

## ***NARUC Telecommunication Policy Resolution***

**WHEREAS**, Local telecommunications markets are taking on more national and international characteristics, and many providers place a high value on consistent regulatory treatment across broad geographic areas; *and*

**WHEREAS**, A growing number of telecommunications services are marketed without regard to geographic boundaries, and some customers may value the availability of broadly portable services; *and*

**WHEREAS**, States have a duty to protect their other interests while they are promoting competition; *and*

**WHEREAS**, NARUC is cognizant that in some instances exclusive State or federal jurisdiction may be demonstrated to be appropriate; *and*

**WHEREAS**, The need for some types of economic regulation by the States may lessen consistent with competitive market forces developing sufficiently to constrain prices; *and*

**WHEREAS**, In some areas competitive markets will not develop sufficiently to prevent the exercise of market power; *and*

**WHEREAS**, The current regulatory policy statement of NARUC opposes federal preemption of State telecommunications regulation in virtually all instances; *now therefore be it*

**RESOLVED**, That the National Association of Regulatory Utility Commissioners (NARUC), convened in its November 2004 Annual Convention in Nashville, Tennessee, amends the “Current NARUC Telecommunications Policies” as follows:

a: Section 3.2 of the Policies be amended to read:

**3.2. Complementary Strengths:** State commissions and the FCC possess complementary strengths and should work together in the spirit of cooperative federalism. Regulation of telecommunications should be designed to use the strengths of State commissions and of the FCC. States and U.S. territories are close to local markets and have developed methods for evaluating the structure of those markets. States have unique knowledge of local conditions and experience in regulating the local market. Diversity and experimentation have value in many circumstances. States and the U.S. territories also benefit from experience with other industry restructurings, including natural gas and electricity. The FCC possesses not only a national, but also a global perspective. Moreover, it is expert in dealing with all forms of communications.<sup>1</sup> In areas where national standards are appropriate, the FCC should strive to implement them in a way that encourages input from each State to the fullest extent possible.<sup>2</sup> NARUC is open to the possibility that, as markets evolve and local products and services take on more national and international characteristics, traditional jurisdictional principles may need to be re-evaluated.

<sup>1</sup>Adopted at the 1999 winter meeting in Washington, D.C. (“Magna Carta” Resolution).

<sup>2</sup>Adopted at the 1999 winter meeting in Washington, D.C. (“Magna Carta” Resolution).

b. Section 4.1 of the Policies should be amended to read:

**4.1 State Involvement:** States have the authority to oversee reciprocal compensation, and they should be involved in the development of any unified carrier compensation system.<sup>3</sup> NARUC is willing to work with the FCC and telecommunications service providers to seek a simpler and competitively neutral system of inter-carrier compensation.

<sup>3</sup>Adopted at the 2001 summer meeting in Seattle.

c. Section 7.4 of the Policies should be amended to read:

**7.4. State Authority:** States must retain the authority to protect consumers from the exercise of market power in the event unregulated monopolies or other anti-competitive situations develop. States must not be prevented from imposing requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, safeguard the rights of consumers and ensure that rates are just and reasonable.

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*Sponsored by the Committee on Telecommunications*

*Adopted by NARUC November 17, 2004*

# NARUC Committee on Telecommunications Current Policies Regarding Telecommunications\*

\* red-lined to show proposed changes to version adopted in March 2004.

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## **I. Statement of Purpose**

The purpose of this document is two-fold. First, the document provides a compilation of the current policies of the Telecommunications Committee as contained in resolutions adopted through the 2004 Winter Meeting. Second, the document provides a tool for tracking policies of the resolutions adopted after the 2004 Winter Meeting. In the event of a perceived conflict between this document and a resolution or other statement of policy adopted by the Executive Committee, reference to the specific language of the resolution or other statement of policy should be used to resolve the conflict. Any resolution not specifically referenced in this document should be presumed to be obsolete.

## **II. Current NARUC Telecommunications Policies**

### **1. Intent of Regulation**

**1.1. Broad goals:** Consumers expect choice, quality and reasonable and affordable rates for telecommunications service.<sup>1</sup> The competition and universal service goals of the Telecommunications Act of 1996 are intended to increase the range of choices in services and service providers available to consumers.<sup>2</sup>

**1.2. Evolving Regulation:** Study and analysis will aid in ensuring that regulatory policies and requirements are optimally tailored to meet the needs of consumers in the marketplace. Over time, it may become necessary to modify or eliminate traditional regulation. Accordingly, NARUC will review and modify such regulatory policies and practices to aid in the transition to competition.<sup>3</sup>

**1.3. Functional Regulation:** In accordance with the principle of technological neutrality, regulatory jurisdiction should, whenever possible, be based on the characteristics of a service, not on the technology used to provide that service, whether the service is commingled with any other service or the speed or capacity of that service.<sup>4</sup>

<sup>1</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>2</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>3</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>4</sup>Adopted at the 2003 Annual Convention in Atlanta.

