December 19, 2011

Via ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of Ex Parte Presentation in 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 December 16, 2011, the undersigned, on behalf of CTIA, as well as member companies AT&T, represented by Brian Benison; Sprint, represented by Norina Moy and Mike Fingerhut; T-Mobile, represented by Indra Chalk; and Verizon Wireless, represented by Maggie McCready and Tamara Preiss, and L. Charles Keller of Wilkinson Barker Knauer, LLP, on behalf of CTIA, met with Zachary Katz of Chairman Genachowski's office; Sharon Gillett, Rebekah Goodheart, Randy Clarke, and Albert Lewis of the Wireline Competition Bureau; and James Schlichting and Peter Trachtenberg of the Wireless Telecommunications Bureau.

The purpose of the meeting was to discuss the letters dated December 14, 2011, from the National Telecommunications Cooperative Association ("NTCA")[1] and a group of mid-sized price cap carriers[2] asking the Commission to reconsider its decision to establish an effective date of December 29, 2011, for the default bill-and-keep regime for intraMTA traffic exchanged between Commercial Mobile Radio Service ("CMRS") carriers and local exchange carriers ("LECs") (collectively, the "LEC Letters").[3] This letter describes and expands upon the points we made in the meeting. For the reasons discussed below, the Commission should reject the LEC Letters and leave the effective date for the bill-and-keep rule for LEC-CMRS traffic unchanged.

Immediate implementation of bill-and-keep for intraMTA LEC-CMRS traffic is an important element of the Order's careful balancing of interests, which greatly

[1] Letter from Michael Romano, NTCA, to Marlene Dortch, FCC, WC Docket Nos. 10-90 *et al*. (filed Dec. 14, 2011) ("NTCA Letter").
[2] Letter from Karen Brinkmann, attorney to CenturyLink, FairPoint, Frontier, and Windstream, to Marlene Dortch, FCC, WC Docket Nos. 01-92 *et al*. (filed Dec. 14, 2011) ("Price Cap Letter").
[3] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at ¶ 994 (rel. Nov. 18, 2011) ("Order").

benefits price cap LECs. The letter signatories assert that there will be a revenue impact from this discrete element of the Order, but the Order is not intended to be revenue-neutral. Virtually every element of the Order will generate a revenue impact on some industry segment. Achieving universal service reform was so arduous because of the difficulty of balancing these competing financial interests. No industry segment is entirely pleased with the outcome. Reconsidering this rule would shift this already precarious balance.

Moreover, the balance that the Order strikes provides enormous benefits to price cap LECs. Some of the major benefits that the Order bestows upon LECs include:

- LECs benefit immediately from the new rule subjecting interconnected VoIP traffic to intercarrier compensation requirements, which also takes effect on December 29.[4] This provides LECs with a significant new revenue stream immediately, which likely will entirely offset any revenue reductions that LECs incur between December 29, 2011 and the implementation of their special recovery mechanism on July 1, 2012. The Commission should include this new revenue in any calculation of whether the Order causes a negative financial impact on LECs.

- LECs retain the right to collect access charges over the life of the plan, albeit at declining levels for many rate elements (but at current rate levels for others). LECs' access rates remain at current levels until July 1, 2012. Due to the length of the phase-down, LECs experience the greatest benefit from the ability to tariff access charges during the early years of the transition.

- LECs receive additional universal service support to partially make up for the intercarrier compensation revenues that they lose as a result of the transition to bill-and-keep, beginning July 1, 2012.[5] Of all the types of carriers that face negative financial consequences as a result of the conclusions in the Order, only incumbent LECs receive a special additional share of universal service support, in addition to a reasonable transition, solely to make up for the loss of a revenue stream from the current regime. The Order includes no provision for other carriers, including CMRS carriers, to receive any comparable additive support.

- Areas served by price cap LECs, in particular, more than double their total USF receipts under the new regime, including an immediate boost of $300 million in 2012 that is not available to other types of providers under any circumstances.

In light of these substantial benefits, it is particularly ironic that the ILECs noted above have raised a concern about one of the few elements of the Order that has a

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[4] Order at ¶ 945.
[5] Order at ¶ 879.

potential negative impact on them in the near term. Indeed, it would be grossly unfair to characterize the immediate transition of intraMTA LEC-CMRS traffic to bill-and-keep as a mistake or as one-sided. The Commission struck a delicate balance in the Order that it should be loath to re-open. The rule's effective date is correct and should not be changed.

Moreover, and as described below, the immediate implementation of the LEC-CMRS bill-and-keep rule is a well-reasoned step in the transition to a bill-and-keep framework for all traffic.

The Commission's assumption was correct that the impact of the rule "is not significant" because "most large incumbent LECs have already adopted $0.0007 or less as their reciprocal compensation rate." [6] It is indisputably true that the majority of traffic exchanged today between ILECs and CMRS carriers pursuant to agreements is exchanged at $0.0007 or less. Most LEC-CMRS non-access traffic is exchanged with the larger carriers, as the Commission assumed, and it is correct that most of these carriers' interconnection agreements reflect the $0.0007 rate. Thus, the Commission based its decision to make the bill-and-keep rule for LEC-CMRS non-access traffic effective immediately on a sound premise.

The letter signatories argue a different point, however – they assert that this premise may not be true for some of them *individually*. But the Commission specifically said that "*most* large incumbent LECs have already adopted 0.0007 or less as their reciprocal compensation rate"[7] – the Commission did not purport to find that this premise applied universally. Indeed, few of the general premises supporting the conclusions in the order are likely to be true in every instance. The Commission should not now undo an important element of the overall Order because of its impact on certain individual carriers.

