

**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 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 intercarrier compensation. The three plans include the plan filed by multiple rural carriers in their comments in the FCC's Notice of Proposed Rulemaking issued February 1, 2011 in this proceeding (February 1, 2011 NPRM), the plan filed by the State Members of the Joint Board on Universal Service in their comments on the February 1, 2011 NPRM, and the America's Broadband Connectivity Plan (ABC Plan)

filed by the United States Telecom Association (USTA). The rural companies' plan taken in tandem with the ABC Plan forms an industry "consensus" plan.

Each plan offers proposals to reform the federal universal service fund to support broadband services and to revise the intercarrier compensation system. The Michigan Public Service Commission (MPSC) has reviewed each plan, though the review period for the ABC and Joint ABC-Rural proposals has been very short, and believes each plan has merits but also certain concerning elements. The MPSC continues to advocate for universal service reform that ensures that all citizens have access to quality voice service at reasonable rates and intercarrier compensation reform that clearly and fairly addresses all types of terminating traffic including switched telecommunications, traditional telecommunications that travel over IP networks, mobile wireless and VoIP traffic. The MPSC offers the following comments in response to the FCC's Further Inquiry, but also notes that its silence on a topic should not be perceived as support or opposition to the topic. Rather, due to the short timeframe for comments, the MSPC has focused on those issues it believes most affect Michigan customers and providers. The MPSC offers comments on both the universal service and intercarrier compensation portions of the proposals as identified in the Further Notice. The MPSC also offers general comments on portions of the proposals not specifically addressed in the Further Notice, but that are particularly concerning.

Universal Service

General Comments

The ABC Plan proposes that the FCC eliminate legacy carrier of last resort (COLR) obligations for price cap incumbent local exchange carriers (ILECs), unless a

state fully funds the obligations with explicit support and the ILEC agrees to accept the obligations in exchange for the funding.¹ The MPSC has two distinct concerns with this proposal. First, should the FCC attempt to preempt the state’s ability to require COLR obligations, the MPSC believes the FCC will be improperly preempting the states’ jurisdiction over local rates, since COLR requirements typically relate to an obligation to offer local voice service. Secondly, it remains imperative that consumers have access to telecommunications networks, especially for the ability to call emergency services (911), and COLR requirements help ensure this. Michigan, for example, has the requirement that a provider show that one or more comparable voice service (which may include wireless or VoIP) is provided to an area before that carrier can withdraw service. Such a requirement certainly allows for the transition to broadband networks, and realizes that mobile wireless or VoIP may offer the same types of services (including emergency calling) as traditional voice for some customers. The MPSC does not believe it is too much to ask of a provider to ensure that customers have some alternative technology before depriving an area of traditional voice service. In the event the FCC prevents the MPSC from requiring such a showing, such as by preempting the state COLR requirements, the result could be fewer citizens with telecommunications service—a result directly in contradiction to the goal of “universal” service. For these reasons the MPSC does not support the preemption of state COLR requirements.

CAF Support for Price Cap Areas – Use of a Model

Another area of concern with the ABC plan is its use of the CostQuest Associates Broadband Analysis Tool (CQBAT) to determine the cost of broadband services and the associated Connect America Fund (CAF) support levels for these services. In support of

¹ ABC Plan, Appendix A, pg. 13.

CQBAT, the ABC plan included two attachments titled “Summary of Model Results” and “Model Description”. However, the CQBAT model itself was not included in the filing and as far as the MPSC is aware it has not been made available to any state commission for review.

In any forward looking cost proceeding it is standard procedure for the party proposing the use of a cost model to make that model available to all affected parties for review. This allows the inputs into the model to be verified and the cost model itself to be tested in order to evaluate its functionality and confirm that the model is compliant with the appropriate standards. In addition, it is the MPSC’s experience that when more parties examine a cost model it is much more likely that errors will be discovered and can be corrected. Similar evaluation of the CQBAT model would benefit the FCC in crafting USF reform. If the cost model was made available to be evaluated by interested parties the resulting comments would allow the FCC to determine if it should adopt the CQBAT model or if some modification might be necessary.