### **2. Tools for Regulation**

**2.1. Competition and Broadband:** Access to consistent, comprehensive, and reliable information about the status of competition for local telecommunications services and broadband deployment will enhance the ability of policy makers to develop, evaluate, and revise policy in these dynamic markets.<sup>5</sup> The Federal Communications Commission (FCC) should collect reliable, consistent and comprehensive information on local competition and broadband deployment. The states should use the same geographic definitions for reporting of local competition or broadband deployment data.<sup>6</sup>

**2.2. USOA and ARMIS.** The data recorded in the Uniform System of Accounts (USOA) and reported under the Automated Reporting Management Information System (ARMIS) system by the larger and mid-sized carriers are essential to many states for varied purposes including: evaluating unbundled network element, access, and local rates; monitoring quality of service; calculating federal and State universal service support; evaluating the competitive nature of the telecommunications market; and performing benchmarking analyses. Data recorded in the USOA or reported in ARMIS can also provide important information to the states and territories regarding the deployment of and cost of new

technologies and services.<sup>7</sup>

**2.3. CPR and ARMIS:** NARUC supports continuation of reasonable federal accounting, continuing property records (CPR), and ARMIS reporting standards until there is effective market competition, ILECs are nondominant, or other uses for accounting data (such as UNE pricing, jurisdictional separations, and universal service funding) disappear.<sup>8</sup>

**2.4. Service Quality:** Service quality reporting is a vital part of the monitoring performed by State and federal regulators in order to protect customers in situations where no competitive alternatives are available. Telephone companies should report information at a level sufficient to monitor service quality.<sup>9</sup> In measuring service quality, the States and the FCC should consider customer-focused service quality reporting programs with five major categories of performance metrics: (1) Installation, (2) Maintenance and repair, (3) Network performance, (4) Answer time performance, and (5) Customer perception. Where appropriate, these metrics could be applied on a multi-State basis.<sup>10</sup>

**2.5. Best Practices:** State and federal policy-makers should consult and collaborate on developing and using "best practices" guidelines. States may consider these guidelines in formulating policy.<sup>11</sup>

**2.6. Public Information:** The FCC and the states should make collected information publicly available so that it can be used by federal and State policymakers, consumers, and others to develop, evaluate, and revise policy affecting the status of competition for local telecommunications services and broadband deployment. The FCC and the states should give appropriate treatment to proprietary information.<sup>12</sup>

**2.7. Women and Minority Owned Business.** NARUC recommends the Model Market Access Standards document jointly developed by NARUC and the Department of Energy as a voluntary guide to State commissions and utilities to improve and increase the procurement opportunities of women and minority businesses.<sup>13</sup>

<sup>5</sup>Adopted at the 2000 Winter Meetings in Washington, D.C.

<sup>6</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. and the 2000 Winter Meetings in Washington, D.C.

<sup>7</sup>Adopted at the 2000 Annual Convention in San Diego. See also paragraph ? below.

<sup>8</sup>Adopted at the 2001 Annual Convention in Philadelphia, PA. (Phase 3 of the FCC's Comprehensive Review.)

<sup>9</sup>Adopted at the 2000 Annual Convention in San Diego. New text has been moved from former paragraphs 9.1 and 9.5 below.

<sup>10</sup>Adopted at the 2004 Winter Meetings in Washington, D.C. More details are in a whitepaper recognized by NARUC in 2004.

<sup>11</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>12</sup>Adopted at the 2000 Winter Meetings in Washington, D.C. ("Data Gathering".)

<sup>13</sup>Adopted at the 2004 Winter Meetings in Washington, D.C.

### **3. Cooperative Federalism**

**3.1. Cooperation:** Cooperation among State and federal regulators is the most effective means by which to achieve Congress's twin goals of promoting competition and universal service.<sup>14</sup> State and federal regulators should work together to adapt their regulatory oversight to the technological changes in communications markets so that all consumers receive the benefits of new technologies.<sup>15</sup>

