

October 20, 2011

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 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  
**Written Ex Parte Communication**

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Dear Ms. Dortch:

I am writing on behalf of Midcontinent Communications (“Midcontinent”) concerning the approach to be taken in the Commission’s anticipated intercarrier compensation order to phasing down intercarrier compensation rates in rural areas. Midcontinent urges the Commission to ensure that the phase-down rules apply identically to incumbent local exchange carriers (“LECs”) and competitive LECs.

Midcontinent was one of the first facilities-based competitive LECs to provide service in rural areas. As described in Midcontinent’s recent comments, Midcontinent serves a wide range of communities in Minnesota, North Dakota and South Dakota, and today provides broadband service to communities with populations as low as 117 people.<sup>1</sup> Midcontinent therefore has a significant interest in how the intercarrier compensation transition rules apply to both incumbent LECs and competitive LECs in rural markets.

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<sup>1</sup> Reply Comments of Midcontinent, WC Docket No. 10-90 *et al.* (Sept. 6, 2011) at 8 (“Midcontinent Reply Comments”).

Under the current access charge rules, competitive LEC access rates are subject to a ceiling that mirrors the rate charged by the incumbent LEC.<sup>2</sup> The specific ceiling for a competitive LEC at a given location is set at the level of the incumbent LEC, and can vary from place to place within a state, depending on the incumbent LEC rate. The Commission adopted the ceiling, in part, because it wanted to ensure that competitive LECs and incumbent LECs had the same opportunity to recover their interstate costs and that competitive LECs and incumbent LECs were subject to the same constraints in setting their access prices.<sup>3</sup> It should continue to follow that principle in designing the transition from the current access regime to a final, unified intercarrier compensation regime.<sup>4</sup>

That means, in particular, that any transition that the Commission adopts for incumbent LECs, rural or non-rural, also should apply equally to competitive LECs that serve the same communities. Thus, if there is an extended transition period for rural incumbent LECs, any competitive LEC that provides service in rural areas should have the same transition in those areas as the incumbents that it competes against.

It will not be complex to administer such a regime; indeed, it will be no more complex than the current competitive LEC access rules, which have been in operation for nearly a decade. Granting rural competitive LECs the same transition period as rural incumbent LECs will, in fact, be simpler than requiring rural competitive LECs to adopt a different transition regime, as many competitive LECs set their access rates today by reference to the incumbent rate.

More important, adopting the same transition period for competitive LECs will prevent those competitors from suffering from an additional competitive disadvantage during the transition period. If there is a different transition for rural incumbents and rural competitors, competitors will be forced to choose between forgoing revenues or raising the rates they charge their customers, either of which would create a marketplace advantage for the incumbents. If, however, the transition is the same for both rural incumbents and rural competitors, both incumbents and competitors will be faced with the same constraints.<sup>5</sup> This will help to maintain a more level competitive playing field.

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<sup>2</sup> 47 C.F.R. § 61.26. As a technical matter, the rules do not prohibit competitive LECs from charging more than this ceiling, but rates above the ceiling cannot be tariffed. Therefore, as a practical matter, competitive LECs mirror incumbent LEC rates.

<sup>3</sup> Reform of Access Charges Imposed by Competitive Local Exchange Carriers, *Seventh Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 9923, 9938 (2001) (“*CLEC Access Reform Order*”).

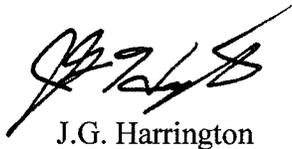
<sup>4</sup> Competitive LECs also should be able to continue to recover any access costs in excess of the costs recovered through per-minute intercarrier compensation charges through end user charges like the subscriber line charge, as is the case under the current rules. As the Commission noted in the *CLEC Access Reform Order*, end user charges are subject to market discipline and therefore detailed regulation is not required. *Id.* at 9938-9.

<sup>5</sup> Midcontinent recognizes that, under the rules the Commission adopts, rural incumbents may be eligible for funding that is not available to rural competitors, such as the proposed

For these reasons, Midcontinent urges the Commission to adopt rules that maintain the current access charge mirroring regime for both rural and non-rural competitive LECs.

In accordance with the requirements of Section 1.1206 of the Commission's Rules, this letter is being filed electronically with the Commission on this date.

Respectfully submitted,



J.G. Harrington

Counsel to Midcontinent Communications

cc: Hon. Julius Genachowski  
Hon. Michael J. Copps  
Hon. Robert M. McDowell  
Hon. Mignon Clyburn  
Zachary Katz  
Margaret McCarthy  
Christine D. Kurth  
Angela Kronenberg  
Sharon Gillett

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access recovery mechanism. (As Midcontinent explained in its September 6 reply comments, the access recovery mechanism should be limited to the smallest rural carriers. Midcontinent Reply Comments at 5-6. Any incumbent carrier that receives access recovery mechanism funding already will have a competitive advantage over a competitor. Also granting the incumbent a preferential transition period for its intercarrier compensation rates would further exacerbate that advantage.