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October 27, 2008

Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: **Ex Parte Presentation:** Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45; In the Matter of High Cost Universal Service Support, WC Docket No. 04-337 and In the Matter of the Universal Service Contribution Methodology, WC Docket No. 06-122.

Dear Chairman Martin and Commissioners:

The Arizona Corporation Commission ("Arizona Commission") is a constitutionally created agency with authority over the provision of telecommunications service within Arizona. As Commissioners of the Arizona Commission, we have spent considerable time and effort promoting competition and ensuring a level playing field for all carriers in the State. We support comprehensive reform of both the current intercarrier compensation rules and the federal universal service funding mechanism. However, based upon what we have learned largely from news accounts regarding the proposed order which is to be voted on by the FCC on November 4, 2008, we cannot support that order since the combined proposals have not been subject to public comment and in our view appear to not be in the best interest of Arizona consumers.

The Arizona Commission Supports the Motion of NARUC for a 90 Day Comment Period on FCC Proposals Addressing Comprehensive Intercarrier Compensation and Federal Universal Service Fund Reform.

The combined comprehensive reform proposals apparently addressed in the order now being circulated at the FCC, have not been the subject of notice and comment by the industry, and thus a full and complete record does not exist upon which to evaluate them.[1] The only record that exists on the proposed order is in large part a series of ex parte filings over a relatively brief span of time. Given the significance of the subject matters at hand and the wide-ranging ramifications for the industry and the public, the FCC should at a minimum seek comment on its combined proposals for intercarrier compensation and federal universal service, before committing to a particular course of action in these critical areas. All affected parties deserve to have a meaningful opportunity to be heard on these issues. Without a fully developed record on the issues addressed, consumers and some carriers are likely to be adversely impacted in the end.

We urge you, therefore, to grant the motion filed by the National Association of Regulatory Utility Commissioners ("NARUC") to first notice and allow for comment by the industry at-large, the broad-based reform proposals which are the subject of the order. The type of deliberative process undertaken on the basis of a full and complete record called for in NARUC's motion has wide-spread support.[2] We respectfully submit that without a full and complete record on the combined proposals now being considered, the uncertainty created by policies that have not been the subject of public comment, and the delay occasioned by litigation, will wreak more havoc on the industry and consumers than providing for at least a 90 day comment period so that a full and complete record can be created.

While FCC action by November 5, 2008, on the narrow issue of the appropriate compensation for termination of Internet service provider ("ISP")-bound traffic, is necessary due to the United States Court of Appeal's decision in *Core Communications,*[3] the need for action on this narrow issue appears to be driving the timeline for major reforms in intercarrier compensation generally and the federal universal service fund. The result of this is a completely truncated process with the record consisting largely of ex parte filings in the last two months. Moreover, most

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[1] The Arizona Commission has not seen the combined proposals addressed in the order, and thus can only respond to news accounts of those proposals in this letter.

[2] See, October 24, 2008 Ex Parte Letter from the United States Telecom Association ("To ensure that rural consumers are not deeply harmed by this proposal, the expected impacts need to be fully understood and appreciated by relevant stakeholders"); Ex Parte Presentation of the Missouri Public Service Commission ("...[H]owever, the Commission should employ a better process than eleventh hour ex parte presentations and filings by which to base its decision. Parties are raising concerns regarding these proposals and the Commission must adequately address these concerns if it intends to comprehensively reform intercarrier compensation and the universal service fund."); October 23, 2008 Ex Parte Letter of the National Association of State Utility Consumer Advocates ("NASUCA") ("...NASUCA hereby expresses its emphatic support for NARUC's motion.")

[3] *In re Core Communications, Inc.*, 531 F.3d 849 (D.C.Cir. 2008).

interested parties, including the Arizona Commission, are getting their information largely from news and media reports or from information NARUC or others are able to receive from their sources.

The FCC could perform a tremendous service to all parties involved in this process by merely limiting its order on November 4, 2008, to the issues raised in the *Core Communications* case and any closely related issues for which an adequate record already exists. For instance, one such issue involves the treatment of Virtual NXX ("VNXX") ISP-bound traffic, an issue still unresolved at the federal level. Another issue that the FCC might reasonably respond to at this time, since there appears to be a full and complete record for its action, is the problem of phantom traffic. Limiting action at this time to this narrow range of proposals, for which an adequate record exists, would benefit regulators, the industry and consumers alike. Delaying for a brief period of time as NARUC requests, for comment on the remaining comprehensive reform proposals will not adversely affect or prejudice anyone. It would, in fact, demonstrate to everyone that the FCC believes that the comments of all interested parties in this process are important to reach a fair and balanced outcome on the comprehensive reform package.

Intercarrier Compensation Reform Which is Done on the Basis of Eleventh Hour Ex Parte Filings and Which Relies Upon Preemption of State Commission Authority Harms Consumers in the End.

The input of state commissions on intercarrier compensation issues is particularly critical, given our responsibility to ensure affordable local service rates and protect consumer interests. Our ability to do this will be significantly impaired, if not rendered virtually impossible, if the FCC utilizes preemption as the primary vehicle to accomplish the comprehensive reforms it is considering. Even under the ex parte record that now exists, there is simply no need or basis for the FCC to preempt state authority over intrastate ratemaking matters. Yet, in the words of the NARUC, the proposed order "fundamentally, and irrevocably, alters the structure for the federal and state oversight" of the telecommunications industry.[4] Elimination of state commission involvement and oversight of these issues hits consumers hardest since it makes meaningful action by state regulators much more difficult and preemption also takes away the consumers' primary advocate and resource at the state level.

