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**BY ELECTRONIC DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**Re: Intercarrier Compensation Reform: Developing a Unified Intercarrier  
Compensation Regime, CC Docket No. 01-92**

Dear Ms. Dortch:

There no longer can be any question that the current intercarrier compensation (“ICC”) system is broken and in need of substantial reform. Such system, “implemented before the advent of the Internet when there were separate local and long distance companies” and the local carriers were allowed to charge – and continue to charge – rates well in excess of economic cost,<sup>1</sup> is simply incompatible with the provision of communications over broadband networks based upon Internet Protocol (“IP”) technology, including the provision of Voice over IP (“VoIP”) services. Indeed, “[t]he current ICC system is not sustainable in an all-broadband [IP] world” and “actually hinders the transformation of America’s networks to broadband.”<sup>2</sup>

In their January 21, 2011, *ex parte* letter in this proceeding, Sprint Nextel Corporation (“Sprint”) and T-Mobile USA, Inc. (“T-Mobile”), explained that “[s]queezing services using 21<sup>st</sup> century technology into networks using mid-20<sup>th</sup> century technology ... harms consumers.”<sup>3</sup> Unfortunately, this is precisely what many incumbent local exchange carriers (“ILECs”) are doing. They have resisted the implementation of IP-based services and insisted on the

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<sup>1</sup> Federal Communications Commission Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan* at 142 (March 16, 2010) (“National Broadband Plan”).

<sup>2</sup> *Id.*

<sup>3</sup> Sprint/T-Mobile January 21 Letter at 2.

conversion of voice calls to the PSTN-based Time Division Multiplexing (“TDM”) protocol. There are no sound engineering or network management reasons for such actions. In fact, as set forth in the National Broadband Plan, TDM conversions are inefficient, impose significant costs, and discourage carriers from investing in and deploying 21<sup>st</sup> century IP-based broadband technologies.

ILECs are requiring TDM conversions for one reason, an attempt to protect legacy access revenue streams. Indeed, four such ILECs have asked the FCC to affirmatively declare that they have the right to collect above-cost access charges for terminating IP-originated calls, such as VoIP calls, delivered over their legacy circuit-switched networks.<sup>4</sup> Such a declaration by the FCC would be contrary to the public interest and long standing FCC precedent.<sup>5</sup> The FCC has never classified such calls as telecommunications services and it has never found VoIP to be subject to access charges.<sup>6</sup>

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<sup>4</sup> See Letter from CenturyLink, Frontier, Qwest, and Windstream to Chairman Genachowski, GN Docket No. 09-51; WC Docket Nos. 07-135; 05-337; 04-36; CC Docket Nos. 99-68; 01-92, January 18, 2011.

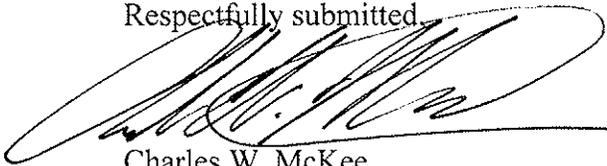
<sup>5</sup> In order to make this declaration, the FCC would have to reverse three decades of decisions finding that services involving net protocol conversion are information services not subject to Title II regulation including the application of access charges. And the FCC would have to provide a detailed justification as to why it was taking such action despite the fact that it has repeatedly recognized that the current access charge system is incompatible with a “an all-broadband [IP] world.” See *Greater Boston Television Corporation v. FCC*, 444 F.2d 841, 852 (DC Cir. 1970) (“An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”).

<sup>6</sup> See, e.g., *In the Matter of Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review; Telecommunications Services for Individual with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; and IP-Enabled Services*, 21 FCC Rcd 7518, 7537 ¶ 35 (2006) (extending USF contribution obligations to providers of interconnected VoIP services even though the Commission “has not yet classified interconnected VoIP services as ‘telecommunications services’ or ‘information services’ under the definitions of the Act”); *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513 3521-22 ¶ 15 (2007) (“... we need not, and do not, reach here the issues raised in the IP-Enabled Services docket, including the statutory classification of VoIP services”); *Feature Group IP Petition for Forbearance From Section 251(g) of the*

Expanding the antiquated switched access regime in this manner simply makes no sense and would be a giant leap backwards. To apply a compensation regime designed some 30 years ago for a completely different type of communications industry with a completely different cost structure to packet-based IP technology in a broadband economy would directly undermine the goals of the National Broadband Plan. Forcing providers of IP-based broadband networks to pay for the inefficiencies inherent in the current access charge regime will “stifl[e] investment in and use of 21<sup>st</sup> century technologies, including the deployment and use of broadband networks.”<sup>7</sup> Of equal importance, as long as the ILECs can continue to reap the subsidies built into their access charges, they will have little or no incentive to deploy broadband IP networks in their territories for the benefit of their end-user customers or to cooperate in a rational reform of the existing system.

Stated differently, these ILECs must at long last be made to understand that the communications industry is changing and that they can no longer demand government protection from change nor continue to be unduly enriched by above-cost access charges.

Respectfully submitted,



Charles W. McKee

cc: Zac Katz (by email)  
Margaret McCarthy (by email)  
Christine Kurth (by email)  
Angela Kronenberg (by email)  
Brad Gillen (by email)  
Sharon Gillett (by email)

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*Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules*, 24 FCC Rcd 1571, 1574 fn. 19 (2009) (“we make no decisions or findings in this Order concerning the current compensation rules for these types of communications [IP-PSTN calls], which are the subject of a pending rulemaking in the current Inter-carrier Compensation proceeding”); and *In the Matter of Preserving the Open Internet Broadband Industry Practices*, (GN Docket No. 09-191, WC Docket No. 07-52), *Report and Order*, FCC 10-201 released December 23, 2010 at ¶ 126 (“The Commission has not determined whether any [] VoIP providers are telecommunications carriers”).

<sup>7</sup> Sprint/T-Mobile January 21 Letter at 3.