

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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act Of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92
	)	
Inter-carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**REPLY COMMENTS OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES**

The New Jersey Board of Public Utilities (NJBPUB) has, individually and as part of a group of Mid-Atlantic States, timely filed a series of comments and/or reply comments in several of the above-captioned dockets, during pleading cycles established by the Federal Communications Commission (FCC or Commission).

On November 5, 2008, the FCC issued an Order on Remand and Order and Further Notice of Proposed Rulemaking (ICC Decision). On November 12, 2008, the FCC published notice of the ICC Decision in the Federal Register. The Federal Register set Comment and Reply Comment deadlines of November 26, 2008 and December 3, 2008, respectively. On December 2, 2008, the FCC extended the reply comment period until December 22, 2008.

The NJBPUB, jointly with the Delaware Public Service Commission, the Public Service Commission of the District of Columbia, and the Pennsylvania Public Utility Commission, filed initial comments concerning the ICC Decision on November 26,

2008.<sup>1</sup> Those joint comments stated that we have serious concerns with the extremely compressed deadlines provided by the FCC, in light of the complexity of the issues. These complex issues include possible preemption of state authority to set intrastate access rates, the conclusion that changes in protocol for transmissions into an Internet Protocol (IP) format preclude state involvement, and resolution of outstanding intercarrier compensation and universal service disputes. In keeping with that filing, these reply comments, on behalf of the NJBPU, address these and other issues raised by the more than 130 filed comments in this matter.

The NJBPU concurs with numerous commenters on a host of issues and concerns. Specifically, the NJBPU concurs with commenters<sup>2</sup> who urge the Commission to reject Appendices A and C, for reasons including: (1) the unlawful preemption of state ratemaking authority; (2) the proposed revenue recovery mechanisms, and Subscriber Line Charge (SLC) increases, which inappropriately shift the burden from carriers to end users; and (3) the lack of any quantification of the effect on individual states, carriers or end users. The Commission should, however, immediately enact Universal Service Fund (USF) reform, as described below. While Appendix B is not perfect, with modifications as advocated herein and by several commenters,<sup>3</sup> we believe it can be an appropriate foundation for much needed USF reform.

### **Intercarrier Compensation Reform Proposals**

The NJBPU is concerned that the construct of the ICC proposals in Appendices A and C are essentially the same as those previously put forth by the industry to which the NJBPU has previously objected to, as they will reduce carrier payments to industry members and instead shift these un-quantified costs to end users through increased SLC charges and USF assessments. The winners under these plans are carriers while the losers are consumers; as such, these plans must be rejected.

**The Commission should reject Appendices A and C because they (1) preempt state authority; (2) contain improper revenue recovery mechanisms and SLC increases that inappropriately shift the burden from carriers to end users; and (3) do not quantify the affects of the proposals on individual states, carriers or end users.**

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<sup>1</sup> Initial Comments of the State Regulatory Commissions and the District of Columbia, filed November 26, 2008, I/M/O High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36 (rel. Nov. 5, 2008), Order on Remand and Report and Order and Further Notice of Proposed Rulemaking. Hereafter, all comments filed in this matter will be referred to as “Initial Comments.”

<sup>2</sup> See, e.g. Initial Comments of NARUC at 5; Initial Comments of the Public Utilities Commission of Ohio at 62; and Initial Comments of the New Jersey Division of Rate Counsel at 12.

<sup>3</sup> See Initial Comments of the Public Utilities Commission of Ohio at 24; Initial Comments of ADHOC Telecommunications Users Committee.

The NJBPU concurs with the comments of most state regulators and NARUC<sup>4</sup> who correctly assert that these proposals unlawfully preempt state access charges. As described more fully in those commenters filings, the legal rationale utilized by the Commission is flawed and inconsistent with existing law.<sup>5</sup>

The NJBPU has, on numerous occasions, opposed intercarrier compensation reform that either increases the size of the USF or shifts the burden of intercarrier payments to end users.<sup>6</sup> In reviewing the initial comments, here it is clear that we are not alone in this position. Several states have expressed concerns with respect to the impact on the size of the USF as a result of these proposals. As net contributor states,<sup>7</sup> we have paid our fair share; the burden must not be increased. While increases in the SLC are paid by all subscribers, not just consumers in net contributor states, we concur with the comments of the New Jersey Division of Rate Counsel and NASUCA who argue that SLC increases are neither justified nor appropriate.<sup>8</sup>

Although the ability of certain carriers to recover the “lost revenues” from intercarrier reform is based on a showing of need as set forth in Appendix A, rate of return carriers appear to have an automatic dollar-for-dollar recovery mechanism set forth in Appendix C. We have opposed such mechanisms in the past,<sup>9</sup> and we concur with the initial comments of several parties who raise similar concerns.<sup>10</sup> We agree with the statement of the Public Utilities Commission of Ohio that, “the FCC’s proposed

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<sup>4</sup> See, e.g., Initial Comments of NARUC at 4; Tennessee Regulatory Authority at 2; New York Public Service Commission at 7.

