

RICA REPORT

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RICA Report is published semi-monthly by RICA, exclusively for RICA's CLEC members. With 80+ carrier members, RICA is the premier trade association representing the independent rural competitive local exchange carrier industry. *RICA Report* concisely captures regulatory and legal news, commentary, and insight relevant to rural CLECs.

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“SIGN ON” DATE FOR INTERCARRIER COMPENSATION “NEW PLAN” EXTENDED TO APRIL 21ST

(Note, due to the complexity and urgency of the Intercarrier Compensation debate, most of this issue of RICA Report will be devoted to the proposal described below)

The NARUC Task Force which has been working with industry groups to develop consensus on revisions to intercarrier compensation rules has extended the “sign on” date for the “New Plan” to April 21st (see RICA Report, March 10, 2006). Sometime after that date, the NARUC Task Force plans to forward the plan to the FCC for its consideration. The following is a more complete description of the New Plan. (This summary of the very complex Plan omits many of multiple exceptions and caveats to the general rules described below in order to help the reader to grasp the overall structure. RICA members with particular questions as to applicability are encouraged to call the editor.)

Classification of Carriers

Carriers are allocated among Tracks 1, 2 and 3 for determination of intercarrier compensation rules. The tracks are based upon large, price cap ILECs; mid-sized ILECs, and rural ILECs, respectively, with some minor adjustments. All CLECs and wireless carriers are subject to the Track 1 rules, regardless of size.

Uniform and Unified Rates

Track 1: Originating and terminating rates are unified (i.e. same rate applies to inter- and intrastate access and reciprocal compensation) although under different transition times. Originating rates are optional. Switching will be \$.0005 per minute. Tandem switching will be \$.0018 per minute.

Subscriber Line Charge Cap transitions over 4 years to \$10.00

Track 2: Also unify originating and terminating rates. Transport rate variable for different carrier sizes and incentive elections at either \$.0097, \$.0018 or \$.00105 for originating; \$.0105, \$.0097 or \$.0075 for terminating. End office switching will be \$.0005, as will ISP-bound rate for traffic over the 3:1 ratio.

Residential and Single Line Business Subscriber Line Charge Cap increases \$.75 per year for three years. Business SLC capped at \$10.00

Track 3: Originating access retained. Intrastate access transitions to interstate rate. Reciprocal compensation will be at the contract rate, but if no contract or interstate access rate is lower, then at interstate access rate. ISP bound traffic over the 3:1 ratio at \$.0005. EAS contracts remain in place, but any Bill and Keep agreements must be offered to CLECs and CMRS carriers.

Residential and Single Line Business SLCs same as Track 2, but no change in Business cap. May be link between SLC and local rate benchmark. New SLC includes both some traffic sensitive and common line costs.

Transiting Charges

All tracks offering transiting service charge \$.0025 per minute, indexed for inflation, but may be uncapped after three years. Transiting charge does not apply to originating Track 3 local calling or for traffic to CMRS and CLECs.

Revenue Restructure Mechanism (f/k/a Access Recovery Mechanism—ARM)

A mechanism for replacement of access revenues no longer received because of rate reductions required by the Plan. The small and midsize companies believe it should be considered an access rate under Section 201 of the Act, the Track 1 companies see it as a Section 254 Universal Service Mechanism.

Revenue Restructure Mechanism (continued)

The amount of access replacement in a given year is determined by adding base year inter- and intrastate revenues to net reciprocal compensation and subtracting from that sum, the sum of current year access and reciprocal compensation revenues, traffic sensitive SLC revenue and local switching support revenue.

CLEC/CMRS Participation in Revenue Restructure Mechanism

The Plan has alternative proposals for application of the Revenue Restructure Mechanism to non-ILECs.

Alternative 1, supported by Track 1 carriers would, consistent with their view that the RRM is to be governed by the Section 254 Universal Service requirements, limit the mechanism to Eligible Telecommunications Carriers. They would also continue the "portability" rule so that CETCs (CLEC and CMRS) would receive only the same amount as the ILEC in Track 1 areas. In Track 2 and 3 areas, only CETCs that lost switched access revenues because of the rule changes in the Plan, would be eligible for RRM, which would be in the same amount as the ILEC.

Alternative 2, supported by the Rural Alliance, would make RRM support available to all CLECs that lost revenue as a result of rate reductions under the Plan. Support would be based on the amount of revenue lost. There would be a requirement to certify use of the funds.

Interconnection Rules

Access applies to 1+, 0+ or 10XXX traffic, except for 8YY calls to the same local calling area. Wireline to CMRS traffic will be access when the call is toll for retail purposes, is between different rates centers in the same MTA and the IXC has a retail relationship with the calling party, or the call is to a rate center in a different MTA. All other traffic is considered subject to reciprocal compensation under Section 251(b)(5) of the Act. A proposal to base jurisdiction on the NXXs of the calling and called numbers has not been fully resolved.

