

August 15, 2005

The Honorable Kevin Martin, Chairman
Federal Communications Commission
445 12th Street, SW
Room TW B204
Washington, DC 20554

Re: February 10, 2005 adopted Further Notice of Proposed Rulemaking, (FCC 05-33) (“FNPRM”) in the proceeding captioned: *In the Matter of Developing a Unified Intercarrier Compensation Regime* (CC Docket No. 01-92)

FCC INTERGOVERNMENTAL ADVISORY COMMITTEE
ADVISORY RECOMMENDATION

Dear Chairman Martin:

Your Intergovernmental Advisory Committee (“IAC”) supports the intercarrier compensation policy principles (“ITC Policy Principles”) adopted by The National Association of Regulatory Utility Commissioner (“NARUC”), dated May 5, 2004,¹ a copy of which is attached hereto as Appendix B.

As you know, NARUC created the NARUC Task Force on Intercarrier Compensation (“Task Force”), and has devoted a tremendous amount of time and effort in analyzing the relevant issues and proposed intercarrier compensation plans. Together, the members of Task Force crafted the ITC Policy Principles in a collaborative effort, which NARUC adopted on May 5, 2004.

The ITC Policy Principles focus on issues related to the design, operation, and requirements of a new intercarrier compensation plan. The IAC believes the ITC Policy Principles provide an effective framework for analyzing and evaluating various proposals.

In developing a new intercarrier compensation system, the IAC is particularly concerned with the potential impact on consumers and the effect on universal service. IAC calls for heightened consumer protection measures especially those associated with the universal service program at both federal and state

¹ “The National Association of Regulatory Commissioners Study Committee on Intercarrier Compensation Goals for a New Intercarrier Compensation System,” attached as Appendix B to NARUC Notice of Written Ex Parte Presentation (47 C.F.R. § 1.1204(10)), filed in CC Docket No. 01-92).

levels. To achieve such goal, the IAC emphasizes the importance of the Universal Service and Consumer Protection principles articulated in Section VII of the ITC, which provides:

- A. The transition to a new intercarrier compensation system should ensure continuity of existing services and prevent significant rate shock to end-users. Penetration rates for basic service should not be jeopardized.
- B. A new intercarrier compensation system should recognize that areas served by some rural local exchange carriers are significantly more difficult to serve and have much higher costs than other areas.
- C. Rural customers should continue to have rates comparable to those paid by urban customers. End-user basic local exchange rates should not be increased above just, reasonable, and affordable levels.
- D. Any intercarrier compensation plan should be designed to minimize the cost impact on both federal and State universal service support programs.

As you also know, the work of the Task Force is ongoing as it continues to review highly complex and interrelated intercarrier compensation issues and possible solutions to the problems that have arisen with the current intercarrier compensation system in this changing telecommunications environment. While the IAC reserves comment on specific proposed intercarrier compensation plans that are being evaluated, we recommend that the FCC seriously consider the ITC Policy Principles as it evaluates proposed intercarrier compensation plans.

In addition, and consistent with the ITC Policy Principles,² the IAC also believes that it is important to rural areas around the country for the FCC to preserve and continue geographic rate averaging and rate integration under Section 254(g)³ of the Act, as described in the Comments of the State of Hawaii filed in this docket, dated May 23, 2003, a copy of which is attached hereto as Appendix A. Preserving geographic rate averaging and rate integration would also be

² ITC Policy Principles VI.C provides: "To avoid creating harmful economic incentives to de-average toll rates by some interexchange carriers, the FCC should have the authority to pool costs within its defined jurisdiction whenever intercarrier compensation rates are high in some areas."

³ See FNPRM ¶¶ 63, 83-86.

consistent with the mission of the FCC to ensure that communications services are available to all Americans at reasonable rates without discrimination.⁴

In summary, as the FCC grapples with these highly complex issues, the IAC recommends that the FCC keep these fundamental principles in mind as it develops a new intercarrier compensation system that is sorely needed in this shifting technological and market environment.

If you have any questions, please contact Carlito Caliboso (808)586-2020 or Vice Chair David Jones (864-596-2050 x101) at your convenience.

