Before the

Federal Communications Commission

Washington, D.C. 20554

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

COMMENTS OF Ionary Consulting et al

Introduction

In this revived Rulemaking proceeding, the Commission has a historic opportunity to restructure an intercarrier compensation regime that has grown increasingly complex, unfair and unworkable. We generally concur with the principles expressed by NARUC. A number of specific proposals have been placed on the table, some but not all of which can realistically be called "unified" intercarrier compensation. The Commission should move expeditiously to create a truly unified system based on recovery of incremental costs. Such a system should have no call classification whatsoever. Call termination rates should continue to be regulated, inasmuch as there will always be a "terminating monopoly" to reach a given destination number. Such rates should not be based on the originating caller's number, choice of carrier, geographic location, or the technology used to carry the call. "Truth in labeling" can best be solved by making all such labels irrelevant, so the price charged for a given call is based on the point of interconnection and the destination, not the actual point of origin or any other classification. Of the specific plans submitted, that of the Cost-Based

Intercarrier Compensation Coalition (CBICC) comes closest to achieving these goals.

Ionary Consulting filed comments in the pending VoIP Docket WC 04-36 which noted that the proper treatment of VoIP cannot be viewed in isolation from intercarrier compensation. With this proceeding reopened, we refer back to that Comment and reiterate that these issues are inseparable. Intercarrier compensation cannot be unified if VoIP calls to or from the PSTN are given special treatment. The success of VoIP services indicates that the historical intercarrier compensation models of the telephone network are obsolete. They should not be imposed on VoIP; rather, a unified regime should be developed that accommodates the more customer-focused model demonstrated by VoIP providers.

Ionary Consulting is a solo practice working with competitive telecommunications providers and their suppliers. Its principal, Fred R. Goldstein, has proffered comments in numerous past proceedings before the Commission, and authored the recently published book *The Great Telecom Meltdown*. This Comment represents the views of its author and does not represent the particular views of any of its specific clients. Concurring with Ionary in this comment are competitive LECs and wireless carriers United Systems Access (Kennebunk, ME), PriorityOne Telecommunications (LaGrange, OR), MegaCLEC Inc. (Fall River, MA), Brahmacom Inc. (Needham, MA) and F. Cary Fitch d/b/a Fitch Affordable Telecom (Corpus Christi, TX).

First principles

In approaching the restructuring of the intercarrier compensation system, we suggest that the Commission begin by adopting a set of first principles, and then seeing where they lead, *rather than* by identifying a desired outcome and then adjusting rates and rules until that is achieved. It appears that the

current morass results from just this latter approach, and that the principles behind the current rules have largely been forgotten. The appropriate first principles for today are quite different.

For many years, one of the guiding principles of telecommunications regulation was to minimize the monthly cost of basic residential service. This was often expressed as a desire for universal service, a goal which remains valid, but it went beyond that, providing below-cost basic rates to rich and poor alike. The current intercarrier compensation regime largely results from that imperative. A bright line was drawn between *local* calls, which were priced one way, and *toll* calls, which were priced far higher. This classification, while obsolete, still prevails, and is a key issue in this Docket.

Access charges were created in the several *MTS and WATS* rulings of the late 1970s and early 1980s, which themselves began as the *ENFIA* proceedings. Before then, intercarrier compensation was based on the Separations and Settlements process, specifically the Ozark Plan. The 1970s were a time of high inflation, and there was significant pressure on local telephone rates which state regulators in particular wanted to resist. At the same time, the unit cost of providing long distance was falling. The easy way out was to hold long distance rates relatively steady and use the money to cross-subsidize local service. This was accommodated in the Ozark plan by raising the Subscriber Plant Factor (SPF), the multiple by which interstate calls were weighted in determining relative interstate and intrastate shares of the cost of the local plant. The SPF rose above 3, so that each minute of interstate usage was balanced against more than three minutes of intrastate and local usage. AT&T Long Lines thus bore the brunt of the cost increase in the local telephone networks. When competitive carriers appeared upon the scene, a method was needed to extract some subsidies from them, even though they could not be direct participants in Separations. Thus the Exchange Network Facilities for Interstate Access (ENFIA) tariffs were created, setting explicit

per-minute usage fees that approximated a target percentage of what Ozark contributions would have been had AT&T carried the call. ENFIA then became the basis of Access Charges, which apply to this day, albeit at lower rates.

