

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

In the Matter of

Developing a Unified Intercarrier
92
Compensation Regime

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CC Docket No. 01-

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COMMENTS OF
MPOWER COMMUNICATIONS CORP.
ON INTERCARRIER COMPENSATION
NPRM OF 3/3/2005

MPOWER COMMUNICATIONS CORP.

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Summary

Mpower believes it is now clear that marketplace and technological convergence are not “fixing” the system but are exacerbating underlying problems that need resolution in the near term. ICF proposes a uniform system for interconnection network architecture and argues that no reform of intercarrier compensation will function adequately without such a proposal. Mpower is inclined to agree and suggests that ICF’s proposal is a reasonable approach to balancing the burdens of interconnecting.

Mpower, like most authors of intercarrier compensation proposals in this docket, believes that there should be a uniform rate structure that should apply to all traffic regardless of jurisdiction (interstate or intrastate), type of carrier (LEC, IXC, CMRS, VoIP) or nature of service (voice/data). Mpower also believes that carriers should be allowed to negotiate, on a voluntary basis, for bill and keep where it seems mutually beneficial. In addition, intercarrier charges should be based upon actual usage and not on capacity, which does not tend to produce fair rates.

CompTel-ALTS is developing a white paper, “Roadmap for Universal Service Reform,” which takes a new look at universal service funding and support and provides not only a fair but compelling approach in this time of dramatic change. Mpower believes it is a new approach for a new time and that nothing short of such a dramatic reform will be adequate.

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**COMMENTS OF
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Mpower Communications Corp. ("Mpower") hereby submits its
Comments on the issues raised by the Federal Communications Commission
("Commission") in its Further Notice of Proposed Rulemaking ("FNPRM") of
3/3/2005 on intercarrier compensation.

I. Introduction

The FCC correctly stated in its FNPRM that "our existing
compensation regimes are based on jurisdictional and regulatory distinctions
that are not tied to economic or technical differences between services."¹
When Mpower filed comments on an earlier NPRM in this docket, it noted

the “rapidly changing technology, significant merger and acquisition activity and numerous regulatory initiatives, all of which are moving the industry inexorably toward the confluence of technologies, networks, and services.”² Mpower then took the position that given the amount of change and the numerous recent decisions at that time, the FCC should not drastically alter the regulatory regime.

Mpower believes it is now clear that marketplace changes and technological convergence are not “fixing” the system but are exacerbating the underlying problems. These important issues need resolution in the near term. Most of the affected parties drafting proposals prior to the issuance of this FNPRM seem to agree that the current system, which allows for charging carriers radically different amounts for the same services, is not only unfair but increasingly unworkable as the types of diverse carriers increase and technologies converge. At least at a high level, their proposals also tend to agree on some basic principles, notably, that intercarrier compensation should be based upon uniform rates that apply to all traffic regardless of jurisdiction (interstate or intrastate), type of carrier (LEC, IXC, CMRS, VoIP) or nature of service (voice/data).

Mpower will review aspects of three of the major proposals which could affect how it and other carriers do business. It will focus primarily on the

¹ Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, rel 3/3/2005 (“FNPRM”), para. 15.

² Comments of Mpower Communications Corp., on Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, 8/21/01, p. 2.

principles it supports and believes should be incorporated into a reformed intercarrier compensation regime.

II. ICF Proposal

Unique among the proposals presented for review is the ICF's elaborate and thoughtful proposal on network architecture. Specifically, it provides for a uniform structure for interconnection which treats all carriers as fairly as possible, given the diversity of carriers and carrier network architecture. Proponents argue that no reform of intercarrier compensation will function adequately without such a proposal. Mpower is inclined to agree. Certainly, without such principles, numerous interconnection issues affecting compensation would remain unresolved.

a. Interconnection Network Architecture

In a very simplified version, what does Mpower support? Mpower understands the proposal as follows. Each carrier must designate at least one "edge" in each LATA where it agrees to receive traffic, either by a date certain or at the time of entry into service in that region. The "edge" must be a tandem, end office, POP, switch, etc. and there are numerical limitations on the number of "edges" a carrier may designate. Specifically, no carrier may designate more "edges" for interconnection than the number of tandems the incumbent local exchange carrier ("ILEC") utilizes in that LATA.

