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December 14, 2011

**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN  
CC DOCKET NO. 01-92, WC DOCKET NOS. 05-337, 07-135, 10-90 AND GN DOCKET  
NO. 09-51 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION --**

**REDACTED FOR PUBLIC INSPECTION**

By Hand Delivery & Electronic Filing  
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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

Dear Ms. Dortch:

On behalf of CenturyLink, FairPoint Communications, Inc., Frontier Communications Corp., and Windstream Communications, Inc. (hereinafter “the mid-sized price cap carriers”), this letter urges the Commission to revisit the decision in its recent *Universal Service/Intercarrier Compensation Transformation Order* (the “Order”) to adopt bill-and-keep as the immediately applicable default compensation methodology for non-access traffic between CMRS providers and local exchange carriers (“LECs”) under section 20.11 and Part 51 of the Commission’s rules.<sup>1</sup> In particular, the mid-sized price cap carriers request that the Commission

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<sup>1</sup> See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, at ¶¶ 988-1002 (rel. Nov. 18, 2011)(“*Comprehensive Reform Order*”).

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reconsider its conclusion that “the impact [of this change] is not significant” for incumbent LECs, and the factual assertions underlying that conclusion.<sup>2</sup> In fact, the new rule will have a significant, negative financial impact on the mid-sized price cap carriers, and they urge the Commission to revise its rules to minimize that negative impact and ease implementation.

In support of its new rule, the Commission states that “CMRS providers that fail to pursue an interconnection agreement do not receive any compensation for intraMTA traffic,” and that “for incumbent LECs that do have agreements for compensation of intraMTA traffic, most large incumbent ILECs have already adopted \$0.0007 or less as their reciprocal compensation rate.”<sup>3</sup> In fact, situations where the mid-sized price cap carriers lack interconnection agreements cover only a small portion of CMRS-LEC intraMTA traffic today. For example, Windstream has 238 interconnection agreements with 81 CMRS providers and only exchanges traffic with 24 providers without an interconnection agreement. Frontier has 560 interconnection agreements with 61 CMRS providers and only exchanges traffic with 25 providers without an interconnection agreement. Often where the carriers do not have interconnection agreements, it is because the amount of traffic passed by that CMRS provider is so small that it does not warrant an agreement.

In addition, where the mid-sized ILECs do have interconnection agreements, their reciprocal compensation rates for CMRS-LEC intraMTA traffic are much higher than \$0.0007. For example, CenturyLink’s average weighted rate for billed, non-transit intraMTA traffic is **\*BEGIN CONFIDENTIAL\* \*END CONFIDENTIAL\*** per minute, and Windstream’s average weighted rate is **\*BEGIN CONFIDENTIAL\* \*END CONFIDENTIAL\*** per minute.

As a result, the immediate move to bill and keep for CMRS-LEC intraMTA traffic will have a significant, measurable negative financial impact on the mid-sized price cap carriers. In particular, based upon CMRS-LEC intraMTA traffic received today, the mid-sized price cap carriers predict total revenue losses of **\*BEGIN CONFIDENTIAL\* \*END CONFIDENTIAL\*** and a net revenue loss of **\*BEGIN CONFIDENTIAL\* \*END CONFIDENTIAL\*** in the first half of 2012.<sup>4</sup> Moreover, this negative impact is entirely unmitigated for the first half of 2012, because the transition to bill-and-keep occurs immediately, while the access recovery mechanism (“ARM”) designed to provide recovery for reduced intercarrier compensation revenues is not implemented until July 1, 2012.<sup>5</sup>

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<sup>2</sup> *Id.* at ¶ 997.

<sup>3</sup> *Id.*

<sup>4</sup> As discussed further below, new arbitrage schemes enabled by the new CMRS-LEC rate regime only will add to these losses.

<sup>5</sup> *See* Section 51.915(f) of the FCC’s new rules.

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The mid-sized price cap carriers are also concerned that the Commission, by moving the default rate for CMRS-LEC intraMTA traffic to bill-and-keep immediately, is unintentionally creating a new arbitrage opportunity at a time when it has pledged to eliminate “wasteful arbitrage schemes” that cost consumers millions.<sup>6</sup> Because the rates for CMRS-LEC intraMTA traffic will not be reduced in accordance with the transition applicable to other types of traffic, dishonest carriers delivering traffic will be motivated to classify that traffic as CMRS-LEC intraMTA traffic. Such schemes will result in revenue losses above and beyond the losses projected above. While the new rules designed to combat phantom traffic are a step in the right direction, they will not help when terminating carriers receive such traffic indirectly and have no way of verifying that it is indeed CMRS-originated.

