

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

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| In the Matter of |) | |
| |) | |
| Developing A Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |
| |) | |
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**REPLY COMMENTS
OF
ALLTEL COMMUNICATIONS, INC.**

ALLTEL Communications, Inc.

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Executive Summary

ALLTEL continues to encourage the immediate authorization of pricing flexibility so that if and when a new intercarrier compensation mechanism is adopted, the impact on the end user will be minimized. ALLTEL also awaits the release of the Commission's Order regarding the MAG Plan for Regulation of Interstate Services of Non-Price Cap ILECs. The rules adopted in this plan should be analyzed and given a chance to operate before any fundamental changes are made to the intercarrier compensation system. Existing arbitrage and gaming of the system must be addressed by simultaneous rule and policy clarification and implementation at both the federal and state levels and symmetrically among wireline, wireless and other technologies.

The actual consequences of a bill-and-keep regime as proposed under COBAK and BASICS are unknown, but the extent of detriment such proposals could have on intercarrier compensation was voiced in numerous comments. Both technical issues like the point of interconnection (POI) and policy matters like universal service received much attention and clearly require further comment prior to any rule modification or implementation.

Neither COBAK nor BASICS will lessen regulatory intervention. On the contrary, these proposals could perpetuate the regulatory fictions that exist under the current system. It is ALLTEL's continued position that no bill-and-keep regime can adequately replace the current intercarrier compensation mechanism. Rather, with establishment of a few conditions precedent coupled with explicit rule clarification, the Commission can avoid additional arbitrage-creating regulation and foster investment and competition.

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ALLTEL Communications, Inc., on behalf of its local exchange carrier affiliates and its various subsidiaries and corporate affiliates providing commercial mobile radio services (“CMRS”) (hereinafter “ALLTEL” or the “ALLTEL Companies”) respectfully submits its reply comments in response to the Federal Communications Commission’s (the “Commission”) Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding.¹

I. Introduction

This proceeding began as an overall assessment of the current intercarrier compensation mechanism as it exists in the industry today and proposed two potential courses for the future. The resultant outpouring of comment raised numerous questions and concerns and resulted in limited agreement. ALLTEL is concerned that a new mechanism based on bill-and-keep will have a significant impact on revenue growth, market expansion of new advanced services, and cost recovery of past investments.

¹ In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking* FCC 01-132 (rel. April 27, 2001) (“*Intercarrier Compensation Notice*”).

In shaping the future of intercarrier compensation, the Commission must continue to focus on promoting competition. The Commission has made a commendable effort to encourage competition. Now is the time for the Commission to focus on fashioning rules explicitly designed to encourage investment in both wireline and wireless networks. As evidenced by current industry conditions, competition policy is not the same thing as investment infrastructure policy. Thus, any future intercarrier compensation mechanism must protect existing markets while promoting competition, the provision of advanced services and the infrastructure necessary for their deployment.

II. The Unintended Consequences Of New Regulation.

As stated in its comments, ALLTEL supports the Commission's reform of the current intercarrier compensation mechanism, but feels implementation of a theory-driven bill-and-keep system, untested by actual market events, is not prudent at this time. Refining existing rules that govern pricing flexibility and universal service mechanisms would be far more beneficial in determining true subsidy needs than implementing an untested paradigm of regulation whose potential material impact is indeterminable.

The existence of regulatory arbitrage that hinders the current system of intercarrier compensation was not the intention of regulators. Rather it is the unintended consequence of cumbersome, compulsory regulation on an industry where competitive market forces should be fostering competition. New regulation will have new unintended consequences.

The Commission has begun to address the regulatory gaming that has been ongoing. In adopting interim compensation mechanisms for traffic bound for Internet Service Providers ("ISP") and competitive local exchange carriers' ("CLEC") access charges, the Commission

acknowledged the imperfections that exist in the current regulatory regime that not only permitted but also induced carriers to behave in ways not contemplated by the Commission when it initially adopted its rules and policies. By working and manipulating the Commission's rules, carriers could and did profit handsomely by taking advantage of the imperfections in the regulatory process. As the Commission approaches redefining the rules for intercarrier compensation, it must remain mindful of this experience.²

The current intercarrier compensation mechanism has already created arbitrage opportunities never envisioned by its designers. An intercarrier compensation mechanism based on bill and keep will also have innumerable loopholes and pitfalls. Numerous ILECs and non-ILECs share this concern to some degree. Time Warner Telecommunications succinctly states, "COBAK may simply replace old inefficiencies created by arbitrage with new inefficiencies ('of unknown magnitude') created by arbitrage..."³ Diminishing regulation, not merely exchanging regulation, is an essential step toward advancing competition and investment.

