July 19, 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:

On July 15, 2011 William A. Haas, Corporate Vice President of Public Policy and Regulatory of PAETEC Holding Corp. ("PAETEC"), Tamar E. Finn of Bingham McCutchen, LLP, on behalf of PAETEC, Jerry James and Karen Reidy of COMPTEL and Joe Gillan of Gillan and Associates, on behalf of COMPTEL, met with Zachary Katz, Chief Counsel & Senior Legal Advisor to Chairman Julius Genachowski and Randy Clarke, Rebekah Goodheart (by phone), and Marcus Maher of the Wireline Competition Bureau.

PAETEC and COMPTEL urged the FCC to find, in its first Order on this NPRM, that the exchange of IP voice traffic via IP-to-IP interconnection arrangements with ILECs is subject to Sections 251 and 252. Such a finding is necessary so that good faith carrier-to-carrier negotiations for IP interconnection can begin, 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 and COMPTEL expressed 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. 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 commissions have set cost-based rates in proceedings implementing the FCC's TELRIC methodology. As the state commissions that have conducted such cost proceedings have argued, the proposed terminating rate of $0.0007 has no basis in cost and is in fact not a cost-based rate.[1] Adopting a non-cost-based rate as the end point of reform would violate the Act, subjecting reform to fallibility on appeal.

[1] *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,

COMPTEL argued that while the FCC should bring all terminating traffic under Section 251(b)(5), originating access should be preserved. With respect to terminating rate levels, COMPTEL argued that the existing, cost-based reciprocal compensation rates should stand until the states implement a new methodology to replace them. If rates for Section 251 elements and functions need to be updated to reflect today's technology, the FCC must update both rates that incumbents pay (terminating compensation) and receive (transport).

COMPTEL also argued that Section 251(b)(5) compensation includes all transport and termination functions. If terminating access is moving to the 251(b)(5) rate structure, all access rate elements, including tandem switching and transport, must be subject to that rate structure.

PAETEC and COMPTEL 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,[2] 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

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Docket Nos. 10-90, 09-51m 07-135, 05-337, 01-92, 96-45 and 03-109, (July 14, 2011) at 2 ("there is NO record evidence - no empirical data - no actual cost studies - to support imposing a single industry-wide $0.0007 rate as compensatory" and the Michigan approved local termination rate for Verizon is $0.003461 and for a small LEC is $0.00703) and 8 ("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").

[2] *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).

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.

COMPTEL argued that VoIP traffic should be treated as any other telecommunications traffic by jurisdiction (intra/inter/local). COMPTEL urged the FCC to make sure that there are no traffic categories that do not have an unambiguous compensation scheme that applies in a workable and enforceable manner. For example, the FCC should amend its rules to make clear that all LECs, not just ILECs, have a right to request negotiations with wireless carriers for Section 251(b)(5) compensation.[3]

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

At the conclusion of the meeting, PAETEC provided the FCC 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):

Zachary Katz
Randy Clarke
Rebekah Goodheart
Marcus Maher

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[3] 47 C.F.R. § 20.11(e).