

**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

**Comments of the  
Michigan Public Service Commission**

**Introduction**

On February 8, 2011, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking (NPRM) in the above noted dockets requesting comments on numerous issues related to comprehensive reform of both the federal universal service fund (USF) and the intercarrier compensation system. The Michigan Public Service Commission (MPSC) commends the FCC for the renewed efforts to address this incredibly complex topic. The FCC and the states have a long and successful history of working cooperatively to address industry issues. In the context of the reforms proposed in the NPRM, the FCC has shown a strong commitment to continuing this tradition, by asking for input specifically from the Joint Board and the states. The MPSC

has already filed comments on Section XV of the NPRM on April 1, 2011. In addition, the MPSC is concurrently filing reply comments that discuss the items addressed in Section XV of the NPRM. The MPSC offers the following comments on specific questions and concepts discussed in the remaining sections of the NPRM. The comments are formatted to track with the headings and subheadings used in the NPRM. The MPSC's comments focus on the role that states can and should play in the context of USF and intercarrier compensation reform. The MPSC may in the future address additional questions and topics from the NPRM not addressed here in reply comments. The MPSC looks forward to reviewing the comments of the other parties in this proceeding and will continue to participate by filing reply comments to the extent that they add to the discussion of how to best reform USF and intercarrier compensation.

### **Setting America on a Path of Reform**

#### **Eligible Telecommunications Carrier Requirements**

In the NPRM, the FCC seeks comments on how to reform the eligible telecommunications carrier (ETC) designation process and whether it should forbear from requiring that recipients of universal service support be designated as eligible telecommunications carriers (ETCs) at all.<sup>1</sup> The MPSC would like to stress that the granting of forbearance of Sec. 254(e) on recipients of the USF provides no protections for the fund or consumers. Rather, the MPSC recommends 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. A review of an application for ETC designation provides a level of confidence that the service provider,

---

<sup>1</sup> NPRM ¶ 89.

a potential recipient of the USF reimbursement, has provided documentation and certification that they will provide the service.

As the telecommunications industry has continued to evolve, the designation of an ETC has become a more complicated process, progressing from a focus primarily on wireline telecommunications carriers for high-cost and Lifeline/Link-Up designation, to wireless telecommunications applicants who request only Lifeline/Link-Up designation. In addition, there is now the possibility for eligible information service provider applications seeking designation to provide broadband as a supported service. The MPSC has experienced a significant reduction in the number of applications for traditional high-cost reimbursement, while ETC applications for only the low income programs have increased. In Michigan, this increase is largely caused by wireless telecommunications carriers reselling service, or reselling service with limited facilities. Currently the law is very general on which providers can be designated as ETCs, but the rules appear to apply more to conventional carriers. The MPSC agrees with the FCC that going forward, the ETC designation process must evolve with the changes in technology and the services eligible for federal USF reimbursement.

The MPSC does not believe that the FCC will have to provide incentives for state commissions to apply FCC-adopted requirements for ETC applicants. Many state commissions have already taken on the delegated responsibility to review ETC designation applications. Michigan and other states have identified some potential issues with the current process, such as determining if an ETC applicant is actually facilities-based or if the carrier must apply to the FCC for forbearance. State commissions have begun to communicate and work together to identify similar situations and work through

comparable solutions. Even though this exchange of information between the state commissions has been invaluable, the MPSC strongly encourages the FCC to provide state commissions, who have taken on this delegated authority, with a key contact person at the FCC for addressing issues such as these and any future issues regarding ETC designations. Ideally, this contact person should be available to answer questions and provide guidance regarding individual applications, the yearly renewal process, monitoring compliance at the state level and associated issues. Such a step would ensure that states continue to meet the intent of FCC goals and help enhance the partnership between the FCC and the states.