Finally, the immediate movement to bill-and-keep presents a significant implementation challenge. The mid-sized price cap carriers have hundreds of interconnection agreements, the vast majority of which must be revisited upon a “change of law.” CenturyLink in particular has 757 interconnection agreements with CMRS providers, of which about 87 percent will have to be revised. FairPoint has 170 agreements, Frontier has 560, and Windstream has 238. Moreover, the companies must make changes to their billing systems to reflect the new rate structure.

In light of these concerns, the mid-sized price cap carriers urge the Commission to consider revisions that would minimize that negative impact of this rule requiring immediate bill and keep for CMRS-LEC intraMTA traffic. Ideally, the Commission should reduce rates for CMRS-LEC traffic in accordance with the six-year transition applying to other forms of terminating traffic. This approach was recommended as a part of the America’s Broadband Connectivity Plan, which was put forward by companies with widely varying positions on intercarrier compensation reforms.<sup>7</sup> Reducing CMRS-LEC rates in accordance with the six-year transition will (i) prevent arbitrage opportunities that otherwise could arise with separate transitions for CMRS-LEC and other terminating traffic, (ii) give incumbent LECs much-needed additional time to revise hundreds of interconnection agreements with CMRS providers, and (iii) make it possible for incumbent LECs to attain reasonable recovery for revenue losses incurred in the first half of 2012.

If separate treatment of CMRS-LEC traffic nevertheless is maintained, the mid-sized price cap carriers recommend that the Commission, at a minimum, delay implementation of the rule taking CMRS-LEC rates to bill and keep to July 1, 2012, coinciding with implementation of the ARM. This reform would provide carriers much-needed additional time to revise

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<sup>6</sup> See, e.g., *Comprehensive Reform Order* at ¶ 648.

<sup>7</sup> See Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. 1 at 9 (filed July 29, 2011) (“by eliminating the disparities between intrastate and interstate access rates, and between access rates and rates for other traffic, the plan will end arbitrage schemes and disputes that divert resources from broadband deployment.”)

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interconnection agreements in an orderly fashion, and it would allow incumbent LECs to attain reasonable recovery for immediate losses resulting from the CMRS rate changes, without requiring any changes to recovery mechanisms adopted in the Commission's Order.

Alternatively, the Commission, if focused only on enabling reasonable recovery, may choose to explore a couple of additional options. First, the Commission may make the ARM effective date concurrent with reductions in rates for CMRS-LEC traffic by moving up implementation of the recovery mechanism to December 29, 2011. Second, the Commission may provide a one-time true-up for carriers to use the ARM to recover the net reciprocal compensation loss incurred during the period December 29, 2011 through June 30, 2012.<sup>8</sup> In contrast to reforms proposed in preceding paragraphs, these reforms are more administratively complex, would not prevent new arbitrage opportunities, and would not mitigate implementation issues; nonetheless, either of these two reforms would significantly improve upon the regime adopted in the Order.

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The companies file the Confidential Information marked herein in bold lettering, pursuant to the Protective Order in CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135, and 10-90 and GN Docket No. 09-51 (DA 10-1749, rel. Sept. 16, 2010) (*Protective Order*). This confidential treatment is required to protect proprietary and confidential information.

Pursuant to the *Protective Order*, enclosed herewith are one copy of the midsized price cap carriers' Stamped Confidential Document, and two copies of their Redacted Confidential Document, as defined in the Protective Order. The mid-sized price cap carriers also are sending two copies of the Stamped Confidential Document to Ms. Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau.

Please contact me if you have any questions.

Sincerely,

/s/  
Karen Brinkmann  
KAREN BRINKMANN PLLC  
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<sup>8</sup> Specifically, this reform could be accomplished by amending Rule 51.915(d)(1)(i)(B) to read as follows: "CMRS Net Reciprocal Compensation Revenues multiplied by 1.5 multiplied by the Price Cap Carrier Traffic Demand Factor; and . . . ." The 1.5 factor would account for the impact of the December 29, 2011 through June 30, 2012 loss of CMRS Net Reciprocal Compensation Revenues.

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