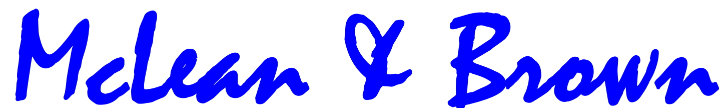

ISSUE UPDATE

November 28, 2011

FCC Releases its Order and FNPRM In the USF and ICC Reform Proceeding

Part II – Intercarrier Compensation Order and FNPRM

On November 18, 2011, the Federal Communications Commission (FCC) released the full text of its Order on comprehensive Universal Service Fund (USF) and Intercarrier Compensation (ICC) reform. On November 21, 2011 we released an *Issue Update* providing an overview of the Order and FNPRM, and providing a summary of the Universal Service issues addressed. In this issue we provide a summary of the Intercarrier Compensation Order and FNPRM. Of necessity, these summaries do not contain all of the provisions and ideas discussed in the Order and FNPRM. Interested readers are encouraged to read the full text of the Order document which can be found at www.fcc.gov.

I. High-Level Summary – Intercarrier Compensation Order

A. The FCC takes immediate action to curtail wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually:

1. Access stimulation, by generally requiring competitive carriers and RoR ILECs to re-file their interstate switched access tariffs at lower rates if:
   a. A LEC has a revenue sharing agreements; and
   b. The LEC either:
      i. Has a 3-to-1 ratio of terminating-to-originating traffic in any month; or
      ii. Experiences more than a 100% increase in traffic volume in any month vs. the same month during the previous year.
2. Phantom Traffic, by requiring telecommunications carriers and interconnected VoIP services to include the calling party's telephone number in all call signaling, and intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path.

B. The FCC adopts a uniform national Bill-and-Keep (B&K) framework as the ultimate end-state for all telecommunications traffic exchanged with at LEC.

1. Under B&K carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support, where necessary;
2. B&K has worked well as a model for the wireless industry; is consistent with and promotes deployment of IP networks, will eliminate competitive distortions between wireline and wireless services; and best promotes the FCC's of modernizing its rules and facilitating the transition to IP.
3. The FCC rejects the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call.

4. Although the FCC adopts B&K as a national framework, governing both inter and intrastate traffic, states will have a key role in determining the scope of each carrier's financial responsibility for purposes of B&K and in evaluating interconnection agreements negotiated or arbitrated under the framework in sections 251 and 252 of the Communications Act.
5. The FCC also address concerns expressed by some commenters about potential fears of traffic "dumping" and seeks comment in the FNPRM on whether any additional measures are necessary in this regard.

C. The FCC focuses initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today. For these rates, as well as certain transport rates, it adopts a gradual, measured transition that will facilitate predictability and stability:
1. First, the FCC requires carriers to cap most ICC rates as of the effective date of the Order;
2. To reduce the disparity between intrastate and interstate terminating end office rates, carriers must bring these rates to parity in two steps, by July 2013;
3. Thereafter, carriers must reduce their termination (and for some carriers also transport) rates to B&K within six years for price cap carriers and nine for RoR carriers;
4. The framework and transition are default rules, and carriers are free to negotiate alternatives that better address their individual needs;
5. The FNPRM seeks comment on the appropriate transition and recovery for the remaining originating and transport rate elements;
6. States will play a key role in overseeing modifications to rates in intrastate tariffs to ensure carriers are complying with the framework adopted in this Order and not shifting costs or otherwise seeking to gain excess recovery;
7. The FNPRM also seeks comment on interconnection issues likely to arise in the process of implementing a B&K methodology for ICC.

