for that use.⁵ This is true for traditional switched traffic; it should also be true for VoIP traffic. The mere fact that a call is, at some point during its transmission, transformed into packets, does not mean that terminating the call is free of cost for the terminating carrier; and it should not mean that the carrier transforming the call should not bear responsibility for paying those costs. Application of access charges to VoIP calls is consistent with much of the FCC’s treatment of VoIP.⁶

Indeed, the purported advantage for end-use customers arising from VoIP may be largely if not entirely attributable to VoIP carriers’ avoidance of access charges. This arbitrage is not based on a real cost differential but on regulatory failures.⁷

It is also true that smaller carriers, like the members of NECA, tend to have higher costs than the largest carriers such as AT&T and Verizon, principally because their smaller call volumes provide less opportunity for recovery of joint and common costs. That was one of the many reasons why NASUCA was adamantly opposed to former Chairman Martin’s proposal to reduce access charges – both interstate and intrastate – to levels so

³ NECA ex parte, cover letter.

⁴ Id.

⁵ See, e.g., WC Docket No. 01-92, NASUCA Intercarrier Compensation Proposal (December 17, 2004). On the other hand, NASUCA has opposed “traffic pumping” schemes that compensate the terminating carrier far in excess of its actual costs. See WC Docket No. 07-135, NASUCA Reply Comments (January 16, 2008).

⁶ See NECA ex parte at 7.

⁷ This is one example of how the Commission’s hands-off treatment of anything relating to or connected with the Internet has harmed carriers and consumers. See, e.g., GN Docket No. 09-51, NASUCA Comments (June 8, 2009) at 2-10.

low that smaller carriers would face huge unrecovered costs.⁸ As NECA shows, smaller ILECs are very much dependent on access revenues.⁹

Which is not to say that current access charges – both interstate and intrastate, for small and large carriers – are necessarily at appropriate levels. NASUCA has supported **voluntary** efforts to reduce intrastate access charges to interstate levels.¹⁰

NASUCA also appreciates the fact that the NECA ex parte is free of the sentiment that all too often pervades industry filings regarding access charges, and was a significant part of Chairman Martin’s proposal: The notion that any and all revenue shortfalls caused by non-payment of or reductions in access charges must be recouped from either end-user charges or the federal universal service fund (“USF”) or both. As NASUCA stated in September 2008:

AT&T’s notion – expressed in a filing made with the Petition addressed in 08-152 – that “comprehensive reform” can only be accomplished in the context of a zero-sum game of only three “interdependent ‘dials’” – terminating intercarrier rates, federal SLCs, and universal service support. Under AT&T’s proposal, if intercarrier rates are reduced (“dialed down”), then either SLCs or the universal service fund (“USF”) – or both – must be increased (“dialed up”) to make up the difference. This proposal self-centeredly and simplistically ignores the full array of services from which AT&T (and other carriers) receive revenues – traditional wireline service, broadband services, and, indeed video and other services. Intercarrier compensation, SLCs and the USF are but three of the numerous spigots from which dollars flow to fill up the telephone companies’ revenue buckets. All of these “buckets” must be included when addressing lost revenues.¹¹

Such increases to end-user charges and the USF are unwarranted. Indeed, as NASUCA has argued, the additional revenue sources available to carriers reflected in the many services available over the network should dictate **reductions** in telephone service charges.¹² And NASUCA has proposed that high-cost USF payments should also be

⁸ WC Docket No. 05-337, et al., NASUCA Comments (November 26, 2008) at 7-17.

⁹ NECA ex parte at 11.

¹⁰ WC Docket No. 05-337, et al., NASUCA Comments (November 26, 2008) at 16-17.

¹¹ WC Docket No. 08-152, et al. NASUCA ex parte (September 30, 2008) at 5-6.

¹² See CC Docket No. 80286, NASUCA Comments (April 4, 2009), citing 80-286, Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate; and Affidavits of Susan Baldwin and Dr. Robert Loube (August 22, 2006); id., NASUCA et al. Reply Comments (November 20, 2006).

reduced – both for some rural carriers¹³ and for non-rural carriers¹⁴ -- in order to further the statutory directive that rural rates and services be reasonably comparable to urban rates and services.¹⁵ For example, a review of the rural carriers in Ohio shows little correlation among the amount of high-cost support received, the level of the carriers' basic service rates, and the earned return of equity of the company.¹⁶

NASUCA appreciates the Commission's attention on these matters, and is pleased to support NECA's view that VoIP calls should compensate carriers for the use of their networks.

Respectfully submitted,

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Chair, NASUCA
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CC: Chairman Genachowski, Commissioners Copps, McDowell, Clyburn and Baker;
Priya Aiyar, Julie Veach, Marcus Maher, Victoria Goldberg, Jennifer Prime

¹³ See WC Docket No. 05-337, et al., NASUCA Comments on Joint Board Recommended Decision (April 17, 2008) at 36-40.

¹⁴ Id. at 40-50.

¹⁵ 47 U.S.C. § 254(b)(3).

¹⁶ This view is based on the small ILECs' tariffs, their annual reports to the Public Utilities Commission of Ohio, and USAC data on high-cost funds received.