III. The Conditions Precedent To Any New Intercarrier Compensation Regime.

a) Universal Service.

ALLTEL stated in its comments that the Commission must provide for universal service support in ways that are explicit, sufficient and predictable. Verizon agrees that "a new framework such as bill-and-keep will provide a different distribution of payments...[and] change the amounts different customers pay."⁴ It is unlikely that the current universal service mechanism will provide sufficient support for high cost areas under the proposed bill-and-keep regime. If the Commission intends to implement bill-

² Comments of BellSouth Corporation at 2.

³ Comments of Time Warner Telecom at 11.

and-keep for all current wholesale services, and bill and keep proposes to reduce both reciprocal compensation and access charges to zero, then there is a high probability that the states will ultimately be forced to reduce intrastate access rates to zero (since the incentive for regulatory arbitrage to bypass intrastate access will be very high). Legitimate costs will have to be recovered elsewhere, placing an even greater potential burden on universal service and compounding the effect of rate shock on customers. Rural carriers will have to rely on their smaller customer bases and universal service to recover costs. In order to keep these increased rates within reason, monies that could be better spent improving network quality and deploying advanced service will be reallocated. Therefore, if the Commission intends to reduce the level of interstate access charges, it should not implement any form of bill-and-keep, but rather must ensure universal service support that is currently implicit in interstate access charges is made explicit, sufficient and predictable.

The Commission should therefore focus on reducing its regulation of interstate access charges, not by prescribing bill-and-keep default rules, but by (1) identifying and rendering explicit large amounts of universal service support now implicit in interstate access charges; and (2) granting increased pricing flexibility to rural and rate-of-return ILECs so that they may align prices more closely with the varying costs of different areas and different access configurations.⁵

b) Immediate Pricing Flexibility.

The Commission must authorize dramatic pricing flexibility to allow carriers to better prepare for any new system of intercarrier compensation. This concern is shared by BellSouth:

Movement to a bill-and-keep intercarrier compensation mechanism will impact cost recovery. Where a carrier recovered some of its access

⁴ Comments of Verizon Communications at 16.

⁵ Comments of CenturyTel at 12.

charges from other carriers, these cost will now have to be recovered from a carrier's end user...Pricing flexibility is the only sure way of ensuring that market responsive rates are established. Failure to provide for pricing flexibility would only transfer to the end user the many regulatory conundrums that have been encountered with regard to intercarrier compensation.⁶

If an intercarrier compensation regime intends to replace access charges with increased end user rates, carriers must have the pricing flexibility to implement capacity-based pricing plans, package pricing and other pricing plans to recover from end users in a reasonable and affordable manner. Otherwise, the true subsidy needs that must be calculated prior to the implementation of such a regime will be distorted. ALLTEL agrees with CenturyTel's argument that granting increased pricing flexibility will allow rural and rate-of-return ILECs to align prices more closely with the costs and access configurations of more rural areas.⁷

c) Transitional Equities.

Many carriers have designed their business plans based on a specific set of assumptions inherent to CPNP regarding compensation, costs, rates and investments. As mentioned above, a viable intercarrier compensation structure must allow each network access provider the opportunity and flexibility to establish a mechanism to recover their network access costs from the end user customer at both the interstate and intrastate levels. In addition, any reallocation of revenue burdens in this docket must account not only for the impact of this proceeding, but also for the practical and collective effect of parallel activities now ongoing. Verizon Communication echoed these sentiments when it stated that "whatever new rules the Commission adopts in response to the Multi-

⁶ Comments of BellSouth at 15.

⁷ Comments of CenturyTel at 12.

Association Group (“MAG”) plan should be given a chance to run their course before any fundamental change [is made] in the intercarrier compensation system.”⁸

d) Simultaneous State And Federal Implementation.

ALLTEL also emphasized in its comments the need for the next intercarrier compensation regime to be implemented simultaneously at both the state and federal levels, as well as symmetrically among different technologies and network configurations. Otherwise, unforeseen arbitrage opportunities will negate any benefits of a new intercarrier compensation mechanism, a result the NPRM seeks to avoid.

e) COBAK and BASICS Create Point Of Interconnection Concerns That Demand Further Comment.

