

October 6, 2008

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: Developing a Unified Inter-carrier Compensation Regime  
CC Docket No. 01-92

Dear Ms. Dortch:

In recent weeks various parties have submitted *ex parte* letters suggesting the Commission overhaul existing inter-carrier compensation mechanisms by establishing uniform compensation rules that would limit per-minute termination charges for all carriers to \$0.0007 per minute.<sup>1</sup> These proposals raise significant concerns among NECA pool members, who depend on cost-based access charges to continue providing high-quality service to customers in rural areas.<sup>2</sup>

Proponents of such concepts have not explained how a uniform rate structure would be implemented, nor (until recently) have they explained what legal rationale the Commission might use to impose a uniform rate on all inter-carrier compensation traffic.<sup>3</sup> On September 19, however, Verizon filed a memorandum asserting that changes in technology and the marketplace (primarily, growth in wireless and IP-enabled services) make it increasingly difficult for carriers to determine the beginning and endpoint of calls, and these circumstances now warrant federal preemption of all inter-carrier compensation mechanisms.<sup>4</sup> Preemption, according to Verizon, would enable the Commission to use its ratesetting authority under sections 201 and 332 of the Act to reform inter-carrier compensation nationwide, by prescribing a single, federal default termination rate of \$0.0007 per minute to all inter-carrier traffic.

Like Verizon, rural rate-of-return companies increasingly find themselves embroiled in complicated and expensive disputes over which rates apply to traffic terminating on their networks.<sup>5</sup> NECA has expressed

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<sup>1</sup> Letter from Susanne A. Guyer, Verizon, to Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell, CC Docket No. 01-92 (Sept. 12, 2008) (*Verizon Proposal*); Letter from AT&T, Verizon, The VON Coalition, *et al.*, to Chairman Martin and Commissioners Copps, Adelstein, Tate, and McDowell, WC Docket No. 04-36, CC Docket No. 01-92 (Aug. 6, 2008) (*Coalition Proposal*).

<sup>2</sup> *See e.g.*, Letter from Ken Pfister, Great Plains Communications, to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 99-68 (Sept. 17, 2008); Letter from Tom Karalis, Fred Williamson & Associates, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 26, 2008) (on behalf of the Rural Alliance, *et al.*) (*Rural Alliance*); Letter from Daniel Mitchell, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92, WC Docket No. 04-36 (Sept. 12, 2008).

<sup>3</sup> *See e.g.*, Letter from Kathleen O'Brien Ham, T-Mobile, to Marlene H. Dortch, FCC, WC Docket No. 04-36 (Aug. 27, 2008); Letter from Norina Moy, Sprint Nextel, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 19, 2008).

<sup>4</sup> *See* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 19, 2008), attaching White Paper (*Verizon*).

<sup>5</sup> *See e.g.*, Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36, CC Docket No. 01-92 (May 23, 2008); Letter from Joe A. Douglas, NECA, to Kevin J. Martin, Chairman, FCC, CC Docket No. Docket No. 01-92

strong support for intercarrier compensation reform that would help resolve these problems. For example, by confirming access charges apply to interconnected VoIP traffic, as NECA and numerous other parties have repeatedly suggested,<sup>6</sup> the Commission could resolve many of the problems identified by Verizon with respect to IP-enabled traffic.<sup>7</sup> Similarly, the Commission has received several proposals suggesting reasonable means for determining the jurisdiction of wireless calls and for dealing with various forms of phantom traffic.<sup>8</sup> Verizon and other wireless carriers have steadfastly opposed these measures, however.<sup>9</sup>

In any event, there is no basis for imposing a single *uniform* rate on all carriers.<sup>10</sup> Verizon asserts in this regard there is “no reason to believe” multiple, reasonable approximations of the additional costs of terminating § 251(b)(5) traffic exist.<sup>11</sup> But costs of transport and termination do vary widely among carriers. In fact, for most rural companies a \$0.0007 rate would not be sufficient even to cover costs incurred to bill minutes of use.<sup>12</sup> And, while Verizon and other carriers may have entered into agreements establishing rates at or below \$0.0007 per minute, this hardly constitutes “substantial evidence” \$0.0007 per minute is just and reasonable for all.<sup>13</sup>

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(Nov. 13, 2007); Letters from Joe. A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. Docket No. 01-92 (Oct. 16, 2007 and May 2, 2007).

<sup>6</sup> *Id.* See also, Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, FCC, WC Docket Nos. 05-337, 06-122, 04-36 and CC Docket Nos. 96-45 and 01-92 (Sept. 16, 2008); Letter from Daniel Mitchell, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 and WC Docket No. 04-36, (Sept. 30, 2008); Letter from Curt Stamp, ITTA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 and WC Docket No. 04-36 (Aug. 14, 1008).