This year, the MPSC is requiring approximately seventy-five ETC designees to provide information for the yearly renewal process. The FCC's Report and Order FCC 05-46 has historically provided state commissions and carriers with the guidance necessary for this process. However, as the USF reform moves forward to include possible support for broadband, additional compliance information will be necessary to ensure the facilities and services for which a provider seeks reimbursement are meeting certain standards nationwide. The MPSC is concerned that all consumers have access to at least basic levels of telecommunications service at reasonable prices. The MPSC encourages the FCC to ensure that study area boundaries and carrier of last resort (COLR) responsibilities receive the necessary attention to ensure that the basic goals of universal service are met, especially should broadband become a mandated service. Self-certification that broadband facilities have been installed and customers are being served may not be sufficient evidence of deployment. The MPSC encourages the FCC to explore opportunities to leverage the benefits of the National Broadband Map, along with

each state's efforts at broadband mapping as one way of validating that broadband service is available to customers of an ETC. The MPSC, through the ConnectMI program,<sup>2</sup> has worked to ensure that the data submitted for the National Broadband Map is highly granular, accurate and verifiable. This program is overseen by the National Telecommunications and Information Administration (NTIA). As all of the other states also have mapping efforts underway, the MPSC believes the FCC has a valuable tool in the National Broadband Map and is open to additional suggestions on how data from those efforts might best be tailored for this use including an information-sharing mechanism where the states, the FCC, the NTIA and the Rural Utilities Service (RUS) could exchange information.

The MPSC believes that each step in the ETC designation process is necessary to ensure that each applicant is able to provide the best product and customer service for the USF funding they receive. Therefore, the MPSC is concerned with the FCC's proposal to include in the auction process providers that have applied for but not yet received ETC designation, whether the application is at the FCC or in individual states. The designation process can take several months, depending on the application, and this time-period allows the state commission or the FCC to collect any additional information necessary to ensure an application is complete and that a provider fully meets the requirements for ETC designation. Furthermore, the MPSC recommends that the FCC limit auction eligibility to those providers that have been approved as ETCs for high-cost fund reimbursement, not those that are approved as ETCs for only Lifeline/Link-Up. The MPSC has found that ETCs limited to Lifeline, or Lifeline and Link-Up, often have

---

<sup>2</sup> Connect Michigan is a partnership between the MPSC and Connected Nation. Additional information about the program, including a link to Michigan's broadband availability map is available at [www.connectmi.org](http://www.connectmi.org)

minimal or no facilities in the state and therefore these providers may not necessarily be in the best position to offer high quality broadband service in the state. The MPSC advocates that only those ETCs with a degree of facilities-based service should be considered eligible to participate in any auction process to receive support for providing broadband.

### **Public Interest Obligations of Fund Recipients**

The public interest obligations for USF recipients should not vary depending on whether broadband is a supported service or if support is provided to voice recipients conditioned on their deployment of broadband-capable facilities. All recipients, whether they are voice, broadband or wireless, should have the same public interest obligations. This would ensure a level of equanimity among all USF recipients for the services they provide. Furthermore, the MPSC agrees with the FCC's proposal to require all recipients to meet public interest obligations tied to the provision of voice and/or broadband services.

For several decades, both federal and state governments have relied on the responsibilities of the wireline COLR to continue to provide telecommunications service to high cost areas and low income customers. The transition into broadband does not mean that wireline telecommunications is now extinct or that the COLR responsibilities are no longer necessary. Whether current COLR carriers are able to provide timely broadband deployment, with the necessary speed and bandwidth, is an important question when evaluating their applications for the Connect America Fund (CAF), as well as evaluating their past activity as the COLR.

## **Near Term Reforms**

### **Identifying Unserved Areas Eligible for Support**

The MPSC notes that the FCC considers that areas are “unserved” when there is no broadband available, but assumes that the area already has voice telephone through the operations of our existing high cost programs.<sup>3</sup> Michigan has several small rural geographic areas that still do not have access to basic telecommunications services. Providers are currently seeking support to serve these areas,<sup>4</sup> and the MPSC recommends that such providers still be considered to be able to receive support from the CAF for those areas.

