

**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

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

INTRODUCTION

As stated in other comments in this proceeding, the Michigan Public Service Commission (MPSC) commends the Federal Communication Commission (FCC) for its renewed efforts related to comprehensive reform of federal universal service fund (USF) and the intercarrier compensation system. Pursuant to the comment deadlines established in the FCC's Notice of Proposed Rulemaking adopted February 8, 2011 in the above noted dockets (NPRM), the MPSC filed comments on Section XV of the NPRM on April 1, 2011 and filed reply comments on Section XV and initial comments on the remaining sections of the NPRM on April 18, 2011. The MPSC seeks to continue the long and successful tradition of the FCC and state commissions working in cooperation to address

industry issues. The MPSC has reviewed the comments filed by other parties and offers the following reply comments. The MPSC's reply comments continue to focus on the important role that states can and should play in the context of the proposed reform.

SETTING AMERICA ON A PATH OF REFORM

Encouraging State Action to Advance Universal Service

States are very willing to assume duties inherent with this process, as long as their individual state interests are not curtailed. The MPSC is in agreement with the State Members of the Federal State Board on Universal Service (State Members) that "states must be integrally involved in the defining, administering, and enforcing in POLR [Provider of Last Resort] obligations for broadband funding recipients."¹ In addition, the MPSC agrees with the California Public Service Commission's (California) comments that "States should retain the ability to designate ETCs and set their own public interest standards..."²

Although states and carriers agree that states should have specific responsibilities in this process, the MPSC does not agree that token duties should be designated to the states without the ability to follow up on compliance by carriers.³ The Connect America Fund transition must be a partnership between the FCC and the states to ensure that telecommunications services are available during the deployment of broadband services and that broadband deployment is conducted in a strategic manner for all unserved and underserved geographic areas.

Eligible Telecommunications Carriers Requirements

¹ State Members of the Federal State Joint Board on Universal Service, p. v.

² California Public Utility Commission, p. 10.

³ AT&T, footnote 199.

The process of eligible telecommunications provider (ETC) designations enables states, and the FCC, to determine whether a telecommunications service provider is adequately prepared to provide service to citizens living in specific areas in exchange for federal universal service reimbursement. Several state commissions believe that to forbear from this process may provide funding to companies that have not met a specific level of ability, see only the potential for profit in rural areas and low income customers, and have no connection to the individual state or its citizens.⁴ Frontier Communications also commented, “retaining the state ETC certification process will add a layer of stability...there is no need to recreate the entire ETC-designation process simply because the Commission adds broadband as a supported service.”⁵

State Members also oppose forbearance from ETC obligations commenting that sections 214(e)(1) and 254(e) state that only an ETC is eligible to receive universal service support. In addition, forbearance “would greatly impair the ability of State commissions to continue to promote broadband and service quality in their States.”⁶

As stated in its original comments, the MPSC recommended that the FCC continue to require that providers undergo some type of review process validating their ability to provide service as a condition of being eligible to receive USF support. States that currently have delegated responsibility to designate ETCs are very willing to continue this effort; however, with potential changes in the ETC designation process, such as study area disaggregation and carrier of last resort (COLR) responsibilities, the

⁴ National Association of Regulatory Utility Commissioners, pg. 8; Regulatory Commission of Alaska, p. 24, Nebraska Public Service Commission, p. 8.

⁵ Frontier Communications, p. 25.

⁶ State Members of the Federal State Joint Board on Universal Service, p. 89.

MPSC reiterates the need for a key contact person at the FCC to assist states with issues related to ETC designation.⁷

Public Interest Obligations of Fund Recipients

Carrier of Last Resort Responsibilities

Currently, ETCs are required to be the COLR⁸ for the service area they request in their ETC designation application and for the telecommunications service they are receiving reimbursement. The FCC has ordered that state commissions may analyze ETC applications for public interest benefits such as increased customer choice, unique advantages or disadvantages of a carrier's service offering, emergency calling ability, creamskimming potential, and the determination of just, reasonable, and affordable rates.⁹ An additional public interest requirement is the ETC applicant's willingness, or ability, to accept the COLR responsibilities.

The question remains, can current ETC designations prove useful in determining which companies will provide broadband in unserved and underserved geographic areas in individual states and assume the COLR responsibilities? To not place the COLR duties upon a sole ETC in a service area enables federal reimbursement with no responsibilities, and the possibility that providers may simply leave the area if the funding does not provide a profit, leaving potentially no service provider for the residents. The MPSC

⁷ Michigan Public Service Commission, p. 4.