Since the CQBAT model has not been made available to the MPSC for review, the MSPC urges that the FCC not adopt the CQBAT portion of the ABC Plan as filed. The two attachments describing the model and its outputs are no substitute for reviewing the actual cost model. As such, the MPSC recommends that the FCC either reject the use of the CQBAT model or require that the model be made available to interested parties and provide appropriate time for those parties to review and comment on the cost model. This will allow the FCC to make a more informed decision on whether to adopt the ABC plan and the CQBAT cost model.

CAF Support for Price Cap Areas – Public Interest Obligations

The Further Inquiry seeks comments on the reporting requirements that the FCC should adopt to ensure that consumers in rural areas are receiving reasonably comparable services at reasonably comparable rates. As has been noted in MPSC comments filed with the FCC on this and other issues, the MPSC has concerns with the relaxation of many data filing requirements at the federal level. While broadband may retain its status as an “unregulated” service, if federal universal service support is provided for broadband, then those carriers receiving support should have reporting requirements that verify the service they are providing. The FCC should explicitly require that carriers 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.

CAF Support for Price Cap Areas – State Role

The MPSC is supportive of a state role in monitoring recipients of universal service support, including CAF support for broadband. However, in order to fulfill such a role, the state commissions must have access to the necessary data to determine compliance with CAF requirements. The MPSC often hears the refrain noting that “broadband isn’t regulated” and/or “such services are interstate and thus there is no state jurisdiction,” when attempting to collect information on broadband. In fact, in order to participate in the National Telecommunications and Information Administration’s broadband mapping program, the MPSC chose to utilize a third party vendor in large part to assuage providers concerns with sharing “unregulated data” with the state regulatory agency. Additionally, providers in Michigan were recently successful in lobbying to

remove certain reporting requirements from the Michigan Telecommunications Act, data that has typically been used by the MPSC to assess the state of telecommunications competition in Michigan. In light of carrier reluctance to provide data voluntarily and continued advocacy by carriers for the lessening of reporting requirements at the state level, the MPSC proposes that that all data related to CAF support required to be filed with the FCC and USAC, also be filed simultaneously with state commissions. The FCC should require this especially in the event that the state seeks or is designated by the FCC to have a role in oversight and monitoring of CAF requirements. Furthermore, if states do collect information on customer complaints regarding unfulfilled service requests or inadequate service, carriers should also be required to provide the state commission with, at a minimum, company address and telephone number, the name of a representative from the company that a customer or state commission staff person can call to discuss complaints and an escalation procedure for unresolved complaints. Additionally, FCC staff should then work with state commission staff to resolve complaints related to broadband services offered with CAF support, including sending the state commission staff person a copy of the resolution or a notice of the closed complaint.

Ensuring Consumer Equity

The MPSC is not opposed to the concept of using a benchmark to determine support levels as a way of ensuring that CAF support is not used to subsidize artificially low rates. However, defining the benchmark can be difficult. The Further Notice recommends including in the benchmark rate the following: the local residential rate, federal and state subscriber line charges (SLCs), mandatory extended area service charges, and contributions to a state universal service fund. However, it is unclear how

the “local residential rate” is determined. Would the rate be the average of all residential services offered? Or perhaps the rate of the local service that includes unlimited local calling? How would the local rate be determined in the case of bundled offerings or if carriers are not required to file local rate tariffs?² Unless the benchmark rate is an imputed rate, rather than an actual rate cap, defining the “local rate” to be reviewed should be an important first step in discussing the level at which to set the benchmark rate.