A different first principle was expressed in the seminal *Computer I* decision, which has been the basis of much subsequent rulemaking as well as being critical to the development of the Internet industry. Computer I stemmed from the fact that while telecommunications was, at the time (1970), a strict, regulated, monopoly, information processing was competitive and unregulated. Thus the appropriate regulatory treatment of a given offering could be determined by whether it was primarily telecommunications or information processing. This distinction was therefore a *surrogate* for whether something was a monopoly or competitive. In its day, it was a valid surrogate, albeit one that was sometimes hard to administer. *Computer II* then created a new distinction between basic and enhanced services which roughly followed the same principle while applying a more easily administrable layered approach, which remains useful today.

But today's boundaries of competitiveness versus competition have shifted. Much but not all of telecommunications is subject to some competition. Sometimes the competition is only nominal, with one vendor having significant to total market power. Sometimes the competition is vibrant. While there is absolutely no excuse for applying additional regulation to information processing (and also noting a lack of jurisdiction), it is quite possible that certain aspects of the *Computer Decisions* are largely obsolescent. It is however still important to preserve the first principle behind them, recognizing that some things are more competitive than others, with regulation being primarily applicable when competition is absent or inadequate.

NARUC has provided a rather detailed set of "guiding principles" for the development of a new intercarrier compensation system. These are a very good start, and stand in clear contrast to the existing regime. We in particular wish to express concurrence with their key principles of economic soundness. These principles include minimizing arbitrage opportunities; recovery of the requested carrier's costs; non-discrimination among entities based on classifications of the carrier or its customers, the carrier or its customer's location, or technology; competitive neutrality; encouragement of interconnection and competition; and (in *very* stark contrast to the status quo) being simple to administer. All of these principles point to the same answer: Calls should not be classified.

Current call classification is far too complex

Today's call classification scheme is not only frightfully complex to administer, but it also reduces network efficiency, encourages arbitrage, and leads to endless disputes between carriers over what is the appropriate rate to apply at any given time. This may generate good billable hours for lawyers, but it is not sound policy.

During the Separations and Settlements era, calls were generally classified along two lines. One was interstate vs. intrastate; the other was local (almost always intrastate) vs. toll. However, today's classifications are more complex. We now have *at least* the following classes of calls, as applied to intercarrier compensation purposes:

- Undisputedly local calls, generally subject to reciprocal compensation.
- Intrastate IXC-handled toll calls, subject to state-set switched access charges.
- Interstate IXC-handled toll calls, subject to FCC-supervised switched access charges.

- ISP-bound local-rated calls, generally subject to the FCC-set ISP-bound rate cap, presumptively identified by ratio of inbound to outbound calls.
- ISP-bound Foreign Exchange calls, treated differently in the various states, quite often subject to bill and keep, though many ILECs are requesting intrastate switched access even though the FCC has ruled that these are under its jurisdiction.
- Non-ISP-bound Foreign Exchange calls, which if interstate are typically subject to switched access (as Feature Group A) but whose intrastate treatment varies by state, and sometimes by whether or not a LATA boundary is crossed within the state.
- VoIP-originated calls, whose proper treatment is unclear but which, due to a common interpretation of the FCC's 1998 *Report to Congress*, are generally compensated for at the ISP rate level.
- CMRS calls, which are subject to switched access *or* reciprocal compensation based on MTA boundaries rather than ILEC local calling areas.

The boundaries between some of these classifications are unclear. Calls for "truth in labeling" are counterproductive and cannot succeed. A completely unclassified regime is the appropriate answer.

Arbitrage is inevitable if the opportunity arises

A rate structure encourages arbitrage if its rates are too far out of alignment with costs, and any means can be found to exploit that difference. Arbitrage typically occurs when there is imperfect communications within a market and an arbitrageur is able to find and profit from the gaps between buyers and sellers. In a strictly-regulated monopoly environment such as the telephone industry of the 1970s, arbitrage was generally viewed as a bad thing, and arbitrageurs were viewed negatively, because it took away subsidy dollars

that had been designed into what passed for a regulatory system. But in a free-market competitive environment, or in a field such as telecom that aspires to be one, arbitrageurs are not a cause of problems; rather, they are beacons of problems that need to be fixed.

