



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

October 2, 2008

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

**Re: *Developing a Unified Intercarrier Compensation Regime
Proper Routing and Compensation for Termination of
Telecommunications Traffic
CC Docket 01-92***

***IP-Enabled Services
WC Docket 04-36***

***Federal-State Joint Board for Universal Service
CC Docket No. 96-45
WC Docket No. 05-337***

NOTICE OF EX PARTE

Dear Ms. Dortch:

On October 1, 2008, Jeffrey Lanning of Embarq, Pat Morse of FairPoint Communications, Ken Mason of Frontier Communications, David Porter of Iowa Telecom, Eric Einhorn of Windstream, Bob Debroux of TDS (via phone) and the undersigned of ITTA met with Randy Clarke, Jeremy Marcus, Nicholas Degani, Claude Aiken, Jay Atkinson, Douglas Slotten, Rebaka Goodheart, Matthew Warner, Jennifer McKee, Carol Pomponio, Albert Lewis, Donald Stockdale and Marcus Maher, all of the Wireline Competition Bureau as well as Paula Silberthau, Lisa Gelb, Christopher Killion of the Office of General Counsel. The parties relied upon the attached presentations in their discussion of the ITTA proposal for intercarrier compensation reform.

Consistent with prior filings, ITTA explained that its track-based intercarrier compensation proposal is a fair and measured approach that appropriately balances the impact of reform among carriers, end-users, and restructuring mechanisms. ITTA fully supports terminating rate unification in its proposal, but that unification must reflect the needs and dynamics of different types of carriers. As ITTA explained in its *ex parte* filing of September 19, 2008, a “one size fits all” approach, endemic to bill and keep and near-zero “uniform rate” proposals, disregards the unique challenges faced by mid-sized carriers serving rural America; will overburden the Universal Service Fund; and violates the intercarrier compensation and universal service framework set out in the Act. As such, ITTA urged the Commission to reject “one size fits all” proposals for intercarrier compensation (ICC) reform.

A terminating rate of \$0.0007 as proposed by some parties would not only fail to provide cover costs for mid-sized and smaller carriers but would also place a large burden on consumer rates as well as strain the Universal Service Fund (USF) or any other device through which the Alternative Recovery Mechanism (ARM) would operate. ITTA members serve rural areas and have higher marginal costs than those entities that have declared \$0.0007 to be sufficient (at least for themselves). Generally, \$0.0007 is less than ITTA members' respective reciprocal compensation rates, often by an order of magnitude. Implementation of that rate for all of the Nation's carriers, therefore, would further the disconnect between rates and costs and engender new and innovative opportunities for arbitrage; it would be, effectively, a self-defeating measure. In addition, such a drastic reduction in intercarrier compensation rates would threaten the existence of carriers serving rural areas and affect adversely their ability to make investments necessary to ensure broadband availability for all Americans.

Section 252(d)(2) requires that rates be cost-based. As described by ITTA, \$0.0007 is not cost-based for its members; at best, therefore, the rate may be applicable only to carriers that *choose* to accept it. Presumably those carriers that have proposed \$0.0007 have done so with the because that rate is appropriate for integrated carriers with large urban service areas. By contrast, ITTA members are mid-size carriers that primarily serve rural areas of the Nation where low population density and natural terrain converge to create costly network deployment and maintenance requirements.

Not only must ICC reform ensure that carriers serving high cost rural areas have a reasonable opportunity to recover revenues lost due to rate reductions, but it must also recognize the unique need of these carriers to recover costs associated with service in rural areas. Section 252(d)(2) of the Communications Act of 1934, as amended, requires cost-based compensation for the transport and termination of local telecommunications. Moreover, COLR obligations require ITTA members to "stand ready" to serve all customers in their service areas, an obligation that requires substantial investment and maintenance of network infrastructure. For example, an ITTA member explained that it maintains several remote local switching offices that are located one hundred miles or more away from the relevant host office, which themselves may serve only several hundred to several thousand lines. Those facilities are necessary to comply with that carriers' COLR obligations. ITTA members incur demonstrably higher costs as a result of fulfilling COLR mandates in largely rural areas.