D. The FCC adopt a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the status quo would:
1. Although carriers will first look to limited increases from their end users for recovery, the FCC rejects notions that all recovery should be borne by consumers;
2. Incumbent telephone companies will have the opportunity to charge a limited monthly Access Recovery Charge (ARC) on wireline telephone service, with a maximum annual increase of $0.50 for consumers and small businesses, and $1.00 per line for multi-line businesses, to partially offset ICC revenue declines;
3. To protect consumers, the FCC adopts a strict ceiling that prevents carriers from assessing any ARC for any consumer whose total monthly rate for local telephone service, inclusive of various rate-related fees, is at or above $30;
4. Although the maximum ARC is $0.50 per month per year, the FCC expects the actual average increase across all wireline consumers to be no more than $0.10-$0.15 a month, which translates into an expected maximum of $1.20-$1.80 per year that the average consumer will pay;
5. The FCC anticipates that consumers will receive more than three times that amount in benefits in the form of lower calling prices, more value for their wireless or wireline bill, or both, as well as greater broadband availability;
6. Carriers cannot charge a multi-line business customer an ARC when doing so would result in the ARC plus the SLC exceeding $12.20 per line;
7. The ARC will phase down over time as carriers' eligible revenue decreases;
8. The FCC prevents carriers from charging any ARC on Lifeline customers or further drawing on the Lifeline program, so that ICC reform will not raise rates at all for these low-income consumers;

9. The FCC also seeks comment in the FNPRM about reassessing existing subscriber line charges (SLCs), which are not otherwise implicated by this Order, to determine whether those charges are set at appropriate levels.

E. Carriers may receive CAF support for any otherwise-eligible ICC revenue not recovered by the ARC, and will be required to use such money to advance the FCC's goals for universal voice and broadband services.

F. In defining how much of their lost revenues carriers will have the opportunity to recover, the FCC rejects the notion that ICC reform should be revenue neutral:

1. The FCC limits carriers' total eligible recovery to reflect the existing downward trends on ICC revenues with declining switching costs and minutes of use;
2. For price cap carriers, baseline recovery amounts will decline 10 percent annually. Price cap carriers will be eligible to receive 90 percent of this baseline every year from ARCs and the CAF:
   a. In those study areas that have recently converted from rate-of-return to price cap regulation, carriers will initially be permitted to recover the full baseline amount for 5 years;
   b. All price cap CAF support for ICC recovery will phase out over a three-year period beginning in the sixth year of the reform.
3. For RoR carriers, recovery will be calculated initially based on fiscal year 2011 interstate switched access revenue requirement, intrastate access revenues that are being reformed as part of this Order, and net reciprocal compensation revenues. This baseline will decline at five percent annually;
4. Both recovery mechanisms provide carriers with significantly more revenue certainty than the status quo, enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

G. The FCC clarifies the prospective payment obligations for VoIP traffic exchanged in TDM between a LEC and another carrier, and adopts a transitional framework for VoIP intercarrier compensation.

1. The default charges for "toll" VoIP-PSTN traffic will be equal to interstate rates applicable to non-VoIP traffic, and default charges for other VoIP-PSTN traffic will be the applicable reciprocal compensation rates;
2. Under this framework, all carriers originating and terminating VoIP calls will be on equal footing in their ability to obtain compensation for this traffic.

H. The FCC clarifies certain aspects of CMRS-LEC compensation to reduce disputes and address existing ambiguity:

1. The FCC adopts B&K as the default methodology for all non-access CMRS-LEC traffic;
2. To provide RoR LECs time to adjust to B&K, the FCC adopts an interim transport rule for rate-of-return carriers to specify LEC transport obligations under the default B&K framework for non-access traffic exchanged between these carriers;
3. The FCC also clarifies the relationship between the compensation obligations in Section 20.11 of the Commission's rules and the reciprocal compensation framework, thus addressing growing concerns about arbitrage related to rates set without federal guidance.
   a. A call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider;
   b. All traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception.

I. The FCC anticipate that the reforms it adopts will further promote the deployment and use of IP networks, and seeks comment in the accompanying FNPRM regarding the policy framework for IP-to-IP interconnection. While the FNPRM is pending, the FCC expects all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.

Following is a synopsis of some of the more detailed rationale and provisions included in the ICC reform Order implementing the revised framework.