<sup>7</sup> Verizon describes at length problems associated with identifying the origination and termination points of “calls” made using various IP-enabled technology. See, e.g., *Verizon* at 15. But these issues are not applicable to calls made using “fixed” VoIP services, See, e.g. Letter from James Bradford Ramsay, NARUC, to Chairman Martin, FCC, CC Docket No. 08-152 (Aug. 26, 2008).

<sup>8</sup> See e.g., NECA Petition for Interim Order, CC Docket No. 01-92 (Jan. 22, 2008); Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Apr. 24, 2008) (proposing extension of call signaling rules to interconnected VoIP providers, and use of originating and terminating telephone numbers to jurisdictionalize traffic in the absence of location-specific information or reasonable negotiated factors).

<sup>9</sup> See e.g., Verizon Comments, CC Docket No. 01-92 (Dec. 7, 2006); Letter from Paul Garnett, CTIA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Feb. 25, 2008), at 3.

<sup>10</sup> See e.g., Letter from Daniel Mitchell, NTCA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 30, 2008); Letter from Anne C. Boyle, Nebraska PSC, to Chairman Martin, FCC, CC Docket No. 01-92 (Sept. 30, 2008); Letter from David Bergmann, NASUCA, to Chairman Martin, FCC, CC Docket No. 01-92 (Sept. 30, 2008), at 2-3; Letter from Jonathan Lechter, Willkie Farr & Gallagher LLP (on behalf of Time Warner and One Comm.), to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 2, 2008), presentation at 2-4.

<sup>11</sup> *Verizon* at 27.

<sup>12</sup> NECA analyzes carrier access billing system (CABS) cost data reported by small cost companies as part of its annual average schedule study, conducted pursuant to section 69.606 of the Commission’s rules. NECA’s most recent study showed interstate CABS billing costs for small cost companies of \$0.001706 per minute – nearly 2.5 times higher than the proposed \$0.0007 rate. See NECA 2008 Modification of Average Schedules, WC Docket No. 07-290 (Dec. 21, 2007) at VII-12 *et seq.*

<sup>13</sup> A \$0.0007 rate may well be reasonable for large integrated carriers such as Verizon or AT&T. But rural rate-of-return carriers receiving traffic via indirect interconnection arrangements lack negotiating leverage, and often find themselves forced to agree to below-cost reciprocal compensation rates in “take it or leave it” negotiations with wireless carriers and other larger providers. E.g., Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Apr. 24, 2008), presentation at 6-8. Agreements arrived at in this manner hardly constitute evidence a \$0.0007 rate is just and reasonable for all carriers.

Verizon also claims section 252(d)(2) of the Act “expressly precludes” regulators from engaging in carrier-specific analysis of the costs of terminating traffic.<sup>14</sup> But that section of the Act, read in context, clearly contemplates examination of individual carrier costs in determining prices for transport and termination.<sup>15</sup> It certainly does not mandate a single nationwide rate, particularly one that is below incremental cost levels incurred by rate-of-return carriers in providing service in rural areas.<sup>16</sup>

Prescription of a nationwide uniform default rate of \$0.0007 is unnecessary to solve the rate arbitrage problems identified by Verizon. It would also represent bad policy.<sup>17</sup> Such below-cost rates would likely encourage new forms of uneconomic arbitrage, as well as abuse of the network.<sup>18</sup> Moreover, transferring a disproportionate share of network costs caused by interconnecting carriers to alternative recovery mechanisms runs the risk of unduly burdening the universal service fund.<sup>19</sup>

A more reasonable approach would be to permit, not require, carriers to set unified originating and terminating access rates. Such rates must (a) recognize differences in costs and operational circumstances among carriers or groups of carriers and (b) maintain a reasonable balance of network cost recovery among intercarrier compensation charges, end user rates and universal service funding.<sup>20</sup>

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<sup>14</sup> *Verizon* at 27.

<sup>15</sup> *See, e.g.*, 47 U.S.C. § 252(d)(2)(A)(i) (rates must “provide for the mutual and reciprocal recovery by *each carrier* of costs associated with the transport and termination *on each carrier’s network facilities . . .*” (emphasis added). It is true that the term “costs” as used in section 252(d)(2) does not necessarily mean “actual costs” determined through “complex cost studies,” but rather a “reasonable approximation of the additional costs of terminating” calls originating on another carrier’s network. *SBC Inc. v. FCC*, 414 F.3d 486, 506-07 (3<sup>rd</sup> Cir. 2005). Current rules implementing this section clearly contemplate rates for reciprocal compensation will be set by reference to the individual carriers’ costs of providing service. *See, e.g.*, 47 C.F.R. § 51.711(a); *see also Cost-Based Terminating Compensation for CMRS Providers; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996*; and *Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, Order, 18 FCC Rcd 18441 (2003), at ¶2.

