Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

Comments of the
Public Service Commission of Wisconsin

The Public Service Commission of Wisconsin (the Commission) respectfully submits these comments in response to the Federal Communications Commission (FCC), *Notice of Proposed Rulemaking*[1] (NPRM) in CC Docket No. 01-92, released on April 27, 2001. In this NPRM, the FCC begins a "fundamental reexamination of all currently regulated forms of intercarrier compensation." Specifically, the FCC seeks comments on whether and how to replace the existing variety of inter-carrier compensation methods with a unified approach. The proposals put forth in this proceeding have the potential to affect virtually all customers in all states as well as state and federal policies on universal service, access charges and jurisdictional separations.

As an overarching approach to addressing these many issues of joint state and federal concern, the Commission supports the recommendation put forth in the resolution of the National Association of Regulatory Commissioners (NARUC) regarding this matter, adopted at its Summer Meetings, July 18, 2001.[2] That resolution advocates that the FCC fully investigate the market effects of the bill and keep proposals and that the

[1] CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132.

cost allocation and universal service issues be referred to the respective Federal-State Joint boards on Separations and Universal Service. Further, the resolution opposes preemption of state interconnection policies at this time and absent formal consultation with the states. A copy of the resolution is attached. (Enclosure 1).

Bill and Keep Proposals

The FCC is considering replacing the traditional framework of interexchange access and reciprocal compensation arrangements with some form of a bill and keep compensation system. Under bill and keep, carrier-to-carrier fees would be substantially reduced and in some cases eliminated. Instead the end user customers would pay many of the fees previously paid by the carriers.

The FCC describes this as a move from the existing philosophy where the "calling party pays" for the costs of an end-to-end call, to a system where each person is directly responsible for paying the costs of the loop going to their house, the costs for the switching center serving their loop, and possibly other costs. Today, when a customer places an interstate long distance call, the customer pays per minute rates that include the costs of transport, originating access, and terminating access for the call.[3] Under a bill and keep system, the person you called would pay a substantial part of the access costs for terminating your call at their home. This raises unique issues of whether it is reasonable for a person to pay for calls they did not originate and did not wish to receive.

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[2] *Resolution Regarding the Development of a Unified "Bill-and-Keep" Intercarrier Compensation Regime*, Sponsored by the Committee on Telecommunications, Adopted by the NARUC Board of Directors July 18, 2001.

[3] To the extent the access fees are not recovered through other means such as the SLC and universals service mechanisms. In this example, "access" means the access to the loop and switching equipment in the local network necessary for the long distance call.

Under the bill and keep example, customers' local bills would have a new monthly fee to recover a substantial portion of the costs of access to and from their homes. Long distance companies would see reduced expenses as their access costs would, to a great extent, be shifted to the end-users. There is a presumption, but no requirement, that long distance companies would reduce their rates to pass their bill and keep related savings to their customers. If long distance companies fail to pass on the savings or only pass them on to select customers, then it is possible bill and keep would lead to a rate increase to all consumers or to a significant portion of them.

The local market as well as the long distance market could be affected by bill and keep. The FCC contemplates that bill and keep could replace in part or in whole reciprocal compensation agreements between local carriers. This would occur because under bill and keep, the customer, and not the carrier, is responsible for the costs for his or her loop and the switch connected to that loop (which together comprise the majority of local network costs). It is not clear whether the customer's local bill will be affected by the local-specific part of the change to a bill and keep system. It is possible that local rates would increase if the local carrier has lost reciprocal compensation revenues that previously paid for costs caused by handling calls of a competing carrier.

Market Issues

The FCC believes that, overall, the market will be improved if there is a simpler, unified system for carrier-to-carrier cost recovery. By essentially transferring some or all of the cost of interconnection from carriers to customers, the FCC believes it may cure some of the competitive market failures it has observed.[4]

Many questions exist however as to whether bill and keep will perform as anticipated. For example, will bill and keep: a) provide fair compensation to each carrier in the market even where there are imbalances in the type or volume of traffic between the carriers; b) maintain a reasonable economic link between the “cost-causer” and the ”cost-payer”; c) provide proper economic signals to carriers in the market and their customers; d) lead to cross-subsidies between low and high volume customers or other customer classes; or d) create undesirable incentives regarding infrastructure development, network configuration, or points of interconnection? Many more unanswered market related questions exist than have been expressed in these comments.[5] Given the complexities of these questions and issues, it was prudent for the Commission to allow a long comment period in this proceeding. Nevertheless, prior to adoption, the effect of bill and keep proposals should be fully investigated. Additional time may be needed for parties to develop models and arguments to flesh out alternative views on the market implications.