⁸ Carrier of Last Resort (COLR) is seen as interchangeable with Provider of Last Resort (POLR) in some comments in this docket.

⁹ FCC 05-46, paragraphs 40 and 41.

concur with the State Members that “abandonment by an incumbent LEC is no longer so unlikely as to be safely ignored.”¹⁰

AT&T commented “there is no longer any need for a COLR when virtually every inhabitable area of the country has access, or soon will have access, to affordable wireless voice service.”¹¹ The MPSC believes this statement is ill-advised as there are still many areas of Michigan, in both upper and lower peninsulas, which have residents and travelers with either very poor wireless service or no wireless service. Allband Communications Cooperative, a northern Michigan-specific local exchange carrier stated in their comments, “wireless is not a dependable technology in most rural areas, especially northern Michigan.”¹² It is imperative that the responsibilities as a COLR remain as this task of providing broadband nationwide is undertaken.

AT&T commented that ETC service obligations should be limited to “*only* when” a carrier is receiving high-cost universal support.¹³ AT&T also stated that the Commission should redirect the states to redefine the “service area” of existing ETCs so they include only those locations where the ETCs are receiving legacy support; many states have designated non-rural carriers as ETCs for their entire study area.¹⁴ In 1997 and even today, local exchange carriers apply for the study area they would like to serve in Michigan. When state commissions, and the FCC, designate ETCs, in most cases, the requested study areas are not altered from the application. If a carrier requested its entire service area, as its study area, and received reimbursement for the entire area initially, they are still responsible for the designated ETC responsibilities (including COLR) in that

¹⁰ State Members of the Federal State Board on Universal Service p. 141.

¹¹ AT&T, p. 4.

¹² Allband Communications Cooperative, p. 19.

¹³ AT&T, p. 76.

¹⁴ AT&T, p. 77.

requested area. The FCC, and state commissions, do not receive any information related to “*when*” an ETC requests or receives high-cost support. To leave customers potentially stranded, without service, because the ETC chose not to apply for high-cost reimbursement for a period of time should not excuse the ETC from COLR responsibilities.

To use current ETC designations as the initial determination of whether a company can apply to the reverse auction is presumptive. Study areas and reimbursed services are determined during the ETC designation and these are two of the issues that will change when the Universal Service Fund becomes the Connect America Fund (CAF). Broadband will either take the place of telecommunications as the reimbursed service, or it will be added as a required service. In addition, the term “study areas” may no longer define the service areas where the specific telecommunications carrier is the COLR, but potentially smaller geographic tracts of land with targeted services and reimbursement.

Some, but not all, broadband providers have ETC designations as telecommunications carriers. Broadband service may have been added to their list of available services years after receiving the ETC designation but, currently, it is not the service reimbursed from the federal USF, nor is it the reason ETCs have COLR responsibilities. ETC designations completed in 1997, or last week, did not provide the necessary information to states, or to the FCC, for approval for reimbursement for broadband services and requested changes to study areas. Reapportionment of study areas will need more than an overnight fix to ensure that all areas of each state that are

unserved or underserved with broadband will actually be applied for and receive reimbursement for broadband deployment.

Additional Obligations of Fund Recipients

Michigan notes two distinct requirements for ETC which were requested by the Nebraska Public Service Commission (Nebraska) and the State Members. Nebraska commented that an ETC designation should be revoked without a commitment by the ETC to extend broadband service out to every customer requesting service within a reasonable period of time¹⁵ and the State Members would like the fund recipient to continue to provide service “not for 5 years, but for long as the company remains an ETC.”¹⁶ Both of these requirements are currently COLR responsibilities, which the MPSC believes can be transitioned to CAF requirements seamlessly. The MPSC would like to add an additional requirement that CAF recipients must be required to identify how and where their funding was spent. CAF funds will be derived via a flow-through from customer bills and, therefore, must require sufficient information so individual recipients may be audited.¹⁷

In Michigan, the initial ETC application process took place in 1997 with 37 companies designated.¹⁸ Each of these carriers already had a long track record with Michigan citizens and have remained steadfast in their responsibilities as COLRs. Michigan does not believe that a change in technology, from voice to broadband or voice in addition to broadband, should lessen or remove service provider responsibilities to their customers.

¹⁵ Nebraska Public Service Commission, p. 23.

¹⁶ State Members of the Federal State Joint Board on Universal Service, p. 89.