Intercarrier Compensation

General Comments

The MPSC opposes federal preemption of state jurisdiction over intrastate traffic. Intrastate access is, as suggested by its name, an intrastate service and therefore should remain in the jurisdiction of the states. Notwithstanding the legal questions/challenges of changing the current jurisdictional framework, many states have actually been at the forefront of intercarrier compensation. The current jurisdictional separation has allowed many states to take action to reform intrastate access charges, complementing, not impeding, the FCC’s intercarrier compensation goals. Michigan, for example, has taken significant steps to reform intrastate access rates, including setting up a transition path that will have all providers intrastate access rates at levels no higher than their corresponding interstate rates no later than January 1, 2015, and setting up a state access recovery mechanism for certain eligible providers. While supporting state policies that coordinate with federal policy for intercarrier compensation reform (so as to minimize arbitrage opportunities, and work toward a compensation system that matches the new

² For example, a recent amendment to the Michigan Telecommunications Act allows carriers to opt-out of certain tariff filing requirements, including local end-user service rates.

technologies used for the networks), the MPSC strongly believes that individual states are in the best position to reform intrastate access charges in a way that minimizes harm to providers and/or customers in their states.

Federal-State Roles: Federal Framework

As noted, the MPSC does not support federal preemption of state jurisdiction over intrastate access rates. However, the MPSC offers the following comments on aspects of the Further Inquiry related to a federal framework for reform in the event that the FCC takes this course of action. As stated in the Further Inquiry, the ABC Plan proposes that the FCC set the framework to reduce intrastate access rates and that any recovery from those reductions would come of the federal jurisdiction. The FCC asks for comment on how this proposal would affect states in different stages of intrastate access reform. As noted in our comments filed in response to the February 1, 2011 USF-ICC Transformation NPRM, Michigan is in the process of reforming intrastate access rates. The reform is the result of a change to state law requiring providers to transition their intrastate access rates to levels no higher than corresponding interstate access rates. The path for reform varied by the type of provider: the two largest ILECs in Michigan (AT&T Michigan and Frontier North & Frontier Midstates, formerly Verizon) have mirrored their intrastate access rates to their corresponding interstate for some time; the rural ILECs in Michigan were required to lower their intrastate access rates to no higher than interstate levels as of September 13, 2010; competitive LECs may utilize a five-year stepdown process that began January 1, 2011 and must conclude January 1, 2015 with a reduction of 20% of the differential between intra- and interstate access rates each year. Michigan's intrastate access reform includes the Michigan Intrastate Switched Toll

Access Recovery Mechanism (MI ARM) which provides some recovery to eligible providers (effectively, the rural ILECs). Additional detail on Michigan's intrastate access reform is included in our previously filed comments.³ The MPSC has significant concern that FCC preemption of state authority over intrastate access charges would result in the MPSC lacking jurisdiction to continue the reform of intrastate access charges according to the Michigan Telecommunications Act, including possibly preempting the MPSC's ability to administer the MI ARM.

The MPSC understands that the ABC proposal for intrastate access reform of Price Cap ILEC, CLEC, and CMRS providers effectively freezes current intrastate rates and then reduces those intrastate access rates to interstate levels. After this, additional steps are then taken to reduce the carrier's terminating access rate to \$0.0007 for transport and termination. Meanwhile a proposal for rate-of-return carriers would reduce intrastate terminating end office rates first to \$0.005, then to \$0.0007.

Michigan's ILECs would not be adversely affected by the proposed first step of reforming certain or all intrastate access rates to be at parity with interstate rates, as Michigan's ILECs currently have intrastate access rates that are no higher than their corresponding interstate access rates. The ABC Plan's timeframe for the transition from current intrastate access rates to interstate rate levels would affect competitive local exchange carriers in Michigan by requiring them to complete the transition from intrastate rates reduced down to interstate levels one and half years earlier than Michigan's own intrastate access reform requires.

³ Comments of the Michigan Public Service Commission on all Remaining Sections of the February 1, 2011 NPRM, filed with the FCC on April 18, 2011, available here: http://www.dleg.state.mi.us/mpsc/orders/fcc/comments/11_04_18_10_90_1.pdf.

The further transitions that will reduce terminating interstate rates for all carriers to \$0.0007 would affect all providers in Michigan. Even if the FCC does not preempt the states, but instead only orders the reduction of interstate rates to \$0.0007, providers in Michigan will be forced to lower their intrastate rates as well, due to current Michigan law. Michigan's law allows the MPSC to make changes to the MI ARM in the event of federal reform:

If the federal government adopts intercarrier compensation reforms or takes any action that causes or requires a significant change in interstate switched toll access service rates, the commission may initiate, or any interested party may file an application for, a proceeding...to determine whether any modifications to the size, operation, or composition of the restructuring mechanism are warranted.

