**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C.**

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

**INITIAL COMMENTS**
**OF THE MISSOURI SMALL TELEPHONE COMPANY GROUP**

**TABLE OF CONTENTS**

Page No.


1. INTRODUCTION ........ 1

2. EXECUTIVE SUMMARY ........ 1

3. THE MISSOURI SMALL TELEPHONE COMPANY GROUP........ 3

4. THE APPROPRIATE GOALS OF INTERCOMPANY COMPENSATION ........ 4

5. THE COMMISSION'S *NPRM* IS BASED ON FALSE ASSUMPTIONS ........ 6

6. "BILL AND KEEP" INVOLVES MANY PROBLEMS AND UNCERTAINTIES. ........ 9

7. THE PROPOSED BILL AND KEEP ARRANGEMENT WILL HAVE A SUBSTANTIAL AND ADVERSE IMPACT UPON END-USER SUBSCRIBERS AND CREATE A VERY REAL THREAT TO UNIVERSAL SERVICE........ 11

8. CONCLUSION ........ 13


## I. INTRODUCTION

In its Notice of Proposed Rulemaking (NPRM) adopted April 19, 2001, and released April 27, 2001, the Federal Communications Commission (the Commission) sought comments on its proposal to adopt a unified intercarrier compensation regime based on a "bill and keep" arrangement. Initially, the proposed bill and keep arrangement would apply to all local reciprocal compensation (i.e. traffic between local exchange carriers (LECs) including competitive local exchange carriers (CLECs) as well as incumbent local exchange carriers (ILECs)). The Commission also proposes to extend its intercarrier compensation arrangement to Commercial Mobile Radio Service (CMRS) compensation arrangements as well as to access charge compensation. The Missouri Small Telephone Company Group (MoSTCG)[1] offers these initial comments in opposition to the Commission's NRPM. For purposes of its comments, the MoSTCG is assuming that the proposed bill and keep intercompany compensation arrangement will be applied to all forms of intercarrier compensation (i.e., local reciprocal compensation arrangements, traffic to and from CMRS providers, and interexchange carrier compensation arrangements).

## II. EXECUTIVE SUMMARY

[1] See Attachment A

While the MoSTCG does not necessarily oppose the concept of a unified approach to intercarrier compensation, the Commission's proposal to implement a "bill and keep" intercarrier compensation regime is ill advised. The existing intercompany compensation regime known as calling party's network pays (CPNP) has worked well for a number of years and, with recent rulings by the Commission to address particular problems such as Intercarrier Compensation for ISP-bound traffic,[2] CPNP can continue to work well into the future. There is no need or reason for the Commission to "throw the baby out with the bath water" for a purely hypothetical regime which has not withstood any empirical analysis.

While a "bill and keep" arrangement may be appropriate in limited circumstances where the traffic between two networks is relatively balanced and the costs of terminating traffic are relatively similar, it will simply not work in a situation where traffic is out of balance and costs are dissimilar, which is the situation that currently exists in the vast majority of cases. The Commission's apparent belief that bill and keep is economically efficient and administratively simple is based upon faulty assumptions and does not withstand close scrutiny. Furthermore, the Commission appears to be overlooking the end-user impact and universal service concerns as references to those concepts are few and far between in the NPRM.

An intercompany compensation regime that is based upon a bill and keep arrangement

[2] *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-131 (rel. April 27, 2001)

will have significant and adverse impact upon the end-users of the MoSTCG and threaten the universal availability of telecommunications services at affordable rates. Before the Commission embarks on any change in existing intercarrier compensation regimes, it must, at the very least, determine the impact the proposal will have upon end-users rates and/or universal service fund requirements. In that regard, the MoSTCG fully supports the recent resolution adopted by the National Association of Regulatory Utility Commissions (NARUC) at its annual meeting in Seattle, Washington, on July 18, 2001. Until such time as the Commission has sufficient information regarding the effect of its proposed rulemaking on end-user customers and universal service, the Commission should refrain from adopting a unified bill and keep arrangement.

## III. THE MISSOURI SMALL TELEPHONE COMPANY GROUP

The MoSTCG is made up of twenty (20) small telephone companies serving predominately rural areas within the state of Missouri. The members of the MoSTCG range in size from 240 access lines to 17,040 access lines, and they primarily provide local exchange service to their end-user customers. The members of the MoSTCG are rural telephone companies as defined by the Telecommunications Act of 1996[3] and are "small entities" as defined by the Commission in its NPRM.[4]

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[3] 47 U.S.C. § 153(37)

[4] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket

No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132 (rel. April 27, 2001), ¶ 141, 144.