Interconnection occurs at "Edges" which are defined as "an end office switch or equivalent facility that performs the termination function for traffic received from other carriers." All carriers must designate at least one edge in a LATA. Carriers must permit direct interconnection by other carriers with the financial obligation to interconnect. That carrier can chose between direct or indirect interconnection.

The FCC's T-Mobile process allowing requesting carriers to obtain interim reciprocal compensation arrangements and a Section 252 interconnection agreement is applied to all types of carriers, i.e. CMRS, CLEC, and ILECs (including those with a rural exemption).

For traffic originating on its network, each carrier must bear the costs of transport and termination to the terminating carrier's edge. Transport charges are flat rated or usage sensitive depending on several factors. Termination is the acceptance of traffic by the carrier responsible for the NPA-NXX or LRN. Termination charges are intended to cover the cost of the traffic sensitive components of the end office switch.

Interconnection Rules (continued)

Reciprocal compensation charges generally apply to non-access traffic with certain exceptions, such as existing EAS arrangements. CLEC reciprocal compensation rates are capped at the rate of the ILEC in whose serving area the called number is located.

The foregoing summary of the interconnection provisions in the Plan excludes many details contained in 22 single spaced pages.

Phantom Traffic Solution

In addition to the rule changes described above, three additional immediate measures are proposed: (1) requirement (and penalties for non-compliance) that all carriers must pass accurate signaling information; (2) tandem transit rules; and (3) uniform process for the creation and exchange of call detail records.

Contribution Methodology

The Plan proposes (1) broadening the base of carriers required to contribute; (2) making the base more stable by pegging obligations to factors expected to be relatively stable over time; and (3) ensuring that the contribution mechanism is technologically and competitively neutral.

Special Provisions

An optional incentive regulation one-way option will be available to rate of return regulated carriers.

The High Cost Loop Fund will be re-indexed to actual current cost over a 24 month transition, then recapped subject to the rural growth factor. The support percentages differential based on number of loops will be eliminated.

Where a CRTC acquires non-CRTC exchanges after July 1, 2007, the acquired exchanges will not have CRTC status, but the carrier will otherwise remain a CRTC. If a CRTC acquires CRTC property, the combination must continue to meet CRTC criteria.

There will be some improvement in the Safety Valve mechanism.

Implications for RICA Members

The Plan presents two areas of serious concern which flow directly from applying the same rules to BOCs and rural CLECs:

1. Revenue loss as a result of access rate reductions
2. Increased financial obligation to carry traffic outside service area

Revenue Loss

Because most rural CLECs today have access rates that exceed the BOCs in both jurisdictions, and many have much higher intrastate access rates than interstate, moving to

Revenue Loss (continued)

unified (inter- and intrastate rates at same level) and uniform rates (all carriers have same rates) will mean a substantial loss of intercarrier revenue. Some of that loss might be offset by the Revenue Restructure Mechanism, however if the BOC favored alternative RRM is chosen, rural CLECs will get only as much as the BOCs, which may be only a small proportion of their loss. At the same time, the BOCs will be kept whole and so obtain a competitive advantage. Even if Alternative 2 is chosen providing support for the full amount of the loss, the result will be to shift a large percentage of current intercarrier revenue to a mechanism which may have the same political liabilities as the USF and will be attacked as being a USF in disguise, which must be made subject to the USF rules, including limiting it to ETCs.

Increased Financial Obligations

Rural CLECs, considered as Track 1 carriers, will be financially obligated to deliver traffic originating on their system to the end office of the called party. How this additional cost could be recovered is not clear, but it would certainly be a substantial change. Rural ILECs affiliated with RICA member rural CLECs will not face this obligation.

Necessary Changes

The plan contains many provisions designed to protect the revenue streams of rural ILECs. Whether those provisions are satisfactory is certainly open to debate, but they are clearly better than the provisions for rural CLECs. RICA has maintained throughout the discussions in the NARUC Task Force that its members most closely resemble rural ILECs and least closely resemble BOCs so that rules should treat RICA members most like rural ILECs. RICA expects to maintain this position in the forthcoming proceeding at the FCC.

COURT FINDS STATE COMMISSION MAY REQUIRE PAYMENT OF INTRASTATE ACCESS FOR ISP-BOUND TRAFFIC SENT TO VIRTUAL NXX

The U.S. Court of Appeals for the First Circuit has upheld the order of the Massachusetts regulatory agency that required Global Naps to pay intrastate access to Verizon for ISP-Bound calls between Verizon subscribers and Global Naps ISP customers physically located outside the Verizon local calling area, but with virtual NXX numbers in the local area. The dispute involved approximately \$43 million dollars. Global Naps had argued that the FCC's ISP Remand order preempted all state regulation of ISP-bound calls. The court, however, stated that preemption would not be assumed in the absence of a clear intent by the FCC to preempt, and that the FCC's order was ambiguous, at best on the point. This case has potential implications for the Intercarrier Compensation negotiations discussed above.