II. Measures to Address Arbitrage

A. Rules to Reduce Access Stimulation

1. By adopting the two-pronged definition of access stimulation adopted in the Order, the FCC believes it will facilitate enforcement of the new rules when the LEC fails to file revised tariffs, since the IXC will be permitted to file complaints based upon evidence from their traffic records.
2. A RoR carrier filing access tariffs pursuant to Section 61.39 would lose its ability to base its rates on historical costs and demand if it is engaged in access stimulation.
3. A LEC that has met the access stimulation definition will be required to leave the NECA interstate tariff (which includes both switched and special access services) within 45 days of commencing access sharing (or within 45 days of the effective date of the rule if the LEC was engaged in revenue sharing), and must file its own tariff for both interstate switched and special access services.
4. Payments made by a LEC pursuant to an access revenue sharing agreement are not properly included as costs in the RoR LEC's interstate switched access revenue requirement.
5. The FCC has balanced the need for the new rules to address traffic stimulation with the costs that may be imposed on LECs and has concluded that the benefits justify any burdens.

B. Phantom Traffic

1. The record in this proceeding suggests that gamesmanship with regard to calling party information is rife.
2. The new rule to include the calling number will also apply to interconnected VoIP traffic.

III. Comprehensive Intercarrier Compensation Reform

1. Adopting B&K as the default methodology for all ICC traffic is consistent with the National Broadband Plan's recommendation to phase out regulated per-minute intercarrier compensation charges.
2. B&K arrangements are also akin to the model generally used to determine who bears the cost for the exchange of IP traffic, where providers bear the cost of getting their traffic to a mutually agreeable exchange point with other providers.
3. B&K has significant policy advantages over other proposals in the record:
   a. A B&K methodology will ensure that consumers pay only for services that they choose and receive, eliminating the existing opaque implicit subsidy system under which consumers pay to support other carriers' network costs;
   b. This subsidy system shields subsidy recipients and their customers from price signals associated with network deployment choices;
   c. A B&K methodology also imposes fewer regulatory burdens and reduces arbitrage and competitive distortions inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers;
   d. The FCC has legal authority to adopt a B&K methodology as the end point for reform pursuant to its rulemaking authority to implement sections 251(b)(5) and 252(d)(2), in addition to authority under other provisions of the Act, including sections 201 and 332.
4. The FCC adopts a gradual transition for terminating access, providing price cap carriers, and competitive LECs that benchmark to price cap carrier rates, six years and RoR carriers, and competitive LECs that benchmark to RoR carrier rates, nine years to reach the end state:
   a. The FCC believes that initially focusing the B&K transition on terminating access rates will allow a more manageable process and will focus reform where some of the most pressing problems, such as access charge arbitrage, currently arise;

b. Limiting reform to terminating access charges at this time minimizes the burden ICC reform will place on consumers and will help manage the size of the access replacement mechanism;

c. The FCC recognizes, however, that it needs to further evaluate the timing, transition, and possible need for a recovery mechanism for those rate elements–including originating access, common transport elements not reduced, and dedicated transport–that are not immediately transitioned, and addresses those elements in the FNPRM;

d. The transition adopted in the Order sets a default framework, leaving carriers free to enter into negotiated agreements that allow for different terms.

5. Other advantages of B&K as the end-state for ICC include:

a. B&K advances the FCC's policy goals and the public interest, driving greater efficiency in the operation of telecommunications networks and promoting the deployment of IP-based networks;

b. B&K is market-based and less burdensome than the proposed alternatives:

i. It is less burdensome than approaches that would require the FCC and/or state regulators to set a uniform positive ICC rate;

ii. B&K is consistent with cost-causation principles:

