

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
Developing a Unified Intercarrier) CC Dkt. No. 01-92
Compensation Regime) FCC 05-33

COMMENTS OF THE NEW JERSEY
BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities (“Board”) submits the following comments in response to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking (“NPRM”) in the above captioned matter, released on March 24, 2005. In its notice the FCC requests that interested parties file written comments regarding the implementation of an intercarrier compensation plan, which would concern the payments carriers make to each other for the exchange of traffic over the public switched telecommunications network, and a universal service plan for use throughout the country.

The Board has a significant interest in any proceeding effecting telecommunications service providers who serve New Jersey residents. More importantly, the Board is aware of the jurisdictional issues evolving from FCC rulemakings which impact state regulation of telecommunications

service providers. Since the inception of intercarrier compensation for the origination and termination of telecommunications traffic, litigation has ensued regarding compensation levels, the traffic to which compensation applies, and the category of carriers obligated to pay reciprocal compensation. Any rulemaking affecting the existing structure of intercarrier compensation and universal service has broad implications, and must have as its overall goal the preservation of non-discriminatory access to the network and the equal treatment of all telecommunications service providers participating in the marketplace.

The Board and its staff have monitored the actions of the FCC since its initial Notice of Proposed Rulemaking in April of 2001, have reviewed the comments and the varying proposals submitted, and have observed the workings of the National Association of Regulatory Utility Commissioners (“NARUC”) Task Force initiated in response to this recent NPRM. The Board agrees with several of the general concepts put forward by the NARUC Working Group. For example, an integrated, uniform, intercarrier compensation plan for interconnecting competitive local exchange carrier (“CLEC”) and incumbent local exchange carrier (“ILEC”) local traffic is clearly appropriate. In addition, all carriers exchanging traffic over the public switched telecommunications network should be included in the plan. The need for uniformity and fair treatment of carriers is paramount and provides

the basis for a plan structured in a way that is competitively and technologically neutral.

Numerous concepts have been proposed by industry members and by the NARUC Task Force to address intercarrier compensation for either origination or termination of telecommunications traffic, or both. Without articulating the specific details of each plan and the perceived benefits or detriments associated therewith, the Board believes that several of the comments outlined in the draft proposal of the NARUC Task Force on Intercarrier Compensation submitted in its March 1, 2005 Ex Parte Comments to the FCC are consistent with our own policy goals, and urges the FCC to consider them in its rulemaking.

Specifically:

- Intercarrier compensation for origination and termination should be unified at rates that are based on forward-looking economic (not embedded) costs and are economically viable in a competitive market environment. “Unified” means that the rates should be the same for all traffic in both interstate and intrastate jurisdictions, the same for all interconnecting carriers, and the same for exchange and exchange access interconnection.
- Carriers should be free to negotiate other intercarrier compensation arrangements, including bill and keep, on a voluntary basis. Agreements should be filed with State commissions for review. State commission review and approval should be in accordance with the standards set forth in Section 252(e) of the Communications Act.
- Intercarrier compensation agreements should be filed with State commissions for review and approval and subject to the standards of Sections 251 and 252 of the Communications Act.

- State commission participation in a system of unified charges should be voluntary.
- The intercarrier charges should apply to Voice Over Internet Protocol (“VoIP”) calls that make use of the public switched network for origination and/or termination.
- A transition process should be established over a period of up to three years based on financial analysis of the plan's impacts. Carriers should track data during the three-year period to accurately adjust compensation if adjustments are necessary at the end of the transition process.

The preservation of a meaningful role at both the state and federal level in overseeing the successful entry of new participants in the telecommunications market is one of the key goals of the federal Telecommunications Act of 1996 (“Act”). The importance of the Board in this process is evidenced by the fact that, since adoption of the Act, the Board’s assistance has been sought by CLECs and ILECs through formal requests for arbitration or through informal requests for the clarification of interconnection related issues. Congress, through the Act, has set a framework for competition and interconnection among carriers to ensure non-discriminatory treatment of carriers. The Board has also been actively involved in the arbitration of interconnection agreements between carriers that have disputed varying issues related to reciprocal compensation.

Basic principles which support a fair marketplace for all carriers have been established by the NARUC Study Committee on Intercarrier Compensation, as set forth in its report on “Goals For A New Intercarrier Compensation System” issued on May 5, 2004. Some key concepts contained

therein should be preserved in this rulemaking. For example, the report states that “state commissions should continue to have a significant role in establishing rates and protecting and communicating with customers.” Further, “state commissions should retain a role in the 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.” Most significantly, preservation of a meaningful state role fitting within existing law is preferable and, in our opinion, necessary in light of the current competitive nature of the telecommunications industry.

The NPRM also references the Universal Service Fund (“USF”). Any increase to USF funding could be detrimental to New Jersey telecommunications consumers and providers. The Board cannot support such action, due to its strong concern that an increase in the level of funding for high cost areas is unwarranted. As framed in the NARUC report, “any intercarrier compensation plan should be designed to minimize the cost impact on both the federal and State universal service support programs.” It is further urged, as NARUC proposes in its report, that a “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.”

The Board further agrees with the overall concepts of NARUC listed below, and urges the FCC to consider same in its rulemaking:

- Universal service funding should be technology neutral. Carriers should not experience changes in universal service funding based upon technological changes in their networks, i.e., converting from circuit-switched to IP. Funding should be based on the most cost effective and efficient way to provide supported services. The technology employed must be capable of evolving to provide broadband services and must not constitute a barrier to providing advanced services.
- The basis for universal service contributions should be expanded. A unit charge for connections, bandwidth, and possibly telephone numbers is the best approach proposed to date.
- Lifeline customers should be exempt from any incremental increase in monthly charges that results from intercarrier compensation restructuring.
- States should condition distribution of universal service funds on an appropriate demonstration that the carrier is providing quality services at reasonable rates throughout their supported areas. Carriers receiving support for rural exchanges must demonstrate that the funds received are being used for rate relief or infrastructure development in those exchanges.

In sum, the Board supports the general principles articulated by NARUC cited above, and urges the FCC to do likewise in promulgating new rules. Moreover, NARUC has outlined a procedure whereby the FCC should consult with the Federal-State Joint Board on Universal Service and Separations before adopting any reform plans pertaining to Intercarrier Compensation or Universal Service. Any plans regarding the above should be required to receive approval by the Joint Board prior to implementation. The broad reach of such a plan requires the utmost scrutiny and the input of all

states. We therefore urge the FCC to incorporate these principles in its rulemaking.

Respectfully submitted,

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DATED: May 23, 2005 {seal}

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