Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

INITIAL COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

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I. SUMMARY OF POSITION

The Illinois Commerce Commission ("ICC") submits its Initial Comments pursuant to the Commission's Notice of Proposed Rulemaking[1] released on April 27, 2001, in the above-captioned proceeding. The ICC supports the Commission's goal to move to a unified intercarrier compensation regime. In order to accomplish this goal, the ICC, respectfully requests that the Commission adopt any new regime on a comprehensive basis, including wireless traffic; issue a more detailed proposal to allow parties to more extensively evaluate the proposal's impact; continue to regulate transport rates and maintain existing transiting rules under any new regime; evaluate changes to the existing calling party's network pays ("CPNP") regime if it is maintained as the unified regime; and maintain total element long-run incremental cost ("TELRIC") as the appropriate pricing methodology for local transport and termination.

II. BACKGROUND

On April 27 2001, the Commission released its NPRM in the above-captioned proceeding, wherein the Commission proposes to initiate a fundamental re-evaluation of all currently regulated forms of inter-carrier compensation. There are currently two general intercarrier compensation regimes: (1) access charges for long-distance traffic, and (2) reciprocal compensation. The Commission seeks to establish a unified approach to intercarrier compensation that would apply to interconnection arrangements between all types of carriers interconnecting with the local telephone network and to all types of traffic passing over the local telephone network. In so doing, the Commission seeks to

[1] *In the Matter of Developing a Unified Inter-carrier Compensation Regime,* CC Docket No. 01-92, Notice of Proposed Rulemaking, 66 Fed. Reg. 28410 (Apr. 27, 2001)("NPRM").

encourage efficient use of, and investment in, telecommunications networks and the efficient development of competition.

III. DISCUSSION

A. THE COMMISSION SHOULD ADOPT ANY NEW BILL-AND-KEEP REGIME ON A COMPREHENSIVE BASIS.

The Commission seeks comment on the implications of adopting bill-and-keep for ISP-bound traffic in the absence of a unified bill and keep regime for other, non-ISP-bound traffic. NPRM at ¶66. It appears that it is the Commission's goal, however, to create a *unified* intercarrier compensation regime in this proceeding. The Commission expresses its dissatisfaction with the current patchwork of intercarrier compensation regulations as follows:

> [R]egulations treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services. The interconnection regime that applies in a particular case depends on such factors as: whether the interconnecting party is a local carrier, an interexchange carrier, a CMRS carrier or an enhanced service provider; and whether the service is classified as local or long-distance, interstate or intrastate, or basic or enhanced.

NPRM at 5.

The ICC concurs that it would be good public policy to adopt a comprehensive intercarrier compensation regime. It is discriminatory to differentiate compensation methodologies based upon the type of services being provided without making determinations about the cost of service. Additionally, separating ISP-bound traffic from other types of traffic has been proven a difficult exercise. The Commission itself acknowledged this fact by adopting a rebuttable presumption that traffic exchanged between local exchange carriers ("LECs") that exceeds a 3:1 ratio of terminating to

originating traffic is ISP-bound traffic.[2] The ICC, therefore, supports the Commission's goal to move to a unified intercarrier compensation regime and discourages the Commission to implement a bill and keep regime for ISP-bound traffic only.

B. ANY COMPREHENSIVE BILL-AND-KEEP REGIME SHOULD INCLUDE WIRELESS TRAFFIC.

The Commission seeks comment on whether a bill-and-keep regime should be applied to situations where a LEC interconnects with a commercial mobile radio service ("CMRS") provider. NPRM at ¶92. The Commission also seeks input on the potential effects of a unified bill-and-keep regime on LEC-CMRS interconnection. *Id.*

There are several strong policy arguments to adopt a bill-and-keep regime for the exchange of traffic between a wireline and a wireless carrier. Growth in wireless traffic continues to outpace any other type of traffic, and anecdotal evidence suggests that some consumers in some markets may consider wireless service to be a reasonable substitute for wireline service. Bill-and-keep for LEC-CMRS interconnection has at least the potential to further this positive development. Under a bill-and-keep regime, wireless carriers would no longer be required to make reciprocal compensation payments for the transport of terminating traffic to the LEC.

At the same time, however, under a COBAK[3] regime the wireless carrier would be responsible for carrying its terminating traffic to the terminating carrier's end office. To the extent that wireless carriers currently have only one mobile switching center

[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound traffic, CC Docket Nos. 96-98, 99-68, *Order on Remand and Report and Order*, FCC 01-131 (rel. Apr. 27, 2001) ("ISP Intercarrier Compensation Order").
[3] The Commission discusses in detail a white paper by Mr. Patrick DeGraba that details a possible bill-and-keep approach. *See*, Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime* (Federal Communications Commission, OPP Working Paper No. 33)(2000)("COBAK").