**3.2. Complementary Strengths:** State commissions and the FCC possess complementary strengths and should work together in the spirit of cooperative federalism. Regulation of telecommunications should be designed to use the strengths of State commissions and of the FCC. States and U.S. territories are close to local markets and have developed methods for evaluating the structure of those markets. States have unique

knowledge of local conditions and experience in regulating the local market. Diversity and experimentation have value in many circumstances. States and the U.S. territories also benefit from experience with other industry restructurings, including natural gas and electricity. The FCC possesses not only a national, but also a global perspective. Moreover, it is expert in dealing with all forms of communications.<sup>16</sup> In areas where national standards are appropriate, the FCC should strive to implement them in a way that encourages input from each State to the fullest extent possible.<sup>17</sup> NARUC is open to the possibility that, as markets evolve and local products and services take on more national and international characteristics, traditional jurisdictional principles may need to be re-evaluated.<sup>18</sup>

**3.3. Terms and Conditions of Service:** States should retain the flexibility to establish the terms and conditions under which telecommunications services are provided, as long as those policies are not inconsistent with federal statutes.<sup>19</sup>

**3.4. Preemption:** Congress should not limit State public utility commissions from exercising their State authority and resources to regulate core telecommunications facilities used to provide both voice and data services and to promote deployment of advanced telecommunications capabilities.<sup>20</sup> The telecommunications network is an international network, but it has important local elements, and it has significant effects on the welfare of citizens of the States. National preemption of State authority may be justified under some circumstances. Before preempting State jurisdiction, however, Congress and the FCC should consult with the States and U.S. territories and should ensure that States and U.S. territories retain sufficient authority to protect the interests of their citizens, by ensuring that basic and advanced services are available in all areas at affordable and reasonably comparable rates. Congress and the FCC should also recognize that most consumers rely on the States to protect them from unreasonable practices by telecommunications service providers.<sup>21</sup>

**3.5. Enforcement:** Interconnection rules and agreements, and regulations promulgated under the Telecommunications Act of 1996, should be enforced by State and federal agencies. Penalties for any party's non-compliance with regulatory and contractual obligations must be meaningful. Cooperative enforcement will aid in the development of a robust telecommunications market.<sup>22</sup>

**3.6. Joint Board Expenses:** Congress should specifically appropriate funds for the expenses of the Joint Boards on Separations and Universal Service, but without otherwise reducing appropriations to the FCC for other purposes. Funding should be sufficient for at least three regularly scheduled meetings per year for each board.<sup>23</sup>

**3.7. Joint Board Meetings.** NARUC supports legislation that would allow all FCC Commissioners serving on a Joint Board or Joint Conference to participate simultaneously in discussions with their State counterparts.<sup>24</sup>

**3.8. Jurisdictional Cost allocations:** Accounting changes that may affect jurisdictional cost allocations should be referred to the Separations Joint Board.<sup>25</sup>

**3.9. Accounting Changes:** A Federal-State Joint Conference, under Section 410(b) of the 1996 Telecom Act, should evaluate any comprehensive accounting and reporting changes.<sup>26</sup>

**3.10. Separations:** With advice from the states and the Federal-State Joint Board, the FCC should continue to evaluate the structure and utility of existing mechanisms to separate costs and revenues.<sup>27</sup>

<sup>14</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>15</sup>Adopted at the 2003 Annual Convention in Atlanta.

<sup>16</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution).

<sup>17</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution).

<sup>18</sup>Adopted at the 2004 Annual Convention in Nashville.

<sup>19</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>20</sup>Adopted at the 2000 Winter Meetings in Washington, DC ("Broadband Legislation".)

<sup>21</sup>Adopted at the 2004 Annual Convention in Nashville.

<sup>22</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>23</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

<sup>24</sup>Adopted at the 2004 Winter Meetings in Washington, D.C.

<sup>25</sup>Adopted at the 2001 Annual Convention in Philadelphia (Phase 3 of the FCC's Comprehensive Review.)

<sup>26</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>27</sup>The new language reflects the existence of the current separations freeze, which expires in 2006. The Separations Joint Board has not yet made a recommendation regarding subsequent separations policy.

## **4. Intercarrier Compensation**

**4.1. General Principles:** NARUC supports the Goals For a New Intercarrier Compensation System, as shown in Appendix A.<sup>28</sup>

**4.2. State Involvement:** States have the authority to oversee reciprocal compensation, and they should be involved in the development of any unified carrier compensation system.<sup>29</sup> NARUC is willing to work with the FCC and telecommunications service providers to seek a simpler and competitively neutral system of intercarrier compensation.<sup>30</sup>

**4.3. Preemption.** Absent input from the states, NARUC opposes a federally imposed unified compensation regime that would preempt State interconnection policies. Congress should avoid imposing "one-size-fits-all" solutions to issues concerning reciprocal compensation. State authority with regard to Internet-related traffic and intercarrier compensation should be preserved.<sup>31</sup>

**4.4. Referrals:** Any FCC decision regarding intercarrier compensation that affects jurisdictional cost allocations should be referred to the Separations Joint Board, and any decision that affects universal service issues should be referred to the Universal Service Joint Board.<sup>32</sup>

**4.5. Consistency:** Any intercarrier compensation system for Internet Service Provider-bound traffic should ensure that cost recovery responsibility and cost assignment are jurisdictionally consistent.<sup>33</sup>

**4.6. Industry Proposals:** Companies are not discouraged from working together to propose a comprehensive solution to intercarrier compensation.<sup>34</sup>

<sup>28</sup>Action by NARUC Executive Committee in May, 2004.

