

220. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-5, 7, 10, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-155, 157, 160, 201-05, 207-09, 214, 218-20, 225-27, 251-54, 256, 271, 303, 332, 403, 405, 502, and 503 and sections 1.1, 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.421, NOTICE IS HEREBY GIVEN of the rulemaking and COMMENT IS SOUGHT on those issues.

221. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**INTERCARRIER COMPENSATION NPRM
CC DOCKET NO. 01-92****COMMENTS**

ACS of Anchorage, Inc.
Ad Hoc Telecommunications Users Committee (Ad Hoc)
Alaska Telephone Association
Allegiance Telecom, Inc.
Allied Personal Communications Industry
ALLTEL Communications Inc.
America Online, Inc. (AOL)
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cbeyond Communications
Cellular Telecommunications & Internet Association (CTIA)
CenturyTel, Inc.
Competitive Telecommunications Association (CompTel)
Florida Public Service Commission (Florida Commission)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc., and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Global Crossing Ltd.
Global NAPs Inc.
Guyana Telephone & Telegraph Ltd.
GVNW Consulting, Inc.
Home Telephone Company, Inc.
ICORE Inc.
Illinois Commerce Commission (Illinois Commission)
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Iowa Utilities Board (Iowa Commission)
ITC's, Inc.
KMC Telecom, Inc.
Level 3 Communications
Maryland Office of the People's Counsel (MD-OPC)
Michigan Exchange Carriers Association, Inc. (MECA)
Mid Missouri Cellular
Minnesota Independent Coalition
Missouri Public Service Commission (Missouri Commission)
Missouri Small Telephone Company Group (MSTG)
Mpower Communications Corp.
National Association of Regulatory Utility Commissioners (NARUC)

National Association of State Utility Consumer Advocates (NASUCA)
 National Exchange Carrier Association, Inc. (NECA)
 National Telephone Cooperative Association (NTCA)
 New York State Department of Public Service (New York Commission)
 Nextel Communications, Inc.
 North County Communications
 National Rural Telecom Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
 Office of the Public Utility Counsel of Texas (Texas Counsel)
 Oklahoma Rural Telephone Coalition
 Onvoy, Inc.
 Parrish, Blessing & Associates
 Personal Communications Industry Association (PCIA)
 Public Service Commission of Wisconsin (Wisconsin Commission)
 Public Utility Commission of Texas (Texas Commission)
 Qwest Communications International Inc.
 Regulatory Utility Commission of Alaska (Alaska Commission)
 Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
 Ronan Telephone Company and Hot Springs (Ronan/Hot Springs)
 Rural Independent Competitive Alliance (RICA)
 Rural Telecommunications Group (RTG)
 SBC Communications, Inc.
 Singapore Telecommunications Limited
 Sprint Corp.
 Telecom Consulting Associates, Inc. (TCA)
 Time Warner Telecom
 Triton PCS License Company, LLC
 United States Telecom Association (USTA)
 United Utilities, Inc.
 Verizon
 Verizon Wireless
 VoiceStream Wireless Corp.
 Western Alliance
 WorldCom, Inc.
 Z-Tel Communications, Inc.

REPLIES

ACS of Anchorage, Inc.
 Ad Hoc Telecommunications Users Committee
 Advanced Paging, Inc., A.V. Luttamus Communications, Inc., and NEP, LLC (Advanced Paging *et al.*)
 Allegiance Telecom, Inc.
 Alliance of Incumbent Rural Independent Telephone Companies and the Independent Alliance
 Allied Personal Communications Industry Association of California
 ALLTEL Communications, Inc.
 Arch Wireless, Inc.
 Association for Local Telecommunications Services (ALTS)
 AT&T
 AT&T Wireless Services, Inc.