The most obvious example in today's market is VoIP. Because of ambiguities in the 1998 Report to Congress, an entire industry has sprung up along the lines predicted by Commissioner Furtchgott-Roth in his Dissent. It takes advantage of the different regulatory treatment accorded to calls made via customer-premise VoIP gateways, vis-à-vis most other long distance calls, including those made via carrier-site VoIP gateways. Various service providers take advantage of this; it would be foolhardy not to. However, we recognize that it is not a sustainable long-term business model. If the mere act of encapsulating voice within some packet format or other leads to a lower price for PSTN termination, then the market will force a widespread migration to such lower-rated packet transport. In the short term this creates business opportunities, but in the long term the result will be an industry whose technology direction was artificially skewed by an Industrial Policy favoring one technology (VoIP) over another (TDM). Eventually, then, the contributions from high-rate call terminations will be lost anyway. Today's arbitrage is thus sentinel of problems in the intercarrier compensation regime.

Applying switched access charges to computer-to-phone VoIP would not solve the problem, either. While it would, in the short term, reduce one arbitrage opportunity, it would instead encourage users to stay off of the PSTN entirely. Already there is growing VoIP traffic that entirely bypasses the PSTN, using products such as Skype and Free World Dialup. As VoIP clients improve their integration with Instant Messaging, Customer Relationship Management, and other types of application, their dependence upon the PSTN and the North American Numbering Plan will decrease. The PSTN

needs to become more competitive with the Internet. This is not a problem with its technology, which is underrated; it is a problem with its business model, and in particular with the entire notion of call classification.

Feature Group A is especially anachronistic

The Switched Access system generates substantial revenues, especially for rural local exchange carriers, that may need to be replaced. But phasing out the access charge system may take some time, while rate structures are rebalanced and alternative revenue sources are located. Feature Group D charges are relatively inelastic, and such calls can be clearly distinguished by their technical characteristics. On the other hand, Feature Group A dates back to the original ENFIA plan, which created a similar tariff in order to reap some contribution margin from *Execunet* and similar overdial services of the day. While such services declined in demand following Equal Access and hardly threaten the integrity of the network, ISPs, VoIP services, some wireless services and some calling card services still face questions of whether and when they are "exempt" from, or subject to, Feature Group A rating.

As a first step in reform, Feature Group A should be promptly abolished; all such circuits should be re-rated as local exchange service circuits that happen to be commingled with extension bandwidth of some sort. The widespread use of VoIP services that offer the caller a choice of local or non-local NPA-NXX, while exempt from access tariffs, demonstrates the continuing retail demand for Foreign Exchange services. Now that technology makes them affordable, a unified approach must be taken. VoIP providers should not be given a regulatory advantage over FX providers who use alternative technologies.

Revenue goals should not drive rate design

The ENFIA rulings of the late 1970s and the Access charges that followed were set at levels that provided sufficient funds to the local exchange carriers to promote Universal Service goals. Rate design – the use of such factors as Carrier Common Line, Host-Remote, Local Switching minutes, and the various tandem charges – was largely driven by a goal of producing a certain result. The CALLS plan now in effect is likewise goal-driven; the actual levels for specific Switched Access rate elements are set in order to produce a desired average rate per minute, not at cost. This is different from the traditional pricing for monopoly services, set to produce a fair rate of return, which is still used by some smaller carriers.

While it is necessary to ensure that funds are available for Universal Service purposes, today's Universal Service Fund is supplemented by cross-subsidies implicit in some carriers' Access rates. Some of the proposals for new intercarrier compensation systems seem to be driven by results – a specific amount of money going to a specific class of carrier – rather than by sensible design principles. The design of the intercarrier compensation system should not be driven by such goals. Universal service goals and funds should be explicit. Attempts to use non-cost-based classified rates to achieve goals via implicit funding will result in arbitrage and endless disputes.

As such, one of the goals of intercarrier compensation reform should *not* be revenue neutrality. While certain proposals, notably that of the ICF, go to great lengths to develop their revenue impact figures, such an effort does not engender confidence in the long-term desirability or even stability of the proposal. Instead it casts suspicion that the proposal was developed *in order to* achieve certain revenue goals. That is what led to the problems we're having in the first place. Once a stable regime is selected, revenue *levels* can then be set, with USF funding and perhaps temporary transition measures

created to ease any rate shock that may impact certain carriers or groups of ratepayers.