<sup>29</sup>Adopted at the 2001 Summer Meetings in Seattle.

<sup>30</sup>Adopted at the 2004 Annual Convention in Nashville.

<sup>31</sup>Adopted at the 2001 Summer Meetings in Seattle. New language moved from former paragraph 4.3.

<sup>32</sup>Adopted at the 2001 Summer Meetings in Seattle.

<sup>33</sup>Adopted at the 2001 Summer Meetings in Seattle.

<sup>34</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

## **5. Convergence, Packets and the Internet**

**5.1. Network Evolution:** Changes in telecommunications technology, such as the availability of Digital Subscriber Line (DSL), cable modem and wireless access to the Internet and the convergence of packet-switching, Internet Protocol (IP) and traditional circuit-switched telecommunications, are all challenging existing regulatory and jurisdictional systems and assumptions.<sup>35</sup>

**5.2. ISP Traffic:** ISP traffic should be treated as subject to State jurisdiction in interconnection agreements and tariffs between ILECs and CLECs, and be governed by the same legal authority of the applicable State PUC that applies to all such interconnection agreements or tariffs between local exchange carriers.<sup>36</sup>

**5.3. Access to Internet Content:** All Internet users have a right to access to the Internet that is unrestricted as to viewpoint.<sup>37</sup>

**5.4. Voice over Internet Protocol:** Phone-to-phone calls over IP networks should be considered telecommunications services. States, appropriate Joint Boards, and industry, should address VoIP jurisdictional rate and separations issues including but not limited to reviewing, revising and simplifying intercarrier compensation regimes while preserving universal service.<sup>38</sup>

**5.5. Use of Title I Authority.** Before reclassifying telecommunications to be information services regulated under Title I, the FCC should carefully consider:

- Uncertainty and reduced capital investment while the scope of the FCC's authority under Title I is tested in the courts;
- Loss of consumer protections applicable to telecommunications services under Title II;
- Disruption of traditional balance between federal and State jurisdictional cost separations and the possibility of unintended consequences and increased uncertainty;
- Increased risk to public safety;
- Customer loss of control over content;
- Loss of State and local authority over emergency dialing services; and
- Reduced support base for federal and State universal service as well as State and local fees and taxes.<sup>39</sup>

<sup>35</sup>Adopted at the 2000 Annual Convention in San Diego (Evolution of technology and markets.)

<sup>36</sup>Adopted at the 1997 NARUC Annual Convention in Boston (#7.) It responded to a pending ALTs petition involving local calls carried to ISPs. The resolution recited that, at the time, calls from end users to ISPs that originate and terminate within the same local calling area were charged as local calls under intrastate tariffs, and that the FCC had waived application of interstate tariffs for such traffic. The resolution also stated that it would apply only so long as the FCC's current rule regarding ISP traffic were to remain in effect. Since 1997 the FCC has issued two rulings on ISP compensation, but both rulings have been reversed. The premise of the 1997 resolution may no longer be valid. On the other hand, the FCC has claimed in several proceedings that all ISP bound traffic is interstate.

<sup>37</sup>Adopted at the 2002 Annual Convention in Chicago.

<sup>38</sup>Adopted at the 2003 Winter Meetings in Washington, D.C. The 706 Joint Conference did not act on this 2003 resolution.

<sup>39</sup>Adopted at the 2004 Annual Convention in Atlanta.

## **6. Network Modernization, Performance, and Security**

**6.1. Joint Responsibility:** Deployment of advanced telecommunications capabilities is a joint federal and State responsibility.<sup>40</sup>

**6.2. New Technologies:** NARUC supports deployment of innovative technologies in all broadband platforms.<sup>41</sup>

**6.3. Interconnection Standards:** The Federal Government should ensure that technical standards allow all telecommunications providers to interconnect with each other as the "network of networks" develops. However, federal legislation should not mandate the use of a particular technology, or a specific network configuration.<sup>42</sup>

**6.4. 9-1-1:** 9-1-1 operation and coordination of services by State, county and local governments is a sound method of administering the nation's 9-1-1 service.<sup>43</sup>



**6.5. Security:** The FCC should build a cooperative relationship with State commissions to undertake an ongoing comprehensive review of plans, rules, orders and programs designed to assess the vulnerability of the telecommunications infrastructure.<sup>44</sup>