Michigan Telecommunications Act, Section 310(18)

Assuming that FCC action does not preempt the MPSC's ability to administer the MI ARM (though if states are preempted from intrastate jurisdiction there is question over whether the MPSC would still be able to administer the MI ARM), carriers may seek to re-evaluate the size of the MI ARM. As intrastate access rates would be reduced significantly (driven by reductions to interstate access rates), carriers would lose additional intrastate revenue and would likely seek recovery of a portion of that revenue through a re-sizing of the MI ARM. Initial, rough estimations show that the size of the MI ARM would likely need to increase, even taking into account losses in the number of access lines, because of the magnitude of the reduction of intrastate access rates to \$0.0007.

The MPSC understands at this time that many carriers in Michigan support the combined ABC-Rural Plan, at least generally. However, the MPSC's sphere of concern is not limited to concern for the welfare of Michigan providers; the MPSC is also

concerned for the welfare of Michigan citizens that use telecommunications services. While the MPSC no longer has rate-setting authority over retail telecommunications rates in Michigan,⁴ the MPSC continues to advocate for policies that do not affect the ability of all Michigan citizens to have access to reasonably priced, high quality telecommunications services. As the MI ARM is funded by Michigan providers (who in turn recover their costs through end-user rates), any significant increase to the size of the MI ARM, would likely trickle down to the end-user customers in Michigan in the form of increased rates. Coupled with the proposed increases to the federal SLC and the fact that customers will likely be funding either directly or indirectly a federal ARM to recover lost interstate access revenues, the rate increases for Michigan customers could be significant.

The FCC also seeks comment on whether states should be responsible for contributing a certain dollar amount per line to aid in access recovery. The Further Inquiry references state universal service funds as the source of this contribution. Michigan does not have a state universal service fund. While the Michigan Telecommunications Act allows for such a fund, due to provider agreement that no such fund was needed, one has not been established. However, Michigan has a state access restructuring mechanism, the MI ARM, which does provide funds to eligible providers for access recovery. In the event that the FCC requires states to provide some amount of funding for access recovery, the MPSC advocates that the source of that funding would

⁴ In the MPSC's comments on this topic filed with the FCC on April 18, 2011, the MPSC referenced a single service, primary basic local exchange service, over which the MPSC had rate-setting authority. Due to amendment to the Michigan Telecommunications Act signed into law June 14, 2011, the MPSC no longer has rate setting authority over any retail telecommunications service rate.

include access recovery mechanisms like the MI ARM and not be limited specifically to “state universal service funds.”

Federal-State Roles: State-Federal Framework

The MPSC continues to advocate for an approach that retains state jurisdiction over intrastate services. As noted above, many states, including Michigan, have already begun the process of intrastate access reform, and while the paths they choose may differ based upon what is best for each state, the goals closely align with the FCC’s own goals for intercarrier compensation reform.

One of the FCC’s concerns stated in the Further Inquiry is that states may not take action on reform, and a three-year timeframe in which states must develop an intrastate reform plan is proposed. Again, noting that the MPSC does not support federal preemption, the MPSC continues to recognize, as noted in our comments on the February 8, 2011 USF-ICC Transformation NPRM, that intercarrier compensation reform cannot be complete without the reform of intrastate access charges. Reforming portions of the system without reforming the entire system would likely lead to continued opportunities for arbitrage. The MPSC believes that in the event that the FCC sets a timeframe for state action on intrastate access reform, the timeframe should be sufficient to allow a state to develop a fair, workable reform structure that includes the use of a transition period for the enactment of the reform. As described in previous comments, the process of intrastate access reform in Michigan involved both the Michigan legislation as well as the MPSC. The process from introduction of a bill until the first major step in such reform, the reduction of rates for eligible providers and the operational date for the ARM, took just over a year and a half. The process also involves a transition period for intrastate

access rates that will not be complete for all providers until 2015. FCC requirements should allow states sufficient time to develop intrastate reform and still provide for time to enact phase-down approaches should a state so desire. Additionally, the MPSC continues to support an option for state commissions that do not wish/do not have the necessary jurisdiction to reform intrastate access charges to petition the FCC to do so in their stead.