Bill and Keep has its own disadvantages

The primary attractiveness of Bill and Keep seems to be to those ILECs that faced major costs for ISP-bound call termination prior to the Commission's imposition of caps in 2001. In 1996, the ILECs expected to receive more calls than they placed, while CLECs expected the opposite, so the ILECs demanded high reciprocal compensation rates – well over what TELRIC studies now typically indicate a cost-based rate should be. Seeing that they were losing the game according to the rules they had originally asked for, the ILECs had the rules changed. Dial-up Internet-bound traffic is now declining, as more consumers move to broadband services, yet the ILECs' concern about this traffic seems to color their perceptions. At the same time, the two largest ILECs are in the process of acquiring the two largest IXCs, so their overall business model will no longer benefit as much from levying high access charges on IXCs. Their situation does not, however, apply to everyone; support for Bill and Keep still seems to be driven by revenue goals.

Bill and Keep leads to its own set of arbitrage opportunities. One risk is that it may lead to greater issues of retail vs. wholesale rating. Many ILECs charge high message-unit or minute-of-use charges for local calls made by businesses. It seems inevitable that if bill and keep becomes the norm, the largest enterprise and institutional users will establish their own carrier divisions in order to take advantage of the arbitrage opportunity between tariff rates and "free". Or in other cases, carriers will promote low usage rates as a competitive edge. While we do not oppose low usage rates, and indeed see above-cost usage rates as worthy of arbitrage, this phenomenon will be worsened by bill and keep.

Indeed a general move towards Bill and Keep could encourage further battles over market entry, or over who qualifies as a "common carrier". A cost-based intercarrier system, on the other hand, promotes efficiency while reducing that somewhat artificial distinction between "wholesale" and "retail" usage rates.

The Internet peering analogy is inappropriate

A fundamental premise behind Bill and Keep is that calls are equally valuable to both caller and recipient. This at first seems similar to the premise of *peering* on the Internet, whereby some ISPs interconnect with each other at no charge, and traffic flow is rarely metered. However, there is a fundamental difference at play. In the Internet backbone business, no player has sufficient market power to distinguish itself from at least several peers. Peering is thus by mutual assent, and any ISP is free to refuse a request for peering from any other. This did, in fact, lead to considerable conflict in the late 1990s when the largest backbone ISP, UUNET, discontinued peering with a number of far-smaller ISPs. UUNET made the free-market business decision that it could sell "upstream" service to smaller ISPs, rather than give away peering. In so doing, it maintained peering with its true "Tier 1" peers, and in so doing, demonstrated the value of its service.

This analogy simply does not apply to the PSTN, in large part because Incumbent Local Exchange Carriers still have extreme market power. A small CLEC cannot survive without interconnection to the ILEC, but the ILEC has a positive financial incentive to cut off connectivity to small or startup CLECs. A cost-based call termination regime could create a smaller distinction between ILEC customer and carrier, and thus reduce disincentives to interconnection, providing a more level playing field.

Interconnection costs involve more than minutes

Some question arises as to where the Interconnect Point[1] should be in a Bill and Keep system, and how calls should be priced if they are carried farther. A CLEC, for instance, today is allowed to have a single Point of Interconnection, but it may be required to pay to transport its outgoing traffic to an Interconnect Point at the destination tandem or end office. For incoming calls, CLECs are sometimes required to have an IP within, or near, the ILEC retail-tariff local calling area. If their POI is not there, then they are required to purchase the bandwidth. This is a common area of conflict between carriers that is not directly solved by "Bill and Keep". Theoretically it is subject to the Section 252 interconnection agreement process, but for many carriers such agreements are tantamount to contracts of adhesion.

Issues also arise concerning the rate that a carrier may charge another carrier for its trunk ports; if Bill and Keep applies to measured usage rates, does that also mean that trunk ports have to be provided *gratis*, subject to, for instance, some engineering standard? Or are trunk ports subject to some cost-based standard? Or can a carrier set above-cost trunk port rates as a way to extract profit from its *terminating monopoly*? Small carriers, including small ILECs, are also frequently dependent on large ILECs for transport and tandem facilities, providing the latter with an additional opportunity for abusive behavior.

Network architecture issues

Existing rules for intercarrier compensation distinguish between end office and tandem origination and termination, and in the case of switched access

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[1] In this Comment we are referring to *Interconnect Point*, or *IP*, as the point of *fiscal* handoff of a switched call, while *Point of Interconnection*, or *POI*, refers to the point of *physical* handoff. This is common usage among Verizon interconnection agreements, but we note that opposite terminology has been used in other cases.