Of significant importance to this inquiry is the fact that the members of the MoSTCG are heavily reliant on intercompany compensation, primarily access charge revenue received from interexchange carriers who originate and terminate both intrastate and interstate interexchange telecommunications services. Indeed, members of the MoSTCG, on average, receive over 50% of their total regulated revenues from intercarrier compensation. Consequently, if the members of the MoSTCG are required to recover all existing intercarrier compensation from their end-user subscribers or universal service funds (which appears to be the case under the Commission's proposal), the impact on end-users and/or the universal service fund will be substantial.[5]

## IV. THE APPROPRIATE GOALS OF INTERCOMPANY COMPENSATION

The MoSTCG agrees that the appropriate goals of any intercompany compensation regime should include the efficient use of the network and the efficient investment in, and deployment of, network infrastructure. In addition, an intercompany compensation regime should fairly apportion the costs of the network among the various groups of customers who use it, such as end-user and carrier customers. In other words, an intercompany compensation regime should be equitable to all customers. Intercarrier compensation should also promote universal service, or, at the very least, do no harm to the universal availability of telecommunications services at affordable prices. Finally, any intercompany compensation

[5] The MoSTCG believes its situation is not unique and that the vast majority of small, rural ILECs will experience similar results.

regime should be relatively easy to administer.

The current intercarrier compensation regime (i.e., CPNP) meets and achieves all of these goals. While the Commission asserts various deficiencies in the current intercompany compensation regime, its proposed bill and keep arrangement is less likely to meet these enumerated goals. For example, economic efficiency is not promoted by a bill and keep regime. Bill and keep simply transfers the costs of terminating a call to the called party (with no guarantee that the calling party will see a commensurate decrease in its costs of making the call). A bill and keep arrangement is also likely to provide an incentive for inefficient behavior on the part of originating carriers who would seek to attract the business of customers who generate significant amounts of originating calling.

Bill and keep is clearly not equitable to all groups of customers, as called parties will now be required to pay the entire costs of the terminating network. A bill and keep arrangement also ignores concerns for universal service and end-user impacts as discussed later in these comments. Finally, contrary to the Commission's belief, a bill and keep arrangement will not necessarily promote administrative efficiency because transport costs still need to be apportioned between the originating and terminating networks. In addition, new billing arrangements will, in all likelihood, need to be established in order to bill and collect terminating costs from the terminating end-user.

The *NPRM* greatly overstates the alleged virtues of a bill and keep intercompany compensation regime. While bill and keep may appear to be appropriate in those circumstances where the traffic between two networks is relatively balanced and the costs of the two networks are relatively similar, there is absolutely no evidence that such an arrangement will work in a situation where traffic is imbalanced and costs are dissimilar. In fact, common sense leads to the inescapable conclusion that bill and keep will neither be economically efficient nor equitable in a situation where traffic between two networks is imbalanced and the costs of the network are dissimilar.

Maintaining universal service is one of the most important goals of any intercompany compensation arrangement, but universal service will not be furthered by the adoption of a bill and keep intercompany compensation regime, as the Commission itself recognizes. In fact, bill and keep would shift the costs from carriers to end-users. The obvious impact is that end-user rates will increase, in some cases dramatically, while carrier rates will decrease. Although the general theory is that a carrier's rates (such as interexchange or toll rates) will likewise fall, the experience of the MoSTCG and their end-user customers has been that interexchange rates in rural areas have not decreased to match the shift in costs to the end-user subscribers.

The current regime of CPNP has achieved the competing goals of economic efficiency and equity, on the one hand, with universally available service at affordable rates, on the other hand. The wholesale abandonment of this regime is unnecessary and unwarranted, particularly where the Commission has failed to provide any empirical analysis that the new, proposed regime will achieve these goals and still do no harm to the equally important goal of universal service.

## V. THE COMMISSION'S *NPRM* IS BASED ON FALSE ASSUMPTIONS.

The Commission's proposal to scrap the current intercompany compensation regime and replace it with a bill and keep arrangement is premised upon faulty assumptions, both regarding the inadequacy of the current system as well as the virtues of the proposed system.