Although the Verizon proposal submitted in September, 2008, relies heavily upon preemption of state commission authority, many other industry participants and consumer groups have pointed out the flaws and self-serving nature of Verizon's proposals. The need for a uniform $.0007 per minute default terminating access rate as proposed by Verizon for all price cap and rate-of-return carriers, including small rural carrier serving high cost areas, has not been established. We also disagree with Verizon's September 19, 2008 ex parte filing which purports to provide a legal

[4] NARUC October 21, 2008 Motion at p. 2.

basis for the FCC to preempt state commission authority over intrastate access rates, in order to achieve a uniform intercarrier compensation rate. The goals of intercarrier compensation are not best accomplished in a "one-size-fits-all fashion." In fact, it may be appropriate given different network and transport costs for different rates to be established for urban and rural carriers.

In addition, the order now being circulated apparently preempts state jurisdiction over IP based services further by declaring non-nomadic Voice over Internet Protocol ("VoIP") to be interstate in nature.[5] In addition, all IP-PSTN and PSTN-IP traffic reportedly would be exempt from intrastate access payments.[6] It is unclear why there is a perceived need to preempt state authority over non-nomadic VoIP and related issues at this time, and whether that is in the public interest. There has been no vetting of this issue in the public record and such action should not be undertaken without an opportunity for comment so that a full and complete record can be created. Moreover, subjecting non-nomadic IP based services to more favorable regulatory treatment is not competitively neutral, and the perceived benefits of such an approach need to be aired in a public proceeding.

Finally, there has been no quantification of the impact to the various classes of carriers that the FCC and state commissions regulate. The ex parte comments received to-date appear to indicate that larger, vertically integrated carriers will come out far ahead of other smaller competitive and rural carriers.

Federal Universal Service Fund Reform Is Too Important to be Done Through Eleventh Hour Ex Parte Presentations. The Impacts of Any Proposed Changes should be Known and Quantified Before They are Adopted, Otherwise Consumers May Ultimately Pay the Price.

It is a true disservice to the public and the industry at large to undertake the type of broad based reform to the federal universal service fund through eleventh hour ex parte presentations, rather than through the more deliberative process called for in the FCC's rulemaking process. The need to act in haste, without the benefit of public comment on the combined proposals, because of the D.C. Circuit's mandate with respect to ISP-bound traffic, is akin to the "tail wagging the dog." The D.C. Circuit's November 5, 2008 deadline for addressing the narrow issue of ISP-bound traffic simply does not provide a reasoned basis for undertaking a complete overhaul of both the intercarrier compensation and federal universal fund issues in such a hasty manner.

The comprehensive federal universal service fund reforms need to be put out for comment by the industry at large as well, before they are adopted, as NARUC has urged. The federal universal service proposals (at least those that have been leaked to the public) under consideration for November 4, 2008, may end up doing more harm than good in the long run. From media reports,

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[5] See MGA Telecom Update, October 24, 2008 ("The order declares all VoIP traffic under the interstate (largely exempt from state authority) jurisdiction...").

[6] MGA Telecom Update, October 24, 2008 Issue, at p. 2.

the FCC is apparently proposing broad-based changes to all aspects of its current funding mechanism.

For instance, the Verizon and AT&T proposal calls for a change to the contribution base from interstate revenues to telephone numbers. But, there is nothing to suggest that this change is necessary or beneficial. The proposed order also apparently calls for continuation of a cap on the universal service fund; but the impact of a cap together with the drastic intercarrier compensation reform measures being proposed for small and medium size rural carriers could end up having some significant adverse consequences.

The FCC should instead be considering ways to make carriers more accountable for the funds that they receive. The proposed order is apparently short on proposals to make carriers more accountable for the funds they receive, instead relying upon an indiscriminate cap to restrain fund growth and distribution in the future. This will merely perpetuate the situation where some carriers that need the revenues will not be getting them, and others that do not need the revenues, will continue to receive them. In addition, it appears that the reform measures will result in consumers paying higher Subscriber Line Charges ("SLC"); something that many residential consumers may be ill-equipped to do in this time of financial crisis. This is merely one impact of the comprehensive proposals that can be quantified; the other potential impacts have not been quantified yet.

Finally, it is unclear whether the universal service fund proposals treat all carriers on a competitively neutral basis. The Commission rules should not promote one form of technology over another. From the small amount of information in the public record on the universal service fund aspects of the order, the Commission's proposals do not appear to be competitively neutral in some respects. For example, it is our understanding that VoIP providers will not be required to impose a SLC, while other providers will be required to assess this charge. Whether this is a significant market distortion and if need be how it should be addressed is worthy of further consideration. The Commission's order also reportedly may preempt state authority to impose USF assessments on VoIP providers, a position that the Arizona Commission would also oppose as not being competitively-neutral and as not having been aired through public written comment.[7]

[7] MGA Telecom Update, October 24, 2008 Issue, at p. 2.

Conclusion.

The FCC should grant NARUC's motion for public comment on the FCC's combined proposals for comprehensive reform of the federal universal service fund and intercarrier compensation. There is too much at stake to try to address them in a hasty fashion simply to meet the D.C. Circuit Court of Appeal's mandate with respect to the narrow issue of the appropriate compensation for termination of ISP-bound traffic. As NARUC states in its Motion, given the breadth of the combined proposals under consideration, the FCC should provide interested parties at least 90 days to consider and comment on them.

Sincerely,

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