("MSC") per Major Trading Area ("MTA"), and possibly only one point of interconnection at a LEC's tandem office, bill-and-keep could result in additional transport costs for wireless carriers if they are required to deliver their terminating traffic to every terminating end office. However, this will only have a negative financial impact on the wireless carriers if the additional transport costs exceed the current TELRIC-based transport rates that the wireless carrier would avoid under a bill-and-keep regime. Nevertheless, considering the importance transport will have in a bill-and-keep environment, the ICC respectfully requests that the Commission maintain its requirement that interoffice transmission facilities be provided as unbundled network elements ("UNEs").[4] As described below, transport services are likely to experience some facilities-based competitive entry over time, thus reducing the need for regulated rates in the long term.

In the event the Commission decides to leave the current CPNP regime for LEC-CMRS interconnection in place, the rebuttable symmetry rule should be maintained. There are several indications that the cost of local transport and termination in a wireless network is significantly higher than local transport and termination for an ILEC, which determines the reciprocal compensation rate. Under the rebuttable symmetry rule, the wireless carrier can show that its transport and termination costs are substantially higher than that of the ILEC. It is questionable, however, that a carrier-by-carrier cost study investigation for all wireless carriers is very cost-effective. While the ICC continues to favor carrier-by-carrier investigations, especially when it comes to determining the need for universal service support, the ICC encourages the Commission to consider the

[4] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket

possibility of allowing states to conduct a single cost study of one CMRS provider, or a small number of carriers, with the resulting cost-based transport and termination rates being applied to all CMRS carriers in the relevant geographic area, while the determination of an appropriate geographic area should be left to the states.

C. THE COMMISSION SHOULD ISSUE A MORE DETAILED BILL-AND-KEEP PROPOSAL TO ALLOW PARTIES TO THOROUGHLY EVALUATE ITS IMPACT.

The ICC recommends the Commission issue a more detailed bill and keep proposal. The ICC believes the Commission is more likely to get a well-developed record if it decides to propose, and invite comments on, one specific rule. Without fully laying out the necessary specifics of a bill-and-keep system, the current NPRM makes reference to two distinct white papers[5] and acknowledges "the two papers differ significantly in their details."[6] The discussions in the white papers omit several important details that any new intercarrier compensation scheme should encompass. Three examples are discussed, in turn, below.

1. Point of Interconnection

Both papers are silent on any accompanying rules regarding points of interconnection. Currently, under the CPNP regime, interconnecting carriers are obligated to provide one point of interconnection ("POI") per LATA. It appears to be appropriate to require a similar rule under a bill and keep regime. The ICC does not take

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No. 96-98, *First Report and Order*, at ¶439 (rel. Aug. 8, 1996)("Local Competition Order").

[5] *See*, NPRM at 7, 13 (citing Patrick DeGraba, *Bill and Keep at the Central Office as the Efficient Interconnection Regime* at 1 ¶ 2 n.3 (Federal Communications Commission, OPP Working Paper No. 33)(2000)("COBAK"); Jay M. Atkinson & Christopher C. Barnekov, *A Competitively Neutral Approach to Network Interconnection* at 13-15 ¶ 33-38 (Federal Communications Commission, OPP Working Paper No. 34)(2000)("BASICS")).

a position on whether it is appropriate to have a single or multiple POIs within a single LATA because this issue is pending before the ICC in ICC Docket No. 99-0511. The ICC would have given more emphasis to the single POI issue absent this ongoing state rulemaking. However, the ICC would like to point out that absent a requirement for carriers to have one POI per LATA (or a similar geographic area), a carrier could have just one customer (i.e., an ISP) in one location and require all interconnecting carriers to deliver their originating traffic to that single point of interconnection. While the issue of how carriers compensate each other when there is one POI *within* one LATA is currently being contested before the ICC and other states[7], the issue of compensation would likely become more contested if the "one POI per LATA" rule, or a similar rule, does not accompany a new bill-and-keep regime.

2. Transport Costs

Another key difference between the two proposals is the treatment of transport costs. The COBAK proposal assigns the transport responsibilities to the calling party's carrier. On the other hand, the BASICS proposal splits the incremental transport cost of interconnection between the two interconnecting carriers. The BASICS proposal, however, does not make a recommendation as to how to identify the incremental cost to interconnection. The treatment of transport costs is one of the most important areas in any type of intercarrier compensation regime. The ICC, therefore, urges the Commission

[6] NPRM at ¶22.
[7] *See*, NPRM at ¶112 (recognizing the current debate over the single POI issue by stating that "carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI").

to propose a more detailed approach to setting transport responsibilities and cost allocations.