**6.6. Telecommunications Service Priority:** The Telecommunications Service Priority (TSP) program can be a useful tool to restore critical communications circuits needed to respond to or recover from an emergency or natural disaster.<sup>45</sup> Commissions should review TSP tariffs in their respective jurisdictions to ensure they are fair, reasonable, and affordable to the organizations that purchase such services in order to promote the homeland security.<sup>46</sup>

**6.7. Government Emergency Telecommunications System:** The Government Emergency Telecommunications System (GETS) program can be a useful tool to provide increased capability to complete emergency communications.<sup>47</sup>

<sup>40</sup>Adopted at the 2000 Summer Meetings in Los Angeles (Broadband Deployment Data Base.)

<sup>41</sup>Adopted at the February 2003 Winter Meetings in Washington, D.C.

<sup>42</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>43</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>44</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>45</sup>Adopted at the 2003 Winter Meetings in Washington, D.C.

<sup>46</sup>Adopted at the 2003 Summer Meetings in Denver.

<sup>47</sup>Adopted at the 2003 Winter Meetings in Washington, D. C.

## **7. Competition**

**7.1. Encouragement of Competition and Consumer Protection:** Federal and State regulators will encourage the development of competition wherever competition can bring more choices, new services and reasonable rates. Consumers will be protected wherever competition fails to develop.<sup>48</sup>

**7.2. Reducing Barriers:** To promote competition in the public interest, NARUC supports identifying and removing unnecessary regulatory barriers and fostering competition, while also maintaining critical reporting requirements and safeguards.<sup>49</sup>

**7.3. Entry, Innovation and Investment:** Regulatory rules should encourage entry by innovators and entrepreneurs in the telecommunications markets, particularly in advanced and emerging technologies. Regulation should encourage innovation and efficient investment by all service providers, incumbents and new entrants, and large and small firms.<sup>50</sup>

**7.4. State Authority:** States must retain the authority to protect consumers from the exercise of market power in the event unregulated monopolies or other anticompetitive situations develop.<sup>51</sup> States must not be prevented from imposing requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, safeguard the rights of consumers and ensure that rates are just and reasonable.<sup>52</sup>

### **7.5. Local Exchange Competition and the Role of State Commissions:**

State commissions have been at the forefront of implementing and enforcing the open market requirements of the 1996 Act and in working with the Bell Companies and competitive local exchange carriers to advance local exchange competition.<sup>53</sup> State commissions should continue to take an active role in studying and ensuring that mass market, residential and small business consumers enjoy the benefits of local competition.<sup>54</sup>

**7.6. Accounting Safeguards:** Accounting safeguards are essential for monitoring and implementing the competitive mandates and cross-subsidy prohibitions of the 1996 Telecommunications Act.<sup>55</sup>

**7.7. Entry Subsidies:** States should have authority to prevent subsidization of a local exchange carrier's (LEC) entry into competitive markets, including, but not limited to: (1) requiring separate subsidiaries for the provision of non-basic telephone services; (2) limiting and auditing affiliate transactions and auditing cost allocation procedures, (3) having access to books and records; and (3) insulating the LEC from creditors of non-regulated affiliates.<sup>56</sup>

**7.8. Three Entry Strategies:** Congress provided three entry strategies to compete in the local exchange market: facilities-based entry, unbundled network elements, and resale. Generally, each of these should be realistically available to competitors. In rural areas, states should decide whether making these entry options available to competitors is in the public interest.<sup>57</sup>

**7.9. Nondiscrimination:** Entrants that are dependent on incumbents for network elements and services necessary to compete in the local exchange must have access to such services and elements in a non-discriminatory manner. State and federal regulators will work together to evaluate what rules, guidelines or performance standards are needed to ensure that new entrants are able to compete fairly with incumbents.<sup>58</sup>

**7.10. Unbundled Elements:** The FCC should establish a minimum set of unbundled elements, and it should provide State commissions with reasonable flexibility to require additional unbundling<sup>59</sup> if State conditions warrant and do not conflict with the Telecommunications Act.<sup>60</sup> In addition, the Unbundled Network Element Platform, comprising a combination of unbundled elements, has become an important entry strategy. States should continue to have authority to require unbundling in addition to that required by the FCC's national minimum standard.<sup>61</sup> NARUC is open to the possibility that unbundling should be treated as a transitional approach to opening markets, and that the goal should be, for most if not all areas, facilities-based competition.<sup>62</sup>

**7.11. UNE-P:** The Unbundled Network Element Platform (UNE-P), comprising a combination of unbundled elements, should be available universally.<sup>63</sup>