Universal Service

The FCC recognizes that its proposals may increase the effective local monthly bill observed by customers.[6] The FCC also realizes that its proposals will reduce the portion of the consumer’s total bill that is subject to geographic rate averaging under

[4] For example, the FCC believes that CLECs in some cases have been able to price access services above competitive market levels.
[5] See the Summary of Recent FCC’s NPRM and Report and Orders on Intercarrier Compensation by the National Regulatory Research Institute, June 2001.
[6] NPRM at p.123.

254(g), which would further increase many customers' bills. The FCC seeks comment on the significance of any change in rate and effect on subscriber penetration rates.

In high costs states, local customers may not be able to afford the increase in monthly fees possible under the various bill and keep proposals. It may be necessary to increase the size of state and federal universal service funds to prevent customer drop off from the network. Similarly, changing the method of carrier-to-carrier compensation implicates the universal service components of the CALLS plan. For these reasons the NARUC resolution proposes that there be coordination between changes in the federal carrier-to-carrier policy and the existing universal service high cost fund. Issues affecting universal service should be referred to the Universal Service Joint Board.

Jurisdictional Separations

The FCC in its NPRM also recognizes that its proposed policy changes may affect jurisdictional separations.[7] The FCC is essentially proposing to change the dividing line between costs recovered through traditional interstate services and those recovered as part of the local bill. In many ways the bill and keep proposals are changing the concept of what is a "local" service. To the extent that the FCC affects a shift in costs to local rate payers, it would be appropriate for the Separations Joint Board to be involved. Similarly, participation by the Separations Joint Board will allow the FCC to evaluate whether it is more reasonable to achieve the end it seeks through a change in jurisdictional cost assignment rather than through a change in policies affecting access rate design. The issues raised in the NPRM are also closely related to jurisdictional allocation issues now

[7] NPRM at p. 122.

before the Separations Joint Board as it continues its review of the next generation of jurisdictional separations policy. For these reasons, the NARUC resolution recommends coordination between the Separations Joint Board and the FCC as the FCC develops its carrier-to-carrier policy issues as well as referral of all jurisdictional cost allocation issues to the Joint Board.

Cost Allocation

The FCC suggests that a bill and keep system may provide a demarcation point between networks so that regulators need not allocate costs.[8] This suggests that the current sharing of costs between the state and federal jurisdiction will be eliminated as costs will be assigned fully to either one side or the other. Changing who pays for costs has the potential to affect end-user rates, incentives for infrastructure investment, customer penetration levels, universal service funding needs, and virtually every major cost-recovery policy affecting state and federal rate payers. States may have a significant interest in ensuring that federal cost allocation changes do not disrupt state networks, policies, and economic and social objectives.

Mirroring of Federal Policies

If the FCC goes to an interstate bill and keep system, states may face significant pressures to make similar changes at the state level. For example, if federal access charges are reduced or eliminated, this could create significant bypass and arbitrage incentives relative to state access charge systems. These effects may be so pervasive that states may not have the option of preserving state policies. In the NPRM, the FCC seeks

[8] NPRM at p. 34.

comment on whether certain state rates should conform with federal policy goals.[9] There is therefore a risk that state decisions regarding state access and other carrier-to-carrier agreements may be preempted by the FCC. While this opportunity for comment is welcomed, as stated previously, the Commission opposes preemption of state interconnection policies at this time and absent formal consultation with the states.

Conclusion

The Public Service Commission of Wisconsin encourages the FCC effort in these dockets and urges consideration of these comments. Besides its effects on the interstate markets, adopting a federal bill and keep system to replace access and reciprocal compensation arrangements has a wide range of impacts. It has the potential to affect intrastate rates, universal service, cost allocation issues, infrastructure development, network structures, and various other state policies.

