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

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

COMMENTS OF THE

MICHIGAN PUBLIC SERVICE COMMISSION

Introduction

On November 5, 2008, the Federal Communications Commission (FCC) released an *Order on Remand and Report and Order and Further Notice of Proposed Rulemaking* in the proceedings noted here. The Order on Remand, as mandated by the U.S. Court of

Appeals, addresses the intercarrier compensation rules for Internet Service Provider (ISP)-bound traffic. The Report and Order provides the rationale for the FCC's decision to not implement the recommendations contained in the *Comprehensive Reform Recommended Decision* issued by the Federal-State Joint Board on Universal Service. The Further Notice of Proposed Rulemaking (FNPRM) seeks comment on three specific proposals: the Chairman's Draft Proposal (Proposal A), the Narrow Universal Service Reform Proposal (Proposal B), and the Alternative Proposal (Proposal C).

The Michigan Public Service Commission (MPSC) commends the FCC for providing all interested parties the opportunity to fully review and comment on the drafted proposals regarding intercarrier compensation (IC) and universal service fund (USF) as contained in the Further Notice of Proposed Rulemaking before the adoption of a final order, although the very short timeframe may not allow parties ample opportunity to fully review and comment.

The MPSC has attempted to review the FCC's proposals and offers the following comments. The MPSC is persuaded that Proposal C, which is significantly similar to Proposal A, would better address the issues related to intercarrier compensation reform and universal service fund reform, albeit certain concerns contained in the comments herein. Proposal B does not address intercarrier compensation reform and the scope of the universal service fund reform is very narrow. Consequently, the following comments will apply predominantly to the proposal found in Appendix C unless stated otherwise.

High Cost Universal Service Support: Broadband required

The MPSC is committed to promoting economic growth in Michigan. A key piece to Michigan's economic recovery is broadband. As such, the MPSC supports any initiative to spur network development for broadband services. The MPSC commends the FCC's actions in taking on the difficult task of attempting to come into terms with the industry, state commissions and interested parties regarding the best possible avenue to promote broadband development at such a critical economic time.

The MPSC agrees with the FCC's mandate to require eligible telecommunication carriers (ETC) to offer broadband internet service as a condition to receive high cost universal service support. The proposed five year transition period, however, may be longer than necessary as incumbents should be able to identify the service areas where the incumbent will not be offering broadband in a shorter timeframe. This would expedite the reverse auction process which, consequently, could benefit the end user. As proposed, if an incumbent LEC does not make the "broadband commitment for a particular service area, the support will be transitioned to the winning bidder of a reverse auction that will commit to deploy broadband throughout the service area within ten years"[1] which could result in a total of 15 years before broadband service is offered in certain service areas.

While the MPSC does not support the reduction of the universal service funding received by the ETCs, if the FCC adopts this proposal, the MPSC supports a gradual transition as described in proposal C.[2] A phased in transition period for the elimination of ETC funding may be less disruptive to the provider and possibly to the consumer as well. The MPSC believes, however, the FCC should set up a reward process for early adopters in order to promote rapid network upgrades versus the penalized methodology where a concrete percentage build out is expected at the end of a certain year in order to continue

[1] Appendix C, ¶ 12.

[2] Appendix C, ¶ 17 and 52.

receiving funds. The MPSC believes time is of the essence in the deployment of broadband and any further delay could negatively affect the economic outlook. A provision where a carrier is rewarded for exceeding the FCC's expectations should be considered as an incentive to invest promptly in the current telecommunications infrastructure.

In addition, although the MPSC agrees with the definition of broadband and the three tier broadband offering, the MPSC strongly encourages the FCC to raise the minimum speeds for downloads. The proposed minimum speeds of 768 kbps for downloads and 200 kbps for uploads is significantly lower than the speeds offered in various countries around the world[3]. The FCC should raise the minimum broadband speeds and aim at higher rather than lower bandwidths. The MPSC is cognizant of the fact that the FCC is attempting to promote higher bandwidths as reflected in the reverse auction process where the bidder with the highest broadband speed offering would be selected instead of choosing the bidder with the best rate[4]. Nevertheless, the MPSC believes the FCC should raise the standards and bring this country, at a minimum, to par with the rest of the world in terms of network connectivity.