3. Definition of a Central Office

The ICC specifically urges the Commission to provide a more detailed proposal regarding the definition of a central office. The COBAK proposal uses the central office as the point in the network where the originating carrier's responsibilities end and the terminating carrier's responsibilities begin. On the other hand, the BASICS proposal is less clear on what constitutes the termination part of the network. While the ICC would prefer a more definitive proposal regarding the definition of a central office, the ICC will, nevertheless, comment on three of the approaches to defining a central office that are contained in the COBAK proposal.

Under one of COBAK's suggested approaches, a central office would be defined as a node that interconnects and exchanges traffic with other equivalent nodes. The ICC agrees that, under such a definition, remote terminals would not be considered central offices because remote terminals do not exchange traffic with other remote terminals. The ICC favors this approach as the most workable of the three suggested in the COBAK proposal.

A second approach would be to define the central office "as the node at which loops: (1) are aggregated, and (2) gain access to the transport network." As Mr. DeGraba acknowledges, such an approach would transfer the debate over the definition of central offices to a debate over the definition of transport facilities. The ICC also points out that

the Commission is evaluating a possible expansion of the current definition of transport.[8] In the Advanced Services FNPRM, the Commission is considering whether to include the fiber feeder portion between a digital loop carrier ("DLC") and the central office in its definition of shared transport. The ICC does not recommend that the Commission follow this approach because the approach would only shift the debate from the definition of central offices to the definition of transport facilities.

Finally, pursuant to a third approach discussed in the COBAK proposal, a central office would be defined as a node at which other networks can interconnect. Such a definition, however, is not well suited for the intended purpose. Section 51.305 (a)(2) of the Commission's rules requires interconnection "at any technically feasible point within the incumbent LEC's network."[9] This definition would include remote terminals because they are a possible point of technically feasible interconnection. As a result, if this approach were adopted, carriers could argue that the described node is anywhere in their network, depending on the specific circumstances. Accordingly, the ICC does not recommend that the Commission adopt this approach.

D. THE COMMISSION SHOULD REGULATE TRANSPORT RATES UNDER A BILL-AND-KEEP REGIME.

Under a bill-and-keep regime, a carrier without transport facilities must lease facilities from either the incumbent or a third party because the calling party's carrier is responsible for transporting calls to the called party's central office. It is likely that, in many areas, the incumbent carrier is the only provider of transport. Thus, regulation of

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[8] *Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98* ("Advanced Services Docket").
[9] 47 C.F.R. §51.305(a)(2).

transport rates is warranted; and the ICC recommends that the Commission continue such an approach.

The ICC points out, however, that over time the transport market may become more competitive with different carriers providing transport services. When competition truly develops, the Commission may be able to employ a more deregulatory approach to transport services.

E. THE COMMISSION SHOULD NOT ALTER ITS EXISTING TRANSITING RULES UNDER A BILL-AND-KEEP REGIME.

The Commission requests comments on what impact a bill-and-keep regime will have on the transport obligation of interconnected LECs when three carriers are involved in a call. NPRM at ¶71. In particular, the Commission seeks comment on whether LECs should continue charging each other for delivering transiting traffic that originates on the networks of other carriers. *Id.* The Commission also seeks comment on any other issues that the current intercarrier compensation rules present for three-carrier calls. *Id.*

1. Carriers Should Continue Charging for the Delivery of Transiting Traffic

In raising this issue, the Commission notes that Qwest argues that "a bill-and-keep arrangement does not work when three carriers are involved in the transport and termination of traffic because the middle carrier that transports the traffic from one LEC to the other does not really have a 'customer' involved in the call from which it can recover costs." NPRM at ¶71 (citing Qwest *ex parte* in CC Docket No. 99-68, Appendix B, at ii (filed Nov. 22, 2000)). As a result, Qwest urges the Commission to continue allowing LECs to charge each other for transiting traffic that originates on the networks

of other carriers. *Id.*

Under a bill-and-keep regime as described in the COBAK proposal, the scenario outlined by Qwest is not problematic. As explained by Mr. DeGraba, transiting is a form of transport that should fall within the responsibility of the calling party's carrier. In particular, Mr. DeGraba identifies the following as a rule under the COBAK proposal: the calling party's network is responsible for the costs of transporting the call to the called party's central office. NPRM at ¶23. Mr. DeGraba further explains that this rule means "that the calling party's network must either construct transport facilities to the called party's central office, or purchase transport facilities or services from another carrier including possibly the called party's network." *Id.* In other words, since the calling party's carrier is responsible for transporting the call to the called party's central office, any transiting (i.e., transport) costs imposed on a third carrier's network would be recovered from the calling party's carrier. Thus, Qwest's concern is adequately addressed by the COBAK proposal by requiring the calling party's carrier to compensate any middle carrier that transports the traffic from one LEC to the other.

