



INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

October 24, 2008

Marlene H. 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***

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

***Universal Service Contribution Methodology
WC Docket No. 06-122***

***IP-Enabled Services
WC Docket No. 04-36***

MOTION TO DEFER AND SET FOR PUBLIC COMMENT

Dear Ms. Dortch:

The Independent Telephone & Telecommunications Alliance (ITTA) hereby files this letter motion to request the Commission to put forth for comment any modifications to current intercarrier compensation regulations. ITTA supports reasonable and comprehensive Intercarrier Compensation (ICC) and Universal Service Fund (USF) reform that protects consumers and does not harm the viability of carriers that serve rural America.

Numerous reports indicate that the Commission is preparing a radical reformation of intercarrier compensation of a manner unlike any of the numerous proposals presented to the Commission previously and, consequently, available for review by the public. Instead, the industry is compelled to take the unusual step of requesting the Commission to delay adoption of an Order that is as yet unseen, the details of which are unknown, but whose presumed contents have reverberated across the industry, sparking concerns that

major action will leave many end-users in rural America and carriers that serve them at substantial risk. Parties including the State Members of the Federal-State Joint Board on Separations,¹ COMPTEL,² the Nebraska Public Service Commission,³ the National Telecommunications Cooperative Association,⁴ the National Association of Regulatory Utility Commissioners,⁵ the National Association of State Utility Consumer Advocates,⁶ and others⁷ have submitted filings that illustrate why the Commission must not value

¹ *Petition of AT&T for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption (Docket No. 08-152); IP-Enabled Services (Docket No. 04-36); Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Universal Service Contribution Methodology (Docket No. 06-122); Petition for Declaratory Ruling Filed by CTIA (Docket No. 05-194); Jurisdictional Separations and Referral to the Federal-State Joint Board (Docket No. 80-286): Ex Parte Presentation of the State Members of the Federal-State Joint Board on Separations (filed Oct. 18, 2008).*

² *Developing a Unified Intercarrier Compensation Regime (Docket 01-92); IP-Enabled Services (Docket No. 04-36); Universal Service Contribution Methodology (Docket No. 06-122): Ex Parte Presentation of the Nebraska Public Service Commission (filed Sep. 30, 2008).*

³ *Developing a Unified Intercarrier Compensation Regime (Docket 01-92); High-Cost Universal Service Support and Federal-State Joint Board on Universal Service (Docket No. 05-337); Universal Service Contribution Methodology (Docket No. 06-122); Intercarrier Compensation for ISP-Bound Traffic (Docket No. 99-68); Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07-135): Ex Parte Presentation of COMPTEL (filed Oct. 21, 2008).*

⁴ *Developing a Unified Intercarrier Compensation Regime (Docket 01-92); High-Cost Universal Service Support and Federal-State Joint Board on Universal Service (Docket Nos. 05-337 and 96-45); IP-Enabled Services (Docket No. 04-36): Ex Parte Presentation of the National Telecommunications Cooperative Association (filed Oct. 17, 2008).*

⁵ *Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption (Docket No. 08-152); IP-Enabled Services (Docket No. 04-36); Universal Service Contribution Methodology (06-122); Petition for Declaratory Ruling Filed by CTIA (Docket No. 05-194); Jurisdictional Separations and Referral to the Federal-State Joint Board (Docket No. 80-282): NARUC Motion/Request for Public Comment on Recently Circulated "Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking" on Universal Service and Intercarrier Compensation Reform (filed Oct. 21, 2008).*

⁶ *Developing a Unified Intercarrier Compensation Regime (Docket No. 01-92); Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption (Docket No. 08-152); IP-Enabled Services (Docket No. 04-36); Universal Service Contribution Methodology (06-122); Petition for Declaratory Ruling Filed by CTIA (Docket No. 05-194); Jurisdictional Separations and Referral to the Federal-State Joint Board (Docket No. 80-282): Support for NARUC Motion/Request for Public Comment on Recently Circulated "Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking" on Universal Service and Intercarrier Compensation Reform (filed Oct. 23, 2008).*

⁷ *See, i.e., ex parte presentations in Docket 01-92 of the New Mexico Public Regulation Commission (filed Oct. 23, 2008); National Exchange Carrier Association (filed Oct. 23, 2008); Minnesota Telecom Alliance (filed Oct. 23, 2008); Nebraska Telecommunications Association (filed Oct. 23, 2008); Rural Independent Competitive Alliance (filed Oct. 23, 2008); Massachusetts Department of Telecommunications and Cable (filed Oct. 24, 2008); and, Fred Williamson & Associates, Inc. (filed Oct. 24, 2008).*

“getting it done” over the principle of “doing it right.” ITTA acknowledges the perfect must not be the enemy of the good, but, based on various reports, the proposal as it exists fails to achieve “the good,” let alone perfection. Accordingly, ITTA requests the Commission to delay adoption of the anticipated Order and instead release the document for public comment.

