STATEMENT OF
CHAIRMAN KEVIN J. MARTIN

Re: *High-Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36

Today we tell the U.S. Court of Appeals for the D.C. Circuit and the Federal-State Joint Board on Universal Service that, after years of deliberation, we are still unready to move forward with comprehensive reform of intercarrier compensation and universal service. Instead, we issue another open-ended Further Notice of Proposed Rulemaking on a variety of approaches for comprehensive reform, and my colleagues promise to act on it by December 18.

I am disappointed by the Commission's unwillingness to step up and make tough choices to modernize our intercarrier compensation and universal service programs. I am also doubtful that the Commission will find itself any better equipped to act in another six weeks. However, I vote to approve this item because this is the only path my colleagues could agree on, and failure to respond to the Court in particular would result in an even sorrier state of affairs – immediate vacatur of our rules.

First, I am skeptical of today's response to the Court, which directed us to justify the Commission's interim intercarrier compensation rules for ISP-bound traffic. The Order treats ISP-bound traffic differently than all other traffic, including other IP traffic. The Order retains the interim rate cap of $0.0007 for terminating this traffic indefinitely. I doubt that an Order that retains artificial and unsupported distinctions between types of IP traffic and maintains an interim rate without establishing an end game will be seen any more favorably by the Court than the Commission's two previous attempts.

By singling out ISP-bound traffic for different treatment, we perpetuate the current patchwork of rates for different traffic. The Order argues that disparate treatment of ISP-bound traffic is justified to combat arbitrage. Yet arbitrage exists precisely because traffic is terminated at a variety of rates.

In addition, the $0.0007 rate cap for ISP-bound traffic was intended to be an interim measure pending comprehensive reform of intercarrier compensation. Indeed, the record does not support a differential rate for ISP-bound traffic except on an interim basis. And even then, $0.0007 can only be justified as an interim rate under a cost standard that we fail to adopt. A rate of $0.0007 is inconsistent with the current TELRIC standard, and the Order does not adequately explain why we retain this rate in the absence of moving forward with adopting a cost standard consistent with $0.0007. However, the Order simply states that the $0.0007 cap shall remain in place until we adopt more comprehensive intercarrier compensation reform. That is, we are establishing a perpetual interim rate. Although the Order is silent as to whether the $0.0007 rate is "interim," let's be clear – this is an interim rate to nowhere. I therefore believe that we have failed to respond to the Court.

In 2005, the Court denied an earlier mandamus petition based on the Commission's representation that it was committed to comprehensive reform. The Commission pointed to its Further Notice on comprehensive reform, including permanent rules to succeed the interim intercarrier compensation regime for ISP-bound traffic.

Three years later, the Commission once again finds itself asking the Court not to vacate our rules because the Commission remains committed to comprehensive reform. And once again, the Commission points to a Further Notice on comprehensive reform as evidence of its commitment.

I question whether my colleagues will be any more willing to adopt comprehensive reform in December. As explained below, I believe when December comes, the other Commissioners will simply pursue another Further Notice and another round of comment on the most difficult issues. If the Court wants a response – and is willing to give the Commission the benefit of the doubt rather than vacate our rules immediately – it should enforce our promise of reform on pain of automatic vacatur on December 19.

It is unfortunate that the Commission could not agree to adopt the comprehensive solution. I had proposed a comprehensive approach that would have transitioned all traffic to a final uniform rate, regardless of the type of traffic or jurisdiction. This approach would have answered the Court's direction – and I think it would have done so in a legally sustainable way.

Specifically, I would have concluded that all traffic falls within section 251(b)(5) and called upon each state to set a glide path to a reciprocal compensation rate applicable to all traffic under section 252(d)(2). Under this proposal, traffic terminated at rates below the glide path, such as ISP-bound traffic, would continue to be terminated at those rates, on an interim basis, until such traffic is swept into the glide path. Ultimately, the glide path would end at a lower, final uniform rate for all traffic.

Second, I view our failure to implement the Joint Board's recommendations as a tremendous missed opportunity. In particular, I supported the Joint Board's determination that broadband should be included in the universal service program. As I have said before, to fully appreciate and take advantage of the Internet today, consumers need broadband connections. Without this underlying infrastructure, efforts to implement advances in how we communicate, work, and provide education cannot succeed.

My proposal for implementing this recommendation would have spurred rapid and widespread deployment of broadband. I would have asked each carrier receiving high-cost universal service support to commit to provide broadband to all consumers in its study area within 5 years as a condition of continuing to receive support. If a carrier did not make that commitment, we would conduct a reverse auction to find out if any other carrier could do so. If nobody came forward, then we would have identified an unserved area, and could then determine what additional steps might be necessary to bring broadband to those consumers. In addition, I would have created a broadband Lifeline and Link Up program to ensure that low income consumers are not left out of our broadband future.

Finally, I am disappointed with the Further Notice issued today. After a decade of comment on these issues, we begin again from square one. To be clear, this is not a targeted Further Notice on a specific reform proposal. We are putting out for comment several proposals that would lead to radically different outcomes. In the Further Notice and in my colleagues'

statement, my colleagues invite comment on conflicting questions, which reveal that they have no fundamental proposal for reform.

- Do we include broadband within the universal service program – or not?
- Do we provide support to competitive carriers based on their own costs? A reverse auction? Or do we phase out their support altogether?
- Should terminating rates be uniform by state – or uniform by carrier?
- Should we use an incremental cost standard for setting termination rates – or the existing TELRIC standard?

These questions have been debated exhaustively in the record for years. I fail to see how further comment over the next six weeks will help us resolve these issues.

Indeed, the longer we wait, the more difficult these issues become. Regulatory arbitrage will increase as long as rates differ by type of traffic and jurisdiction. Moreover, carriers are booking IP traffic at vastly different rates that must be reconciled eventually. This type of traffic will continue to grow as carriers invest in broadband networks.

I would like to be encouraged by my colleagues' commitment that they will truly be ready to complete this much needed reform on December 18. The nature of the questions they included in the Further Notice makes me doubt they will have found their answers within an additional six weeks. I believe the far more likely outcome is that, in December, the other Commissioners will merely want another Further Notice and another round of comment on the most difficult questions. I do not believe they will be prepared to address the most challenging issues and that the Commission will be negotiating over what further questions to ask in December.

I recognize that few other issues before the Commission are as technically complex and involved, with as many competing interests, as are reforming the intercarrier compensation and universal service programs. But neither of those two realities are excuse for inaction.