The MPSC commends the FCC for the detailed and thorough description of the reverse auction bidding process. While the geographic area selected may be the best choice for the implementation of the reverse auction, it may favor the incumbent provider. Consequently, it is questionable whether a competitive carrier may have the incentive to offer service in such area.

Broadband with Lifeline/Link up Customers

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[3] *2008 ITIF Broadband Rankings*: http://www.itif.org/files/2008BBRankings.pdf

[4] Appendix C, ¶ 35-50.

The MPSC applauds the FCC for its decision to make additional funding available for broadband service offering for Lifeline and Link up customers. The proposed Pilot Program will ensure consumers have the opportunity to subscribe to broadband which may otherwise not be accessible to them. Michigan is dependent on the federal Lifeline and Link up programs that provide additional support to low-income consumers. There are about 50 carriers which offer Lifeline to customers in Michigan. The decision to include such funding could greatly benefit our state. The MPSC would encourage the FCC to expand the pilot program, should it be successful, for another two years which would coincide with the future network upgrades by the carriers.

As with any program where funding is involved, program oversight as well as auditing will be crucial to the success of this pilot program. Although the FCC has safeguards in place, the MPSC would be willing on a state level to assist in the implementation of this program as needed.

Reform of Universal Service Contribution

The MPSC has always been supportive of a telephone numbered based universal service contribution methodology. As voice service is being offered in diverse platforms and the jurisdiction of a call may be unclear, the telephone numbered base contribution would appear to be the most logical route. In addition, consumers would all be treated equally regardless of their calling habits. Furthermore, consumers would have a clearer and more transparent understanding of what their USF contribution exactly is in their bill.

The MPSC is concerned, however, about the statement the FCC makes in paragraph 316 of Proposal C where it affirms that “price cap incumbent LECs operating in states where retail rates are deregulated are not entitled to the new universal service funding adopted here." In Michigan, providers offer basic local exchange service and primary basic local exchange service. While the MPSC regulates the quality of service of both the basic local exchange service and the primary basic local exchange service, it regulates only the "retail rate" of the primary basic local exchange service where a small population subscribes to that service as providers tend to offer more attractive bundled packages with basic local exchange service. This statement may cause confusion and a potential for arbitrage in Michigan. The MPSC urges the FCC to clarify this point further in order to avoid uncertainty.

Regarding the Further Notice on an appropriate universal service mechanism focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas, the MPSC believes a specific universal service mechanism for deployment of wireless services is not warranted at this time. In Michigan, several wireless carriers have ETC status; thus have access to the universal service fund.

Reform of Intercarrier Compensation

The MPSC is supportive of efforts to reform intercarrier compensation and is pleased that the FCC has heeded the call of many commenters in taking comments on the specific proposals being considered.

Transition Period

The MPSC believes the use of a transition period is essential and supports the 10-year transition as described in the proposals. The MPSC believes the schedule set in the proposals ensures that quantifiable milestones are reached while still providing some flexibility[5] for state commissions to tailor the process of transitioning to final terminating

[5] Specifically, in stage three of the process, that is, the time period from year five through year nine.

rate(s) according to the needs of the providers and customers within their states.[6] The two year period in which states "must adopt a state-wide interim, uniform reciprocal compensation rate applicable to all carriers (except carriers whose rates are below the interim, uniform rate, in which case, those carriers' rates shall be capped at those lower, existing rates)"[7] should be adequate provided that the methodology for determining the 'additional cost' mentioned in the statue is defined with more clarity. The MPSC comments more specifically on the possible methodologies below, but would note that the clock should not start on the transition period until a decision has been made on which cost methodology is appropriate.

Symmetry

The MPSC strongly supports the FCC's tentative conclusion "that final uniform reciprocal compensation rates should be symmetrical…in all cases once the final uniform reciprocal compensation rates become effective."[8] As the FCC is well aware, the default currently is symmetry with the limited exception of a carrier showing a forward-looking cost study establishing that their costs of termination are higher than the incumbent LEC's. In accordance with the FCC's findings[9], the MPSC has not received any filings in which a competitive carrier sought to establish their own higher costs and set a reciprocal compensation rate higher than the incumbent LEC's. Therefore, the MPSC

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[6] As the majority of the lost revenue from intercarrier compensation charges will be made up through increased retail rates, this flexibility allows state commissions to balance the needs of reducing reciprocal compensation charges and avoiding rate shock among customers.