### **Disaggregating Support**

Currently, study areas are defined as the incumbent local exchange carrier’s service areas. In Michigan, most of the historical study areas remain unchanged. The concern with possible disaggregation is the need to ensure that new study areas are not developed to encourage broadband deployment in specific areas with many bidders, while providing no incentive to serve extremely rural areas with difficult terrain. The disaggregation of study areas should be an opportunity to balance high need and unserved areas with other areas of the state.

State commissions should be directly involved in the disaggregation process, due to the state commission’s knowledge of the state and work already completed on the broadband field.

---

<sup>3</sup> NPRM ¶ 262, see specifically footnote 420.

<sup>4</sup> For example, currently three providers have applications before the FCC in CC Docket 96-45 seeking waivers and other necessary action in order to be eligible for support for services provided in unserved areas of Michigan.

## **Concepts to Guide Intercarrier Compensation Reform**

### **Intercarrier Compensation Methodologies for All-IP Networks**

In the NPRM, the FCC seeks comments on the appropriate end-goal for intercarrier compensation reform, including bill and keep, a flat-rated intercarrier charge, or some other methodology.<sup>5</sup> At this time, the MPSC does not have a position on the specific methodology that the FCC should seek as an end goal. Rather the MPSC urges that whatever end goal the FCC ultimately adopts, 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. The MPSC further advocates for intercarrier compensation reform that clearly and fairly addresses all types of terminating traffic including, switched telecommunications, traditional telecommunications that travels over IP-networks, mobile wireless and VoIP traffic. Finally, the MPSC advocates for a process that does not penalize those states that have taken steps to reform intrastate access.

### **Selecting the Path to Modernize Existing Rules and Advance IP Networks**

#### **Reform Based on Existing Jurisdictional Framework**

In Section XVIII of the NPRM, the FCC seeks comments on how to work in partnership with states to enact intercarrier compensation reform.<sup>6</sup> The FCC proposes two distinct options. The first of which would see the FCC reforming interstate access charges and reforming the methodology for reciprocal compensation. This proposal would leave states with authority over intrastate access, as well as the responsibility to

---

<sup>5</sup> NPRM ¶ 529-532.

<sup>6</sup> NPRM ¶ 534.

implement the new reciprocal compensation methodology set by the FCC. The second proposal is to classify all intercarrier traffic, including intrastate access traffic, under the framework of reciprocal compensation. The FCC would establish the methodology for the unified intercarrier rates and the states would then implement this.

The MPSC respectfully requests that the FCC not penalize those forward thinking states that have begun the process of intrastate access reform ahead of the FCC taking definitive action on intercarrier compensation reform. As described in more detail below, Michigan is one of the states that have already spent considerable time and effort developing, adopting, and implementing intrastate access reforms. The MPSC therefore advocates for the first proposal, in which intrastate access remains under the jurisdiction of the states. State legislatures/commissions have the “on-the-ground” knowledge of their own telecommunications landscapes. Furthermore, states are in many different situations when it comes to intrastate access reform. Some states regulate retail rates and as such would need to consider rate-rebalancing proceedings as part of intrastate reform. Other states have state universal service funds that states may be able to expand as part of intrastate reform. Intrastate access is, as suggested by its name, an intrastate service and therefore should remain in the jurisdiction of the states. Additionally, states should be able to tailor intrastate access reform according to the specific challenges they will experience as well as the specific tools they currently have to address these challenges. States have a variety of different laws and regulatory structures. All of these elements need to be considered for comprehensive reform. States are in the best position to tackle these intrastate issues.

