



OFFICE OF CONSUMER ADVOCATE
COMMONWEALTH OF PENNSYLVANIA
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923

IRWIN A. POPOWSKY
Consumer Advocate

(717) 783-5048
(Fax) 717-783-7152

December 17, 2004

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

Re: Developing a Unified Intercarrier
Compensation Regime
CC Docket No. 01-92
Ex Parte Presentation

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. §1.1206, the National Association of State Utility Consumer Advocates (NASUCA) offers notice of ex parte contacts made on December 16, 2004. Mr. Billy Jack Gregg, Philip McClelland, and Joel Cheskis submitted the attached NASUCA Intercarrier Compensation Proposal in a number of meetings at the FCC. A number of such ex parte contacts were generally anticipated in an ex parte letter filed on behalf of NASUCA on December 14, 2004.

The NASUCA representatives met with Com. Jonathan Adelstein, Mr. Daniel Gonzalez, Mr. Matthew Brill, Mr. Scott Bergmann, Ms. Jessica Rosenworcel, Mr. Jeffrey Carlisle, Ms. Jane Jackson, and other staff members of the Wireline Competition Bureau. We are attaching the ex parte presentation offered in such meetings as an attachment to this letter. Please also note that this Proposal has been filed with the Commission **electronically**.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Philip F. McClelland
Senior Assistant Consumer Advocate

Enclosure
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NASUCA Intercarrier Compensation Proposal

The NASUCA Intercarrier Compensation (ICC) proposal creates a glide path for minimizing the disparity among existing ICC rates and reducing their absolute level over a five year period.

1. Recognize Cost Causation. NASUCA believes any plan for ICC reform must recognize that a carrier that originates, transits or terminates traffic on the network of another carrier imposes costs on that carrier. As a result, the cost of intercarrier compensation cannot be zero. Nevertheless, carriers remain free to enter into negotiated bill and keep arrangements.

2. Address Disparate Rates. The current widely varying rates for intercarrier compensation create arbitrage opportunities and treat different types of carriers differently. The NASUCA proposal would minimize, but not eliminate these disparities over an interim five year period.

- Each year a new target ICC rate would be established by the FCC. Interstate ICC rates above this target would step down to the target level; rates below the target rate would be maintained.
- The final target rate for the fifth year would be \$0.0055 per minute.
- The FCC could impose a different final target rate for rural carriers, such as \$0.0095 per minute.
- States would be encouraged to match the target rate for intrastate rates. However, each state would retain authority to reach the target rate in its own way.
- As the disparity among ICC rates is reduced, and as the total amount of revenue at issue declines, carriers will have greater incentive to enter into negotiated bill and keep arrangements. Incentives to bypass the PSTN will also be reduced.

3. No Final Solution. With due respect for the uncertainty of the future of the telecom market and telecom technology, NASUCA believes that the FCC should take steps now to minimize ICC as a problem. However, NASUCA does not believe that a final solution is advisable or possible. The FCC should assess the situation at the end of five years to determine if additional measures are necessary in regard to ICC.

4. Maintain Current Edge Definitions and Wholesale/Retail Relationships. The NASUCA proposal does not require any change in the current definition of network “edges” or wholesale and retail relationships. The reduction in ICC target rates over time should also reduce arbitrage opportunities related to network and/or relationship definitions.

5. Respect State Jurisdiction. The current federal/state jurisdictional dichotomy as set forth in federal law would be respected. The FCC would exercise control over interstate rates and provide guidance to states in regard to annual target ICC rates. States would retain control over intrastate local and access rates.

6. Maintain Current USF Mechanisms. The NASUCA ICC target rates will maintain intercarrier compensation as a revenue source for carriers, although at a reduced level. If the reduction in ICC rates creates a demonstrated need for additional interstate funding for rural carriers, it should be recovered through existing universal service mechanisms. LSS could be amended to allow recovery of a portion of the revenue shortfall related to switching.

7. No Increase in SLC Caps or Mandatory Increase in Local Rates. Any demonstrated need for additional intrastate funding created by reduction in ICC rates should be recovered through local rates or state universal service funds, as determined by the state.