[7] Appendix C, ¶ 189.

[8] Appendix C, ¶ 271.

[9] Appendix C, ¶ 274.

agrees with the FCC's tentative mandate requiring, without exception, symmetrical reciprocal compensation rates.[10]

Furthermore Measures to Ensure Proper Billing

The MPSC is also supportive of the FCC's proposed measures to ensure proper billing. Recent cases before the MPSC show the need for more consistent identification and labeling of traffic. Unlabeled or mislabeled traffic is often at the core of compensation disputes. When multiple providers' networks are used in the delivery of a call, it can be very difficult for a terminating provider to identify the originating carrier for billing purposes since the terminating carrier does not have a direct relationship with the originating provider. The MPSC believes the FCC's tentative conclusion regarding the rate to charge for unidentified traffic[11] will function as a strong deterrent preventing providers from not labeling or mislabeling traffic.

Additional Costs Standard versus TELRIC Standard

In the Order/FNPRM, the FCC specifically requested comments on whether the additional cost standard utilized under §252(d)(2) of the Act should be: (i) the existing TELRIC standard; or (ii) the incremental cost standard described in the proposals.[12] The FCC identified three main differences between the proposed additional cost standard and

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[10] Appendix C, ¶ 276.

[11] "In the event that traffic does not contain the information required by our rules, or the provider delivering the traffic does not otherwise provide the required call information, for example by providing an industry-standard billing record, to the provider receiving it, we allow the terminating service provider to charge its highest terminating rate to the service provider delivering the traffic. To the extent that a provider acting simply as an intermediate provider (such as a transit provider) becomes subject to a charge under this provision, that intermediate provider can charge the rate it was charged to the provider that delivered the improperly labeled traffic to it. This will ensure that providers are paid for terminating traffic in those instances, and gives financial incentives for upstream providers in the call path to ensure that the traffic includes proper information in the first instance." Appendix C, ¶ 322.

[12] Order, ¶41.

TELRIC: (1) Common costs are a component of TELRIC but should be excluded under the new additional cost standard; (2) TELRIC did not specifically exclude all non-traffic sensitive costs, only those associated with line ports, while the new additional cost standard would exclude all non-traffic sensitive costs; (3) the proposal for the new additional cost standard includes a requirement that the modeled networks use softswitches and fiber for transport in order to meet the least-cost, most-efficient requirement, whereas TELRIC left it up to each state commission to determine whether a specific network design met the least-cost, most-efficient requirement.

For costing purposes, Michigan has adopted a Total Service Long Run Incremental Cost (TSLRIC) methodology. The FCC has approved the use of TSRLIC as compliant with TELRIC principles.[13] The one key difference between the methodologies is that TELRIC includes a common cost component, whereas TSLRIC does not. In this regard, Michigan’s costing methodology appears to be compliant with the proposed requirement to exclude common costs under the proposed additional cost standard.

The MPSC has reservations regarding the second requirement of the proposed additional cost standard that all non-traffic sensitive costs be excluded. The MPSC has recently completed two cost proceedings in which a total of 24 cost studies performed by some of Michigan’s smaller rural ILECs were analyzed. Two main issues arose in these proceedings with regard to traffic sensitive versus non-traffic sensitive costs. The first was the difficulty in determining which portion of a switch should be classified as traffic sensitive. There exists a wide variety of opinion on this subject, and the MPSC is not

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[13] Under Michigan's TSLRIC methodology, common costs are developed throughout a TSLRIC study but separate from the direct and shared costs. The appropriate amount of common costs is then added on to the TSLRIC, derived from the study, in order to determine the TELRIC pricing for network elements.

aware of a clear answer. The second issue that arose was that certain smaller ILECs have no way to bill a flat-rate monthly charge for the non-traffic sensitive component of switching costs since they do not directly interconnect with all providers. In the case of these providers, if all non-traffic sensitive costs were to be excluded, the result would be customers in these carriers' territories subsidizing other carriers. This would be contrary to the principle that the entity financially responsible for the cost should be the cost-causer.