The ICF also proposes guidelines for covering the expense of physical interconnection between similarly and dissimilarly structured carriers. It

calls the more elaborately structured carriers, usually ILECs, “hierarchical” carriers because they have both tandems and subtending end-offices. Other carriers, like most CLECs, are called “non-hierarchical” carriers. Similarly structured carriers are responsible for sending traffic to the “edge” of other similarly structured carriers with which they are interconnected.

For non-similarly structured carriers that interconnect, the non-hierarchical carriers must either provide the interconnection or pay for it, however, the hierarchical carrier must offer transport at 50% of the usual rate for that purpose. This puts the burden on the interconnecting carrier to make the necessary or desired arrangements but does not necessarily place the full burden of the expense on that carrier. Should a third party be able to provide these services more efficiently or economically than the “hierarchical” carrier, that is also allowed. Proponents indicate that because of their structure, hierarchical carriers usually use more intra-network transport and that this plan is intended as “rough justice.” Mpower and other facilities-based carriers are often interconnected in this fashion and Mpower believes this is a reasonable approach to balancing the burdens of interconnecting.

b. Compensation Structure

The ICF proposal is also unique in its proposed compensation structure and Mpower only partially agrees with the ICF proposal on this issue. The ICF proposes that initially only terminating compensation or transit compensation would be allowed, although there would be some degree of

separate treatment for rural carriers, especially regarding transport charges to reach their “edge.”

They also propose a uniform rate structure, which steps down to bill and keep over a period of years. Mpower believes there should be a uniform rate structure and that carriers should be allowed to negotiate, on a voluntary basis, where bill and keep seems mutually beneficial. Mpower does not, however, support a mandatory step-down to bill and keep for all carriers and all services. Mpower believes there are some niche markets for which bill and keep may not be appropriate. In most instances, however, Mpower believes that local traffic should be bill and keep and it has negotiated for bill and keep in such instances. There are also circumstances where it can be prohibitively expensive for entering carriers to develop the billing systems to bill intercarrier traffic. This is especially true where traffic flows are relatively balanced or relatively small.

The ICF proposal also would allow regulated carriers to increase end-user SLCs to a capped amount to compensate for reduced intercarrier compensation. Mpower has long supported ILEC end-user rates that cover ILEC costs and this mechanism would be an appropriate and useful step in that direction. Further, there has long been a fairness issue here. CLECs may have difficulty competing with end-user rates that do not cover ILEC costs, whereas CLECs can mirror ILEC SLCs where it is useful and efficient to do so. Thus, Mpower strongly supports this proposal.

III. CBICC Proposal

CBICC proposes a system of unified intercarrier compensation rates, based on economic costs, measured by TELRIC. CBICC's unified rate plan would apply to all traffic, regardless of jurisdiction (interstate or intrastate), type of carrier (LEC, IXC, CMRS, VoIP) or nature of service (voice/data). In regard to intrastate rates, CBICC supports working with the Joint Board to phase-in rates to the uniform level. Regarding VoIP, it would be included when it originates or terminates as circuit-switched traffic. Since this would normally be the case, the rates would generally apply to VoIP, the same as to any other traffic.

Proponents of CBICC's plan estimate that the current national average of TELRIC rates for transport and termination of calls is about \$.00212. They argue that while TELRIC is based upon ILEC in-puts, it is intended to produce forward-looking costs of an efficient carrier using efficient technology. Proponents indicate that it would be easier to implement and administer than other plans because it builds on the current system and TELRIC rates have already been set and approved.

Mpower strongly supports the establishment of one inclusive, uniform rate plan for all traffic types, including local, intrastate, interstate and VoIP, with the intrastate rates being phased in by means of cooperative state efforts. As noted above, however, Mpower does not endorse CBICC's anti-bill

and keep stance. Instead, Mpower would encourage the voluntary negotiation of bill and keep wherever it is more efficient for the parties.

IV. NARUC Proposal

NARUC proposes a uniform structure, based upon the reciprocal compensation model. Rates would be based upon unified, forward-looking economic costs, which would be the same for all traffic, both interstate and intrastate jurisdictions, all interconnecting carriers and the same for exchange and exchange access. Origination rates would usually be zero.

a. Default Plan

The NARUC default plan would depend upon the number of access lines in a wire center. For more than 5000 lines, the rate would be \$.002. They indicate that 90% of the wire centers would fall into this category. For 500-5000 lines, or approximately 9% of wire centers, the rate per minute would be \$.005. For less than 500 lines, or approximately 1% of wire centers, the rate per minute would be \$.01.