<sup>5</sup> *Ibid.*

<sup>6</sup> See I/M/O Developing a Unified Intercarrier Compensation Regime; Missoula Intercarrier Compensation Reform Plan, CC Docket No. 01-92, Comments filed 10-25-06; Reply Comments filed 2-1-07; Comments filed 3-19-07.

<sup>7</sup> See Initial Comments of Pennsylvania Public Utility Commission at 2; Delaware Public Service Commission at 2; New York Public Service Commission at 13; (“The overall size of the fund must be reduced and the high cost funding mechanisms that continue need to be fair, equitable, competitively neutral, and targeted to focus the effect of any subsidy on a precisely defined problem.”)

<sup>8</sup> See Initial Comments of the New Jersey Division of Rate Counsel at 13; National Association of State Utility Consumer Advocates at 17.

<sup>9</sup> I/M/O Developing a Unified Intercarrier Compensation Regime, Missoula Intercarrier Compensation Reform Plan, Comments of the NJBPU, filed 10-25-06 at 9: “The Board concurs with the opponents of the Plan who have balked at the premise that ILECs, in particular rural ILECs, must be compensated dollar-for-dollar for any access charge reductions. This dollar-for-dollar concept is flawed because it completely ignores the numerous alternative revenue streams (such as long distance service, DSL service, and video services) that ILECs have developed to recover the costs of their networks. The opponents further argue and we agree that the USF provisions of the Plan are focused more on achieving ‘revenue neutrality’ for ILECs (again, mostly rural ILECs) than on delivering benefits to consumers.” Also see I/M/O Developing a Unified Intercarrier Compensation Regime, In the Matter of Universal Service Contribution Methodology, In the Matter of High Cost Universal Service Support, In the Matter of Federal-State Joint Board On Universal Service, CC Docket No. 01-92, WC Docket No. 06-122, WC Docket No. 05-337, CC Docket No. 96-45; Ex Parte Comments of the Five State Commissions, filed 10-22-08 at 7: “The consumers of net contributor states such as the Five State Commissions, that already pay more than their fair share for the public policy goal of universal service, will be further burdened with no tangible benefit in return, under these proposals. Not only would the proposals increase the Subscriber Line Charge, they would shift billions of dollars of intercarrier payments to USF, in an effort to be ‘revenue neutral’ to carriers. The premise that ICC reform must equate to revenue neutrality for affected carriers is flawed and should be rejected. Increases in the USF under the plans are focused more on achieving ‘revenue neutrality’ for ILECs than on delivering benefits to consumers.”

<sup>10</sup> See, e.g., Initial Comments of the Public Utilities Commission of Ohio at 12-13.

revenue recovery mechanism shifts the burden of revenue recovery to end-users without any evaluation of the amount of revenue that needs to be recovered.”<sup>11</sup>

The total lack of quantification of the impact on individual states, carriers, and end users makes it impossible to properly evaluate these proposals. We concur with Virginia on this point.<sup>12</sup> This lack of factual data is the same fatal flaw that was inherent in the ill-conceived Missoula Plan. Appendix C apparently gives rate of return carriers a new revenue recovery source through the USF, yet, as correctly stated by the Virginia Commission, it does not identify or describe the support necessary to make this additional support available.<sup>13</sup> It is the NJBPU’s concern that this un-quantified level of support will increase the already bloated USF through one of the existing revenue recovery components of the high cost fund. We agree with Sprint Nextel’s assessment that, “existing ILEC high-cost support is excessive and not based on ILEC’s actual costs. Two of the largest components of federal high-cost USF to price cap carriers – Interstate Access Support (IAS), the \$650 million fund that was established to reimburse carriers for access charge reductions associated with the CALLS plan, and Interstate Common Line Support (ICLS), the fund established to reimburse carriers for access charge reductions associated with the MAGS plan – were established based on past ILEC access revenue (not cost) levels, and thus have no relationship to actual per line costs.”<sup>14</sup>

The current proposals could dramatically increase these funds, thus creating a further burden on net contributor states and exacerbate the inappropriate requirements that low and middle-income urban consumers subsidize higher income consumers and their carriers in rural states.