BellSouth Corp.
Cable & Wireless USA
Cablevision Lightpath, Inc.
California Public Utilities Commission (California Commission)
Cellular Telecommunications & Internet Association (CTIA)
Cincinnati Bell Telephone
Cook Telecom, Inc.
District of Columbia Office of the People's Counsel (DC People's Counsel)
e.spire Communications, Inc. and KMC Telecom, Inc. (e.spire and KMC)
Focal Communications Corp., Pac-West Telecomm, Inc., RCN Telecom Services, Inc. and US LEC Corp. (Focal *et al.*)
General Services Administration (GSA)
Genuity Solutions, Inc.
Global NAPs, Inc.
GVNW Consulting, Inc.
Independent Telephone & Telecommunications Alliance
Information Technology Association of America
Leap Wireless International
Level 3 Communications, LLC
Maryland Office of People's Counsel (MD-OPC)
Midwest Wireless Communications LLC, Midwest Wireless Iowa LLC, and Midwest Wireless Wisconsin LLC (Midwest)
Missouri Independent Telephone Group (MITG)
Missouri Small Telephone Company Group (MSTG)
National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. (NECA)
National Rural Telephone Association and Organization for the Promotion and Advancement of Small Telecommunications Companies (NRTA/OPASTCO)
National Telephone Cooperative Association (NTCA)
Network Services LLC
Nextel Communications, Inc.
North County Communications
Office of the Public Utility Counsel of Texas (Texas Counsel)
Personal Communications Industry Association (PCIA)
Qwest Communications International, Inc.
Ronan Telephone Company Consumer Advisory Committee (Ronan Advisory)
Rural Cellular Association
Rural Independent Competitive Alliance (RICA)
Rural Telecommunications Group (RTG)
SBC Communications, Inc.
Small Business Administration, Office of Advocacy (SBA)
Small Company Group of New York
Sprint Corp.
SureWest Communications
Taylor Communications Group, Inc.
Telecom Consulting Associates, Inc. (TCA)
Time Warner Telecom
Triton PCS License Company, LLC
United States Telecom Association (USTA)

Verizon
Verizon Wireless
VoiceStream Wireless Corp.
WebLink Wireless, Inc.
WorldCom, Inc.

APPENDIX B

T-MOBILE USA, WESTERN WIRELESS, NEXTEL COMMUNICATIONS
AND NEXTEL PARTNERS PETITION
CC DOCKET NO. 01-92

COMMENTS

Alliance of Incumbent Rural Independent Telephone Companies
AT&T Corp.
AT&T Wireless Services, Inc.
BellSouth Corp.
Cellular Telecommunication & Internet Association (CTIA)
Cingular Wireless LLC
Fred Williamson & Associates, Inc.
Frontier & Citizens Incumbent Local Exchange Carriers
ICORE, Inc.
John Staurulakis, Inc. (JSI)
Michigan Rural Incumbent Local Exchange Carriers
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Telecommunications Cooperative Association (NTCA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Qwest Communications International, Inc.
Rural Cellular Association and Rural Telecommunications Group
Rural Incumbent Local Exchange Carriers (Rural ILEC)
Rural Iowa Independent Telephone Association
SBC Communications, Inc.
South Dakota Telephone Assoc., et. al.
Sprint Corp.
Telecom Consulting Associates, Inc.
Triton PCS License Company, LLC
United States Cellular Corp.
United States Telecom Association (USTA)
Verizon Wireless
Warinner, Gesigner & Associates, LLC
Warinner, Gesigner & Associates on behalf of KLM Telephone Company, *et al.*

REPLIES

Alabama Rural Local Exchange Carriers
AT&T Corp.
AT&T Wireless Services, Inc.
Beacon Telecommunications Advisors, LLC
California RTCs
Cellular Telecommunication & Internet Association (CTIA)
Fred Williamson & Associates Inc.
GVNW Consulting, Inc.
Joint CMRS Petitioners
Minnesota Independent Coalition
Missouri Independent Telephone Company Group (MITG)
Missouri Small Telephone Company Group (MSTG)
Montana Local Exchange Carriers
National Exchange Carrier Association, Inc. (NECA)
Nebraska Rural Independent Companies
Oklahoma Rural Telephone Companies
Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Rural Carriers (TDS Telecommunications Corp. *et al.*)
SBC Communications, Inc.
Supra Telecommunications & Information Systems, Inc.
Triton PCS License Company, LLC
Verizon Wireless

APPENDIX C

A BILL-AND-KEEP APPROACH TO INTERCARRIER COMPENSATION REFORM

An Analysis of Pleadings in CC Docket No. 01-92 by the Staff of the Wireline Competition Bureau