Recovery Mechanism

The MPSC initially notes that there would be some inherent disadvantage to Michigan customers if providers in states that have not enacted intrastate access reform receive intrastate access revenue recovery support through a federal mechanism for intrastate access reductions. If Michigan telephone customers contribute to the federal ARM/USF/CAF that will provide support to carriers in those states that have not enacted intrastate access reform, Michigan customers will effectively be helping to subsidize the reduction of intrastate access rates to interstate rate levels in other states. However, as Michigan has already enacted intrastate access reform, the total cost of support for Michigan's providers to reduce their intrastate access rates to current interstate levels, has likely been born by Michigan customers alone. This would hold true for other states that have already enacted, and borne the cost of, intrastate access reform as well. A decision by the FCC with this result effectively punishes the customers in states that have begun the process of reform. In the February 1, 2011 USF-ICC Transformation NPRM, the FCC suggested that carriers in states that have already reformed intrastate access charges could possibly receive earlier CAF fund awards or some other incentive. The MPSC supports such an approach as a way to offset possible harms to those states that have

already reformed intrastate access charges. However, in spite of these arguments, the MPSC is also sympathetic to the argument that if the FCC does preempt the states on intrastate access rate jurisdiction, the FCC should also be prepared to offer recovery support from federal funds. As such, the MPSC remains open-minded but concerned about the details of the methodology for a federal ARM, especially to the extent that it provides support for intrastate access revenue recovery for the lowering of intrastate access rates to interstate levels.

Impact on Consumers

The FCC seeks comments on how to ensure that consumers receive the benefits of reduced long distance and wireless rates as a result of intercarrier compensation, especially as consumers may see their local rates increase due to carriers needing to make up lost access charge revenues, increased subscriber line charges, and possibly increased USF contributions. There is general industry support for the idea that carries will be incented to lower prices to their customers due to the competitive nature of the industry. The MPSC will note, however, that it has not noticed reduced rates for long distance and/or wireless service as a result of Michigan's intrastate access reform.

VoIP ICC

The MPSC continues to oppose special treatment for VoIP traffic with regards to intercarrier compensation. As noted in the MPSC's comments in response to Part XV of the February 2011 NPRM, the MPSC recommends that the FCC find that VoIP traffic is subject to existing intercarrier compensation rates, including reciprocal compensation and

intrastate and interstate access charges, as jurisdictionally applicable, today and during any transition period adopted.⁵

Conclusion

Many of the advancements in policy that have been necessary and beneficial to the growing and changing telecommunications industry have been the result of cooperation between the federal and state jurisdictions. The MPSC believes that such a process can and should be retained from a practical aspect, and must be retained from a legal one. The MPSC, therefore, reiterates its adamant opposition to federal preemption of state jurisdiction over intrastate services, including both COLR obligations and intrastate access charges.

In conclusion, the MPSC believes that the three proposals addressed in the Further Notice represent, in many ways, an important step forward. However, the reform of universal service and intercarrier compensation involves many parts, and the consequences, both intended and unintended, of any reform will be far-reaching. The MPSC urges the FCC to review, with certain deference, the comments of any state commissions and state consumer advocates that have been or will be filed in this proceeding. These entities act as representatives for consumers who may not be aware of, nor have the resources to participate fully, in this proceeding. Federal universal service funds and intercarrier compensation revenues have both been used as tools to benefit customers, and therefore the interest of customers should be paramount to any reforms the FCC ultimately chooses to adopt. The MPSC thanks the FCC for the opportunity to offer these further comments and looks forward to reviewing the

⁵ Comments of the Michigan Public Service Commission on Part XV of the February 8, 2011 NPRM, filed with the FCC on April 1, 2011, available at: http://www.dleg.state.mi.us/mpsc/orders/fcc/comments/11_04_01_10_90.pdf.

comments of other parties and offering reply comments to the extent they continue to advance the discussion of these important issues.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION**

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