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July 15, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington, DC 20554

Re: ***Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *High Cost Universal Service Support*, WC Docket No. 05-337; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51**

Notice of Ex Parte Communication

Dear Ms. Dortch:

William A. Haas, Corporate Vice President of Public Policy and Regulatory of PAETEC Holding Corp. ("PAETEC"), and the undersigned had separate meetings with Angela Kronenberg, Wireline Legal Advisor to Commissioner Mignon Clyburn, and Margaret McCarthy, Wireline Policy Advisor to Commissioner Michael Copps on July 13, 2011, and Christine Kurth, Policy Director and Wireline Counsel to Commissioner Robert McDowell on July 14, 2011.

PAETEC expressed its support for a unified termination rate under Section 251(b)(5) so long as the rate is cost-based and carriers are provided a sufficient time to transition from current rates to the final rate. PAETEC primarily serves enterprise customers under term agreements. Because PAETEC's end user contracts provide price stability and last on average 3.7 years, PAETEC cannot, in the short term, recover from end users costs formerly recovered in intercarrier compensation charges.

PAETEC argued that all of the Commission's policy goals have the potential to be undermined by unchecked self-help. If large carriers can withhold payment of charges unless and until the terminating carrier "negotiates" the larger carrier's preferred rate, the Commission's efforts to eliminate phantom traffic and establish a reasonable glide path to protect competitive choice and ensure certainty for carriers and investors will be for naught.

PAETEC argued that the Act delegates state commissions the authority to set the rate for 251(b)(5) traffic and the FCC is limited to determining the methodology. State

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commissions have set cost-based rates in proceedings implementing the FCC's TELRIC methodology. Many of these rates have been submitted in the record.[1] For those that are not in the record, the FCC could take judicial notice of the state commissions' section 251(b)(5) rates. While those rates need to be updated to reflect forward-looking technology, such as softswitches, they are a better starting target for rate reductions than $0.0007. As the state commissions that have conducted such cost proceedings have argued, the proposed proposed terminating rate of $0.0007 has no basis in cost and is in fact not a cost-based rate. Adopting a non-cost-based rate as the end point of reform would violate the Act, subjecting reform to fallibility on appeal.[2] Similarly, record evidence submitted by carriers shows that $0.0007 does not recover the cost of terminating traffic.[3]

PAETEC argued that a nationwide uniform termination rate is inconsistent with other rates set under the section 251/252 framework. Just as rates for comparable unbundled network element rates vary between ILECs, and are further delineated for each ILEC within a given state by region, it is appropriate for intercarrier compensation rates to vary by carrier. Moreover, CLECs do not resemble RBOCs and are more appropriately benchmarked to mid-sized ILECs with whom they share similar cost and density characteristics.[4]

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[1] *Ex Parte* Comments of NuVox, CC Docket No. 01-92 and WC Docket No. 04-36, at 1-2 (filed Oct. 2, 2008) ("NuVox *Ex Parte*") and attached Declaration of Michael Starkey at 2 and Exhibit 2 (reviewing rates in 40 states).

[2] *See, e.g.,* Letter from James Bradford Ramsey, Counsel to the State Members of the Federal State Joint Board on Universal Service, to Marlene Dortch, Secretary, FCC, Docket Nos. 10-90, 09-51m 07-135, 05-337, 01-92, 96-45 and 03-109, at Appendix p. 4 (July 13, 2011) ("This [$0.0007] rate is even below TELRIC-based reciprocal compensation rates"); Reply Comments of the California Public Utilities Commission and the People of the State of California, Docket Nos. 05-337, 96-45, 03-109, 06-122, 99-200, 96-98, 01-92, 99-68 and 04-36, at 14 (Dec. 22, 2008) ("rates in the zero to $.0007 range, which are lower than rates determined using the TELRIC methodology"); Comments of the Corporation Commission of the State of Kansas on All Sections of the February 9, 2011 NPRM Except Section XV, Docket Nos. 10-90, 09-51, 07-135, 05-337, 01-92, 96-45 and 03-109, at 5 (Apr. 18, 2011) ("FCC should acknowledge that because costs vary by carrier and thus, the ICC rate may vary by carrier"); Letter from Greg Jergeson, Chairman, Montana Public Service Commission, to Marlene Dortch, Secretary, FCC et al., Docket No. 01-92, at 2 (Aug. 18, 2008) (Qwest's "cost for carrier access… is closer to $.0404/minute, nowhere near the rumored $.0007/minute rate").