2. Carriers' Charges for Transiting Traffic Should Remain Cost-Based

The ICC believes that transiting, similar to transport, is likely to become more competitive than other areas of the exchange market, such as the local loop. Once sufficient competition develops, it may be appropriate for the Commission to allow market-based rates. Similar to our recommendation regarding transport, however, until sufficient market forces are able to drive down prices closer to cost, it is appropriate to set ILECs' transiting services at cost based rates.

F. THE COMMISSION SHOULD EVALUATE POSSIBLE MODIFICATIONS TO THE CURRENT CPNP REGIME IF IT IS MAINTAINED AS THE UNIFIED REGIME.

The Commission seeks comment on whether the existing Calling Party's Network Pays (CPNP) interconnection regime can be efficient in the event the Commission decides not to adopt a bill-and-keep approach. NPRM at ¶98. The fact that the current CPNP regime relies heavily on the ILECs' existing network infrastructure makes certain changes to the CPNP regime almost inevitable. For example, it is unclear whether or not the central office and tandem rates for local termination will have any meaning in the future as networks evolve. The same difficulties exist in a bill-and-keep regime and need to be resolved regardless of which intercarrier compensation method the Commission implements. As discussed above, the definition of a central office and/or tandem switch might not be straightforward during times of changing network designs. Also, the "single POI per LATA" rule, or a similar rule, is a major component in any type of intercarrier compensation scheme and should be evaluated even in the absence of the Commission's adoption of a new bill-and-keep regime.[10]

G. TELRIC IS THE APPROPRIATE PRICING METHODOLOGY FOR LOCAL TRANSPORT AND TERMINATION.

The Commission seeks comment on whether total element long run incremental cost ("TELRIC") is the appropriate cost standard for transport and termination pursuant to section 252(d)(2) of the Telecommunications Act of 1996. NPRM at ¶101. The ICC does not agree with the ILECs' current interpretation that "unlike TELRIC, the

[10] As discussed *supra*, while the ICC views this as an important issue, the ICC does not take a position on whether it is appropriate to have a single or multiple POIs within a single LATA because the issue is

'additional costs' statutory standard for calculating reciprocal compensation is a pure incremental cost standard that requires a short-run marginal cost analysis."[11] The positions certain ILECs have taken since the passage of the 1996 Act on pricing for local transport and termination appear to be inconsistent. Soon after the Act's passage, Bell South argued that "the recovery of transport and termination costs should include joint and common costs."[12] USTA went even further to argue that "rates should be based on existing prices (i.e. access charges) because this would not require small and mid-sized incumbent LECs to conduct cost studies."[13] In other words, five years ago ILECs were lobbying for relatively high transport and termination rates.

Today, on the other hand, the ILECs are asking for a relatively low rate level for the same services. The motivation for the ILECs' change in position seems clear. While the ILECs were anticipating *receiving* more traffic from other carriers than the ILECs would *deliver to* other carriers, the ILECs are now faced with the opposite scenario. In other words, the ILECs are delivering a significantly greater amount of traffic to other carriers than the ILECs are receiving from those carriers.

The ICC urges the Commission to maintain the current pricing methodology for local transport and termination, namely TELRIC, regardless of current traffic flows.[14] The Commission's initial reasons for basing transport and termination on TELRIC remain valid. Declining to adopt the same cost standard for transport and termination, and unbundled network elements ("UNEs") may have distorting effects. The distorting

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currently pending before the ICC.
[11] *See*, *Id.* (citing Joint ILEC *ex parte* in CC Docket No. 99-68 at 12 n.33 (filed Nov. 3, 2000)).
[12] Local Competition Order at ¶ 1048 (citing Bell South comments at 70-72).
[13] Id. at ¶ 1048 (citing USTA comments at 70-72).
[14] Notably, the ICC advanced the same position following the 1996 Act's passage. *See*, Id. at ¶ 1049 (citing ICC comments at 76-77).

effects could arise because there appears to be some substitutability between UNEs and transport and termination services. Two different pricing standards for substitutable services can lead to the inefficient use of resources. In light of the fact that TELRIC has been chosen as the pricing methodology for UNEs and interconnection services, the Commission should continue to apply the same standard to local transport and termination.

IV. CONCLUSION

WHEREFORE, for each and all of the foregoing reasons, the Illinois Commerce Commission respectfully requests that the Commission adopt any new regime on a comprehensive basis, including wireless traffic; issue a more detailed proposal to allow parties to more extensively evaluate the proposal's impact; continue to regulate transport rates and maintain existing transiting rules under any new regime; evaluate changes to the existing calling party's network pays regime if it is maintained as the unified regime; and maintain total element long-run incremental cost as the appropriate pricing methodology for local transport and termination; and for any and all other appropriate relief.

August 21, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing Motion to File *Instanter* and Comments of the Illinois Commerce Commission to be served upon all known parties of record by mailing, by first-class mail, postage prepaid, a copy thereof properly addressed to each party.

Dated at Chicago, Illinois, this 21st day of August, 2001.

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