- Underlying historical pricing policies for termination of traffic was the assumption that the calling party was the sole beneficiary and sole cot-causer of the call;
- More recent analyses have recognized that both parties generally benefit from participating in a call. This is particularly true now given the availability caller ID, do-not-call lists, and unlisted telephone numbers;
- A B&K framework helps reveal the true cost of the network to potential subscribers by limiting carriers' ability to recover their own costs from other carriers and their customers;
- To the extent carriers in costly-to-serve areas are unable to recover their costs from their end users while maintaining service and rates that are reasonably comparable to those in urban areas, universal service support, rather than intercarrier compensation should make up the difference. In this respect, B&K helps fulfill the direction from Congress in the 1996 Act that the FCC should make support explicit rather than implicit.

iii. B&K will benefit consumers:

- Carriers will reduce consumers' effective price of calling, through reduced charges and/or improved service quality;
- Quality-adjusted prices will be reduced regardless of the extent of competition in any given market, but will be reduced most where competition is strongest;
- These price reductions will be most significant among carriers who, by-and-large, incur but do not collect termination charges, notably CMRS and long-distance carriers:
  - The potential for benefits to wireless customers is particularly important, as today there are approximately 300 million wireless devices, compared to approximately 117 million fixed lines, in the United States;
  - Lower termination charges for wireless carriers could allow lower prepaid calling charges and larger bundles of free calls for the same monthly price;
  - Lower termination charges could also enable more investment in wireless networks, resulting in higher quality service—e.g., fewer dropped calls and higher quality calls—as well as accelerated deployment of 4G service;
  - Similarly, IXCs, calling card providers, and VoIP providers will be able to offer cheaper long-distance rates and unlimited minutes at a lower price.

- The elimination of termination charges under B&K will enable carriers to engage in substantial innovation to attract and retain consumers;
- Experience with prior ICC reform, such as CALLS, indicates that consumers will benefit from these reforms;

iv. B&K eliminates arbitrage and marketplace distortions.

c. B&K is appropriate even if traffic is imbalanced:

- Concerns about the balance of traffic exchanged reflect the view that the calling party's network should bear all the costs of a call. Given the understanding that both the calling and called party benefit from a call, the "direction" of the traffic—i.e., which network is originating or terminating the call—is no longer as relevant;
- Although a B&K approach will not provide for the recovery of certain costs via ICC, it will still allow for cost recovery via end-user compensation and, where necessary, explicit universal service support.

d. The FCC departs from its earlier articulated concern that B&K distorts carriers' incentives – to the contrary, B&K best addresses the significant arbitrage incentives inherent in today's ICC system.

6. The FCC concludes that a uniform national framework for the transition to B&K, with an accompanying federal recovery mechanism, best advances its goals:

a. Although states will not set the transition for intrastate access rates under this approach:

i. The Order does adopt the State Joint Board Members' proposal regarding recovery from the federal jurisdiction;

ii. States will help implement the B&K methodology:

- They will continue to oversee the tariffing of intrastate rate reductions during the transition period; and
- They will oversee the interconnection negotiations and arbitrations pursuant to Sections 251 and 252, and will have responsibility for determining the network "edge" for purposes of B&K.

7. Transition to the new ICC regime will proceed as follows:

Intercarrier Compensation Reform Timeline		
Effective Date	**For Price Cap Carriers and CLECs that benchmark access rates to price cap carriers**	**For Rate-of-Return Carriers and CLECs that benchmark access rates to rate-of-return carriers**
Effective Date of the Rules	All intercarrier switched access rate elements, including interstate and intrastate originating and terminating rates and reciprocal compensation rates are capped.	All interstate switched access rate elements, including all originating and terminating rates and reciprocal compensation rates are capped. Intrastate terminating rates are also capped.
July 1, 2012	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50 percent of the differential between the rate and the carrier's interstate access rate.	Intrastate terminating switched end office and transport rates, originating and terminating dedicated transport, and reciprocal compensation rates, if above the carrier's interstate access rate, are reduced by 50 percent of the differential between the rate and the carrier's interstate access rate.
July 1, 2013	Intrastate terminating switched end office and transport rates and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate.	Intrastate terminating switched end office and transport rates and reciprocal compensation, if above the carrier's interstate access rate, are reduced to parity with interstate access rate.
July 1, 2014	Terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and $0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and $0.005. *
July 1, 2015	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to $0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to $0.005.*
July 1, 2016	Terminating switched end office and reciprocal compensation rates are reduced to $0.0007.*	Terminating switched end office and reciprocal compensation rates are reduced to $0.005.*
July 1, 2017	Terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep. Terminating switched end office and transport are reduced to $0.0007 for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.	Terminating end office and reciprocal compensation rates are reduced by one-third of the differential between its end office rates ($0.005) and $0.0007.*
July 1, 2018	Terminating switched end office and transport are reduced to bill-and-keep for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.	Terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the differential between its end office rates as of July 1, 2016 and $0.0007.*
July 1, 2019		Terminating switched end office and reciprocal compensation rates are reduced to $0.0007. *
July 1, 2020		Terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep.*