Accordingly, ITTA proposes the Commission implement rate unification that is calibrated to the size and type of carrier. Rate unification on that basis would not only resolve a great degree of arbitrage incentives, but would also bestow reduced transaction costs on both originating and terminating carriers. ITTA's three-track proposal meets the specific needs of distinguishable carriers; the rate proposed for Track 2 carriers, which would include ITTA price cap members, is a blended reciprocal compensation rate that reflects TELRIC-derived costs.

ITTA discussed the fact that its rate unification proposal relies in part on preemption of state access charge rates but does not affect state access revenue streams. Preemption of the specific rates (and the associated outcome that intrastate revenues are recovered on a per-minute basis through intercarrier compensation) is justified and legally sustainable. The shifting of some compensation to an ARM changes only the mechanism, but not the compensation. So long as the revenue stream to a state remains the same, the Commission can argue that preemption does not violate section 2(b). This is particularly true where, as is the case for the ITTA proposal, the unified rate bears a reasonable relationship to the cost of transport and termination. Preemption of state access charge levels, as such, is appropriate because continued disparity in intercarrier compensation would frustrate Federal policy by encouraging arbitrage, promoting litigation, and ultimately increasing transactional costs associated with proper

identification and billing of terminating access traffic. Finally, the unified tracked rates proposed by ITTA can be supplanted by rates derived by cost-studies for carriers in Tracks 2 and 3.

ITTA's proposal distributes responsibility equitably: it incorporates a benchmark that relies upon the Commission's already-determined National average urban residential rate (\$20.76, excluding taxes and fees); provides for modest SLC increases; and imposes only minor pressure on the USF by reducing the size of the ARM that would be required with other proposals. In addition to its equitable features, the ITTA proposal avoids unintended adverse impacts and recognizes, particularly in its Track 2 element, the distinct needs of its members and the 30 million customers they collectively serve. For example, the benchmark enables fulfillment of the "comparability" standard. At the same time, modest SLC increases that bring a carrier's rates closer to the benchmark are set to avoid skewing competitive markets where a sudden spike in local wireline telephone rates would propel users off the network toward and competitors. If that were to occur, those carriers' ability to fulfill COLR obligations would be exacerbated by having fewer subscribers from which costs could be recovered. The ITTA proposal avoids rate increases that would compel users away from the network, and its tracked approach to unified rates avoids undue burdens imposed by an unduly large ARM.

Adjunctively, ITTA maintains that phantom traffic must be addressed specifically through call identification rules in order to address as fully as possible the problem of unidentified traffic. Notwithstanding the jurisdictional-based billing questions that would be resolved by unifying each carrier's rates, carriers would still be faced with circumstances in which the identity of the originating carrier is obscured. Moreover, calls must be measured from their physical end-points, rather than dialed numbers: VNXX traffic must not be treated as local even when it is used for information access rather than voice traffic. If a provider wants to offer customers the benefit of a local presence, it should bear the added transport costs itself rather than impose them on another carrier. Similarly, VNXX traffic should bear an equal share of the implicit subsidies in access charges, which contribute to the cost of the carrier of last resort obligation that provides affordable phone service in high-cost areas.

Finally, ITTA reiterated that intercarrier compensation should not apply to out-of-balance ISP-bound traffic. To the extent such traffic is found to be subject to intercarrier compensation, that maximum rate for such traffic should be limited to \$0.0007.

Respectfully submitted,

s/Curt Stamp

Curt Stamp
President

cc: Jeremy Marcus
Nicholas Degani
Claude Aiken
Paula Silberthau
Jay Atkinson
Douglas Sloten
Rebekah Goodheart
Lisa Gelb
Matthew Warner
Jennifer McKee
Carol Pomponio
Albert Lewis
Christopher Killion
Donald Stockdale
Marcus Maher