<sup>16</sup> Possibly, Verizon seeks to have the Commission impose a nationwide default rate of \$0.0007 on all carriers as a way of responding to the court’s mandamus order on ISP traffic. But as Verizon itself has exhaustively explained, the Commission has ample ability to respond to the D.C. Circuit’s request for a better explanation of the legal rationale for imposing a \$0.0007 rate cap on ISP-bound traffic without necessarily applying a uniform rate to other types of traffic. *See* Supplemental Comments of Verizon and Verizon Wireless on Intercarrier Payments for ISP-Bound Traffic and the Worldcom Remand, CC Docket Nos. 01-92, 96-98, and 99-68 (Oct. 2, 2008). *See also* Letter from Andrew D. Crain, Qwest, to Marlene H. Dortch, FCC, CC Docket Nos. 96-98, 99-68 and 01-92 (Sept. 24, 2008); Letter from Christopher J. Wright and John Nakahata, Harris, Whilshire and Grannis (Counsel to Level 3), to Marlene H. Dortch, FCC, CC Docket Nos. 99-68 and 01-92, (May 7, 2008); Letter from Robert W. Quinn, AT&T, to Chairman Martin, FCC, CC Docket No. 01-92 (July 17, 2008).

<sup>17</sup> Basic economics texts make clear that government-imposed, below-market prices hurt consumers by creating artificial shortages. The classic example is rent control in New York City, where housing shortages and abandoned buildings can be directly traced to government mandated rent controls. *See, e.g.*, Frank and Bernanke, *Principles of Macroeconomics* 2<sup>nd</sup> edition, McGraw-Hill 2004, pp. 58, 67-68. Imposing artificially low switched access rates would lead to an analogous situation in the telecommunications industry, causing inefficient routing of traffic and congestion. Interconnecting carriers would find it cheaper to abandon efficient dedicated transport arrangements in favor of common transport, which in turn would impose unnecessary costs on rural ILECs who must add transport capacity to trunk groups to meet government-imposed quality standards, diverting investment funds better spent on deploying broadband services.

<sup>18</sup> For example, rules establishing a default rate of \$0.0007 would undoubtedly prompt large end users to seek “carrier” status to take advantage of below-cost interconnection pricing. Revised rates may also impose significant network rearrangement costs as carriers discontinue dedicated transport services in favor of below-cost switched transport services.

<sup>19</sup> *See Rural Alliance*, presentation at 5.

<sup>20</sup> *Id.* *See also* Letter from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force, to Kevin Martin, FCC, CC Docket No. 01-92 (July 24, 2006) (attaching the Missoula Plan). Other parties have likewise

NECA agrees with the Rural Alliance<sup>21</sup> that the Commission can best accomplish these objectives by permitting rate-of-return carriers to charge tariffed originating and terminating access rates unified at the interstate level.<sup>22</sup> To the extent reform brings about reductions in intercarrier compensation levels that cannot reasonably be recovered from end users, a sustainable, long-term alternative recovery mechanism must be put in place to assure rural rate-of-return carriers can continue to provide state-of-the-art services to rural consumers without disruptions or reductions in service quality.<sup>23</sup>

Finally, while Verizon and other interested parties have offered various proposals and legal theories supporting their preferred approaches to intercarrier compensation reform, it bears noting the Commission has not *itself* explained what options it is seriously considering or what specific actions and rules it plans to adopt.<sup>24</sup> This makes it difficult to analyze implementation details of potential Commission reform decisions. As the Commission determines what specific actions it plans to take, NECA stands ready to assist it in developing specific methods to assure a smooth transition for rural rate-of-return carriers to a revised intercarrier compensation regime.

Respectfully submitted,



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suggested using tier-based rate structures based on cost and operational differences among groups of carriers. *See, e.g.*, Letter from Curt Stamp, ITTA to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 19, 2008) (attaching ITTA proposal).

<sup>21</sup> *Rural Alliance*, presentation at 5.

<sup>22</sup> Contrary to claims by Verizon and other large carriers, small rural rate of return ILECs do not have the resources or negotiating power to base access rates on “commercial negotiations.” *See id.* at 4.

<sup>23</sup> *Id.* at 7-8.

<sup>24</sup> The Commission issued a notice of proposed rulemaking in 2001 discussing the possibility of replacing today’s “calling party network pays” structure with a “bill and keep” system. *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001), at ¶ 19. A second NPRM, issued in 2005, described several alternative ICC reform concepts and plans advanced by various industry groups, *see* Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005), at ¶¶ 37-62, but pointedly did *not* invite comment on a staff proposal for bill and keep. *Id.* at n. 106. The Commission has also received comment on the Missoula Plan, and its subsequent invitation to “refresh the record” in these dockets has produced a bewildering variety of reform proposals. The Commission’s views, however, remain unknown.