Given that the scope of consequences of adopting a bill and keep system cannot be conformed to respect existing state/federal jurisdictional delineations, the Commission advises that further FCC action regarding the bill and keep proposals should only be made in formal consultation with the states. The issues related to universal service should be referred to the Federal-State Joint Board on Universal Service and the issues related to cost allocation and jurisdictional separations should be referred to the Federal-State Joint Board on Separations. Further, the Commission specifically opposes

[9] While much of the NPRM addresses methods the FCC may adopt regarding interstate rates, paragraph 99 seeks comment on "whether, in order to achieve the benefits of a uniform intercarrier compensation regime, state public utility commissions would need to move intrastate access charges to forward-looking-economic costs." At paragraph 87, the FCC also seeks comment on the extent to which Section 332 preempts state regulation of intrastate LEC-CMRS interconnection and gives such authority to the FCC.

preemption of state interconnection policies at this time and absent formal consultation with the states.

Dated at Madison, Wisconsin August 21, 2001

By the Commission:

Lynda L. Dorr

Lynda L. Dorr
Secretary to the Commission

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Attachment

NARUC Resolutions & Policy Positions

Resolution Regarding The Development of a Unified "Bill-and-Keep" Intercarrier Compensation Regime

WHEREAS, The Federal Communications Commission's (FCC's) Office of Plans and Policy on December 13, 2000 released two working papers proposing new ways of analyzing inter-carrier compensation; and

WHEREAS, On April 27, 2001, the FCC released a Notice of Proposed Rulemaking (NPRM, FCC 01-132) seeking comments on modifications to existing intercarrier compensation agreements and on the feasibility of a unified compensation regime based on a bill-and-keep approach or other alternatives that would encourage efficient use of, and investment in, telecommunications networks, and would promote the development of competition; and

WHEREAS, This regime may apply to interconnection arrangements between all types of carriers interconnecting with the local network, and all types of traffic passing over the local network; and

WHEREAS, The FCC is considering moving both state and interstate access to a proposed version of a "bill-and-keep" system of compensation; and

WHEREAS, Long distance companies would see reduced expenses as their access costs would be shifted to the end-users; and

WHEREAS, The FCC's NPRM recognizes that such reform may increase the total end-user prices and affect universal service; and

WHEREAS, The impact of this proposal has not been examined or referred to the Separations or the Universal Service Joint Board; and

WHEREAS, Under a unified bill-and-keep regime, consumers would pay a substantial part of the access costs for terminating a call at their home, even if it was a call they did not wish to receive; and

WHEREAS, It is unknown whether bill-and-keep will:

1. provide fair compensation to each carrier in the market, especially if there are imbalances in the type or volume of traffic between the carriers;
2. maintain a reasonable link between the "cost-causer" and the "cost-payer";

3. provide appropriate economic signals to carriers and their customers;
4. lead to cross-subsidies between low and high volume customers or other customer classes; or
5. create perverse incentives regarding infrastructure development, network configuration, or points of interconnection; and

WHEREAS, The FCC's proposal will change the dividing line between costs recovered through traditional interstate services and those recovered as part of the local bill; and

WHEREAS, Parties require sufficient information regarding the effect on intrastate ratepayers to provide informed comments; and

WHEREAS, A notice and comment proceeding will not adequately address impacts on states; and

WHEREAS, It is unclear whether the FCC intends to wait until after the CALLS agreement expires or will act sooner; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) convened in its July 2001 Summer Committee Meetings in Seattle, Washington, strongly recommends that prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both the federal and state regulators; and be it further

RESOLVED, That prior to further consideration of a unified or bill-and-keep system, NARUC advocates the FCC refer the proposals and cost allocation issues to the Separations Joint Board for purposes of determining the effect on intrastate and interstate ratepayers and refer universal service issues to the Universal Service Joint Board; and be it further

RESOLVED, That NARUC opposes a federal unified compensation regime based on bill-and-keep or other alternatives that would preempt state interconnection policies at this time and absent input from the states; and be it further

RESOLVED, That the NARUC General Counsel be directed to file and take any appropriate actions to further the intent of this resolution.

Sponsored by the Committees on Consumer Affairs and Telecommunications Adopted by the NARUC Board of Directors July 18, 2001