

STATE OF FLORIDA

COMMISSIONERS:  
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# Public Service Commission

July 20, 2005

## VIA ELECTRONIC FILING

The Honorable Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime

Dear Ms. Dortch:

Forwarded herewith are reply comments of the Florida Public Service Commission in the above docket with regard to developing a unified intercarrier compensation regime.

Greg Fogleman at (850) 413-6574 is the primary contact on these comments.

Sincerely,

/s/

David E. Smith  
Attorney Supervisor

DES:tf

cc: Brad Ramsay, NARUC

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

In the Matter of )  
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Developing a Unified Intercarrier Compensation ) CC Docket No. 01-92  
Regime )  
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**MOTION TO ACCEPT LATE-FILED COMMENTS  
BY THE FLORIDA PUBLIC SERVICE COMMISSION**

On March 3, 2005, the Common Carrier Bureau of the Federal Communications Commission issued a Further Notice of Proposed Rulemaking. The Further Notice of Proposed Rulemaking seeks comment on intercarrier compensation reform, including regarding the legal and economic bases on the seven reform proposals submitted by industry groups, and whether and how each reform proposal would affect network interconnection, end-users, and universal service, and preemption of state jurisdiction over intrastate access charges among other issues.

On July 19, 2005, the Florida Public Service Commission approved for filing Reply Comments in CC Docket No. 01-92. These Reply Comments, however, were not filed by the July 20, deadline due to a staff family medical emergency. We are therefore filing these Reply Comments one day out of time, and request approval of a motion to accept the late-filed comments. In the alternative, please treat these Reply Comments as *ex parte*.

Respectfully submitted,  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

/ s /

David E. Smith  
Attorney Supervisor

Dated: July 21, 2005

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

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation	)	CC Docket No. 01-92
Regime	)	
	)	

**REPLY COMMENTS OF THE  
FLORIDA PUBLIC SERVICE COMMISSION  
IN RESPONSE TO THE FEDERAL COMMUNICATIONS COMMISSION'S  
FURTHER NOTICE OF PROPOSED RULEMAKING**

CHAIRMAN BRAULIO L. BAEZ

COMMISSIONER J. TERRY DEASON

COMMISSIONER RUDOLPH "RUDY" BRADLEY

COMMISSIONER LISA POLAK EDGAR

July 20, 2005

### **Summary and Introduction**

The Florida Public Service Commission (FPSC) submits these reply comments in response to the Further Notice of Proposed Rulemaking (Notice) released on March 3, 2005. In this Notice (FCC 05-33), the Federal Communications Commission (FCC) seeks comment on the development of a unified intercarrier compensation regime. The record before the FCC includes numerous proposals by industry and others, and the FCC has asked for comments relating to these proposals. Proposals range from extremely comprehensive and detailed to simply suggesting a framework for further consideration or rulemaking. The FCC has also requested general comments on implementation issues and alternative reform proposals.

Due to limited information on the consequences of the various proposals, the FPSC does not endorse any proposal in its entirety at this time. The FPSC urges the FCC to focus on the goal of competitive and technological neutrality. Reform that does not accommodate and facilitate market and technology changes will be short-lived.

The FPSC's reply comments identify several guiding principles for the FCC to consider in evaluating intercarrier compensation reform proposals. Universal service support should be preserved, but only to achieve the goals of the Telecommunications Act, as required by Section 254(b)(5). The FPSC opposes the use of universal service funding as the sole or primary source of any replacement revenues. The proposal by the NARUC Task Force on Intercarrier Compensation to establish a high-cost and low-income "floor" is inconsistent with this principle and Section 254(b)(5).

While the FPSC is sympathetic to the principle noted by NASUCA and the Ohio Public Utilities Commission that access charge reform should not assume revenue neutrality, implementation of such a principle would be impractical, at least at the outset. Evaluating the use of rate benchmarks to focus funding in areas that have higher-than-average local rates and a need for replacement revenues is merited.

### **Goals of Intercarrier Compensation Reform**

The current intercarrier compensation regime requires thoughtful and timely reform. While the FPSC generally agrees with the goals enumerated in the Notice,<sup>1</sup> we note that certain goals are

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<sup>1</sup> Further Notice of Proposed Rulemaking, FCC, CC Docket No. 01-92, FCC 05-33, Released March 3, 2005, ¶ 31-35. The FCC concludes that the goals include: promote facilities-based competition; encourage the efficient use of, and investment in, telecom networks; promote increased competition; preservation of universal service; and competitive neutrality.

more important than others. We agree that any new intercarrier compensation approach should be, to the extent possible, both competitively and technologically neutral. A new approach that remedies many of the existing arbitrage situations would likely be short-lived if the approach skewed the competitive balance between providers or technologies, or could not accommodate technological change.