Respectfully Submitted,

Jim Dailey, Chair
FCC Intergovernmental Advisory Committee

⁴ “It is the mission of the Federal Communications Commission to ensure that the American people have available – at reasonable costs and without discrimination – rapid, efficient, nationwide and worldwide communication services whether by radio, television, wire, wireless, satellite, or cable.” Federal Communications Commission Strategic Plan FY2003-FY2008, citing 47 U.S.C. §151 – Title 1, Section 1 of the Communications Act of 1934, as amended (emphasis added).

Appendix B

THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS STUDY COMMITTEE ON INTERCARRIER COMPENSATION GOALS FOR A NEW INTERCARRIER COMPENSATION SYSTEM

May 5, 2004

I. INTRODUCTION:

Portions of the current intercarrier compensation system are rapidly becoming unsustainable. There is disagreement among stakeholders over the appropriate solutions. Various industry groups have been working separately to develop intercarrier compensation proposals. The proposals are reportedly designed to replace some or all of the existing intercarrier compensation mechanisms, and are expected to be submitted to the FCC.

"Inter-carrier compensation" controls how various carriers compensate one another for handling calls or for leasing dedicated circuits. "Reciprocal compensation," the fee for handling local traffic, has increasingly flowed from the Incumbent Local Exchange Carriers ("ILECs")¹ to the CLECs by virtue of such developments as CLECs terminating an increasing share of ISP traffic. "Access charges" are intercarrier fees for handling toll traffic. "Long distance" or toll compensation between carriers existed for decades under the old AT&T Bell System monopoly, and it supported a portion of the cost of common wires and facilities. Following divestiture, "access charges" were created for toll traffic.

The emergence of new communications technologies has placed stress on the current compensation system. Because it was assembled piecemeal over time, the current intercarrier compensation system has inconsistencies that can result in discriminatory practices, arbitrage or "gaming" of the current system, and other unintended outcomes.

In hopes of leading to a balanced solution, a group of the NARUC's commissioners and staff has drafted this set of guiding principles against which the various proposals can be measured and evaluated. These principles address the design and functioning of, and the prerequisites to, a new intercarrier compensation plan. They do not address the amount or appropriateness of costs recovered by particular carriers through intercarrier compensation.

¹ A "local exchange carrier" is defined generally by the Telecommunications Act of 1996 as any entity engaged in the provision of telephone exchange service or exchange access. In this document, it refers to both the traditional local providers of wire-line telephone service, referenced as the Incumbent Local Exchange Carriers or ILECs, and their competitors/any competing service, referenced in this document as Competing Local Exchange Carriers or CLECs.

II. APPLICABILITY:

A. An integrated intercarrier compensation plan should encompass rates for interconnecting CLEC and ILEC local traffic as well as access charges paid by interexchange carriers.

B. CLECs, IXC, ISPs, VoIP, wireless, and any other companies exchanging traffic over the Public Switched Telecommunications Network should be covered ("Covered Entities").

C. No Covered Entity should be entitled to purchase a service or function at local rates as a substitute for paying intercarrier compensation.

III. ECONOMICALLY SOUND:

A. The compensation plan should minimize arbitrage opportunities and be resistant to gaming.

B. Intercarrier compensation should be designed to recover an appropriate portion of the requested carrier's ² applicable network costs. At a minimum, this will require compliance with the jurisdictional separations and cost allocation rules, applicable case law in effect at any point in time, and 47 U.S.C. 254(k).

C. A carrier that provides a particular service or function should charge the same amount to all Covered Entities to whom the service or function is being provided. Charges should not discriminate among carriers based on:

1. the classification of the requesting carrier ³;
2. the classification of the requesting carrier's customers;
3. the location of the requesting carrier's customer;
4. the geographic location of any of the end-users who are parties to the communication; or,
5. the architecture or protocols of the requested carrier's network or equipment.

D. Intercarrier compensation charges should be competitively and technologically neutral and reflect underlying economic cost.