**7.12. UNE Pricing:** Under the law, entrants are granted access to incumbents' network elements and services as one way to compete in the local exchange market. In some rural markets, States will determine if such access is in the public interest. Elements and services should be priced in a manner that encourages competitive entry in the markets in which such entry is appropriate.<sup>64</sup> Prices should, however, be set at levels that are sufficiently compensatory so that they do not discourage investment.<sup>65</sup>

**7.13. TELRIC Pricing:** The FCC should retain its Total Element Long Range Incremental (TELRIC) pricing methodology for unbundled network elements. States should have flexibility to reflect State-specific conditions determined in TELRIC dockets. States should be allowed to conduct a full UNE pricing proceeding or use a set adjustment factor (set in a State TELRIC docket), and states should be allowed to adopt specific fill factors.<sup>66</sup>

**7.14. Nonrecurring Charges:** Excessive nonrecurring charges are a barrier to entry into the local exchange business. State and federal regulators should commit to careful consideration of ways to minimize the adverse impact that nonrecurring charges may have on entry decisions, consistent with legitimate cost recovery.<sup>67</sup>

**7.15. Incentives for Investment:** Regulation, where needed, should encourage innovation and effective investment by all service providers in all markets.<sup>68</sup>

**7.16. Wireless Number Portability:** Number portability increases competition among wireless providers because customers are able to retain their wireless telephone

numbers when switching to alternative wireless service providers who offer more economical calling packages. Number portability also promotes efficient use of telephone number resources.<sup>69</sup>

**7.17. Forbearance:** A forbearance petition is not the appropriate mechanism to use to review the FCC's TELRIC pricing methodology, so the FCC should reject Verizon's July 1, 2003 petition.<sup>70</sup> **Directory Assistance.** NARUC supports retail Directory Assistance competition in concept as long as it is developed in a manner that preserves each State's authority over DA within its jurisdiction, is not overly costly, and does not involve per-line surcharges.<sup>71</sup>

<sup>48</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>49</sup>Adopted at the 2001 Winter Meetings in Washington, D.C. in a resolution regarding pending legislation that would apply to "two-percent" carriers.

<sup>50</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>51</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation. The text was adjusted in a resolution adopted at the 2004 Annual Convention in Nashville.

<sup>52</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation. Similar language is included in section 253 of the Telecommunications Act of 1996.

<sup>53</sup>Adopted at the 2000 Winter Meetings in Washington D.C. ("Broadband Legislation".)

<sup>54</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>55</sup>Adopted at the 2000 Annual Convention in San Diego. See also, paragraph 2.2 above.

<sup>56</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>57</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>58</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>59</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. and was reiterated at the 2002 Winter Meetings in Washington, D.C.

<sup>60</sup>Adopted at 2004 Annual Convention in Nashville.

<sup>61</sup>Adopted at the 2002 Winter Meetings in Washington, D.C.

<sup>62</sup>Adopted at 2004 Annual Convention in Nashville.

<sup>63</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>64</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>65</sup>Adopted at the 2004 Annual Convention in Nashville.

<sup>66</sup>Adopted at the 2003 Annual Convention in Atlanta.

<sup>67</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>68</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>69</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>70</sup>Adopted at the 2003 Summer Meetings in Denver.

<sup>71</sup>Adopted at the 2004 Winter Meetings in Washington, D.C.

## **8. Physical Access**

**8.1. Poles, Ducts, Conduits and Rights-of-Way:** Lack of access to rights-of-way can be a barrier to deployment of telecommunications facilities.<sup>72</sup> Requesting carriers should receive prompt, non-discriminatory access to poles, ducts, conduits, and rights-of-way at reasonable rates and terms. This will aid the development of facilities-based competition and network redundancy, as well as the deployment of state-of-the-art telecommunications services to the public.<sup>73</sup>

**8.2. Federal Authority:** State commissions should consider asserting the optional jurisdiction granted by federal law over the rates, terms and conditions governing access.<sup>74</sup>

**8.3. State Law:** Federal, State and local government agencies should vigorously enforce existing laws granting telecommunications providers access to public rights-of-way and public lands. Access laws should be adopted where none exist, and existing

local, State and federal provisions should be reformed to eliminate barriers to deployment of telecommunications facilities.<sup>75</sup>

**8.4. Timely and Fair Decisions:** Applications for access to public rights-of-way should be decided in a reasonable and fixed period of time. Governments should treat all providers uniformly and in a competitively neutral manner, and they should ensure that their control over access to public rights-of-way and public lands is used to facilitate the deployment of telecommunications facilities.<sup>76</sup>