## **Reforms Undertaken by the States**

### *Michigan's Intrastate Access Charge Reform*

Michigan is one of the states that have enacted intrastate access charge reform and, pursuant to the FCC's request for comments on the status of intrastate access reform,<sup>7</sup> offers the following discussion of that reform process. In early 2009, the Michigan legislature began the process of amending the Michigan Telecommunications Act (MTA) to reform the system of rates for intrastate switched toll access.<sup>8</sup> MPSC staff participated throughout the legislative process and had the opportunity to discuss the issue of intrastate access reform with both large and small ILECs, competitive LECs, cable VoIP providers, wireless providers, and others. It quickly became obvious that each of these stakeholders have very different concerns regarding reform to intercarrier compensation. Larger ILECs and wireless providers sought to streamline the multitude of rates they must pay to terminate traffic on local networks. Smaller ILECs were concerned about large revenue losses and an inability to recover the costs of maintaining their networks, especially in rural areas while still offering service at reasonable rates to customers. VoIP providers sought to ensure that any reform did not serve to regulate VoIP service at the state-level. The MPSC served as a resource to the Legislature, understanding both the benefit of reforming a part of the complex system of intercarrier compensation, but also understanding the challenges in enacting any reforms in a way that minimized harm to providers, specifically Michigan's smaller rural ILECs.

---

<sup>7</sup> NRPM ¶ 543.

<sup>8</sup> At that time, the law required providers to mirror their interstate rates for access service, but provided an exemption to this requirement for providers with less than 250,000 access lines. Because of the market conditions in Michigan, this provision of the law only resulted in the two largest ILECs in the state, AT&T Michigan and Verizon (now Frontier), being required to mirror interstate access rates.

The stakeholders spent nearly a year in the legislative process developing Michigan's intrastate access reform, resulting in Public Act 182 of 2009.<sup>9</sup> Public Act 182 of 2009 amended the MTA to require that all providers charge intrastate switched toll access rates no higher than their corresponding interstate rates, albeit with different timeframes for when this transition must occur based on the type of provider. The law also set up a 12-year recovery mechanism, the Intrastate Switched Toll Access Recovery Mechanism (ARM), to provide some recovery to eligible providers for lost revenues as they transition their business models away from relying on revenues associated with higher intrastate access rates. It should also be noted that under current Michigan law the only end-user rate that is regulated is the rate for primary basic local exchange service (PBLES). PBLES is a low-cost, limited, basic service plan.<sup>10</sup> Therefore, all providers, including both eligible and non-eligible, are also able to raise their end-user service rates for all services other than PBLES to offset their reduction in intrastate access revenue.

Eligible providers, effectively defined as rural ILECs, had to reduce their intrastate access rates to no higher than their corresponding interstate rates on September 13, 2010, the operational start date for the ARM. Non-eligible providers must reduce their intrastate access rates to rates no higher than the corresponding interstate levels in a series of five steps of no less than 20% of the differential between the two.<sup>11</sup> The first of

---

<sup>9</sup> The initial bill was introduced February 11, 2009. The Governor signed the resulting law December 18, 2009. The text of the bill as introduced and as eventually signed into law as Public Act 182 of 2009 is available at: [http://www.legislature.mi.gov/\(S\(mj5rlc5511mac2ml51x32bjw\)\)/mileg.aspx?page=getObject&objectName=2009-HB-4257](http://www.legislature.mi.gov/(S(mj5rlc5511mac2ml51x32bjw))/mileg.aspx?page=getObject&objectName=2009-HB-4257).

<sup>10</sup> PBLES is defined as the provision of 1 primary access line to a residential customer for voice communications and shall include all of the following: (i) not fewer than 100 outgoing calls per month; (ii) not less than 12,000 outgoing minutes per month; (iii) unlimited incoming calls.

<sup>11</sup> Non-eligible providers include ILECs with over 250,000 lines and CLECs. As noted earlier, the law previously required the large ILECs to mirror interstate rates. Thus, the new provisions of the law

these steps occurred January 1, 2011, and the following step-downs must occur on January 1 of 2012, 2013, 2014 with the final step no later than January 1, 2015.