(but not reciprocal compensation), between host and remote-node origination and termination. This is generally a valid approach for describing the existing ILEC networks, but lacks the flexibility to deal with changes in network architecture, particularly the type of distribution of intelligence and connectivity that is more common with packet-mode architectures (both IP and ATM today, and potentially any new technologies that may arise in the future).

We thus suggest that a cost-based regime be established that does not explicitly name "end office" and "tandem" Interconnect Points. Instead, each Location Routing Number (or, in the case of a non-portable number, the switching entity associated with an NPA-NXX code) should be associated with at least one "primary" IP, for which the lowest regulated termination cost will apply, and potentially one or more "secondary" IPs, for which a higher cost will apply. The primary IP will generally correspond today to the End Office, or, in the case of a host-remote cluster, the Host, and the secondary IP will typically apply to a tandem switch that it subtends. As such, the current Rule 51.711(a)(3) calling for tandem compensation for a CLEC switch with a similar coverage area (a rule that tends to favor CLECs, but which is honored largely in the breach) can be made obsolete in a fully unified intercarrier compensation regime. CLECs should not be required to put this IP within a retail local calling area, since this is *not* related to carrier costs, but should be given reasonable flexibility. If they cannot place the IP within the designated geographically-relevant area, any additional distance-related charges (such as deductions against call termination fees) should not exceed TELRIC cost, regardless of whether "impairment" exists in the market.

A rural carrier can also take advantage of this arrangement to create a primary IP within or at the boundary of its serving area. It may contract with another carrier, such as a larger ILEC that owns a tandem, to create

secondary IPs. But because this intercarrier compensation plan is explicitly not interested in the origin of a call, it creates a competitive market for this middle-mile connectivity. Any third party can offer indirect connectivity to other carriers, rural or otherwise, provided that they pay the destination carrier's full primary-IP rate or make arrangements with that carrier to meet elsewhere.

Capacity vs. usage-measured charges

Existing intercarrier rates are primarily based on measured usage, rather than, for instance, capacity-based schemes like those that are more common on the Internet. A capacity-based option should be made available; even migrating to an unmeasured, capacity-based scheme may be reasonable. Trunk capacity is a surrogate for traffic flow, and it is peak capacity, not minutes of use, that actually imposes most of the cost. Capacity-based schemes thus correctly provide a positive incentive to encourage off-peak usage. But we note that capacity-based systems also suffer from their having a positive incentive to lower Grade of Service. Where one-way trunks are used, this puts the onus squarely upon the side whose customers, as callers, would be the ones suffering from a poorer call completion rate; in a fully competitive environment, this may prove to be self-regulating.

A capacity-based scheme should apportion the costs of interconnection based on the direction of call origination, as is normally done today for reciprocal compensation trunks. For large-volume interconnection, one-way trunks are often sufficient; for smaller interconnection, two-way trunk costs should continue to be apportioned. This does however pose some complications for reconciling a fully-unified, unclassified-call scheme with a desire to have IXCs pay for the originating leg of Equal Access and 800-type calls. Either a minute-of-use fee can continue to be levied for those services, or the usage apportionment can be adjusted to essentially reverse the responsibility for such calls.

Ensuring payment

One issue, raised for instance by NARUC, concerns the payment of call termination fees by originating carriers that do not promptly pay intermediate carriers. Should a tandem owner be held liable for terminating payments? While it is attractive to the tandem owners to place the responsibility for call termination payments squarely on the backs of the call originators, rather than pay directly, this leads to the massive complexity of today's CABS process, wherein carriers bill other carriers with whom they have only indirect dealings. It also stands in the way of capacity-based pricing, inasmuch as tandem capacity is shared by many originating carriers.

A more satisfactory approach is to make each carrier responsible for all of the traffic which it delivers to the next carrier. Thus an IXC is responsible for the full cost of traffic delivered to a LATA tandem operator, who is in turn responsible for the full cost of traffic delivered to the terminating LEC. Billing and collection are thus relatively simple bilateral responsibilities. A carrier who falls into arrears may simply lose its right to originate calls, or have it deducted from its terminating revenues, while common law payment remedies are pursued.

Role of the states

Intercarrier compensation reform is another area where federalism must be weighed carefully. History shows that states have often taken very different approaches to changes in interconnection requirements, particularly when they are viewed as possibly reducing subsidy flows that maintain low "1FR" rates. This was the case in the early 1970s when some states fought the FCC's *Carterfone* decision, a battle that was only finally won when the Mebane Home Telephone Company (now Madison River Communications) was ordered to change its tariffs following the *Telerent Leasing* ruling. Intercarrier compensation today is divided between intrastate and interstate jurisdictions. Switched Access rates at the state level are often far higher

than intrastate rates. Some ILECs still impose intrastate carrier common line charges, as well as high local switching charges. Thus a short-haul intrastate toll call today may be subject to access rates over 13 cents/minute, even while an interstate call's rate would be a fraction of that.