**8.5. Pricing:** Municipalities and managers of public lands should provide prompt, non-discriminatory access to requesting carriers at reasonable rates and terms, consistent with environmental stewardship and other management responsibilities. Where compensation exceeds actual and direct costs, governments should consider the impact on the deployment of advanced telecommunications and broadband networks.<sup>77</sup>

**8.6. Building Access:** Federal and State policy should allow customers to have a choice of access to properly certificated telecommunications carriers and should allow all telecommunications carriers access to public and private property at fair, nondiscriminatory and reasonable terms. State and federal regulators each have a responsibility to closely evaluate building access issues within their jurisdictions. If the FCC sees the need to act further concerning access to multiple tenant environments, it should consider delegating additional authority to State commissions.<sup>77</sup>

<sup>72</sup>Adopted at the 2002 Winter Meetings in Washington, D.C.

<sup>73</sup>Adopted at the 2000 Annual Convention in San Diego.

<sup>74</sup>Adopted at the 2000 Annual Convention in San Diego.

<sup>75</sup>Adopted at the 2002 Winter Meetings in Washington, D.C.

<sup>76</sup>Adopted at the 2002 Winter Meetings in Washington, D.C.

<sup>77</sup>Adopted at the 2002 Winter Meetings in Washington, D.C.

<sup>78</sup>Adopted at the 2000 Annual Convention in San Diego.

## **9. Service Quality**

**9.1. Inter-Carrier Service Quality:** Competition cannot develop without sure and adequate standards and accompanying sanctions concerning carrier-to-carrier interactions.<sup>79</sup>

**9.2. OSS:** The FCC should set minimum standards for the performance of operations support systems (OSS) used by competitive local exchange carriers. State commissions should have the flexibility to apply more stringent standards based upon local market conditions.<sup>80</sup>

**9.3. State Role:** State commissions have traditionally exercised the authority and had the knowledge to design and implement wholesale performance measurements and standards. States should continue to be able to develop and oversee State specific plans. However, the FCC should create a mechanism that allows the FCC and State commissions to work together to develop minimum base guidelines that will provide the minimum information needed for effective FCC and State enforcement efforts.<sup>81</sup>

**9.4. Special Access:** The FCC should establish performance measures and standards, reporting requirements and a strong, straightforward enforcement mechanism for the ordering, provisioning and maintenance of wholesale and retail interstate special access services by all providers.<sup>82</sup>

<sup>79</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>80</sup>Adopted at the 1997 Annual Convention in Boston (Resolution No. 5) in relation to an FCC decision. The resolution commended the FCC for its initial OSS evaluation and supported the development of performance

measurement categories and methodologies for provision of access to the components of OSS functions. The only portion relevant today suggests an allocation of responsibility between the FCC and the states.

<sup>81</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>82</sup>Adopted at the 2002 Winter Meetings in Washington, D.C. It originally applied only to pending FCC action.

## **10. Consumer Protection**

**10.1. Protections Maintained:** In competitive markets, basic consumer protections should be maintained and adequate forums should be available for resolution of consumer complaints.<sup>83</sup> NARUC endorses and encourages continued, active enforcement of consumer protections in the telecommunications industry as it evolves to a competitive marketplace.<sup>84</sup>

**10.2. Consumer Notice:** In the transition to competition, consumers should be informed of their service options, the functional standards for those services, and the process for resolving service problems.<sup>85</sup>

**10.3. Bill Clarity:** Consumer telecommunications bills should be clear.

NARUC supports ensuring that consumers can tell quickly and easily from their bills (a) what services they are receiving; (b) from whom they are receiving these services; and (c) how much they are paying.<sup>86</sup> The truth-in-billing model rules define a rational and systematic approach to achieving a reasonable level of customer protection; and the FCC has an important role in establishing consistency in the terminology contained in telecommunications bills.<sup>87</sup>

**10.4. Advertising:** Advertising claims by telecommunications providers should be accurate and understandable. Advertising should be truthful, non-misleading, and substantiated. Advertising should disclose all costs associated with the advertised services. Any basis for comparative price claims should be disclosed. Because consumers benefit when Federal and State governments work together cooperatively, State law requiring advertising to be accurate, understandable, and comparable should not be preempted.<sup>88</sup>

**10.5. Notice of Terms:** Federal and State regulators should take a rational and systematic approach to achieving a reasonable level of customer protection. As to newly subscribed interexchange services, consumers should have a right to receive the following information:

- (a) The provider's legal or business name;
- (b) Description of each product or service to which the customer has subscribed;
- (c) All rates and charges as they will appear on the bill, including any minimum charges or recurring charges;
- (d) Itemization of any charges that may be imposed on the customer, including charges for late payments and returned checks;
- (e) Minimum contract service terms and any fees for early termination;
- (f) Advance payments requirements and refund policy;
- (g) Any required change in telephone number;
- (h) Instructions on canceling service for customers who have not signed a written contract for service; and
- (i) A working toll-free number for customer inquiries.<sup>89</sup>