The following report was prepared by the staff of the Wireline Competition Bureau for inclusion in the record of the *Intercarrier Compensation* rulemaking.¹ As explained in footnote 106 of the *Further Notice*, this staff report does not represent the views of, and is not endorsed by, the Commission.²

In the *Further Notice* in this proceeding, the Commission concluded that there is an urgent need for comprehensive reform of the existing intercarrier compensation rules. The Commission noted that many parties support moving to a unified compensation regime, but that there is no consensus as to what type of regime the Commission should adopt. As a general matter, parties have advocated two different types of unified regimes – a bill-and-keep regime and a unified calling party's network pays (CPNP) regime. Bill-and-keep can be thought of as a unified compensation regime with a rate of zero. Under a bill-and-keep regime, carriers do not charge each other for the origination and termination of traffic. Rather, carriers recover all their costs from their subscribers. In contrast, under a unified CPNP regime, carriers would continue to compensate each other for the termination of traffic, but the rate charged by any particular carrier would be the same for all types of traffic. In some cases, a unified CPNP regime also would require long distance carriers to continue paying local exchange carriers for the origination of traffic.

In response to the *Intercarrier Compensation NPRM*, many parties submitted comments on the relative merits of bill-and-keep and a unified CPNP approach to intercarrier compensation reform. The following staff analysis of the principle arguments in the record regarding bill-and-keep is offered to aid the Commission and interested parties in further consideration of these issues.³

1. Bill-and-Keep and Cost Causation

In the *Intercarrier Compensation NPRM*, the Commission sought comment on the assumption underlying its current rules that the calling party is the sole cost causer and sole beneficiary of a call and therefore bill-and-keep makes sense only in certain narrow circumstances. In this section, we re-evaluate

¹*Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*); Further Notice of Proposed Rulemaking, FCC 05-33 (rel. Mar. 3, 2005) (*Further Notice*).

²See *Further Notice*, para. 38 n.106.

³This report focuses on the question of whether a regime with a compensation rate of zero is preferable to one with a positive compensation rate. The report does not address the interconnection and transport issues that must be considered as part of either type of regime. These issues are discussed in section II(E) of the *Further Notice*.

the relative benefits of a bill-and-keep approach to intercarrier compensation based on the record developed in this proceeding.

Bill-and-keep provides a mechanism whereby end users pay for the benefit of making and receiving calls.⁴ Thus, bill-and-keep is consistent with the assumption that both the calling party and the called party may benefit from any given call, and, therefore, that the originating and the terminating networks should share the costs associated with the call by recovering their costs from their own end-user customers. Several commenters support the notion that both the calling and called parties benefit from any given call.⁵ Similarly, some parties recognize that the nature of telephonic communication is the interactive process of exchanging information between two parties rather than the relaying of data in one direction.⁶ For example, Level 3 argues that bill-and-keep is consistent with the way customers currently use communications networks and cause costs to be incurred.⁷

Other commenters, however, contend that there is an insufficient basis for altering the historical assumption that the calling party is responsible for the costs of the call.⁸ They also challenge the notion that the benefits of any given call are always shared between the calling party and called party.⁹ For instance, some commenters argue that only the calling party can assess the benefit of any given call because only the calling party knows the content of the call.¹⁰ They explain that the called party does not benefit in the case of unwanted calls, and that a bill-and-keep regime would require the called party to pay for receipt of these calls.¹¹ Moreover, even if the called party receives some benefits of a call, commenters contend that a bill-and-keep approach assumes incorrectly that the calling and called parties benefit equally, and that, therefore, such an approach would not accurately capture the relative benefits of a call.¹²

We are not persuaded that principles of cost causation require retention of a CPNP regime. The purpose of a telephone call is to facilitate communications between two or more parties.¹³ These

⁴*Intercarrier Compensation NPRM*, 16 FCC Rcd at 9625, para 37.

⁵*See, e.g.*, AT&T Wireless Comments at 30; Verizon Wireless Comments at 17, 19; AT&T Wireless Reply at 14-17; Cable & Wireless Reply at 5-6.

⁶*See, e.g.*, AT&T Wireless Comments at 30; AT&T Wireless Reply at 15-16; Level 3 Reply at 13.

⁷*See* Level 3 Reply at 13.