The Commission must reject proposals that fail to consider the needs of carriers serving rural America, including ITTA members who collectively serve 30 million access lines across 45 states in predominantly rural markets. So-called “\$0.0007” and similar proposals would not only eliminate a vital element of cost recovery but would also constrict severely carriers’ ability to obtain capital in the financial markets as regulatory risk would reduce investor confidence in carriers. Such action, particularly during the most significant National economic downturn in years, will retard broadband deployment, rather than promote it; impose upon end-users higher rates, rather than cognizable benefits; and leave carriers in the unenviable position of determining how to drastically cut capital and operational costs and raise prices where possible to compensate for the substantial recurring revenue losses that will result from the proposed Order. Suggestions that the Commission may take action today and modify it in the future to correct for mistakes fail to recognize that investors looking toward the long-term will not wait. The anticipated action would shatter not only the pillar of intercarrier compensation, but also the pillars of investor confidence and access to capital. Although the proposed Order would cause significant harm to telecommunications providers serving rural areas and their customers, the Order would also result, astoundingly, in little, if any, corresponding benefits for consumers. Instead, the gains appear to accrue mostly to the largest integrated carriers.

A terminating rate of \$0.0007 as proposed by some parties and reportedly contemplated by the Commission would not only generally fail to cover costs for ITTA members but would also place a large burden on consumer rates as well as strain the USF or any other device through which the Alternative Recovery Mechanism (ARM) would operate; proposals bereft of an ARM are simply untenable, a position shared by carriers across the industry. 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. Such a drastic reduction in intercarrier compensation rates would threaten carriers serving rural areas and affect adversely their ability to make investments necessary to ensure broadband availability for all Americans.

The Commission must not elevate arbitrary deadlines over good policy. The issue of compensation for dial-up ISP-bound traffic is the only deadline that must be met by November 5, 2008 (phantom traffic, too, could be resolved by that date since, as ITTA has noted previously, the record is complete and includes comprehensive proposals for call signaling rules). An adequate period for public review of the ICC-related segments of the anticipated Order, however, would promote rational rulemaking and serve the

public good. The scope of the anticipated action, as revealed in piece-parts by different parties, implicates numerous mathematical impacts and legal outcomes that demand adequate testing and investigation. The Commission has responded previously to concerns that process must accommodate public review and comment, and should act similarly here.

In September 2008, the Commission released the *Third Further Notice of Proposed Rulemaking* in which it is seeking comment on its tentative conclusions regarding a nationwide interoperable public safety-private partnership through an auction of commercial spectrum (D Block).⁸ This notice followed Congressional and Commission hearings regarding the failure of the D Block to attract a winning bid in Auction 73, and illustrates the Commission's recognition that comprehensive actions require full vetting. Similarly, in June 2008, the Commission released a *Further Notice of Proposed Rulemaking* seeking comment on Service Rules for the AWS-3 band.⁹ In response to vigorous lobbying, the Commission sought comment on actual proposed rules for licensing, operating, and technical rules. The same approach should be applied in the instant matter: the algorithms and assumptions that underlie reformulations of intercarrier compensation must be tested fully, and the implications of legal decisions set forth in the anticipated Order must be explored in order to ensure that unintended adverse impacts do not arise.

The draft proposal was first revealed to other Commissioners for consideration barely three weeks before the scheduled vote. It is unlike any other proposal in the record, and stakeholders have had an opportunity to evaluate adequately the potential impacts. On December 3, 2007, Rep. John Dingell (15th MI) wrote a letter to Chairman Martin to "address an apparent breakdown in an open and transparent regulatory process at the Federal Communications Commission."¹⁰ Rep. Dingell noted that "the Commission does not put the text of proposed rules out for notice and comment; there is little public notice of certain proposed Commission actions; and Commissioners are often not informed of the details of draft items until it is too late to provide the necessary scrutiny and analysis that is so important to reasoned decision-making." There is warranted concern in the instant matter that insufficient time for review has been provided. Regarding media ownership, Rep. Dingell asked Chairman Martin to "commit to publishing the text of proposed rules sufficiently in advance of Commission meetings

⁸ *Service Rules for the 698-746, 747-762, and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band: Third Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, PS Docket No. 06-229, FCC 08-230 (rel. Sep. 25, 2008).

⁹ *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1885-2000 MHz, 202-2025 MHz, and 2175-2180 MHz Bands: Further Notice of Proposed Rulemaking*, WT Docket Nos. 07-195, 04-356, FCC 08-158 (rel. Jun. 20, 2008).