The Commission must quantify the impact on individual states, carriers and end users, before it enacts any intercarrier compensation plan. On this even those commenters who generally are in favor of the Commission’s reform proposals agree. The Missouri Public Service Commission (MoPSC) states that “The MoPSC has on numerous occasions supported comprehensive reform that is consistent with various principles and is generally supportive of the many concepts proposed by the Commission. However, before finalizing such comprehensive reform, the Commission should identify and quantify the potential impacts to company revenues and consumer rates.”<sup>15</sup>

## UNIVERSAL SERVICE

The NJBPU urges the Commission to enact USF reform immediately and we agree with those commenters who suggest that Appendix B is a reasonable foundation

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<sup>11</sup> *Id.* at 59.

<sup>12</sup> *See* Initial Comments of the Virginia State Corporation Commission at 2. (“While the filings in these cases are numerous, neither Appendix A nor Appendix B provides the detailed and necessary information to evaluate the impact on carriers, states or consumers.”)

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *See* Initial Comments of Sprint Nextel at 22.

<sup>15</sup> *See* Initial Comments of the Missouri Public Service Commission at 2.

for a long term solution.<sup>16</sup> We do, however, believe that certain modifications and clarifications are necessary to ensure a fair and equitable USF moving forward.

The NJBPU urges the Commission to immediately enact the following: (1) cap total high-cost support at 2007 levels; (2) eliminate the identical support rule, (3) implement a numbers-based method for determining USF contributions (with the modifications described below); and (4) use a reverse auction, with a single winner per study area, to distribute all high cost funds.

These proposed changes will help to stop the unfettered growth of the fund and should return the fund to a level that reflects its intent and will support only those that are truly in need. This should help reduce the current inequity of donor states, such as New Jersey, paying more than their fair share into the USF. Furthermore, NJBPU supports the proposals raised by the Ohio and Pennsylvania Commissions<sup>17</sup> related to numbers-based method for contributions.

First, both commenters raise a concern with the exclusion of certain “follow-me” services that impact the amount of contributions and/or have a negative impact on numbering resources. The NJBPU agrees with the Ohio Commission’s statement that “the only appropriate exemption for the residential numbers-based contribution methodology is for Lifeline customers and we believe the FCC finding exempting services to Lifeline customers from the new contribution methodology is reasonable.” (p39)

Second, the FCC has proposed a residential contribution fee of \$1.00 per number per month in Appendices A and C, and \$.85 per number per month in Appendix B. In support of these levels, the FCC apparently relies upon a letter from IDT indicating that the average residential household paid \$1.37 in universal service fees in 2006.<sup>18</sup> While the Ohio Commission states that it has no data to support or reject the amounts, the Ohio Commission recommends the lower \$.85 amount. The NJBPU similarly has no empirical data to support these levels and would urge the Commission not to adopt either the proposed \$1.00 or \$.85 amounts without further justification and quantification of the size of the fund, or the amount necessary to meet the properly sized fund. Footnote 152 in Appendix B also suggests that the “lowest-income consumers paid an average of \$1.09 in universal service fees for wireline telephone bills.” This amount is unsubstantiated as well. A more reasonable assessment, on an interim basis subject to an actual quantification of the size of the fund, would be the current assessment on consumers who make no long distance calls, of \$.74.<sup>19</sup> This interim amount is more appropriate to ensure that low use consumers are not paying more than they have to. After data is made available for state commissions to review to determine the appropriate level of the fee, it can be adjusted accordingly.

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<sup>16</sup> See, e.g., Initial Comments of the Missouri Public Service Commission at 9; Public Utilities Commission of Ohio at 62; ADHOC Telecommunications Users Committee at ii.

<sup>17</sup> See Initial Comments of the Pennsylvania Public Utility Commission at 14 - 18; Public Utility Commission of Ohio at 36 - 40.

<sup>18</sup> Appendix A, n. 279; Appendix C, n. 271.

<sup>19</sup> See Exhibit B at ¶ 59.

## CONCLUSION

For the reasons articulated above, the Commission should not adopt Appendices A and C and should immediately enact USF reform as described herein.

Respectfully submitted,

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DATED: December 22, 2008

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