A unified intercarrier regime therefore must not permit the retention of switched access charges for intrastate calls; federal pre-emption is necessary, as it was in the case of terminal equipment after *Carterfone* and affirmed in *Telerent Leasing*. We disagree with NARUC on this; while we recognize the political sensitivity behind their wishing to get states to "voluntarily" join in the plan, by withholding benefits if a state fails to do so, a national policy needs to be in place. The state's role, however, should not end. Instead, the states should be the first line in determining the proper *unified* cost-based rates for the exchange of *all* traffic, to and from all telephone carriers, on a technology-neutral basis, in their jurisdictions. Carriers should also be permitted to negotiate alternatives, on a bilateral basis. Regulator-imposed rates should be the backstop to prevent abuse of market power by large carriers, and to prevent abuse of the terminating monopoly by all local exchange carriers. Final authority must rest with the FCC or a Federal-State Joint Board, of course, since interstate traffic is involved, but state determinations should be given the maximum legal presumption.

Comments on Specific Proposals

In keeping with the spirit of the Further Notice of Proposed Rulemaking, we are submitting these specific comments on each of the seven proposals put forth for public review.

CBICC

The Cost-Based Intercarrier Compensation Coalition proposal is by far the best of the seven at meeting the principles described above and by NARUC. Its use of TELRIC-based rates for all intercarrier compensation holds carriers

essentially harmless against changes in traffic levels imposed by other carriers, and minimizes gaming. A full-scale bill-and-keep system, in contrast, would impose costs upon carriers with high terminating traffic and, frankly, encourage wasteful and annoying calling such as telemarketing or even voice-spamming. The CBICC plan is fully unified and technology-neutral; furthermore, it is fundamentally simple. It allows a role for states in setting the appropriate rates, although in the case of interstate calls such state input would technically have to be consultative to the FCC in its role as interstate regulator, rather than definitive.

There is however one problem with the CBICC proposal that we wish to address. "In those cases where the IXC has the retail relationship with the calling party for the call… the IXC pays the originating carrier the originating switching rate…." This does arrive at a reasonable result *when dealing with an IXC*. However, the long record of the ILECs in seeking to treat ISP-bound calls as Switched Access includes repeated assertions that it is the ISP who has the "retail relationship" with the caller. We disagree, but do not want that dispute to be reopened. Furthermore, this "relationship" can potentially be interpreted as covering Foreign Exchange, VNXX, and VoIP traffic. It is an unacceptable ambiguity that might be applied, as described, to calls *other than* the 1+ toll calls for which it was apparently intended.

Therefore we suggest that in *every* case, the originating carrier nominally owes the intercarrier compensation rate to the carrier to whom the traffic is sent. Whether that carrier is *classified* as an IXC or LEC or ESP should be irrelevant, precisely because such classifications break the *unified* nature of the system. If, however, the calls are sent on an Equal Access basis (1+, 101+, or using a Service Access Code such as 800 or 900), then the originating carrier should be allowed to charge a *fee for service* that is presumptively acceptable if set to *twice* the intercarrier compensation level. The IXC would

then in effect pay twice and receive once, netting an outflow, a *net* cash flow to the originating LEC equal to a the "collect" payment suggested by CBICC. Database dip fees for 800-type calls should also be recoverable by the originating LEC. If the call is made using 7/10-digit local dialing, however, then it should remain merely a sent-paid call (i.e., there should be no Feature Group A). Given the likely price level of intercarrier compensation at well under one cent per minute, such a rate schedule would probably not harm demand for 1+ calls any more than current arbitrage opportunities do.

ICF

The Intercarrier Compensation Forum proposal has a certain attractiveness to the extent that it is largely unified, but it bears all a design made by a committee. It fails miserably at the goal of simplicity, and bears the hallmarks of a scheme developed backwards from a desired revenue goal. By phasing in its rates over a lengthy period of time, it leaves existing call classifications intact for a considerable period of time. Like other bill-and-keep-oriented proposals, it also fails to compensate network operators for terminating calls.