¹⁷ AT&T , p. 100.

¹⁸ Michigan Public Service Commission, Dockets U-11548, U-11555, U-11547 (link: <http://www.dleg.state.mi.us/mpsc/orders/comm/>).

Broadband as a Supported Service

It is imperative that current voice communications services remain a viable option until broadband deployment is completed and broadband communication becomes the norm. Therefore, the MPSC concurs with the State Members that interconnected Voice over Internet Protocol (VoIP) be “immediately confirmed” as a form of telecommunications.¹⁹ By adjusting the definition of telecommunications to include VoIP, the door is open to add broadband to the list of supported services necessary for an ETC to receive reimbursement under Sec. 254(b)(2) of the federal Act.

NEAR TERM REFORM

Study Area Waiver Process

Identifying Unserved Areas Eligible for Support

As stated in the MPSC comments, Michigan has several geographic areas that are unserved for even basic telecommunications service.²⁰ In addition to those unserved areas for telecommunications, there are many more unserved and underserved areas for broadband in Michigan.²¹ Identifying those unserved and underserved areas for broadband, and the reason why they are unserved or underserved, must be a very methodical process and is best assumed by state commissions. The MPSC agrees with the Public Service Commission of the District of Columbia that there is also a need to identify providers with pre-existing plans or commitments, to serve specific geographic

¹⁹ State Members of the Federal State Joint Board on Universal Service, p. viii.

²⁰ Michigan Public Service Commission, p. 7.

²¹ Michigan Public Service Commission, Broadband Map, http://connectmi.org/mapping/interactive_map_interface/?q=map.

areas since previous commitments may make certain geographic areas unnecessary to fund with federal universal service.²²

The Use of Disaggregation for Reapportionment

The MPSC believes that the use of disaggregation, as a systematic application process to divide up current study areas or the creation of new study areas, will serve state commissions, service providers, and customers the best. It is imperative that current study areas remain with COLR responsibilities, until requests for disaggregation are approved and additional service providers are serving those areas. The disaggregation process will have to be completed prior to the application process for the reverse auction.²³

It will also be imperative to carve out higher populated areas with multiple competitors actually providing voice communications and/or broadband service. The MPSC agrees with Nebraska that is important to target universal service support on a more localized or specific basis to ensure the big picture does not skew the national process.²⁴ The use of census tracts, versus study areas, to determine broadband need and CAF funding, may seem to contain the most granular information available. However, without the familiar landmarks or patterns of telecommunications exchanges, it may become difficult to assess differing terrain, large in-land bodies of water, or other unique land masses where broadband deployment may not be necessary.

The MPSC believes a “layered” electronic mapping system, provided on the federal level, including census tract information, rate center/exchange boundaries,

²² Public Service Commission of the District of Columbia, p. 5.

²³ The MPSC would like to include the unserved areas with surrounding areas to ensure that citizens will be able to receive some form of voice and/or broadband service.

²⁴ Nebraska Public Service Commission, p. 17.

telecommunications carrier's service areas, ETC designated study areas, and additional information would allow an interactive means to assess geographic areas versus potential need. It is a concern of the MPSC that the use of census tract information, as the sole geographic determinant, will not provide either the states or the reverse auction applicants with the essential information necessary to ensure that all areas of a state will have broadband available to every potential customers in the near future.

CONCEPTS TO GUIDE INTERCARRIER COMPENSATION REFORM

Intercarrier Compensation Methodologies for All-IP Networks

The MPSC advocates for 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 recommends that the FCC find that VoIP traffic is subject to existing intercarrier compensation rates, both inter- and intrastate access and reciprocal compensation charges, today and during any transition period adopted. During the transition period, the FCC should ensure that any provider that is terminating traffic on its network be compensated appropriately for such traffic. Additionally, whatever end goal the FCC ultimately adopts for intercarrier compensation reform, the MPSC urges that adequate funding be allocated under the CAF, or some other recovery mechanism, to ensure that rural incumbent providers can maintain/enhance their networks while still offering service to end-users at reasonable rates.

Selecting the Path to Modernize Existing Rules and Advance IP Networks

Reform Based on Existing Jurisdictional Framework

The MPSC continues to support reform based on the existing jurisdictional framework. 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.