E. The intercarrier compensation system should encourage competition by ensuring that requested carriers have an economic incentive to interconnect, to carry the traffic, and to provide high-quality service to requesting carriers. In

² "Requested carrier" means a carrier that receives a request for telecommunications service. An example would be a LEC that receives traffic for termination on the loop of one of the LEC's customers.

³ "Requesting carrier" means a carrier that requests another carrier to transport, switch, or process its traffic.

limited circumstances, carriers may voluntarily enter into a bill and keep arrangement.

F. Volume of use should be considered when setting intercarrier compensation rates. Available capacity may be used as a surrogate for volume of use.

G. Any intercarrier compensation system should be simple and inexpensive to administer.

IV. COMPETITIVE INTERCARRIER MARKETS NOT PRICE-REGULATED:

Market-based rates should be used where the market is determined to be competitive. A rigorous definition of "competitive market" is needed in order to prevent abuses.⁴

V. NON-COMPETITIVE INTERCARRIER MARKETS PRICE-REGULATED:

A. An intercarrier compensation system should ensure that telecommunications providers have an opportunity to earn a reasonable return and that they maintain high- quality service. It should also encourage innovation and promote development of competitive markets.

B. Government should limit the ability of carriers with market power to impose excessive charges.

C. Where charges are restricted by government action, carriers have the protections of due process, and confiscation is not permitted.

D. If any ILEC property or operations in the future could give rise to a confiscation claim, in a rate case or otherwise, then a practical way should be defined to exclude property and operations that are in competitive markets.

VI. APPROPRIATE FEDERALISM:

A. The reciprocal compensation system should ensure that revenues, cost assignment, and the risk of confiscation are jurisdictionally consistent for all classes of traffic.

B. State commissions should continue to have a significant role in establishing rates and protecting and communicating with consumers.

⁴ Markets that have been competitive can become non-competitive, requiring the re-imposition of regulation to protect consumers.

C. To avoid creating harmful economic incentives to de-average toll rates by some interexchange carriers, the FCC should have the authority to pool costs within its defined jurisdiction whenever intercarrier compensation rates are high in some areas.

D. State commissions should retain a role in this process reflecting their unique insights, as well as substantial discretion in developing retail rates for services provided by providers of last resort, whether a dual or unified compensation solution is adopted.

E. A proposal preserving a significant State role that fits within the confines of existing law is preferable.

VII. UNIVERSAL SERVICE AND CONSUMER PROTECTION:

A. The transition to a new intercarrier compensation system should ensure continuity of existing services and prevent significant rate shock to end-users. Penetration rates for basic service should not be jeopardized.

B. A new intercarrier compensation system should recognize that areas served by some rural local exchange carriers are significantly more difficult to serve and have much higher costs than other areas.

C. Rural customers should continue to have rates comparable to those paid by urban customers. End-user basic local exchange rates should not be increased above just, reasonable, and affordable levels.

D. Any intercarrier compensation plan should be designed to minimize the cost impact on both federal and State universal service support programs.

VIII. ACHIEVABILITY AND DURABILITY:

A new intercarrier compensation system should not only recognize existing circumstances but should also anticipate changes at least over the intermediate term, and should provide solutions that are appropriately resilient in the face of change.

IX. PREREQUISITES FOR PLAN IMPLEMENTATION:

A. The estimated cost impact on a carrier-by-carrier basis, by State, must be computed before a decision is made whether to adopt a new intercarrier compensation plan.

B. The FCC should identify, quantify, and evaluate the total of all federal high cost universal service fund payments received by each company today. The federal universal service support mechanisms should be revisited as an intercarrier compensation plan is implemented to ensure that telecommunications services remain accessible and affordable to all Americans.

C. The FCC should be required to regularly revisit its cost allocation rules for regulated/nonregulated services. Costs that should not be recovered through regulated rates ought to be excluded from the computation of intercarrier compensation rates.

D. Before any new intercarrier compensation plan is implemented, the effect of the plan on local exchange rates, including both interstate and intrastate SLCs, should be computed.

E. Even when a referral to a Joint Board is not mandated by law, in order to ensure State input the FCC should make a referral, and the Joint Board should act on that referral, in an expedited manner. Similarly, referrals to Joint Conferences should be handled on an expedited basis.