The FPSC has endorsed policies that will promote facilities-based competition. Accordingly, we readily agree that a goal of intercarrier compensation reform should be to “. . . encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition.”<sup>2</sup> Aspects of the current compensation regime have resulted in scenarios where providers made decisions as to entry and facilities deployment based on arbitrage opportunities, rather than sound long-term business plans. Meaningful intercarrier compensation reform should not perpetuate such aberrations, but instead should stimulate economically efficient investment in telecommunications infrastructure.

Equally important is the preservation of universal service, as mandated by Section 254 of the 1996 Telecommunications Act. The Notice acknowledges that intercarrier compensation and universal service are intrinsically related. Any proposal to reform intercarrier compensation that results in substantial decreases in intercarrier payments may have adverse impacts on universal service that must also be addressed. It is critical for the universal service portion of the reform equation to balance the principle in Section 254(b)(3) (to ensure that consumers throughout the country have access to telecommunications and information services reasonably comparable to those available in urban areas, at rates that are reasonably comparable to those charged in urban areas) with the direction in Section 254(b)(5) (that universal service support should only be sufficient to achieve the Act’s statutory goals). Automatically increasing federal high-cost universal service funding to offset reductions in intercarrier compensation may not be the optimal solution.

### **Principles**

The Notice solicited comments on principles filed by the National Association of Regulatory Utility Commissioners (NARUC), the National Association of State Utility Consumer Advocates (NASUCA), and a wireless industry association. The FPSC has developed a set of core principles to promote a competitive business environment, fair treatment between and among providers, platforms,

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<sup>2</sup> Further Notice of Proposed Rulemaking, FCC, CC Docket No. 01-92, FCC 05-33, Released March 3, 2005, ¶ 31.

and jurisdictions, and provide for consumer safeguards. The FPSC proffers these core principles for consideration for intercarrier compensation reform:

- **Competitive Neutrality**
  - Revenue neutrality may not be necessary in the long-term, but is likely needed during a transition period.
  - In a competitive market, it is questionable that an entitlement can, or should, be preserved.
- **Universal Service**
  - The Universal Service Fund (USF) should not be increased absent a showing of compelling need.
  - Universal service support should only be maintained to achieve the goals of the Act, as required by Section 254(b)(5).
  - Changes in the collections for universal service should minimize the regulatory costs and complexities associated with audits.
- **Avoid Rate Shock**
  - Prescribed changes should avoid sudden and dramatic impacts on wholesale and retail rates. A phased-in approach may ameliorate some concerns.
- **Federal-State Cooperation**
  - Given the lack of consensus, it may be appropriate for the FCC to refer certain issues to the Universal Service and Separations Joint Boards.
- **No Obligation**
  - The FCC is not obligated to adopt any given proposal in its entirety.

#### **Recovery of Intercarrier Compensation Revenues Foregone**

The FPSC notes that most of the reform proposals presented to date assume revenue neutrality – that any decrease in revenues generated from intercarrier compensation will be offset by increases in revenues generated from end user charges (e.g., subscriber line charges (SLCs), local rates), universal service funding, or a combination of the two. However, some parties (such as NASUCA and the Ohio Public Utilities Commission) appear to advocate that the availability of replacement revenue sources to offset foregone intercarrier compensation revenues should not be automatically assumed, but instead a carrier should be required to establish a need for such replacement funds. While we are

sympathetic to this point of view, the FPSC believes its implementation would be impractical. Such need determinations would be akin to rate cases, which can be time-consuming, labor-intensive, and highly litigious.

The FPSC concurs with the New York DPS that universal service funding should not be the sole or primary source of any replacement revenues.<sup>3</sup> If there are to be revenue shifts from carriers to other sources, it is appropriate for incumbent LECs to look first to their own customers to recoup foregone revenues. We submit two points in support of this view. First, it is likely that local rates in some states may have been held below what the market could bear, as well as nationwide average levels. Where this has occurred, modest increases in local and associated rates should be viable without jeopardizing subscribership. Second, absorbing increases in end user charges leaves open the possibility that over time, if truly rivalrous competition develops, any above normal profits implicit in such rates will be eroded. Decreases in the federal universal service fund will be highly unlikely if revenue recovery is shifted into the universal service program. We note that it is arguable whether the current universal service contribution mechanism is competitively neutral.