⁸*See, e.g.*, Allegiance Reply at 5; SBA Reply at 3-6.

⁹*See, e.g.*, Allegiance Reply at 5; ALTS Reply at 7; MD-OPC Reply at 20-21; NTCA Reply at 7-8.

¹⁰*See, e.g.*, MD-OPC Comments at 24-26; NTCA Comments at 16; Allegiance Reply at 5; Focal *et al.* Reply at 23; MD-OPC Reply at 16-18; SBA Reply at 5.

¹¹*See, e.g.*, ALTS Reply at 7; AT&T Reply at 16; Focal *et al.* Reply at 21-22; MD-OPC Reply at 8-9, 20-21; NTCA Reply at 8.

¹²*See, e.g.*, Ad Hoc Comments at 5; Focal *et al.* Comments at 43-44; Allegiance Reply at 5; ALTS Reply at 7; AT&T Reply at 17; DC People's Counsel Reply at 15; Focal *et al.* Reply at 20, 24; NASUCA Reply at 18-19. *See also* Ad Hoc Reply at 15-16 (arguing that bill-and-keep would entail making untested assumptions about benefits and responsibilities).

¹³*See* AT&T Wireless Comments at 25; AT&T Wireless Reply at 15.

communications enable the exchange of information between the parties, not just the relaying of information to a recipient.¹⁴ Although the calling party decides to place the call, the called party must decide to answer and continue the communication.¹⁵ The communication therefore is a two-way joint interaction between the calling party and called party.¹⁶ Each party is capable of taking measures to avoid call-related costs, if any.¹⁷ Moreover, in the current networking environment, consumers are increasingly connected through a number of communications devices and express a desire to be connected with others through these devices.¹⁸ Thus, the need or desire to exchange information causes the communications, rather than the party initiating the communication.¹⁹

AT&T initially supported a CPNP approach on the grounds that all calls have both positive and negative externalities, and that only a CPNP regime permits parties to internalize properly these externalities.²⁰ By positive externalities, AT&T appears to refer to the fact that called parties benefit from receiving calls even though they generally do not pay for them.²¹ Negative externalities, on the other hand, result from the fact that the called party does not want some calls even if there is no cost associated with them.²² AT&T explains that CPNP requires the calling party to internalize a greater portion of the costs, which limits incentives to make unwanted calls, and it states that there are a variety of conventions under CPNP that allow parties to align the costs of calls with the corresponding benefits.²³

For a variety of reasons, we disagree that a consideration of the externalities identified by AT&T justifies retention of a CPNP approach. With respect to negative call externalities, *i.e.*, unwanted calls, the Commission explains in the *Further Notice* that there have been significant developments in the

¹⁴See A&T Wireless at 16-17.

¹⁵See, *e.g.*, Qwest Comments at 20; Cable & Wireless Reply at 6; Qwest Reply at 14.

¹⁶See, *e.g.*, Qwest Comments at 20; Cable & Wireless Reply at 6.

¹⁷See, *e.g.*, Sprint Comments at 15; Qwest Reply at 14.

¹⁸See Level 3 Reply at 13.

¹⁹See AT&T Wireless Comments at 25.

²⁰AT&T Reply at 14-15. We note that AT&T's position regarding bill-and-keep has evolved over the course of this proceeding and, as a member of the Intercarrier Compensation Forum, AT&T now supports a bill-and-keep proposal. We nevertheless address many of the concerns initially identified by AT&T in order to provide a more thorough analysis.

²¹AT&T Comments, Attached Declaration of Janusz A. Ordovery and Robert D. Willig, at 14, para. 27.

²²*Id.* at 14-15, para. 28. The externalities addressed by AT&T are externalities associated with individual calls. The economics literature also recognizes network externalities that result because the addition of a new subscriber to a network benefits other subscribers on the network, as well as subscribers of any interconnected networks, none of whom pays for this benefit. We note that this is the rationale usually given for universal service programs, in which some users subsidize other subscribers. A CPNP approach is not necessary, however, for funding a universal service program. Funding universal service through a CPNP regime means that rates are set above incremental cost, which may discourage efficient usage of the network.

²³AT&T Reply at 15 (describing these conventions as agreements between the parties to take turns calling each other or to limit the length of a telephone conversation).