As described in detail in initial comments, Michigan has taken significant steps to reform intrastate access rates, including setting up a transition path that will have intrastate rates at levels no higher than corresponding interstate rates no later than January 1, 2015, and setting up a recovery mechanism for certain eligible providers. Indiana²⁵, Iowa²⁶, Massachusetts²⁷, Nebraska²⁸, and Ohio²⁹ are some of the other states that have put the time, effort and resources into intrastate access reform. Under each of these states' actions, either intrastate access rates are required to mirror interstate rates currently or the state is using a glide path approach to mirror intrastate rates to corresponding interstate rates. The MPSC advocates for the FCC to incorporate the efforts of those states that have reformed intrastate access and advocates for a process of

²⁵ See Initial Comments of the Indiana Utility Regulatory Commission, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021238969>, p. 12.

²⁶ See Comments of the Iowa Utilities Board, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021239305>, p. 4.

²⁷ <http://www.mass.gov/Eoca/docs/dtc/dockets/01-31/58order.pdf>

²⁸ See Nebraska PSC 2008 ICC/USF FNPRM Comments, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021239323>, p. 8.

²⁹ See Comments Submitted on Behalf of the Public Utilities Commission of Ohio, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021238587>, p. 55.

reform that does not penalize those states. In the event the FCC does take action that intrudes into the historical state jurisdiction of intrastate rates, the MPSC would urge the FCC to set either the criteria for intrastate reform, or the timeframe for the enactment of reform, such that states that have adopted an approach that relies on a transition period are not penalized. As the FCC itself proposes a transition period in the context of greater intercarrier compensation reform; it is clear that a controlled, planned transition rather than a flash cut change is very important to many stakeholders.

Reforms Undertaken by the States

The MPSC's initial comments describe in detail the legislative and regulatory steps that taken in Michigan to reform intrastate access charges. Without restating that entire description, the MPSC offers the following additional comments to address the initial comments filed by XO Communications that referenced Michigan's Intrastate Switched Toll Access Recovery Mechanism (ARM). XO Communications argues that a fund such as Michigan's ARM is "fundamentally unfair and anticompetitive."³⁰ XO Communications references an open FCC proceeding, WC Docket 10-45, in which a group of Michigan competitive local exchange carriers³¹ petitioned the FCC to preempt Michigan's law as related to intrastate access reform. Pursuant to the FCC's pleading cycle in that proceeding, the MPSC filed comments on March 9, 2010 addressing the petition, and such filed comments speak for themselves.³² Other than taking comment from interested parties, the FCC has not yet acted on the Joint Michigan CLECs petition.

³⁰ See Comments of XO Communications, LLC, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021240010>, pp 49-50.

³¹ ACD Telecom, Inc., DayStarr, LLC, Clear Rate Communications, Inc., TC3 Telecom, Inc. and TelNet Worldwide, Inc. (Joint Michigan CLECs) filed the petition on February 9, 2010. However, the FCC was closed due to inclement weather until February 12, 2010 and therefore recognizes the filing date as February 12, 2010.

³² See Comments of the Michigan Public Service Commission in WC Docket 10-45, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020395073>.

The MPSC continues to support its filed comments in that proceeding and offers the following comments here to provide clarification on how intrastate access reform in Michigan affects CLECs.

XO Communications notes in their initial comments that, “all carriers must contribute to the Michigan restructuring fund, [but] only ILECs are entitled to claim any reimbursement from it.” While it is true that disbursements from the ARM are limited to eligible providers, which by definition excludes CLECs, it is important to note that the Michigan Telecommunications Act also treats CLECs differently with respect to the timeframe for reductions in intrastate access charges. Rather than having to immediately lower intrastate rates to no higher than interstate levels as of September 13, 2010, CLECs in Michigan are able to take advantage of a 5 year step-down process in which the first reductions (of 20% of the differential between intra- and interstate access rates) did not occur until January 1, 2011. In fact, CLECs have until January 1, 2015 before their intrastate access rates are required to be no higher than their corresponding interstate access rates, i.e. four years of additional time not allotted to eligible providers. Thus while the MPSC concedes that the Michigan Telecommunications Act does not treat ILECs and CLECs identically, the MPSC does not support XO Communications’ portrayal of the ARM as therefore inevitably anticompetitive.

CONCLUSION

The MPSC again thanks the FCC for the opportunity to participate in the discussions of USF and intercarrier compensation reform, both through the comment and reply comment process and through the live-streamed webcasts of the FCC’s workshops held on these issues. The MPSC is proud to have been part of the collaborative efforts

between the FCC and the states in the past and looks forward to continuing this collaboration in the future.

Respectfully submitted,

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May 23, 2011