

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**To: The Commission**

**REPLY COMMENTS OF  
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group (“RTG”),<sup>1</sup> by its attorneys, hereby replies to the initial comments to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding.<sup>2</sup>

The FCC has sought comment on its proposal to change the intercarrier compensation mechanism that would apply to interconnection arrangements between all types of local carriers and to all types of traffic passing over the local public switched telephone network. The FCC proposed to adopt the bill-and-keep approach as the

---

<sup>1</sup> The Rural Telecommunications Group is a group of rural telecommunications providers who have joined together to speed the delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG's members provide wireless telecommunications services, such as cellular telephone service, Personal Communications Services (“PCS”), Multichannel Multipoint Distribution Service (“MMDS”), and Local Multipoint Distribution Service (“LMDS”) to their subscribers. RTG's members are all affiliated with rural telephone companies or are small businesses.

<sup>2</sup> *In re Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 28410 (May 23, 2001). (“*NPRM*”).

Commission's unified regime for the flow of payments among telecommunications networks.<sup>3</sup>

While RTG supports the Commission's initiative to use bill-and-keep as an intercarrier compensation arrangement in certain circumstances, RTG and the majority of commenters emphatically urge the Commission to allow commercial mobile radio service ("CMRS") providers the flexibility to seek intercarrier compensation using either reciprocal compensation or bill-and-keep methodologies. Notably, 59 commenters agreed with RTG that the Commission should not mandate a uniform bill-and-keep compensation regime, but should allow carriers some form of flexibility in negotiating compensation terms.<sup>4</sup> The record, therefore, does not support mandated bill-and-keep, but retaining bill-and-keep as one of the compensation alternatives for CMRS-LEC interconnection agreements.

The majority of commenters also urge the Commission to maintain its exclusive jurisdiction to establish standards and resolve controversies that may arise in any CMRS-related compensation/interconnection dispute.

## **I. THE FCC SHOULD ALLOW FLEXIBILITY IN CMRS INTERCONNECTION/COMPENSATION AGREEMENTS**

Although RTG fully supports the use of bill-and-keep intercarrier compensation arrangements in certain circumstances, RTG initially called upon the Commission to allow CMRS providers the flexibility to use the most appropriate intercarrier

---

<sup>3</sup> *NPRM* at ¶ 1.

<sup>4</sup> *See e.g.*, SBC Communications ("SBC") Comments, Nextel Communications ("Nextel") Comments, United State Telecom Association ("USTA") Comments, ICORE Comments, Mid Missouri Cellular Comments, Triton PCS Comments, Personal Communications Industry Association ("PCIA") Comments, Ronan Telephone Comments, America Online Comments, Onvoy Comments, and CenturyTel Comments.

compensation arrangement. The comments overwhelmingly support some sort of intercarrier compensation flexibility. Nextel, Triton PCS, USTA, PCIA, SBC and the Independent Telephone & Telecommunications Alliance (ITTA) are among the parties who call on the FCC to do the same.<sup>5</sup>

As ITTA explains, “[t]he NPRM bears witness to the fact that the FCC’s historical path of increasing levels of regulatory intervention has proved increasingly ineffective and impracticable,” in response to various existing compensation methods.<sup>6</sup> RTG agrees with ITTA’s statement that, “[t]he slower regulation becomes and the more interstices it creates, the more regulation detracts from market flexibility and the more it produces unintended, undesirable consequences...”<sup>7</sup>

Many carriers commented that a bill-and-keep regime would be administratively and economically more efficient. These same carriers, however, agreed with RTG that a one-size-fits-all approach is not the best for all carriers.<sup>8</sup> Nextel agrees that there is no one solution for all carriers and all interconnection agreements. It argued that a bill-and-keep regime should be the preferable arrangement, but that carriers should be permitted to voluntarily negotiate any form of compensation agreement that is appropriate for both carriers.<sup>9</sup> Triton PCS supports the Commission’s efforts to achieve a more efficient intercarrier compensation regime, but believes the FCC should ensure that bill-and-keep

---

<sup>5</sup> See generally, Nextel Comments, Triton PCS Comments, USTA Comments, PCIA Comments, SBC Comments, and ITTA Comments.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> PCIA Comments at 17.