Tasked with the administration of the new law and the ARM, the MPSC spent approximately nine months working to implement the language of the law and bring the ARM into operation.<sup>12</sup> The initial size of the ARM, approximately \$17.5 million per year, is the sum of the disbursements to eligible providers and also the MPSC's estimated administrative costs and an appropriate cash reserve. The Commission set the initial disbursements, as described in the law, by calculating the approximate revenue losses each eligible provider would incur by reducing their intrastate access rates to interstate levels, based on 2008 demand data. Eligible providers will receive the disbursement amount calculated by the MPSC for four years, after which the amount is re-calculated factoring in then-current interstate rates as well as line losses. A similar re-calculation occurs after four more years (eight years from the initial operational date of the ARM) and the fund sunsets after twelve total years of operation.

All providers of retail intrastate telecommunications service, including mobile wireless providers, contribute to the fund monthly based on their retail intrastate telecommunications service revenues. The language of the law specifically excludes VoIP revenues from the contribution base. The Commission set the initial contribution percentage and has since revised it one time.<sup>13</sup> The law provides for the MPSC to review

---

effectively require the CLECs to the lower their access rates, as the large ILECs already have rates no higher than corresponding interstate levels.

<sup>12</sup> The MPSC opened a docket, Case No. U-16183, for the purposes of administering the ARM. This docket is available online at <http://efile.mpsc.state.mi.us/efile/viewcase.php?casenum=16183>.

<sup>13</sup> As per the language in the law, the MPSC based the initial contribution percentage on 2008 revenue data. Monthly contributions to the fund are based on the most current monthly revenues available. The MPSC has found that current revenues are less than the 2008 revenues, thus necessitating a higher contribution percentage to ensure that the ARM has the funds necessary to maintain operation.

the operation of the ARM in the event of significant federal reform of either intercarrier compensation or the federal Universal Service Fund contribution methodology.

The MPSC's experience in implementing the intrastate access reform adopted in Michigan has not been without challenges. In making the ARM operational, the MPSC has received negative feedback from re-sellers of telecommunications service who pay into the fund, but claim not to see reduced intercarrier compensation costs passed on to them in their costs of purchasing service. Identifying the providers required to pay into the ARM has also been challenging since the MPSC has extremely limited regulatory authority over toll re-sellers, and authority over wireless providers only to the extent necessary for the operation of the ARM. Additionally, transitioning the intrastate rates down to interstate levels has presented difficulties due to differences in rate structures between providers and between intra-and interstate rates. For example, implementing a 20% reduction in the differential between interstate and intrastate rates is not a clear-cut calculation when a provider charges a single combined rate at the intrastate level but a series of rate elements on the interstate side. Additionally, some providers offer service at the intrastate level but do not offer a corresponding service on the interstate level. The MPSC does not present this issue as advocacy against reform at either the state or the federal level, but rather to inform the FCC of some of the complexities experienced in Michigan's efforts to reform intrastate access.

It has now been just over two years since Michigan began the process of reforming intrastate access charges. The process was labor intensive and required compromises from each party's ideals. At this time, the MPSC is confident that the ARM is functioning adequately. The MPSC believes that Michigan has taken an

important step that fits well within the framework of the FCC's intercarrier compensation reform goals as outlined in the NPRM. If the FCC has any further questions about or wishes to discuss Michigan's intrastate access reform, the staff of the MPSC is available as a resource.

*Incentives for States to Act*

The FCC seeks comment on how to encourage states to adopt intrastate access reform while not penalizing those states that have already taken steps toward this type of reform.<sup>14</sup> As described above, Michigan has taken the difficult and time-consuming steps to reform intrastate access charges, and the MPSC supports preferential treatment for Michigan and other states that have taken on this challenge in the distribution of the first phase of CAF funds. More importantly however, the MPSC respectfully requests that the FCC consider the reforms that states have already taken in determining the criteria for what constitutes intrastate access reform.