In general, Mpower believes that rates should be uniform, as companies utilize similar switching technology. If the smallest, rural/high cost carriers cannot cover their costs without raising the SLCs or obtaining USF funding, they should meet their expenses by such means rather than by higher charges per minute.

b. Conversion to Capacity Charges

The NARUC plan would also allow ILECs to convert per minute termination charges to equivalent capacity charges at any time, i.e. number of ports dedicated to a carrier, with the goal of converting entirely to capacity charges within 5 years. Mpower strongly disagrees with this approach for the following reason. Mpower and most other CLECs size trunk groups to allow for growth over a period of time and it generally has a volume of trunks which are not used. Mpower, for example, augments a trunk group at 70% capacity to ensure there will be no blocking and because it must rely upon ILEC installation intervals for CLECs, dictated by the interconnection agreement, usually 30 days. This could leave CLECs paying for a great deal of capacity that they are not using.

Mpower believes that to the extent such intercarrier charges are made, they should be based upon actual usage. CLECs have faced the issue of substituted capacity charges before in the case of ILEC charges for power costs in collocation cages. Typically, ILECs have desired to charge for power based upon the capacity of the equipment, rather than actual power usage. Such equipment is installed with duplicate power feeds and is also fused far above the potential usage of the equipment. In addition, the equipment typically begins with zero usage and only builds toward maximum useable capacity over a considerable period of time. This results in a great deal of overcharging. The same likelihood of abuse exists here.

c. Transit Charges

Regarding transit charges, carriers definitely should be required to provide – and not strip off – caller and carrier information that would allow carriers to bill for terminating access. In general, Mpower believes a Commission complaint or investigation is the appropriate means to remedy disputes and is less subject to abuse than self-help, however, in the situation where carriers are misrepresenting or manipulating their traffic, carriers should be allowed to block that traffic rather than being required to accept traffic for which they will not be able to obtain compensation.

V. Universal Service Fund Reform

CompTel-ALTS (“C-A”) is developing a white paper, called “Roadmap for Universal Service Reform,” which takes a new look at universal service funding and support and provides not only a fair but compelling approach in this time of dramatic change. Mpower believes it is a new approach for a new time and that nothing short of such a dramatic reform will be adequate.

a. Funding

Current sources of universal service funding are diminishing rapidly as funding requirements escalate. C-A recognizes that consumers also pay for universal service support. Consequently, it would distribute the funding burden uniformly, charging fees based on end-user connections, regardless of whether the service was voice or data and regardless of whether the technology was analog, digital, VoIP, CMRS, etc. They explain that the governing principles should be: 1) competitive neutrality and 2) “application”

neutrality. That is, all providers of competing services would be assessed and there would be no distinction among the applications riding over their networks in determining whether they were subject to universal service fees.

b. Who Would Be Supported?

C-A rightfully would focus on the consumers of services, rather than the providers. Thus they would direct the FCC to define and determine what consumers, i.e. household, business, person, would be eligible for universal service support in order to achieve “affordable” and “reasonably comparable” pricing for affected consumers.

Once the consumers entitled to support were defined, the support would follow the consumer. Thus, the consumer and the marketplace -- and not the government -- would be free to choose the best providers and technologies to deliver the services needed by the consumer. All eligible carriers providing supported services would receive the same amount of support for serving a given customer, preferably, they suggest, in the form of a virtual voucher. Support would be provided on a “capitated” basis, i.e. per line, per connection or per supported unit. This would retain the risks and rewards of the marketplace while allowing supported end-users to pay a lower, affordable and reasonably comparable price for service.

C-A also argues that this focus on the appropriately defined consumer would help to ensure that sufficient but not excessive support was provided. In any geographic market, when the identified consumers are able to obtain

service at affordable and reasonably comparable rates without subsidies, high cost “universal service” support would be eliminated for all carriers for that class of customers. (Carriers would be separately eligible for support for low income services.)

VI. Conclusions

Thus, Mpower supports a uniform compensation structure for all carriers, regardless of jurisdiction, carrier type or service provided, which allows for the negotiated use of bill and keep. It also supports a decision on minimum network architecture requirements for interconnection and believes the ICF proposal is a reasonable one. Crucial to the functioning of such a revised compensation system is a major overhaul of USF. C-A has proposed a very thoughtful reform program which

Mpower believes is a necessary part of a new, fairer, competitively neutral system of intercarrier compensation.

Respectfully submitted,

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