

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**Further Reply Comments of the
Michigan Public Service Commission**

Introduction

On August 3, 2011, the Federal Communications Commission (FCC) released a *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding* (Further Inquiry). The Further Inquiry sought comment on three plans that have been filed with the FCC to reform the federal universal service fund (USF) and/or the intercarrier compensation (ICC) system. The Michigan Public Service Commission (MPSC) filed initial comments on the Further Inquiry on August 24, 2011.¹ The comments addressed specific concerns with regards to the three plans and the questions/topics presented for comment in the Further Inquiry. The MPSC continues to

¹ Further Comments of the Michigan Public Service Commission, available at http://www.dleg.state.mi.us/mpsc/orders/fcc/comments/11_08_24_10_90.pdf.

support those comments and the positions taken therein. Rather than reiterate those positions in these comments, the MPSC instead has focused these comments on generally supporting the recent comments filed by the National Association of Regulatory Utility Commissioners (NARUC)² and on responding to some questionable statements in the comments filed jointly by AT&T Services, Inc., CenturyLink, FairPoint Communications, Inc., Frontier Communications, Verizon & Verizon Wireless, and Windstream Communications, Inc. (collectively, the Joint Coalition).³

Support for NARUC Comments

The MPSC strongly supports the comments filed by NARUC on August 24, 2011. In those comments NARUC expounds upon the legal issues surrounding federal preemption of state jurisdiction over intrastate services.⁴ The MPSC supports NARUC's position opposing preemption of state carrier-of-last-resort (COLR) obligations. Not all COLR requirements are onerous, nor do they ignore the realities of the communications marketplace. For example, Michigan law allows for a provider to cease serving an area so long as "1 or more alternative providers for toll service, or 2 or more alternative providers for basic local exchange service, are furnishing a comparable voice service to the customers in the exchange" with a comparable voice service defined to include "any 2-way voice service offered through any form of technology that is capable of placing and receiving calls from a provider of basic local exchange service, including voice over internet protocol services and wireless services."⁵ Such a requirement ensures that a

² Further Comments of the National Association of Regulatory Utility Commissioners filed in this proceeding on August 24, 2011 (NARUC's Comments).

³ Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon, and Windstream filed in this proceeding on August 24, 2011 (Joint Coalition's Comments).

⁴ NARUC's Comments, pages 10-17.

⁵ [Michigan Telecommunications Act](#), Section 313(1).

Michigan customer with voice service today will not lose that service tomorrow, unless there is some alternative available—again, the alternative can be voice over internet protocol or wireless. Furthermore, contrary to arguments that COLR obligations prevent deployment of broadband in high-cost areas, data from the Connect Michigan broadband mapping project shows that as of October 2010 over 93% of Michigan’s rural (with rural households being a rough proxy for high-cost-to-serve households) households had at least basic broadband (768Kbps downstream/200Kbps upstream) available.⁶ While the MPSC supports ensuring that high-cost areas have access to faster broadband speeds, the MPSC agrees with NARUC that even for those high cost areas that are un- or underserved, “there is no evidence linking State COLR obligations to the fact that there is not adequate service.”⁷ Without an abundance of compelling data that COLR obligations are substantially harming broadband deployment, and the record in this proceeding does not include such evidence, the FCC should not remove the important customer protections that currently apply to voice service, and as such the FCC should not preempt state COLR obligations.

The MPSC also agrees with NARUC that there are significant legal concerns with unifying all intercarrier traffic under Section 251(b)(5) of the Federal Communications Act, and strongly supports NARUC’s arguments against preemption of state authority over intrastate access. The MPSC believes that the state’s share the FCC’s goals of reducing arbitrage opportunities and realigning current funding mechanisms to more closely adhere to today’s technologies. Additionally, states have a strong incentive to ensure that intrastate access policies do not result in impediments to providers deploying

⁶ [Broadband Infrastructure, Adoption, and Technology Usage in Michigan](#), issued June 2011, page 16.

⁷ NARUC’s Comments, page 22 (footnote 29).

additional broadband infrastructure or rolling out other advanced services, as customers continue to seek more access to, and better speed/service from broadband. In the unlikely event that a state's policies do result in a provider having to "scale back or drop further upgrades to their networks,"⁸ that state's officials would have to respond to any dissatisfaction expressed by the customers in their own state. As such, any state policy that discouraged additional broadband developments could be expected to be very short-lived. While the MPSC agrees that even short-lived policies that discourage broadband are not ideal, states' legal authority over intrastate services preserves each state's right to determine the best course of reform for the individual circumstances of their particular state. For these reasons, as well as those described in the MPSC's comments filed August 24, 2011, the FCC should not preempt state jurisdiction over intrastate services.