[3] *See* PAETEC April 1, 2011 Comments, at 38-42; PAETEC May 23, 2011 Reply Comments, at 33-34.

[4] *See* PAETEC May 23, 2011 Reply Comments, at 43-45.

PAETEC argued that it is not yet clear what termination costs will be under an IP-IP interconnection framework. PAETEC reiterated that the most effective action the FCC could take to promote a transition to IP networks is to confirm immediately that ILECs have a duty to offer IP interconnection under 251(c)(2)/252. Such a finding would enable carriers to negotiate and gain experience with direct IP-IP interconnection, giving state commission and the FCC a better basis for determining how/what costs are incurred in a forward looking IP network architecture and how they should be recovered.

PAETEC urged the Commission to consider the impact of ICC reductions on CLECs and their customers and adopt a measured transition to ensure continued investment in competitive broadband services. Intercarrier compensation makes up approximately 7% of PAETEC's revenue. The variance between PAETEC's interstate and intrastate access rates varies widely depending on the state,[5] and the revenue impact of equalizing intrastate and interstate access is substantial. To the extent ILECs are able to lengthen the transition to recovering costs from end users by receiving an access recovery subsidy that continues beyond the date the uniform rate is reached, CLECs should be given the same opportunity. For example, if ILECs get six years to transition to a uniform rate and get access recovery subsidies, which are not available to CLECs, for an additional three years, CLECs should have the same time period (nine years) to move cost recovery from intercarrier compensation to end user rates. Otherwise regulation will put CLECs at a competitive disadvantage in the market.

PAETEC summarized its safe harbor proposal under which each carrier could elect to implement a uniform rate on a faster timetable, thus reducing incentives for arbitrage to gain lowest termination rate and permitting carriers to self-select a faster transition period.[6]

With respect to phantom traffic, PAETEC emphasized that the proposed rule will not close a loophole that permits entities to avoid payment for terminating charges. Although the proposed rule would help terminating carriers resolve the question of ***what*** jurisdiction the call should be billed as, it will not assist terminating carriers in identifying ***who*** should be billed. In order to identify the financially responsible provider, the terminating carrier needs the Carrier Identification Code ("CIC") or Operating Company Number ("OCN") of the provider delivering the call to the terminating tandem. Such CIC/OCN information is needed regardless of whether rates vary by jurisdiction or are unified. Without such information, phantom traffic will continue and the Commission will not have solved the problem of unbillable minutes of

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[5] *See* PAETEC Confidential Revenue and Cost Data (filed May 23, 2011), at Tab "Term. Rates Combined" (demonstrating the variance between interstate and intrastate rates across the PAETEC operating companies).

[6] *See* PAETEC April 18, 2011 Comments, at 23-24; PAETEC May 23, 2011 Reply Comments, at 49-50.

use. Indeed, masking the identity of the carrier delivering the call to the tandem could enable a significant ongoing arbitrage opportunity.

On the issue of traffic stimulation, PAETEC reiterated its arguments that a net payor trigger would be difficult to implement as a practical matter.[7]

PAETEC provided the meeting participants with a copy of the confidential chart, previously filed in the docket on June 13, 2011, entitled "Total Domestic Monthly Access Revenue Under Alternative Access Policy Proposals."

Sincerely yours,

/s/ electronically signed

Tamar E. Finn

cc (by e-mail):

Angela Kronenberg
Margaret McCarthy
Christine Kurth

[7] *See* PAETEC April 1, 2011 Comments, at 21-22.