NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
The Voice of Rural Telecommunications
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December 20, 2011

Ex Parte **Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

***Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing* a *Unified Intercarrier Compensation Regime*, CC Docket 01-92**

Dear Ms. Dortch:

This letter is submitted on behalf of the National Telecommunications Cooperative Association ("NTCA"), the National Exchange Carrier Association ("NECA"), the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (the "Rural Associations") in response to a letter filed by CTIA on December 19, 2011 in the above-referenced proceedings.[1]

CTIA urges the Federal Communications Commission (the "Commission") to preserve the unique treatment of intraMTA traffic exchange between local exchange carriers ("LECs") and CMRS providers established in the Commission's recent Order,[2] notwithstanding the data, technical issues, and arbitrage concerns identified in letters filed recently by NTCA, TDS Telecommunications Corp., and several mid-sized carriers.[3] Specifically, CTIA argues that:

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1 Letter from Scott K. Bergmann, CTIA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, *et al*. (filed Dec. 19, 2011).

2 *Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.,* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*").

3 Letter from Yaron Dori, Counsel for TDS Telecommunications Corp., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, *et al*. (filed Dec. 19, 2011); Letter from Michael R. Romano, NTCA , to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, *et al*. (filed Dec. 14, 2011); Letter from Karen Brinkmann, Counsel for CenturyLink, FairPoint, Frontier, and Windstream, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, *et al*. (filed Dec. 14, 2011).

(1) immediate implementation of bill-and-keep for intraMTA LEC-CMRS traffic is an appropriate offset to purported benefits for price cap LECs under the Order;

(2) the impact of bill-and-keep is not significant because most price cap LECs have already adopted $0.0007 or less as their reciprocal compensation rate;

(3) the challenges of implementing a bill-and-keep regime for intraMTA traffic effective January 1, 2012 are exaggerated; and

(4) the arbitrage issues raised regarding the special treatment afforded intraMTA traffic are without merit.

As explained below, each of these arguments is unavailing or simply inapplicable to small, rate-of-return regulated LECs ("RLECs").

CTIA's first argument – that bill-and-keep is a balanced offset to benefits accruing to price cap LECs under the Order – is on its face inapplicable to RLECs. The Rural Associations will not respond here as to whether the Order benefits price cap LECs, but this argument holds little, if any, weight as to RLECs. Unlike price cap LECs who would receive an incremental infusion of $300 million in high-cost universal service support in 2012, RLECs are "budgeted" to receive for several years the same annual amount of universal service support that they receive today, but with recovery of slashed intercarrier compensation revenues now *included* within that "budget."

CTIA's second argument – that the impact of bill-and-keep is insignificant because most price cap LECs have already adopted $0.0007 or less as their reciprocal compensation rate – is similarly inapposite for RLECs. CTIA makes no attempt in its letter to extend this argument to RLECs, and with good reason. An analysis conducted by NECA indicates that the weighted average net reciprocal compensation rate for 331 RLECs was $0.0164 per minute. More than 90% of the companies surveyed have reciprocal compensation rates higher than $0.0007 per minute, and more than 75% of the companies have rates greater than $0.01 per minute.

CTIA's third argument – that the Commission should breeze past the challenges of implementing a bill-and-keep regime for intraMTA traffic – is wholly misplaced. As an initial matter, CTIA focuses its argument upon ***administrative issues*** relating to renegotiation of "change-of-law" clauses in interconnection agreements, and makes no attempt to address the substantial ***technical challenges*** with respect to the exchange of intraMTA traffic identified by NTCA in a recent letter.[4] Moreover, even the administrative challenges should not be minimized. In addition to the need for renegotiation of agreements – a substantial task at a time when many RLECs face increasing shortfalls in the recovery of corporate operations expenses, other cuts to support, and numerous new compliance obligations – it is a near certainty that case-by-case disputes will arise over the timing of the effectiveness of the amendments and rate changes based upon the specific "change-of-law" language in any given interconnection agreement.

4 Letter from Michael R. Romano, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90, *et al*. (filed Dec. 9, 2011).

CTIA's final argument – that there is no arbitrage because this is a "six month" issue and also because the Commission's new phantom traffic rules will preclude arbitrage – misses the mark. First, the rate disparity between intraMTA traffic and other traffic persists for much longer than six months; even if the effective date of any rate reduction were delayed to July 1, 2012, intraMTA traffic would still be zero-rated *several years before any other traffic*. To describe this as a six month problem is sheer obfuscation. Furthermore, it is unclear that the new phantom traffic rules will do anything to deter bad actors from engaging in arbitrage by disguising traffic as intraMTA CMRS for purpose of obtaining free termination. Indeed, because the Commission has declined to require the passage of carrier identification information as part of its new phantom rules, it is unclear how a terminating LEC might even identify the "bad actor" under such circumstances. Put another way, the new phantom traffic rules might help expect accountability from someone, but the question of *who* can be held accountable may remain unanswered for years to come.

The Rural Associations therefore support the request of the mid-sized carriers as set forth in their December 14, 2011 *ex parte* letter for intraMTA traffic to be treated the same as all other reciprocal compensation traffic in the context of any and all rate transitions. It is perplexing that intraMTA traffic has been placed on a special pedestal at a time when the Commission's reforms are ostensibly aimed at eliminating illogical rate disparities and arbitrage. In the alternative and at a minimum, to satisfy the objective of providing a sensible "transition glide path" with respect to intercarrier compensation reform, the Commission should ensure that any rate reductions with respect to intraMTA traffic are paired with the availability of the Recovery Mechanism established in the Order.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016 or mromano@ntca.org.

Sincerely,

/s/ Michael R. Romano
Michael R. Romano

Senior Vice President - Policy

cc: Zac Katz
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