<sup>9</sup> Nextel Comments at 28-29.

is an option, but not mandated. “In some circumstances, it may be appropriate for CMRS providers and LECs to exchange traffic at asymmetrical rates based on the costs of each carrier.”<sup>10</sup> Triton argued that CMRS carriers must have options when negotiating a compensation arrangement. While bill-and-keep encourages reliance on market-oriented solutions, USTA believes there may be some detrimental consequences from the adoption of bill-and-keep.<sup>11</sup> Some concerns include the affordability of rates, the reduction of infrastructure investments due to diminishing incentives, and changes in current universal service contributions.<sup>12</sup>

Chairman Powell, in a recent speech, called for the development of a competitive policy that stressed facilities-based telecommunications with "simplified interconnection rules."<sup>13</sup> Former Commissioner Furchtgott-Roth, in response to this *NPRM*, said, “the 1996 Act aims to remove impediments to contract.”<sup>14</sup> He also said, “requiring intercarrier compensation of specific forms, such as bill-and-keep, is nothing more than price regulation – harmful to contracts, carriers, consumers, and the public interest.”<sup>15</sup> RTG agrees with both Chairman Powell’s and former Commissioner Furchtgott-Roth’s statements. The Commission should establish a flexible framework that allows CMRS providers to seek intercarrier compensation arrangements using the preferred mechanism,

---

<sup>10</sup> Triton PCS Comments at 10.

<sup>11</sup> USTA Comments at 22.

<sup>12</sup> *See generally, id.* at 23-25.

<sup>13</sup> *See* Chairman Powell’s Speech at the National Summit on Broadband Deployment. (Oct. 25, 2001).

<sup>14</sup> *See* Commissioner Furchtgott-Roth’s Separate Statement, *NPRM* at 70.

<sup>15</sup> *See, id.*

rather than creating regulation that could impede competition. The Commission would then be available to resolve specific disagreements that might arise between carriers.

The few commenters supporting a mandated, uniform compensation regime do not focus on the real issue. Verizon Wireless, for example, stated that the Commission should not exempt rural carriers from a mandated bill-and-keep regime because bill-and-keep makes sense due to administrative simplicity.<sup>16</sup> Verizon Wireless, however, did not fully consider the impact on rural end users. As USTA suggested, mandating bill-and-keep could have many detrimental consequences, which will be particularly harmful if current access revenue streams are displaced and must be recovered from the end user customer.<sup>17</sup> Administrative efficiency should not be the reason the Commission mandates a uniform one-size-fits-all approach, particularly since compensation negotiations take place between private parties on a case-by-case basis. The better alternative is to grant all carriers pricing flexibility in establishing an end user recovery mechanism that suits their particular situations.<sup>18</sup>

The record clearly reflects ways for the Commission to accommodate carriers that prefer bill-and-keep, carriers that prefer reciprocal compensation, or carriers that prefer another type of compensation regime.<sup>19</sup> It should allow telecommunications carriers the flexibility to choose the best compensation regime based on particular circumstances.

---

<sup>16</sup> Verizon Wireless Comments at 47.

<sup>17</sup> USTA Comments at 23.

<sup>18</sup> SBC Comments at 31.

<sup>19</sup> *See generally*, Nextel Comments, Triton PCS Comments, USTA Comments, PCIA Comments, SBC Comments, ITTA Comments, and RTG Comments.