Under the existing intercompany compensation arrangement where the calling party's network pays, the Commission states that the calling party is the sole causer and sole beneficiary of a call. This also implies that the calling party bears the entire cost of terminating the call, but this is simply not the case. The rationale for the CPNP is that the originating carrier, who has a customer relationship with the calling party, has the wherewithal to recover its costs to originate, transport, and terminate the call. While the calling party obviously derives benefit from the ability to call other end-users, it is neither fair nor appropriate to assume that the calling party is the sole beneficiary of the call. Called parties also derive benefit from the receipt of calls and the ability to be called, and their local rates are designed to recover some of the terminating company's costs of its network. So, neither the calling party nor its originating carrier pay for 100% of the terminating company's costs. The terminating company's end-user customer through local rates also makes a contribution to the LEC's network (which both originates and terminates the call). Thus, there is a sharing not only of benefits but of costs under the existing CPNP regime, and neither the calling party or the called party is unfairly burdened in the sharing of those costs.

Similarly, it is incorrect to assume that the called party is the sole beneficiary of a call, although this is clearly the underlying assumption in a bill and keep arrangement. Many times the called party receives no benefit from a call, particularly if it is an unwanted sales call.

In Missouri, a substantial amount of the traffic originating from or terminating to the networks of the members of the MoSTCG is carried by an intermediate or "transiting" carrier. The transiting carrier is most often the regional bell operating company (RBOC). In Missouri, the RBOC is Southwestern Bell Telephone Company (SWBT). Under a bill and keep arrangement, a transiting carrier, such as SWBT, has no end-user customer (i.e., either originating or terminating) who will benefit from the call. Nevertheless, the intermediary carrier incurs costs in transiting the call that need to be recovered. The current CPNP regime has a well established system for seeing that the transiting carrier gets paid. Under either proposed bill and keep arrangement (i.e., COBAK or BASICS), there appears to be a recognition that the owner of the transport facilities should be compensated. Accordingly, both bill and keep plans require that compensation be paid for the transport facilities. The way in which the intermediary carrier will be paid for its transport facilities is far from resolved and will, in all likelihood, involve much contention and debate. Ultimately, the proposed bill and keep arrangement will not be as simple to administer as the Commission may initially believe.

The Commission also seems to take for granted that the existing arrangement is broken and must be scrapped. This is simply not the case. Many of the intercompany compensation problems have recently been addressed by the Commission. For example, in its recent order regarding Intercarrier Compensation for ISP-Bound traffic,[6] the Commission addressed one of

[6] *In the Matter of Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-

the major shortcomings of the CPNP regime (a shortcoming which came to light because of the abuses being perpetuated by competitive carriers). In addition, the Commission has recently embarked upon implementation of significant access reform for price cap LECs in the form of the CALLS Plan[7] and further reform is under consideration for non-price cap companies in the form of the MAG Plan.[8] Both of these plans, if given a reasonable opportunity, will work toward removing significant implicit subsidies from access charges while still maintaining universal service. The Commission should give these plans a chance to work before embarking on an entirely new intercompany compensation scheme.

The existing intercarrier compensation regime is not broken, and it does not need to be replaced. The other modifications that are already being considered and implemented will address many of the concerns raised by the Commission regarding the current regime. These modifications ought to be given a reasonable opportunity to succeed.

## VI. "BILL AND KEEP" INVOLVES MANY PROBLEMS AND UNCERTAINTIES.

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68, *Order on Remand and Report and Order*, FCC 01-131 (rel. April 27, 2001)

[7] *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Sixth Report and Order*, FCC 00-193 (rel. May 31, 2000)

[8] *In the Matter of the Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Report and Order*, FCC 01-157 (rel. May 23, 2001)

The Commission cites as one of its main goals the elimination of regulatory arbitrage which it claims arises from the existing CPNP regime. Regulatory arbitrage, however, was not created by CPNP. Rather, it is due to the presence of dual regulatory bodies (i.e., federal and state) having concurrent jurisdiction over the telecommunications industry. Implementation of a bill and keep regime will not necessarily eliminate regulatory arbitrage, as there will continue to be dual jurisdiction by the states and the federal agencies. In addition, depending upon how transport costs are recovered under a bill and keep regime, there may be as much opportunity for arbitrage as there is under the existing regime. Finally, the concern for regulatory arbitrage may be overstated because recent action by the Commission in addressing ISP-bound traffic and access reform will lessen the opportunity for such arbitrage.