Michigan for example has set a requirement of intrastate rates that are no higher than corresponding interstate rates; a requirement that will likely meet any criteria the FCC adopts to define intrastate reform. Eligible providers, as well as Michigan's two largest ILECs, already meet this requirement; however, Michigan's reform provides non-eligible providers a five-step transition path to be completed January 1, 2015. The MPSC would urge the FCC to set either the criteria for 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. 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.

---

<sup>14</sup> NPRM ¶ 544.

Whatever incentives the FCC ultimately adopts, it may still be the case that a state is unable or unwilling to act on intrastate access reform. Some state utility commissions may not have jurisdiction to reform intrastate access rates. Others may choose not to act. The MPSC was required to act on intrastate access reform because of a change in the Michigan Telecommunications Act. However, the legislative process that created that change was not without challenge. Some state legislatures may, as Michigan's did, opt to tackle the contentious issue of access reform, while others may seek to avoid that challenge. While the MPSC believes states are in the best position to reform intrastate access, the MPSC does not oppose the FCC setting up a process by which a state may petition the FCC to set that state's intrastate access reform path in the event that a state does not wish/is not able to.

Finally, in the event that the FCC decides to explicitly require rather than incentivize states to participate in intrastate access reform, the MPSC is not opposed to the FCC setting end goals and timelines for all types of intercarrier compensation, including intrastate access. States that do not act within that timeframe would be subject to FCC action to reform that particular state's intrastate access rates. However, states should retain the freedom to set their own path toward that goal, provided it follows the FCC's timeline. This would ensure that states previous or current efforts to implement intrastate access are not in vain or detrimental to the state. This scenario would allow each state to address its own particular telecommunications provider landscapes. Finally, the FCC would have the final timeframe and backstop mechanism to ensure such intrastate reforms do indeed occur.

The MPSC acknowledges that any goal or timeframe for intrastate access reform set by the FCC may require those states that have already acted on intrastate reform, including Michigan, to modify their current reform. However, modification of current intrastate reforms, though not without significant effort, is far better than having working reforms completely abolished. A clear goal and timeframe may also provide states that have not yet acted with a fixed target upon which to base their own intrastate access reform paths.

#### *Timeframe for State Action*

While the MPSC does not advocate for the FCC pre-empting states on intrastate access, the MPSC recognizes that intercarrier compensation reform is not complete without the reform of intrastate access charges. Therefore, in the event the FCC will require states to act within a specific timeframe after which the FCC will set the glide path for that state, the MPSC is not opposed to the FCC requiring states to begin reform within the four-year timeframe proposed in the NPRM. The four-year timeframe should be, as described in the NPRM, the timeframe for a state to initiate proceedings and begin reform, not necessarily complete it.<sup>15</sup> As described earlier, 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. In the event that the FCC seeks to

---

<sup>15</sup> NPRM ¶ 548.

adopt a date by which states must have completed the process of intrastate reform, that date should be set at the date for completion of the other aspects of intercarrier compensation reform or six years out, whichever is later. Six years would provide a state one to three years to develop a path and still provide time for a transition period.

The FCC seeks comment on how to ensure that states do not simply wait for the FCC to take action.<sup>16</sup> As noted above, the MPSC supports the FCC's proposal to incentivize states to act with preferential treatment in distributions from the Connect America Fund. Further, the FCC could include in the definition of "having enacted intrastate reform," a state filing a petition to the FCC to have the FCC set that states glide path. This would be a strong incentive for a state to either act, or quickly petition the FCC to act in its stead.

### **Reform Based on the 1996 Act Framework**

The MPSC does not support the FCC's alternative proposal to bring all traffic under the framework of Section 251(b)(5) without sufficient evidence that states are refusing to either act on their own or petition the FCC to act in their stead. Such a step would preempt states regarding an intrastate service over which states have traditionally and rightly had jurisdiction. As discussed above, the MPSC is not completely opposed to the FCC setting end goals and timeframes for intrastate access reform to ensure that states act. If such end goals and timeframes could only be accomplished under this alternative proposal, or in the event the FCC chooses this alternative proposal, the FCC's methodology should be sufficiently flexible to allow states to determine their own transitions within the process.