The ICF proposal also shows a bias towards large carriers who own tandem switches. While small carriers who own end offices (including rural ILECs, CLEC, and CMRS carriers) are subjected to bill and keep, tandem owners – generally the largest ILECs -- will receive a fee for their services. This tends to worsen the situation for rural carriers who, under CBICC or other cost-based schemes, would be likely to receive higher-than-average rates for terminating calls.

ARIC

The Alliance for Rational Intercarrier Compensation puts forth a plan that flouts the Commission's goals. It contradicts virtually all of the first principles stated above, seeking instead to maximize the flow of subsidy

revenue to small ILECs, with no regard for collateral damage. Rather than abolish the access system, it seeks to expand it. Amazingly, it even proposes direct per-byte usage taxes on the Internet, as a further source of revenue for rural ILECs whose own subscriber rates are far from compensatory. Can anyone even take this proposal seriously? Lest anyone suggest that the Record does not say otherwise, we go on record strongly opposing it. Were it to be imposed, the main impact would be to dramatically hasten the disintermediation of traffic from the PSTN onto nonparticipating entities, such as non-ILEC ISPs. The primary merit of this proposal is in illustrating what the Commission should *not* do.

EPG

The Expanded Portland Group proposal is somewhat more moderate than that of ARIC, with which it has recently merged. Its "truth in labeling" goals are however precisely the opposite of what any unified scheme should have. It compounds its backward-looking nature by reintroducing the notorious "Modem Tax" (access charges for ISP-bound calls) for ISPs served by CLECs, and thus essentially proposing that ILECs should have a monopoly on local-rated dialup ISP access. While it lacks some of the laugh-out-loud preposterousness of the ARIC proposal, its best purpose seems to be to illustrate the negotiating position of many ILECs today, who have attempted and sometimes managed to foist similar schemes upon CLECs via the Section 252 interconnection agreement process.

NASUCA

Both NASUCA and NARUC represent elements of state governments; NASUCA's proposal, unlike NARUC's, appears to be mired in the past, retaining as its first principle that of minimizing the "1FR" rate, regardless of the consequences. It also emphasizes the separateness of interstate and intrastate rates, a residual classification that is probably unsustainable in

the Internet era. NASUCA's plan boils down to the status quo with only minor tweaks, such as lowering the switched access rates charged by rural carriers to somewhat more modestly contributory levels. It is not a Plan; it is merely an expression of denial, a paean to "residual pricing". Consumers do benefit somewhat by lower 1FR rates, but would benefit more by a rational scheme that reduces the regulatory friction that is generating so much heat in the current scheme of affairs.

Western Wireless

This appears to be less of a complete plan than a set of requirements that apply to rural CMRS providers. This is largely an issue of USF disbursement, not intercarrier compensation per se. As such it does not seem to contradict a truly unified intercarrier compensation plan. We disagree, however, with its suggestion that bill-and-keep be the basis of intercarrier compensation.

Home/PBT

One aspect of the Home Telephone – PBT Telecom proposal, though not unique to it, is to move towards a capacity-based rather than usage-based compensation system. This is quite reasonable; especially on a large-scale basis, the number of trunks is a good surrogate for cost incurred. As noted above, it does run the risk of lowering grade of service, as it encourages tight control of capacity, but this is not necessarily a bad thing in a competitive market.

Its key novel feature is a scheme for shifting the subsidy mechanism off of minutes of use. But it is too clever by half: By substituting telephone numbers for minutes, it merely replaces one arbitrary subsidy payer with another. Directory numbers are a low-cost resource today, and are used far more by certain classes of user than others. Under the Home/PBT scheme, businesses would be encouraged to use touch-tone overdialing schemes

(automated attendants) rather than Direct Inward Dialing. Fax servers, both private and public (e.g., the service offered by jFax), would be particularly hard hit. Demand for telephone numbers is not inelastic, and by putting a substantial tax on them, the Home/PBT plan would encourage the exodus *from* the PSTN for a broad class of innovative users.

Summary

The Commission should proceed to implement a fully-unified intercarrier compensation regime that is technology-neutral, distance-insensitive and free of arbitrage opportunities. The CBICC proposal, with minor clarifications to remove any possibility of Feature Group A charges, is closest to this goal. Carriers should deliver calls from their interconnect point without regard to their origin. Compensation should be based on cost, either on a per-minute or bandwidth basis.

Respectfully submitted this 23rd day of May, 2005.

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