* Transport rates remain unchanged from the previous step.

IV. Recovery Mechanism

1. This mechanism allows LECs to recover ICC revenues reduced as part of intercarrier compensation reforms, up to a defined baseline, from two alternate revenue sources – incremental, and limited increases in end user rates, and, where appropriate, universal service support through the Connect America Fund.
2. The recovery mechanism is not 100 percent revenue-neutral relative to today's revenues, but it eliminates much of the uncertainty that carriers face under the existing ICC system, allowing them to make investment decisions based on a full understanding of their revenues from ICC for the next several years.
3. In establishing the framework for recovery, the FCC concludes that carriers should first look to limited recovery from their own end users, consistent with the principle of B&K and the model in the wireless industry, and the FCC takes measures to ensure that phone rates remain affordable and reasonably comparable among all Americans.
4. Operation of the Recovery Mechanism (RM)
   a. The RM has two components:
      i. The "Eligible Recovery" amount, which represents the revenue that incumbent LECs are allowed to recover; and
      ii. How the ILEC may recover Eligible Recovery through limited end-user charges and, where eligible and a carrier elects to receive it, CAF support.

      Competitive LECs are free to recover reduced revenues through end-user charges.
   b. Eligible Recovery amount
      i. Price Cap Carriers
         - PC Baseline for recovery is 90% of FY2011 interstate and intrastate revenues for the rates subject to reform, and net reciprocal compensation revenues.
         - For price cap carriers that participated in CALLS (circa 2000), the Eligible Recovery amount is the difference between:
           1. PC Baseline, subject to annual 10% annual reductions, and
           2. Revenues from the reformed ICC rates that year, based on "Estimated MOUs" multiplied by the associated default rate for that year.
         - For carriers that have recently converted to price cap regulation, Eligible Recovery is the difference between:
           1. Years 1-5 PC Baseline, Years 6+ PC Baseline subject to 10% annual reductions, and
           2. Revenues from the reformed ICC rates that year, based on "Estimated MOUs" multiplied by the associated default rate for that year.
         - For all price cap carriers, Estimated MOUs will be calculated as FY2011 minutes reduced by 10% for each year of reform. (This is done to inject predictability into the process.)
      ii. RoR Carriers
         - Baseline for recovery is FY1011 interstate switched access revenue requirement, plus FY2011 intrastate terminating switched access revenues and FY 2011 net reciprocal compensation revenue.
         - Eligible Recovery will be the difference between:
           1. RoR Baseline, subject to 5% annual reductions, and
           2. Revenues from reformed ICC rates based on Actual MOUs multiplied by the associated default rate for that year.

c. End User Recovery
   i. Three constraints to ARC recovery:
      1. In no case will the monthly ARC increase more than $0.50 per year for residential or SLB customers, or more than $1.00 per year for MLB customers. Price cap ILECs may increase ARC no more than 5 years, RoR ILECs no more than 6 years;
      2. No ARC increase allowed if residential rates would exceed the $30 per month Residential Rate Ceiling;
      3. Total ARC increase cannot exceed Eligible Recovery.

d. CAF Recovery
   i. The FCC anticipates that end user recovery alone will not provide the full recovery of Eligible Recovery amounts, particularly for RoR carriers.
   ii. The new CAF universal service mechanism will permit ILECs to recover Eligible Recovery that they do not have the opportunity to recover through permitted ARCs.
   iii. Competitive LECs have generally been found to lack market power, their end-user charges are not subject to rate regulation, and therefore they are not eligible for CAF support for lost ICC revenues.