---

<sup>16</sup> NPRM ¶ 549.

## **Developing a Recovery Mechanism**

While all providers should have been anticipating changes to the intercarrier compensation system for many years now, there will likely remain a need to develop some sort of recovery mechanism to replace a portion of revenues lost as a result of reform while providers tailor their business models to the new rules. It is imperative that providers in rural, high-cost areas have the means to maintain their networks and offer quality services at reasonable prices to customers during the transition period. And as intercarrier compensation revenues can represent a large portion of some provider's revenue streams,<sup>17</sup> it is important that some recovery mechanism is available to coincide with the reduction or elimination of those revenues. The FCC's proposal provides for recovery from a combination of increased end-user rates as well as an explicit support mechanism. The MPSC agrees with this approach, with the caveat that end-user rates, especially in traditionally high-cost areas, must remain affordable.

## **Determining the Type and Amount of Recovery**

The FCC seeks comment on how best to structure a recovery mechanism, based on cost or based on revenue recovery.<sup>18</sup> The MPSC does not take a position on this issue at this time; however, the MPSC offers its experience with Michigan's intrastate access reform as it pertains a recovery mechanism.

### *Cost Recovery*

During the legislative process there was some discussion of a cost-based recovery mechanism, though ultimately the legislature decided to base the ARM on revenue recovery. Again, the MPSC remained neutral throughout the legislative process in

---

<sup>17</sup> NPRM ¶ 567, based on comments filed by the National Exchange Carriers Association.

<sup>18</sup> NPRM ¶ 564-571.

Michigan, but did provide information on the proposals and alternatives. One of the major concerns with a cost-based recovery mechanism was the time needed to establish it. For example, to perform cost studies for each of the eligible providers in Michigan would have required numerous cases before the MPSC. Historically, cost cases before the MPSC can take up to two years to complete, and never have all such companies been before the MPSC with a cost study at the same time. The MPSC's resources would likely have been incredibly strained in trying to accomplish a thorough yet timely review of all eligible providers' costs in order to develop a cost-based recovery mechanism. Similarly, should the FCC decide to use a cost-based recovery mechanism, a significant amount of time will need to be expended determining the cost standard to apply, whether to permit each company to use its own cost model or some standardized model, and to review the actual filed costs. While highlighting these concerns, the MPSC reiterates that it does not currently take a position for or against this type of recovery.

#### *Revenue Recovery*

Michigan's ARM is based on revenue recovery. As described earlier, each eligible provider submitted data to the MPSC on 2008 demand levels for each component of intrastate access service. These demand levels were multiplied by the difference between the intra- and interstate rates to determine an approximation of the revenues lost due to reducing intrastate access rates to interstate levels. Pursuant to Michigan law, the revenue recovery under the Michigan ARM is based only on intrastate access revenues. The process of determining disbursement amounts did not include any offsets to these revenue losses from revenues associated with increases to end-user rates or reduced costs of billing and collection. The process described in Michigan's law was expeditious and

did not require lengthy individualized proceedings. The MPSC is charged with re-sizing the disbursements from the ARM after four and eight years to reflect access line losses. These re-sizings will help ensure that providers are not recovering revenues from the ARM that they would not have received had intrastate access reform not occurred. The ARM is effective for twelve years from its operational date, at which time there is no further planned recovery mechanism specific to intrastate access reform.