Moreover, to the extent that any of the signatories to the Price Cap Letter have agreements that reflect rates higher than $0.0007, it is likely because these companies were formed through consolidation out of smaller carriers that, in 2001, did not elect the $0.0007 rate. This means that these carriers have been charging reciprocal compensation rates for the last ten years that are substantially above cost (and are above the rates that other carriers have been charging). The benefits that these carriers have received from these above-cost rates over the past decade is no reason to extend these benefits for another six months. To the contrary, this is another reason why the Commission was correct not to be concerned about the impact of the bill-and-keep rule during this limited six-month period.

Finally, it is unclear whether the Price Cap Letter's estimates of financial harm are even accurate. Revenue lost beginning July 1, 2012, will be subject to the

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[6] Order at ¶ 997.
[7] *Id.* (emphasis added).

price cap LECs' special recovery mechanism;[8] thus, any concern they have relates only to traffic exchanged at bill-and-keep before that date. The letter signatories' claims regarding financial impact are redacted and thus not readily available for public inspection. In addition, these parties do not explain the assumptions behind the confidential impact estimates they proffer. The Price Cap Letter acknowledges that "situations where the mid-sized price cap carriers lack interconnection agreements cover only a small portion of CMRS-LEC intra-MTA traffic today."[9] The Commission did not abrogate these agreements,[10] and the letter signatories do not reveal how many of these agreements would be affected, either because they contain change-of-law provisions or are in evergreen status. With respect to traffic exchanged pursuant to agreements with change-of-law provisions, they do not explain how quickly they assumed that such negotiations would be concluded.[11] The evidence proffered by the price cap LECs is far too little and self-serving to support their request to upset a decision of this magnitude in the Order.

The LECs exaggerate the implementation challenges. The Price Cap Letter asserts that implementing the bill-and-keep rule for LEC-CMRS traffic on December 29 will present "a significant implementation challenge" given the "hundreds of interconnection agreements" that are subject to change-of-law provisions.[12] As noted above, however, the Order does not abrogate these agreements, nor does it require ILECs to complete any change-of-law renegotiations by December 29 (though of course they must act in good faith to complete such negotiations as soon as reasonably practicable). The process will impose some burdens on both LECs and CMRS carriers, but these burdens are part of the overall balance struck in the Order – a balance that overwhelmingly benefits price cap LECs.

Nor do the price cap ILECs provide any evidence to suggest that all, some, or even any of the modifications to interconnection agreements pursuant to change-of-law provisions would be automatically retroactive to the effective date of the new rule. Unless there is a specific provision in an interconnection agreement that provides otherwise, changes to interconnection agreements may be effective upon execution, or whatever other date the parties agree. CTIA's members do not believe that any such retroactivity provisions are standard in LEC-CMRS interconnection agreements. And, in any event, these change-of-law provisions were negotiated by the parties to the agreements, and the LECs should not be relieved of them now. The Price Cap Letter also asserts that "companies must make changes to their billing systems to reflect the new rate structure."[13] It is unclear to CTIA why it would be necessary for price cap LECs to change their billing systems to reflect the

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[8] NTCA Letter at 1-2.
[9] Price Cap Letter at 2.
[10] Order at ¶ 1000.
[11] Of course, price cap LECs may not unreasonably delay such negotiations, but CTIA acknowledges that they may involve more than mere notice.
[12] Price Cap Letter at 3.
[13] Price Cap Letter at 3.

implementation of bill-and-keep. LECs should simply stop sending invoices to carriers that become subject to bill-and-keep. No system changes are needed.

In short, the price cap LECs exaggerate the implementation challenges involved in implementing the new rule. None of these challenges is sufficient to justify delay of the implementation date.

The Order already addresses the price cap LECs' arbitrage concerns. The Price Cap Letter asserts that the transition of LEC-CMRS intra-MTA traffic to bill-and-keep might "unintentionally creat[e] a new arbitrage opportunity" because "dishonest carriers delivering traffic will be motivated to classify that traffic as CMRS-LEC intraMTA traffic."[14] The Order, however, already addresses these situations. The Order clarifies that traffic only counts as CMRS if the end user originated the call on a CMRS network.[15] This provision was specifically designed to address situations where traffic is being mischaracterized as intra-MTA CMRS traffic.[16] The Order's new call signaling rules also will severely restrict carriers' ability to mischaracterize traffic.[17] It is also important to remember that the period at issue here is only six months long. It is difficult to imagine that elaborate arbitrage schemes could be formulated and executed in time to cause any meaningful financial harm.

On the other hand, delaying the effective date for implementation of bill-and-keep for CMRS-LEC traffic will extend the uncertainty that already exists around a number of well-documented forms of traffic pumping that CTIA and others have noted in the past. The Commission was correct to conclude that bill-and-keep is the appropriate framework for CMRS-LEC traffic and the Commission should retain its existing effective date.

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The factual premises were sound for the Commission's decision to make the bill-and-keep rule for LEC-CMRS non-access traffic effective on December 29. The affected LECs receive a myriad of other benefits in the Order that more than outweigh this one potential cost. CTIA urges the Commission not to upset the delicate balance of costs and benefits that it struck in the Order by re-opening the effective date of the LEC-CMRS bill-and-keep rule.

Sincerely,

/s/ Scott K. Bergmann
Scott K. Bergmann

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[14] Price Cap Letter at 3.
[15] Order at ¶ 1006.
[16] *Id.* at n.2128.
[17] *Id.* at ¶¶ 702-35.

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