We agree that it may not be possible for all LECs to absorb foregone intercarrier compensation revenues through increases in end user charges (whether SLCs or intrastate rates) and preserve universal service goals without resorting to explicit universal service funding. To determine where such universal service funding is required, the FPSC agrees with the comments of the Missouri PSC that there is merit to employing a rate benchmark.<sup>4</sup> Such a rate benchmark would provide a reasonable tool to recognize that some states have progressed more quickly than others in lowering intrastate access rates and increasing cost recovery from end-user rates. If the federal universal service fund were expanded without some consideration for those states which have rebalanced rates, there would be an issue of equity among the states. States that had progressed further with rate rebalancing would be penalized, and states that had not would be improperly compensated, unless some mechanism is implemented to take these differences into account. The FPSC notes that the Expanded Portland Group (EPG) proposal included a benchmark of \$21.07 per line.<sup>5</sup> While we take no position on the specific benchmark amount, we agree that the notion of an affordability or rate comparability threshold is worthy of further investigation.

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<sup>3</sup> Comments of the State of New York Department of Public Service, CC Docket No. 01-92, May 20, 2005, page 6.

<sup>4</sup> Comments of the Public Service Commission of the State of Missouri, CC Docket No. 01-92, May 23, 2005, page 33.

### **Universal Service**

Several of the proposals seek to re-allocate carrier revenues from intercarrier compensation to the federal universal service programs. Recognizing the strain already imposed by current commitments, these same proposals also seek to change the assessment base relating to how universal service funds are collected in order to support an even larger federal universal service fund. The FPSC objects to modifications to universal service cost recovery mechanisms made solely to support an increased fund. To the extent that changes in universal service collection mechanisms should be made, the goals should be to develop a more equitable method of collecting support and to minimize regulatory costs and the complexities associated with audits. We question whether this proceeding is the appropriate venue for conducting a major overhaul of universal service mechanisms.

The FPSC also notes that the NARUC Task Force on Intercarrier Compensation proposal seeks to establish a “floor” equal to the funds collected in 2004 for high-cost and low-income funding received by a state. Such an approach precludes the possibility of future decreases in funding, regardless of any changes in need within a state or nationally. This approach likely conflicts with Section 254(b)(5)'s requirement that universal service support should only be sufficient to achieve the goals of the Act. Creating a funding floor for Lifeline and Link-up programs is a significant issue that should be debated separate from intercarrier compensation. It is the position of the FPSC that it would be inappropriate to establish a “floor” at this time.

### **Conclusion**

The FPSC does not endorse any comprehensive proposal in its entirety at this time. While we agree in general with the goals the FCC has itself identified, we believe that certain goals are of higher priority than others. The FPSC believes that universal service funding should not be the sole or primary source of replacement revenues. To the extent that universal service support is required as a source of replacement revenues, the FPSC believes that a rate benchmark, such as proposed by EPG, is worthy of further consideration. The FPSC also disagrees with the expansive scope of some of the proposals that address universal service assessments. Finally, the FPSC opposes the aspect of the NARUC intercarrier compensation task force proposal that urges the establishment of a “floor” for both high-cost and low-income program disbursements based on 2004 distributions. The FPSC

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<sup>5</sup> The Expanded Portland Group's (EPG's) Comprehensive Plan for Intercarrier Compensation Reform, attached to Letter from Glenn H. Brown, EPG Facilitator, filed in CC Docket 01-92, November 2, 2004, page 24.



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believes that such a “floor” is inconsistent with Section 254(b)(5)'s requirement that universal service support should only be sufficient to achieve the goals of the Act.

The FPSC appreciates the opportunity to provide comments and looks forward to continued participation in the intercarrier compensation reform efforts.

Respectfully submitted,

CHAIRMAN BRAULIO L. BAEZ

COMMISSIONER J. TERRY DEASON

COMMISSIONER RUDOLPH “RUDY” BRADLEY

COMMISSIONER LISA POLAK EDGAR

Dated: July 20, 2005