The Commission also seems to be concerned with a "terminating monopoly" situation. However, the terminating monopoly issue was not created by the ILECs, whose access rates are closely regulated, but by CLECs who initially were permitted to establish their own rates without any regulatory supervision. Again, recent action by this Commission[9] and state Commissions[10]

[9] See e.g. *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket 96-262, *Seventh Report and Order*, FCC 01-146 (rel. April 27, 2001)

[10] See e.g. *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596, *Report and Order*, 2000 Mo. PSC LEXIS 803, issued June 1, 2000

to control abuses by CLECs in the establishment of terminating access rates has greatly diminished the issue of terminating monopoly.

The proposed bill and keep arrangement will not lessen regulatory oversight. The Commission recognizes that under either of the proposed bill and keep arrangements there must be an allocation or assignment of transport costs. It is unlikely that all carriers will mutually agree to this allocation or assignment, so regulatory intervention will, in all likelihood, be required. In addition, if carriers are required to recover all of their terminating costs from the end-user, this may require new billing arrangements with those end-user customers who receive substantial volumes of calls and from whom, it may be argued, a substantial portion of the terminating costs should be recovered. While the Commission is appropriately concerned with hidden subsidies, an intercompany compensation regime that places all of the terminating costs upon all of the terminating end-users will not remove those hidden subsidies, but merely shift them among customers, unless new ways are found to measure and bill end-user customers for the terminating costs they create on the network.

The proposed bill and keep intercompany compensation arrangement is far from a panacea. As noted previously, it is premised on faulty assumptions, it does not necessarily promote efficient use of the network, and it will result in significant cost shifts to the end-user (or universal service funding). Replacing the existing compensation regime with a bill and keep regime would simply create a new set of problems. It is troubling to see the Commission considering an entirely new intercompany compensation regime without any actual experience or empirical analysis.

## VII. THE PROPOSED BILL AND KEEP ARRANGEMENT WILL HAVE A SUBSTANTIAL AND ADVERSE IMPACT UPON END-USER SUBSCRIBERS AND CREATE A VERY REAL THREAT TO UNIVERSAL SERVICE.

It has not gone unnoticed to the MoSTCG that in the entire 70 pages of the Commission's NPRM, the concepts of universal service and impact on end-user customers are discussed in cryptic fashion in only one (or possibly two) places. It is clear that end-user impacts and universal service have taken a distant back seat to economic theory in this proposed rulemaking. A bill and keep intercompany compensation arrangement will have the effect of shifting substantial amounts of costs from carriers to end-user customers. This is particularly true for the members of the MoSTCG who derive more than half of their total regulated revenues from intercarrier compensation. If these small companies are required to recover those substantial amounts of revenues from their end-user customers (or from universal service funds) the impact will be substantial.

It is absolutely critical, in order for the Commission to make a meaningful determination of the impact upon end-user customers and universal service, that it conduct an empirical analysis which will quantify the cost shift being contemplated. In this regard, the MoSTCG fully supports the recent resolution of the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC) adopted July 18, 2001 at their annual meeting in Seattle, Washington. Specifically, the MoSTCG agrees "that prior to adoption, the effect of any unified or bill-and-keep regime on market issues be fully investigated by both the federal and state regulators" and that "prior to further consideration of a unified or bill-and-keep system, . . . the FCC refer the proposals and cost application issues to the Separations Joint Board for purposes of determining the effect upon intrastate and interstate ratepayers and refer universal service issues to the Universal Service Joint Board."

## VIII. CONCLUSION

The Commission's proposal to eliminate the current intercarrier compensation regime and replace it with a bill and keep arrangement should be abandoned. It is not more economically efficient, and certainly no more equitable, than the current regime. More importantly, adoption of the proposed bill and keep arrangement will have substantial and adverse consequences upon end-user rates and/or universal service fund requirements. The Commission should allow recent actions regarding intercarrier compensation for ISP-bound traffic and access reform to be fully implemented before dismantling the existing intercarrier compensation regime. At the very least, before the Commission begins serious consideration of any new intercarrier compensation regime, it should perform empirical analyses to determine whether or not such a regime will achieve the various goals of an appropriate intercompany compensation regime, including maintaining universal service.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, on this 21st day of August, 2001 to the following:

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## ATTACHMENT A

BPS Telephone Company
Cass County Telephone Company
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Farber Telephone Company
Fidelity Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
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Mark Twain Rural Telephone Company
Miller Telephone Company
New Florence Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company