Resolution of the point of interconnection (POI) issue will be a critical determining factor in the viability of a workable replacement intercarrier compensation mechanism. Under COBAK, a called party’s carrier cannot charge an interconnecting carrier to terminate a call (each carrier recovers the cost of the loop and local switch from its end-user). However, by making the calling party’s network responsible for the cost of transporting a call between the calling party’s central office and the called party’s central office, COBAK creates a potential POI problem. If a carrier’s switch is located many miles from where a call terminates, the originating carrier could incur huge costs in transporting traffic to a terminating carrier switch. These costs would be passed on to the end user customer.

Level 3 recommends that the Commission continue to require carriers to haul traffic to a single POI per LATA, but does not provide analysis as to whether the current

⁸ Comments of Verizon Communications at 18.

rule will be appropriate in the future.⁹ BellSouth feels that there needs to be a “geographical limitation associated with the point of interexchange.”¹⁰ It is ALLTEL’s belief that the POI issue will have a disparate impact on different carriers due to their differences in technology and network architecture. Therefore, the POI issue demands further comment and inquiry.

IV. Bill And Keep In The Context Of LEC-CMRS Interconnection.

The wireline-centric model of both the COBAK and BASICS proposals fails to account for the unique nature of CMRS network architecture, the scope of the MTA-wide local calling area for CMRS, and the evolving nature of LEC-CMRS interconnection arrangements. The Commission should recognize that the adoption of a specific compensation regime intended to universally cover the costs of interconnection of network traffic is not appropriate in a diverse telecommunications market comprised of a variety of service providers using differing and evolving technologies.¹¹ Therefore, ALLTEL cannot support either proposed bill-and-keep model as the mandated default LEC-CMRS interconnection regulation.

a) COBAK and BASICS Both Require Regulatory Intervention and Perpetuate Regulatory Fictions.

The Commission has attempted to promote default bill-and-keep through COBAK and BASICS under the guise of reduced regulatory intervention. COBAK and BASICS will not generally accomplish this goal, and particularly not in the context of LEC-CMRS interconnection. The COBAK proposal centers around the location of a “central office.”

⁹ Comments of Level 3 Communications, LLC at 20.

¹⁰ Comments of BellSouth at 14-15.

¹¹ Comments of the National Association of State Utility Consumer Advocates at 4.

As Verizon Wireless notes in its comments, “it would require a regulatory body to determine on a case-by-case basis what is a ‘central office.’”¹² To the extent there is a ready analog to a “central office” in a CMRS network, this alone would increase the need for regulatory intervention and lead to further regulatory fiction. CTIA echoes this sentiment and adds, “it is at best futile and at worst dangerous to compare newer network architectures to the architecture of legacy networks for determining the terms and conditions of interconnection...The risk of regulatory ‘getting it wrong’ leads to inadvertent favoritism of some networks over others.”¹³

The BASICS proposal, in proposing a split in the incremental interconnection costs equally among carriers does not clearly define how this would be accomplished. Carriers would bid on the right to provide transport to another network, but agreeing on the incremental cost of interconnection and refereeing the bidding process remains undefined and may require more regulatory intervention, not less. As CTIA notes, BASICS “invites once again widespread regulatory battles over what costs are appropriately included, and how to quantify them.”¹⁴

b) Carriers May Adopt Bill and Keep Today.

Intercarrier compensation for local interconnection traffic today is largely governed by market forces that drive negotiated carrier interconnection agreements. The Local Competition Order clearly stated that “all CMRS providers provide telecommunications [services] and that LECs are obligated pursuant to Section 251(b)(5) (and the corresponding pricing standards of Section 252(d)(2)) to enter into reciprocal

¹² Comments of Verizon Wireless at 22.

¹³ Comments of CTIA at 38.

¹⁴ Comments of CTIA at 23. The proposal also appears to ignore the efficiencies of larger carriers serving in the role of transit carriers, aggregating traffic and terminating it at a rate reflecting the total volume.

compensation arrangements with all CMRS providers... for the transport and termination of traffic.”¹⁵ Under the current rules, in situations where market forces dictate, carriers are free to adopt bill-and-keep compensation terms for local interconnection traffic with Commission approval. As noted in CenturyTel’s comments, “the fact that interconnection agreements do not universally reflect bill-and-keep compensation arrangements... demonstrates that the market will not universally produce the results the Commission seeks to establish under its default rules.”¹⁶ ALLTEL agrees. The fact that negotiated bill-and-keep arrangements exist does not mean they are the most efficient means of ensuring competition. Therefore, ALLTEL questions whether there is a compelling need for the Commission to uproot the rules governing reciprocal compensation arrangements and replace them with default bill-and-keep under either COBAK or BASICS.

c) The existing mechanism for LEC-CMRS interconnection would benefit from the immediate adoption of critical rule and policy clarifications.