FCC reform to interstate access rates may have an effect on Michigan's ARM. The legislature provided for a provider to file an application for, or the MPSC to initiate a proceeding, to determine whether any modifications to the size, operation, or composition of the ARM is warranted in the event of significant federal intercarrier compensation reform. Because intrastate access rates in Michigan are capped at interstate levels,<sup>19</sup> in the event that the FCC requires significant reduction in interstate access rates, the MPSC may have to re-evaluate the operation of the ARM to take into account any additional intrastate access revenue losses. Finally, while at this time Michigan does not have a state universal service fund, the MTA does provide for one if it is found to be necessary.

The recovery mechanism adopted in Michigan was not the ideal of any one party. Some felt that a cost-based mechanism would be more appropriate. Some argued for retail rate benchmarking. Some argued that the revenue recovery process should have looked at all revenues, not simply intrastate access revenues. As a neutral party, the MPSC is concerned with any negative impacts of the intrastate access reform legislation.

---

<sup>19</sup> Again, Michigan law requires that providers charge intrastate access rates no higher than corresponding interstate rates. This provision has been in effect for eligible providers since September 13, 2010. Non-eligible providers that do not already meet this provision must use a step-down process that concludes January 1, 2015.

However, since the implementation of intrastate access reform and the ARM, the MPSC has not been made aware of any significant harm to any provider.

Finally, the MPSC lauds the FCC's actions to both encourage and require providers, the national associations, and others to provide robust data on access revenues, demand data, and expenses.<sup>20</sup> The MPSC supports the FCC's position that if a provider believes they will be harmed they need to submit data to support that position. During the legislative process in Michigan, the MPSC acted as a sort of gatekeeper for confidential data provided by companies to support their positions. The MPSC was able to review data and inform the Michigan legislature if parties' concerns were well-founded or specious. As one would expect, the smaller rural ILECs who expressed the most concern about the harm to their companies, quickly provided data to support their positions. Others were very reluctant to produce data, and as such, the MPSC could not substantiate their accusations of harm.

The MPSC has had previous concerns with the relaxation of many data filing requirements at the federal level, as noted in comments in proceedings related to ARMIS data and the restructuring of Form 477. Especially given the goal of providing support to providers for broadband build-out, data on broadband, even with its status as an "unregulated" service, will likely be necessary to determine support levels. The MPSC is supportive of the FCC requiring that providers provide any data, on both regulated and unregulated services, that is necessary to determine support for both a recovery mechanism and for any other purposes of the Connect America Fund.

---

<sup>20</sup> NPRM ¶ 572.

## **Evaluating Reasonable Recovery from End-Users**

### *Residential Benchmark*

In some states, such as Michigan, providers already have the regulatory flexibility to change most or all of their end-user rates. As noted earlier, the MPSC only has rate-setting authority over a single retail service, PBLES. Providers in Michigan are free to change their other retail rates at any time without MPSC review or approval. As this has been the case in Michigan since 2005, there was not a need for rate rebalancing when Michigan implemented intrastate access reform. Data provided during the legislative and regulatory processes showed that most providers' retail service rates were comparable and no provider had a rate that was extremely low. In the context of federal reform, the MPSC does not oppose rate benchmarking as a way to ensure that all customers are paying a fair share of the cost of providing telecommunications service, provided the benchmark rate is such that it affords all customers access to basic telecommunications services at reasonable prices. While subscribers in high-cost areas cannot be expected to bear the full cost of service in those areas, they also should not be paying rates significantly lower than those in lower-cost-to-serve areas.

### **Conclusion**

The MPSC is grateful for the opportunity to participate in the discussions of USF and intercarrier compensation reform. The collaborative efforts between the FCC and the states have often resulted in policies that are effective and efficient. Michigan has been an integral part of this cooperative process for many years and the MPSC looks forward to continuing collaboration with the FCC and the industry to share information, data, best

practices, and lessons learned as we work toward ways to achieve the goals of universal telecommunications and broadband service.

Respectfully submitted,

Robin P. Ancona, Director  
Telecommunications Division  
6545 Mercantile Way, Suite 14  
P.O. Box 30221  
Lansing, MI 48909  
(517) 241-6200

April 18, 2011