¹⁰ See, http://energycommerce.house.gov/Press_110/110nr133.shtml (last viewed Oct. 24, 2008).

for both (i) the public to have a meaningful opportunity to comment and (ii) the Commissioners to have a meaningful opportunity to review such comments.” In response, Commissioner Martin noted that “it has not been standard practice to publish separately proposed rules prior to adoption of an Order... however, because of the unusually controversial nature of the media ownership proceeding, I took the extra step of publishing the actual text of the one rule I thought we should amend.”¹¹ The Commission is urged to adopt a similar approach in the instant matter, and to defer the action for public comment.

Other Federal agencies, including the Federal Trade Commission, routinely publish the proposed text of new rules for comment prior to consideration and ultimate adoption. Under legislation entitled the “FCC PROCESS Act”¹² touted by Rep. Joe Barton (6th TX) in summer 2008, the Commission would be required to publish the specific language of a proposed regulation, modification or deletion and provide the public with at least 30 days to submit comment and 30 days to submit reply comments. Additionally, the bill would require that there be a period of at least 30 days for agency consideration on the record on such regulations, modifications, or deletions. ITTA does not propose that the Commission undertake at this time a recalibration of all of its processes – rather, ITTA urges the Commission to permit sufficient time to test and review a proposal that threatens to wreak tremendous harm on rural telecommunications consumers and the carriers that serve them. Given the scope of the anticipated action, the Commission may be guided by the parameters proposed in the Media Ownership Act of 2007¹³ (sponsored by Sens. Trent Lott (MS), Barack Obama (IL), Olympia Snowe (ME), John Kerry (MA), Ben Nelson (NE), Hillary Clinton (NY), Claire McCaskill (MO), Joseph Biden (DE), and others), which would require the Commission to provide the public with at least 60 days for comment and 30 days for replies on any the text of any prospective modification, revision, or amendment to broadcast ownership rules.

¹¹ *2000 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 06-121); *2002 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 02-277); *Cross-Ownership of Broadcast Stations and Newspapers* (MM Docket No. 01-235); *Rules and Policies Concerning Multiple Ownership of Broadcast Stations in Local Markets* (MM Docket No. 01-317); *Definition of Radio Markets* (MM Docket No. 00-244); *Ways to Further Section 257 Mandate and to Build on Earlier Studies* (MB Docket No. 04-228); *Public Interest Obligations of TV Broadcast Licensees* (MM Docket No. 99-360); *Report and Order and Order on Reconsideration*, Statement of Chairman Kevin J. Martin, FCC 07-216 (rel. Feb. 4, 2008).

¹² FCC Procedural Reform for Openness and Clarity Encouraging Sensible Solutions Act, 110 Cong. 2d, (Jul. 23, 2008).

¹³ Media Ownership Act of 2007, 110 Cong. 1st, S. 2332 (Nov. 8, 2007).

Sufficient time for public comment must be provided. Regarding Media Cross-Ownership, Commissioners Adelstein and Copps in November 2007 issued a News Release in response to Chairman Martin's proposal. The Commissioners characterized the Chairman's proposal as

a wolf in sheep's clothing . . . clearly not ready for prime time. Under the Chairman's timetable, we count 19 working days for public comment. That is grossly insufficient. The American people should have a minimum of 90 days to comment, just as many Members of Congress have requested.¹⁴

In the instant matter, the public will have had only 20 days opportunity to comment on a proposal that is as-yet unseen; the Commissioners will have only 27 days to absorb the proposed Order before voting.

Inappropriate ICC reform will wreak adverse impacts across a wide swath of the Nation. ITTA members serve 30 million access lines across 45 states, and a survey of ITTA members revealed that ICC accounts, on average, for 12.26 percent of company revenues.¹⁵ The impacts increase exponentially as reported elements of the anticipated Commission action, including action on originating traffic, classification of VoIP traffic, and absence of a viable recovery mechanism, are combined. The impacts on consumers and carriers' ability to attract capital necessary for network deployment and maintenance cannot be underestimated. Accordingly, the Commission must seize the opportunity for rational deliberation and place the anticipated Order for public comment and review.

Respectfully submitted,

s/Joshua Seidemann
Vice President, Regulatory Affairs

cc: Kevin J. Martin, Chairman
Jonathan Adelstein, Commissioner
Michael J. Copps, Commissioner
Robert M. McDowell, Commissioner
Deborah Taylor-Tate, Commissioner

¹⁴ Joint Statement by Commissioners Copps and Adelstein on Chairman Martin's Cross-Ownership Proposal, FCC News, Nov. 13, 2007, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-278142A1.pdf (last viewed Oct. 24, 2008).

¹⁵ This data represents 13.26 million surveyed ITTA access lines.