It is unnecessary and ill-advised to prohibit carriers from recovering their access related costs from other carriers.

- NASUCA appreciates the importance of reducing the variance in the access rates that apply to companies accessing the network. However, the importance of this principle does not require that this rate be reduced to \$0.00. The elimination of arbitrage may as easily be achieved at a uniform rate above \$0.00.
- While the costs of accessing the network may be small and declining, there is no credible analysis demonstrating that this function will no longer cause any cost on the network. A zero charge rate would not conform to FCC efforts to bring rates to cost.
- The NASUCA proposal to bring all access rates to \$.0055 per minute in 5 years will strongly encourage companies to enter into bill and keep arrangements rather than attempt to continue monitoring and billing per minute charges at such low rates.
- There is no doubt that ICC reform will impose relatively larger changes on rural carriers. As an alternative to a single target rate, the FCC may want to establish a different target rate for rural carriers, such as \$.0095 per minute.

FCC should reject the access revenue guarantees contained in some ICC plans.

- Access revenues have generally declined in recent years for various reasons. In part, this reflects a migration of network traffic to services that generate less access revenues. NASUCA believes that the FCC should not take regulatory action that would short-circuit this market evolution by guaranteeing each carrier's current level of access revenues into the indefinite future.
- Access revenue replacement through FCC-required rate increases on local phone service will create artificial incentives for customers to avoid the increase by migrating to other forms of telephony, such as VOIP. Access charge reform directly affects and benefits the telecommunications industry. Accordingly, the industry should share in the costs of resolving ICC issues.
- It should not be assumed that preservation of current levels of access revenues is justified without any examination of the financial need of the carriers.
- Access revenue replacement through FCC-required rate increases on local phone service will create particular difficulties for low-income and low-usage customers.
- Any agreement among industry participants to seek FCC approval to preserve access revenues through a mandatory consumer surcharge necessarily has anti-competitive aspects that should discourage the application and approval of such relief.
- Given the general admonition in the Telecommunications Act of 1996 to "reduce regulation in order to secure lower prices," the FCC should not embrace the attempt of industry participants to raise consumer prices through a new regulatory requirement.

It is not necessary to develop a complete, final and dramatic ICC solution at this time.

- The problem of access rate arbitrage has existed for many years. It is important to take action to reduce this problem prospectively without necessarily eliminating intercarrier compensation entirely.
- The NASUCA approach allows the FCC time to reevaluate ICC issues at the end of 5 years in light of changes in the telecommunications market. Mid-course corrections could also be made within the 5 years of the plan.
- A 5-year plan will allow adequate time for states to craft their own methods for reaching the FCC target rates.
- An FCC order that compels measured and deliberate access rate reductions may be better than dramatic reductions in access rate disparity and concomitant revenue neutral consumer rate increases. The FCC should avoid a “cure that may be worse than the underlying disease.”

FCC and state universal service and ratemaking mechanisms can work to resolve access revenue reduction issues.

- In the 10th Circuit Remand Order as issued on October 27, 2003, the FCC developed universal service mechanisms designed to ensure rate comparability for customers in areas served by non-rural carriers. The FCC should allow this method to work and not short circuit the process through a required increase in rates and universal service support.
- As part of intercarrier compensation reform, the FCC should extend rate review and supplemental rate support to rural companies.
- NASUCA cautions that the FCC should carefully consider further required enlargement of the federal universal service fund given the funding issues that currently relate to the contribution factor.
- Establishment of target rates by the FCC will provide guidance to the states. However, states should be allowed to achieve the target rates in their own way.
- State universal service and ratemaking methods have been used to reduce intrastate access rates, and can continue to do so. There is no need broadly to preempt states on these issues.
- Complete preemption of state access ratemaking over purely intrastate traffic would violate § 152(b), interfere with existing state programs, and create needless appeals on what should be a cooperative governmental effort. There is no persuasive argument that Congress intended in 1996 to eliminate state jurisdiction over intrastate access.
- The same reasons and policies that drive ICC reform at the FCC are also evident to state commissions.

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