Response to the Joint Coalition's Comments

The Joint Coalition argues that although targeted reporting requirements will be necessary to enable the Commission monitor broadband services supported by CAF funding, "the nature and scope of such requirements should be determined in a separate proceeding."⁹ The MPSC disagrees with this approach. The FCC has stated that "one of the reasons for reform is "to increase accountability and efficiency."¹⁰ Accountability for the appropriate use of federal universal service funding cannot be achieved without reporting requirements that provide the FCC the data to ensure recipients are meeting their obligations. The requirements for this data should be explicit and absolutely should be determined during this portion of this proceeding. If the methodology for awarding CAF funds and the public interest obligations are determined at this time, the

⁸ Joint Coalition's Comments, page 21.

⁹ Joint Coalition's Comments, page 14.

¹⁰ FCC Joint Statement on Broadband, GN Docket 10-66, issued March 16, 2010,

corresponding reporting requirements should also be addressed now. To delay addressing these requirements until an unspecified later proceeding, as advocated by the Joint Coalition, risks the new CAF funds being awarded without the necessary monitoring tools in place, thus leaving the FCC with little to no accountability over the program. Therefore, the MPSC continues to advocate that the FCC explicitly require that carriers receiving funding provide any data, including availability, price and quality of service data, on both regulated and unregulated services, that is necessary to determine CAF support levels and verify that all associated public interest obligations are being met. These explicit reporting requirements should be described in the same order that lays out any significant reforms to the USF and ICC mechanisms.

The Joint Coalition also expresses significant concerns about the ability of states to craft intrastate access policies that complement federal intercarrier compensation goals. However, the MPSC believes that the reform undertaken in Michigan, for example, is generally consistent with the FCC's goals for intercarrier compensation reform. Furthermore, as Michigan's reform moves intrastate access rates to levels no higher than corresponding interstate access rates, Michigan's intrastate reform efforts are consistent with at least one of the first steps proposed in the ABC Plan. In fact, the Joint Coalition notes that to "the extent some states have undertaken reform of their intercarrier compensation rules and rates, those efforts generally are directionally consistent with the ABC Plan."¹¹ Such a statement seems to contradict their earlier statement that "tasking state regulators with responsibility for national reform would inevitably result in confusion, inaction, and continued disparities in regulatory outcomes."¹² As described

¹¹ Joint Coalition's Comments, page 21, (emphasis omitted).

¹² Joint Coalition's Comments, page 18.

above, the MPSC believes that the states have a strong incentive to ensure that their policies align with federal policy to prevent arbitrage and to help ensure a rational system of intercarrier compensation.

Finally, the FCC should not be intimidated by comments that imply that any changes to the plan will result in a lack of industry support for all other elements of the plan. Certainly the industry should be praised for working together to address the issues involved with USF and ICC reform, but the industry alone should not set the policy on this important topic. The FCC can and must take into consideration the comments of all other parties in this proceeding, as well as its own analysis, in determining the plan for moving forward. The Joint Coalition's comments emphasize the "deep compromises" made by the individual industry parties, however it is strongly implied that any further changes (such as possible compromises with state commissions or the State Member of Joint Board on Universal Service, neither of which were invited to participate in the crafting of the plan) would jeopardize industry support for the plan. The comments go so far as to make a veiled threat that if the FCC makes any changes to the ABC Plan "the opportunity to adopt comprehensive universal service and intercarrier compensation reform will slip away once more and may not come again."¹³ The FCC should not be pressured into abdicating its responsibility because of comments/statements from the industry. The FCC must continue to balance not only the needs of the industry, but also the legality of its policies as well as the impacts of such policies on all stakeholders including states and consumers. This cooperative federal-state approach has been used over many years and has produced results that have moved the industry into the current innovative and competitive market that we enjoy today.

¹³ Joint Coalition's Comments on pages 5-6.

Conclusion

Again, the MPSC notes that the most recent proposals in this proceeding represent an important step forward. The cross-section of industry support for a single proposed reform plan is unprecedented. However, the FCC must acknowledge the questions and concerns included in the comments filed by the many state regulatory agencies and the consumer advocate community. The MPSC continues to oppose any action that would preempt state jurisdiction over intrastate services, specifically state COLR obligations and/or intrastate access charges. The MPSC again thanks the FCC for the opportunity to offer these reply comments and urges the FCC to give strong consideration to these comments, as well as the MPSC's previous comments in this proceeding.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION**

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