V. Intercarrier Compensation for VoIP Traffic

1. Under the transitional framework adopted in the Order:
   a. All VoIP-PSTN traffic is brought within the 251(b)(5) framework;
   b. Default ICC rates for "toll" VoIP-PSTN traffic are equal to interstate access rates;
   c. Default ICC rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates; and
   d. Carriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation.
2. The FCC is concerned with providers' ability to distinguish VoIP-PSTN traffic from other traffic and permits LECs to address this issue through tariffs, much as they do with jurisdictional issues today.
3. The FCC believes that this prospective framework best balances competing policy goals during the transition to the final ICC regime:
   a. By declining to apply the entire preexisting intercarrier compensation regime to VoIP-PSTN traffic prospectively, the FCC recognizes the shortcomings of that regime;
   b. At the same time, the FCC is mindful of the need for a measured transition for carriers that receive substantial revenues from intercarrier compensation;
   c. Although these actions clarifying the prospective ICC treatment of VoIP-PSTN traffic do not resolve the numerous existing industry disputes, they should minimize future uncertainty and disputes regarding VoIP compensation, and thereby meaningfully reduce carriers' future costs.

VI. Intercarrier Compensation for Wireless Traffic

1. Two compensation regimes currently apply to non-access LEC-CMRS traffic:
   a. Under section 20.11, LECs have a duty to provide interconnection to CMRS providers and LECs and CMRS providers must pay each other "reasonable compensation" in connection with traffic that originates on the other's network;
   b. Under the reciprocal compensation regime in section 251(b)(5), LECs have an obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic, and CMRS providers that have entered into a reciprocal compensation arrangement with a LEC must compensate the LEC for terminating traffic originating on the CMRS provider's network.

2. As part of its comprehensive ICC reform Order, the FCC clarifies the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers;
    a. The compensation obligations under section 20.11 are coextensive with the reciprocal compensation requirements under section 251;
    b. Consistent with its overall reform approach, the FCC adopts B&K as the default compensation for non-access traffic exchanged between LECs and CMRS providers;
    c. To ease the move to B&K for rural, RoR regulated LECs the FCC adopts an interim default rule limiting their responsibility for transport costs for this category of traffic;
    d. The FCC finds that these steps are consistent with its overall reform and will support our goal of modernizing and unifying the intercarrier compensation system.
3. The FCC also addresses certain pending issues and disputes regarding what is now commonly known as the intraMTA rule, which provides that traffic between a LEC and a CMRS provider that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than interstate or intrastate access charges. The FCC resolves two issues that have been raised before the Commission regarding the correct application of this rule to specific traffic patterns:
    a. One wireless service provider claims that calls that it receives from other carriers, routes through its own base stations, and passes on to third-party carriers for termination have "originated" at its own base stations for purposes of applying the intraMTA rule. The FCC disagrees;
    b. The FCC affirms that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception;
    c. In addition to these clarifications, the FCC also denies requests that the intraMTA rule be modified to encompass a larger geographic license area, the regional economic area grouping, or REAG.

Further Notice of Proposed Rulemaking (FNPRM)

In addition to the specific items decided in the Order and codified in a set of "Final Rules" contained in Appendix A to the Order document, the FCC raises questions in a number of intercarrier compensation policy areas and initiates a FNPRM to gain additional public input and data on a range of policy alternatives. The FNPRM poses a multitude of questions in a number of specific policy areas. The complex nature of the subject areas in which the FCC seeks input, as well as the large number of highly technical and granular questions that the FCC asks, makes providing a high-level summary of the FNPRM a difficult task. (Indeed, a complete and detailed summary of the FNPRM would almost be as large and complex as the FNPRM itself.)