COURT RULES "DEEMED LAWFUL" STATUS APPLIES TO TARIFF FILING WHICH FCC SUSPENDED AND SET FOR INVESTIGATION, THEN RECONSIDERED

The Communications Act provides that local exchange carrier tariffs filed on 7 or 15 day notice (for reductions or increases, respectively) are "deemed lawful" if they are allowed to go into effect without the FCC issuing an order to suspend and investigate the filing. "Deemed lawful" rates are not subject to refund obligation, even if later found not to be "just and reasonable." When the Virgin Islands Telephone Corporation (Vitelco) filed its 1997 access tariff, the FCC suspended the rate for one day and ordered an investigation. After Vitelco provided information to the FCC staff satisfying its concern with the cash working capital calculations underlying the rates, the FCC issued an order "reconsidering" its suspension and investigation order. When AT&T later filed for refund of the rates because of alleged overearnings, the FCC

COURT RULES (continued)

ruled that Vitelco's rates were not protected by their original deemed lawful status because a suspension order had been issued. The U. S. Court of Appeals for the District of Columbia Circuit had no difficulty overruling the FCC this week. The Court concluded that the FCC's reconsideration order had the effect of vacating the suspension and investigation order and therefore restored the status quo, i.e. "deemed lawful." The Court dismissed other FCC arguments saying they would result in Vitelco's tariff being in "endlessly suspended animation," the very result the statute was written to avoid.

HOUSE TELECOMMUNICATIONS AND INTERNET SUBCOMMITTEE APPROVES NATIONAL VIDEO FRANCHISE BILL 27-4

Last week the Telecommunications and Internet Subcommittee of the House Energy and Commerce Committee, after extended discussion, approved a bill intended to establish a national video franchising process. The subcommittee rejected proposed amendments by senior Democrats John Dingell (D-MI) and Ed Markey (D-MA) which would have imposed "build out" requirements and strengthened the network neutrality provisions. The subcommittee did approve an amendment by Congressman Chip Pickering (R-MS) to give VOIP providers the same interconnection rights as other voice providers. Also approved was an amendment by Congresswoman Barbara Cubin (R-WY) to ensure access to programming by operators of shared head-ends. Text of the amended bill was not available at press time. Committee Chairman Joe Barton (R-TX) indicated he planned to have the Full Energy and Commerce Committee consider the bill following the Easter recess. There is expected to be some debate about the authority of the Judiciary Committee to consider the bill at the same time as Energy and Commerce. Also last week, Congressman Barton introduced a bill to "prohibit manipulation of caller identification information." National video franchise legislation has not yet surfaced in the Senate.

CONGRESSMEN TERRY AND BOUCHER FILE UNIVERSAL SERVICE BILL

On March 30th, Congressman Lee Terry (R-NE) and Rick Boucher (D-VA) introduced HR 5072, the "Universal Service Reform Act of 2006." The bill generally follows the draft circulated late last year, and commented on by RICA, with a few important modifications. The bill addresses a long time RICA concern by providing that USF support should be based upon "actual cost reasonably incurred in providing [supported] services, exclusive of the cost of acquiring spectrum." The bill provides for support for broadband services and support for non-rural carriers on a wire-center basis where wire center costs exceed 3.75 times the national average cost per line. While the bill retains an indexed cap on the total fund, it provides for a one-time adjustment for the broadband and non-rural wire center provisions. ETCs would be required to provide services, including broadband, throughout their service area over their own facilities, but that requirement could be waived for broadband service where provision is technically infeasible, would impair the provider, or where the cost per line of deployment is three times the national average. The bill also expands the contribution base and establishes measures to control "phantom traffic."

SENATE COMMITTEE APPROVES SUBSCRIBER RECORDS PROTECTION MEASURE

Following the earlier lead of their House Colleagues, the Senate Commerce Committee last week approved legislation to protect telephone subscribers' records. The bill, S.2389, would make it illegal to acquire, use or sell a person's confidential phone records without that person's affirmative consent, and outlaws the practice of "pretexting." Telecommunications Carriers and

SENATE COMMITTEE (continued)

IP Service Providers would be required to certify compliance with the FCC implementation rules annually. The FCC would be required to adopt privacy rules similar in scope to the Federal Trade Commission regulations governing financial institutions. Separately, the House Energy and Commerce Committee issued subpoenas to a dozen companies that sell records of private phone calls. The subpoenas require production of extensive business and tax records of the businesses.