## II. THE COMMISSION SHOULD MAINTAIN ITS PLENARY JURISDICTION UNDER SECTION 332

Many commenters agree with RTG that the Commission has plenary jurisdiction under Section 332 of the Communications Act,<sup>20</sup> to establish general CMRS interconnection standards and resolve individual disputes.<sup>21</sup>

RTG strongly supports the Cellular Telecommunications & Internet Association's ("CTIA") position that Section 332 grants the FCC plenary authority to adopt an intercarrier compensation regime for LEC-CMRS interconnection. According to CTIA, it is clear from the past five years of regulation and judicial affirmation that the Commission can and should assert its jurisdiction over CMRS-LEC interconnection matters without conflict with state authority.<sup>22</sup> When Congress amended Section 332, it preempted the states' authority to regulate CMRS rates and entry and granted the Commission the authority to oversee intercarrier compensation arrangements.<sup>23</sup>

Nextel and Verizon Wireless also asserted that the Commission has jurisdiction over CMRS interconnection compensation. Nextel argued that the individual state commissions lack the jurisdictional authority to regulate CMRS providers as LECs, and

---

<sup>20</sup> 47 U.S.C. § 332.

<sup>21</sup> *See generally*, Verizon Wireless Comments, SBC Comments, Qwest Comments, CTIA Comments, Nextel Comments, Triton PCS Comments, Sprint Comments, Allied Comments, Bell South Comments, and AT&T Wireless Comments.

<sup>22</sup> CTIA Comments at 4.

<sup>23</sup> *Id.* at 6. While agreeing with CTIA as to the plenary nature of the FCC's authority under Section 332, RTG does not agree that the Commission should exercise that jurisdiction to mandate bill-and-keep. Congress never expressed a preference for bill-and-keep as the compensation means for the transport and termination of local traffic. In fact, the only language in the Communications Act that discusses bill-and-keep, Section 252, calls for its use only in exceptional circumstances. *See* § 252(d)(2)(B). As RTG explained in its comments, CMRS operators' cost structures may typically justify asymmetrical reciprocal compensation mechanisms.

therefore, must follow the FCC’s current CMRS interconnection rules.<sup>24</sup> As Verizon Wireless noted, Congress, in passing the Omnibus Budget Reconciliation Act of 1993,<sup>25</sup> “chose a federal regulatory framework for CMRS, stating that its goal with respect to CMRS was to ‘foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure.’”<sup>26</sup>

Another commenter noted, the “jurisdictional concerns raised by a nationwide bill-and-keep regime ultimately may be rendered moot by technological advancements.”<sup>27</sup> The deployment of packet networks could change the current jurisdictional role the FCC plays. In this era of technological convergence, more competition means the need for less regulation.<sup>28</sup> These rapid changes in the CMRS industry call for a national approach to local compensation matters. Irrespective of the type of compensation regime it adopts, the Commission, not the states, must take this opportunity to affirm its primacy under Section 332 and establish standards and resolve controversies that may arise in CMRS-related interconnection disputes.

RTG urges the Commission not to cede its CMRS interconnection jurisdiction to the states in any way. It is imperative that CMRS providers, who typically operate across state lines, have a single, consistent source of interconnection direction.

---

<sup>24</sup> Nextel Comments at 8.

<sup>25</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 392 (1993).

<sup>26</sup> Verizon Wireless Comments at 5.

<sup>27</sup> SBC Comments at 42-43.

<sup>28</sup> Qwest Comments at 34.

### III. CONCLUSION

An overwhelmingly majority of the commenters agree with RTG that the Commission should not mandate a uniform bill-and-keep compensation regime. Based on the record, the Commission should allow CMRS carriers flexibility to negotiate the appropriate compensation regime. The FCC should also retain its plenary jurisdiction over all CMRS interconnection compensation matters to prevent the states from creating confusing and inconsistent regulations. This reflects both Congress' intent for national CMRS oversight and a reasonable approach to regulating businesses that operate across state borders on a routine basis.

Respectfully submitted,

THE RURAL TELECOMMUNICATIONS GROUP

By: \_\_\_\_\_/s/\_\_\_\_\_

Caressa D. Bennet  
Brent H. Weingardt  
Rebecca L. Murphy  
Bennet & Bennet, PLLC  
1000 Vermont Avenue, NW  
Tenth Floor  
Washington, DC 20005  
202-371-1500

Its Attorneys

November 5, 2001