The Commission’s effort to improve the rules governing LEC-CMRS interconnection is commendable, but mandatory bill-and-keep in any form is not the answer. ALLTEL agrees that the current intercarrier compensation negotiation process needs improvement. Verizon Wireless and Nextel proposed the following measures to clarify and improve the process. First, in order to improve efficiency and reduce regulatory intervention, the Commission should establish a rebuttable presumption that a CMRS carrier’s wireless mobile switching center (“MSC”) serves a comparable

¹⁵ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1997) (“*Local Competition Order*”).

¹⁶ Comments of CenturyTel, Inc. at 23.

geographic area to the ILEC tandem.¹⁷ Second, the Commission’s determination that CMRS carriers’ “local” calling areas is the Major Trading Area (“MTA”) for purposes of reciprocal transport and termination needs to be reiterated.¹⁸ This rule allows CMRS carriers to request interconnection at any technically feasible point in the MTA and precludes ILECs from assessing access charges on CMRS carriers for traffic originating and terminating in the same MTA. Many CMRS have configured their networks around existing MTA boundaries. CTIA points to instances of rural ILECs using boundaries other than the MTA to define the local calling area, “thereby effectively reclassifying local CMRS calls as toll calls and subjecting these calls to toll rates and access charges.”¹⁹ In order to prevent the questionable behavior of certain rural LECs who have attempted to circumvent LEC-CMRS interconnection rules in rural areas, the Commission should reiterate and clarify that rural carriers must bear the cost to transport their local traffic within the MTA to the CMRS carrier’s MSC and must compensate CMRS carriers for the costs of terminating such traffic.

Additional problems have arisen where CMRS providers connect indirectly with small ILECs through a larger ILEC. These small, rural ILECs have suggested that CMRS carriers pay for direct trunking arrangements to bring terminating CMRS traffic directly to them.²⁰ It would be highly inefficient to establish direct physical connections with every carrier within an MTA because traffic flows are so low and CMRS customers only occasionally terminate calls on these rural ILEC’s networks.²¹ The impediments being imposed on indirect interconnection by rural ILECS are jeopardizing the

¹⁷ Comments of Verizon Wireless at 39; Comments of Nextel at 36.

¹⁸ Comments of Nextel at ii.

¹⁹ Comments of CTIA at 15.

²⁰ Comments of Nextel at 26.

competitive availability of wireless service in rural areas and must be addressed by the Commission, because CMRS carriers are, for purposes of the Act, “telecommunications carriers” vested with the right to connect directly or indirectly with other carriers.²²

d) Rural ILEC Gaming Violates Commission Rules and Distorts the Intentions of the 1996 Act.

As several commenting parties noted, without reiteration and clarification of the rules governing LEC-CMRS interconnection in rural areas, abuses are likely to continue. Specifically, rural ILECs in Missouri have filed tariffs that impose unilateral, access-like rates for termination of local wireless calls.²³ CMRS carriers fought these unilateral tariff filings arguing that such tariffs violated the 1996 act and Commission interconnection rules.²⁴ The Missouri Public Service Commission (“PSC”) rejected the CMRS carrier claims concluding that wireless carriers were free to pursue direct interconnection arrangement with each individual rural ILEC if the tariffed rates were not satisfactory. As mentioned above, the cost of establishing a direct physical connection to each rural ILEC to whom it terminated *de minimus* amounts of traffic would be economically infeasible.²⁵ Clearly, the Missouri PSC’s intent to drive parties to the bargaining table was misguided. At worst, the PSC’s allowing of the rural ILEC to choose to route intraMTA calls through an IXC, thereby receiving originating access compensation from the IXC, while avoiding any payment of reciprocal compensation to CMRS carriers that transport and terminate the traffic, was a deliberate decision to skirt current Commission rules and Section 251/252 of the Act.

²¹ *Id.* at 27.

²² See Telecommunications Act of 1996, Section 251(a)(1).

²³ *Id.* at 40.

²⁴ Comments of Nextel at 11.

²⁵ *Id.* at 13.

V. Conclusion.

ALLTEL does not endorse either of the Commission's bill-and-keep proposals as an appropriate replacement for the current intercarrier compensation mechanism. Neither COBAK nor BASICS has been proven to provide adequate cost recovery and both will likely perpetuate regulatory fictions. Refining existing rules governing pricing flexibility, universal service and interconnection would be a more appropriate course of action for the Commission at this time. Implementing an untested regulatory mechanism while the success or failure of access reform for both price-cap and rate-of-return carriers remains uncertain would not be prudent.

Respectfully submitted,

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