The following outline provides a complete listing of the ICC policy areas addressed in the FNPRM, and a sampling (generally 4 or less) of the types of questions and requests for data that the FCC makes in each of the specific policy areas. It must be stressed that this is a sampling only to indicate the types of questions the FCC is asking and data that it is seeking, but in no way is a complete listing of all of the questions that the FCC has raised in each policy area. Interested readers are encouraged to review the full text of the FNPRM. The outline below follows the nomenclature used in the FNPRM for easy reference.

I. Transitioning All Rate Elements to Bill-and-Keep

- The FCC seeks further comment to complete its reform effort, and establish the proper transition and recovery mechanism for the remaining ICC rate elements, including originating switched access, dedicated transport, tandem switching and tandem transport in some circumstances, and other charges including dedicated transport signaling, and signaling for tandem switching. The FCC seeks comment on transitioning the remaining rate elements consistent with its B&K framework, and adopting a new recovery mechanism to provide for a gradual transition away from the current system.
- The FCC seeks comment on the need for an additional multi-year transition for originating access as part of the final transition to bill-and-keep. Should any final transition of originating access be made to coincide with the final transition for terminating access adopted today? Relatedly, the FCC also seeks comment on the appropriate treatment of 8YY originated minutes.
- The initial transition described in the Order does not fully address tandem switching and transport charges. Because the Order does not address the transition for all transport charges and the relationship between these charges and interconnection obligations more generally, the FCC seeks further comment on the proper transition for these charges, the proper scope of reform, and on the transition for these elements. The FCC also seeks comment on possible recovery for tandem switching and transport as part of our recovery mechanism. Should recovery of lost revenues be made available for these charges?
- Traditionally, the originating carrier was financially responsible for transport to the point of interconnection, which may be located at the end office of the called party's carrier. As the industry moves to a new intercarrier compensation system governed by a section 251(b)(5) B&K methodology, the FCC invites parties to comment on the existing and future payment and market structures for dedicated transport, tandem switching, and tandem switched transport.

II. Bill-and-Keep Implementation

- Now that the end point to comprehensive intercarrier compensation reform has been determined, the FCC seeks comment on any interconnection and related issues that must be addressed to implement B&K in an efficient and equitable manner.
- Currently, under section 251(c)(2)(B), an incumbent LEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. The Commission has interpreted this provision to mean that competitive LECs have the option to interconnect at a single point of interconnection (POI) per LATA. Does the FCC need to provide new or revised POI rules at some later stage of the transition to B&K or provide one set of rules to be effective at the end of the six-year transition for price cap carriers and nine-year transition for rate-of-return

carriers described above and maintain the current regime until that time? Does the FCC need to prescribe POIs under a B&K methodology?

- A critical aspect to B&K is defining the network "edge" for purposes of delivering traffic. The "edge" is the point where B&K applies. A carrier is responsible for carrying, directly or indirectly by paying another provider, its traffic to that edge. The FCC believes that the states should establish the network edge pursuant to federal guidelines. How should the location of the "edge" be determined?
- Some commenters suggest that a B&K framework may promote traffic dumping on terminating carriers' networks. Parties are asked to provide more detail on traffic dumping and its negative effects. Have there been incidents of traffic dumping in the wireless industry that operates largely under B&K today? What other arbitrage schemes might emerge under a B&K structure?