Finally, with regard to the third requirement under the proposed additional cost standard, the MPSC believes that state commissions are better situated than the FCC to make the determination of the appropriate least-cost, most-efficient networks in individual states. As the FCC has acknowledged by its exclusion of Alaska and Hawaii from the current proposals, different states (and indeed different portions of the same state) may have different geographies and population densities which must be taken into account when designing a telecommunications network. State commissions are in the best position to be able to analyze a proposed network in a cost study with these types of constraints in mind. Furthermore, the MPSC notes that technologies are changing at a rapid pace within the telecommunications industry, and by setting a specific technology requirement such as this, the FCC may inadvertently prevent companies from modeling the true least-cost, most-efficient technologies in the future. For these reasons the MPSC does not believe the FCC should set a specific technology requirement whether it ultimately chooses to continue the use of TELRIC or change to the proposed additional cost standard. The determination of the appropriate least-cost, most-efficient technologies in a modeled network for a cost study should continue to be made by the entity closest to the network in question, namely the individual state commissions.

In summary, the MPSC believes that it has a costing methodology in TSLRIC that can be used to calculate the appropriate additional cost for terminating traffic. The MPSC notes that there exists a wide range of opinions on the portion of a switch that should be classified as traffic-sensitive. Also, the appropriate portion may vary by the type of switch (traditional versus softswitch). Additionally, there is no way for certain carriers to recover the non-traffic sensitive portion of their switching costs attributable to terminating other carriers' traffic due to the fact that not all carriers have direct interconnection. The FCC's proposed additional cost standard does not provide an opportunity for these carriers to recover their costs except through increased end-user rates. The MPSC does not believe this is appropriate given the result of end-users subsidizing other carriers. Finally, the MPSC believes that any cost standard that the FCC adopts should leave the determination of the least-cost, most-efficient technologies to be used to state commissions. State commissions are in the best position to evaluate modeled networks based on the characteristics of the serving area within their states. Additionally, by not setting a technology standard the FCC would allow carriers to model new (more efficient) technologies in the future.

Single Statewide Rate versus Single Rate per Operating Company

The FCC also specifically requested comments on whether the terminating rate for all §251(b)(5) traffic should be set as: (i) a single, statewide rate; or (ii) a single rate per operating company.[14] While a single state-wide rate may be the ideal, the MPSC

[14] Order, ¶41.

believes that the best approach would be to leave the question of one state-wide rate or one rate per operating company to the individual states to determine. It may be the case that in some states it is reasonable to have a single rate state-wide. However, in many states, including Michigan, a mix of rural and urban areas exists that does not easily lend itself to a single state-wide rate.

In the recent cost studies, the MPSC has approved reciprocal compensation rates for rural ILECs that are far higher than the $0.0007 rate the FCC is hoping will be a ceiling on the final rates (those in effect at the completion of the 10-year transition) for call termination. Under the FCC's proposal these carriers would not be eligible for additional USF money to offset the lost revenue from severely reduced call termination rates since telecommunications carriers are rate-deregulated in Michigan. The lost revenue would have to be offset by increased end-user charges. In many areas of the state of Michigan, especially the Upper Peninsula, the end-user rates would need to be raised substantially. The MPSC believes such increases may cause rate shock. In already economically depressed areas, these higher rates may force individuals to cancel their telephone service.

In addition, a single state-wide rate assumes that there exists a single least-cost, most-efficient network for the entire state. While such a network could be modeled, it would be very difficult to determine appropriate investment costs. No one provider currently serves the entire state. A proceeding to develop this network would have to include all incumbent carriers (at a minimum) in the state. Analyzing the myriad of proposals such a proceeding would inspire and narrowing these proposals to a single network would be especially difficult given the limited resources of most state commissions in the current economic climate.

For these reasons, the MPSC believes the best course of action would be to leave it to the individual states to determine whether a single state-wide terminating rate or a single terminating rate per operating company would be more appropriate. In this way, the states would be afforded the flexibility to craft a terminating rate structure most appropriate to the conditions of each state.

Conclusion

The MPSC appreciates the opportunity to comment on the issues of universal service fund and intercarrier compensation reform and has attempted in this very short timeframe to review the FCC's proposals. As stated above, the MPSC believes proposal C would better address these matters with the caveat that the FCC will take into consideration the areas of concern described in the body of these comments when making its final decision.

Respectively Submitted,
MICHIGAN PUBLIC SERVICE COMMISSION

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