



August 5, 2011

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Ross A. Buntrock

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**Re: *Ex Parte* Presentation: CC Docket No. 01-92, WC Docket No. 10-90,
WC Docket No. 07-135, WC Docket No. 05-337, GN Docket No. 09-51, and
WC Docket No. 06-122**

Dear Ms. Dortch:

Yesterday, August 4, 2011, former Commissioner Harold Furchtgott-Roth, David Carter, and I met with Al Lewis, John Hunter, Pam Arluk, and Doug Sloten of the Wireline Competition Bureau, Pricing Policy Division, as well as Eric Ralph, Chief Economist of the Wireline Competition Bureau, on behalf of Northern Valley Communications, LLC and Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone. We met to discuss the Commission's on-going ICC/USF reform rulemaking and, in particular, the proposed rules relating to so-called "access stimulation."

We discussed the recent proposal filed by AT&T, FairPoint, CenturyLink, Frontier, Verizon, and Windstream, which urges the Commission to adopt a uniform intercarrier compensation rate of \$0.0007 and to transition to that rate within five years. While the approach suggested by these carriers has many flaws which counsel against its adoption, we noted that this or similar proposals would effectively moot the need to adopt rules specifically addressed at "access stimulation," because the industry-wide transition to such low rates would effectively prevent carriers from having sufficient revenues to share with their end user customers.

We also discussed the comments of Commissioner Furchtgott-Roth filed in these dockets on May 25, 2011.¹ In those comments, after reviewing a number of the public comments filed in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, the Commissioner made the following findings:

- The NPRM fails to articulate a compelling need for new rules much less a statutory necessity or even statutory preference for the specific proposed new rules;

¹ See FCC, Docket 07-135, Ex Parte Comments of H. Furchtgott-Roth (May 25, 2011), available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021655286>); see also FCC, Docket 07-135, Comments of H. Furchtgott-Roth (November 30, 2010), available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921723>.

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- The NPRM misuses the word “arbitrage”;
- Rather than a rule based on statutory necessity or reflective of expanding competition, the NPRM proposes a rule based on an assessment of profits under current market conditions, ultimately favoring one group of firms over another;
- Even if writing rules based on an assessment of profits under current market conditions were appropriate, the NPRM presents no new verifiable information upon which to base those rules;
- The NPRM proposes a dangerous precedent of regulating revenue sharing;
- The NPRM proposes to expand rather than contract price regulation despite the presence of more rather than less competition;
- The NPRM fails to recommend deregulation when deregulation is both the obvious and lawful solution; and
- The NPRM fails to comply with the Regulatory Flexibility Act.

Ultimately, at a time when the nation’s economy remains in peril and the Chairman is focused on how technology and innovation can create jobs for Americans,² the rules proposed by the FCC are unwarranted. These proposed new regulatory burdens would serve only to kill jobs in rural America, and by attacking free conference calling services would make it more expensive for small businesses and entrepreneurs to collaborate on their ventures. Thus, the Commission should reject the proposed rules and focus on creating comprehensive reform.

To the extent that the Commission does proceed to adopt new rules for carriers serving conference call providers, however, it should carefully consider Northern Valley and Kentucky Telephone’s alternative proposal regarding the appropriate CLEC benchmark rate for conference calling traffic.³ This proposal urges the use of the “local switching” element for NECA Rate Band 1 as the appropriate CLEC benchmark rate for traffic meeting an “access stimulation” trigger. The NECA Rate Band 1 local switching element as a benchmark has the distinct advantage of ensuring that no carrier is disadvantaged based on the state in which it operates.

² See FCC Press Release, FCC Chairman Genachowski Announces 100,000 New Broadband-Enabled Call Center Jobs with Business Leaders: Genachowski makes Jeffersonville, Indiana first stop in a national “American Innovation Tour” to spotlight and promote the benefits of broadband across the country (Aug. 4, 2011) (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308897A1.pdf).

³ See FCC, Docket 07-135, Northern Valley Communications, LLC and Bluegrass Telephone Company d/b/a Kentucky Telephone Initial Comments (April 1, 2011) at 15 - 16, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021236795>.

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This high degree of certainty would also reduce the likelihood of future litigation regarding so-called “access stimulation.”

Finally, we briefly discussed a petition for declaratory ruling filed by the Rural Independent Competitive Alliance (“RICA”) that requests that the Commission clarify that rural competitive local exchange carriers are not obligated to report on the FCC Form 499-A any portion of their end user revenues that is not collected pursuant to rates explicitly designated as charges for the provision of interstate service. RICA’s petition further requests that the Commission clarify that end user revenues recovered pursuant to rates charged for the provision of telephone exchange service entirely within one state are intrastate revenues. *See* Petition of the RICA Members for Declaratory Ruling Regarding Imputation of Interstate Revenue, WC Docket Docket No. 06-122 (filed April 26, 2011). USAC has cited the instructions to FCC Form 499-A, which states that “filers without subscriber line charge revenue must identify the interstate portion of fixed local exchange service revenues...,” to require LECs to apportion revenue, even though it is not interstate in nature. We noted that certain LECs that provide service to conference call providers have received inquiries from USAC similar to those reported by RICA and thus urged the Commission to take appropriate action to address the RICA proposal and to avoid further uncertainty regarding a LEC’s compensation obligations.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



Ross A. Buntrock

cc: Al Lewis
John Hunter
Pam Arluk
Doug Slotten
Eric Ralph