III. Reform of End User Charges and CAF ICC Support

- The FCC seeks comment on a number of questions related both to the Recovery Mechanism (RM) adopted in the Order as well as the pre-existing rules regarding subscriber line charges (SLCs). In particular, with respect to the RM, the FCC seeks comment on the long-term elimination of that transitional recovery mechanism beyond the provisions for reduction and elimination of elements of that recovery already adopted in the Order.
- Should ICC replacement CAF for RoR carriers be subject to a defined phase-out? If so, should it be modeled after the approach used for price cap carriers, or based on a different approach?
- In years 1 through 5, RoR carriers' Eligible Recovery will decrease at 5% annually, with both ARC and ICC-replacement CAF provided based on a true-up process. For years 6 and beyond, should RoR Eligible Recovery decrease by an additional percent each year for a maximum of five years, up to a maximum decrease of 10% per year?
- Are SLCs set at appropriate levels under pre-existing FCC rules, should they be reduced, particularly for price cap carriers where the Commission has not evaluated the costs of such carriers in nearly ten years?
- If carriers increasingly are moving to IP networks, to what extent is voice telephone service simply one of many applications on that network, such that regulated charges specific to voice, such as SLCs, might no longer be appropriate?

IV. IP-to-IP Interconnection Issues

- FCC requirements implementing the duty to negotiate IP-to-IP interconnection in good faith could take their primary guidance from one or more of various provisions of the Communications law—Sections 4, 201, 251(a), or 251(c) of the Communications Act, or 706 of the 1996 Act. The FCC seeks comment on which of the available approaches is most consistent with the statutes as a whole, and sound policy.
- The voice communications marketplace is currently transitioning from traditional circuit-switched telephone service to the use of IP services. There are conflicting views regarding what role legacy voice interconnection requirements should play in an increasingly IP-centric communications market. Some smaller ILECs cite concerns about a lack of negotiating leverage relative to other providers in the absence of a right to IP-to-IP interconnection. How should the FCC ensure that efficient interconnection of IP networks occurs?
- The FCC seeks comment on the appropriate scope and nature of requirements for good faith negotiations generally that should apply, as well as the associated implementation and enforcement provisions. Should the right to good faith negotiations for IP-to-IP interconnection be limited to traffic associated with particular types of services? How would the FCC determine whether or not a particular provider negotiated in good faith under such an approach?

V. Further Call Signaling Rules for VoIP

- Now that the rules applicable to VoIP service providers adopted in the Order provide additional context, the FCC seeks comment again on the need for signaling rules for one-way VoIP service providers.
- If call signaling rules are to apply to one-way VoIP service providers, how could these requirements be implemented? Would one-way VoIP service providers have to obtain and use numbering resources? If call signaling rules were to apply signaling obligations to one-way VoIP service providers, at what point in a call path should the required signaling originate, i.e. at the gateway or elsewhere? Are there alternative approaches for how signaling rules could operate for originating callers that do not have a telephone number?
- If one-way VoIP service providers were permitted to use a number other than an actual North American Numbering Plan (NANP) telephone number associated with an originating caller in required signaling, would such use lead to unintended or undesirable consequences? If so, should other types of carriers or entities also be entitled to use alternate numbering? Would there need to be numbering resources specifically assigned in the context of one-way VoIP services? Are there other signaling issues that we should consider with regard to one-way VoIP calls?

VI. New Intercarrier Compensation Rules

- The FCC seeks comment on whether the new "Final Rules" adopted in the Order and contained in Appendix A to the order package may result in any conflicts or inconsistencies. This could include conflicts or inconsistencies within the newly adopted rules or conflicts or inconsistencies between the new rules and the Commission's existing rules.
- If commenters believe conflicts or inconsistencies are present, the FCC asks that they identify the specific rule or rules that may be affected, explain the perceived conflict or inconsistency, and propose language to address the conflict or inconsistency.
- The FCC also seeks comment on whether the new and revised rules reflect all of the modifications to the intercarrier compensation regimes made in the Order. If not, parties should identify in their comments the potential problem areas and propose specific language to address the possible oversight.

The FCC has established the following schedule for parties to comment on the Intercarrier Compensation related items in the FNPRM:

Comments due February 24, 2012
Reply Comments due March 30, 2012

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