**10.6. Notice of Changed Terms:** When an interexchange carrier makes any material change to existing terms of a customer's service document, the carrier should provide notice to the customer 30 to 60 days in advance, and it should allow the customer to decline the material change and cancel service without penalty.<sup>90</sup>

**10.7. Slamming and Cramming:** Consumers should be able to choose among alternative service providers and to keep their preferred carrier without interference.<sup>91</sup> Slamming (unauthorized changes to a customer's carrier) and cramming (unauthorized changes to a customer's services) violates that right. NARUC opposes slamming and cramming and supports increased cooperation, clear rules, economic incentives, and effective enforcement efforts.<sup>92</sup> States are the appropriate contact for consumer complaints, and should continue to have the opportunity to elect to investigate slamming complaints.<sup>93</sup>

**10.8. Privacy:** American jurisprudence recognizes a fundamental right to privacy in personal communications, and the Courts and Congress have recognized the paramount interest citizens have in protecting their privacy.<sup>94</sup> Protection of privacy rights should be incorporated in the design of new telecommunications services and in rules regulating such services.<sup>95</sup> Based upon customers' expectations of privacy, states have a substantial interest in the care and treatment of customer-derived information.<sup>96</sup> Congress should ensure that telecommunications companies cannot use an individual's personal phone call records without their consent for commercial marketing purposes.<sup>97</sup>

**10.9. Privacy and Marketing of Additional Services to Consumers:** Government has a clear and substantial interest in the care and treatment of customer derived information, and State commissions have substantial experience regarding the use of customer information by regulated utilities. An "opt-in" approach is an ineffective method to protect sensitive private information.<sup>98</sup>

<sup>93</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>94</sup>Adopted at the 2001 Summer Meetings in Seattle.

<sup>95</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>96</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>97</sup>Adopted at the 2000 Summer Meetings in Los Angeles and reaffirmed at the 2001 Winter Meetings in Washington, D. C. The model rules cover a variety of subjects, including:

- A minimum or required billing interval to eliminate the confusion that results from sporadic billing;
- A bill format of balance(s) due to help customers readily identify their billing status and any bill inaccuracies;
- A rate change notification format to ensure the customer's receipt of timely information regarding future charges;
- Incorporation of the FCC's mandate requiring identification of charges that must be paid to preclude disconnection of basic local service to reduce customer confusion;
- A billing block option that restricts the charges placed on the telephone bill to allow customers the ability to maintain a simplified bill;
- A rescission period option that allows customers the ability to revoke their consent to purchase certain services which would have been charged on their telephone bills;
- A procedure for removal of unauthorized charges to minimize fraudulent practices by making such activities less profitable;
- Requirements for billing agents, billing aggregators and service providers that State commissions can monitor and use to regulate billing practices involving the placement of charges on the telephone bill.

<sup>98</sup>Adopted at the 2000 Winter Meetings in Washington, D.C.

<sup>99</sup>Adopted at the 2000 Summer Meetings in Los Angeles. The same principles were reaffirmed in a resolution adopted at the 2001 Winter Meetings supporting the Phone Bill Fairness Act (S. 1825), introduced by Senator Rockefeller.

<sup>90</sup>Adopted at the 2000 Summer Meetings in Los Angeles. The same principles were reaffirmed at the 2001 Winter Meetings in a resolution supporting the Phone Bill Fairness Act (S. 1825), introduced by Senator Rockefeller, and in another on FCC Mandatory Interexchange Carrier Detariffing.

<sup>91</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

<sup>92</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. ("Magna Carta" Resolution.)

<sup>93</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

<sup>94</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>95</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>96</sup>Adopted at the 2001 Annual Convention in Philadelphia.

<sup>97</sup>Adopted at the 2000 Winter Meetings in Washington, D.C.

<sup>98</sup>Adopted at the 2001 Annual Convention in Philadelphia.

## **11. Telephone Numbers**

**11.1. State Authority:** States and NANPA need enforcement authority, and states need the ability to participate in policy decisions relating to the implementation of conservation measures.<sup>99</sup> States should continue to have substantial representation on the North American Numbering Council.<sup>100</sup>

**11.2. Industry Obligations:** Industry should be accountable for use of public numbering resources through specific rules and reporting requirements. Carrier choice of conservation measures should not be allowed.<sup>101</sup>

**11.3. Unnecessary Splits:** Unnecessary area code splits should be avoided, in part through adoption of enforceable number conservation measures.<sup>102</sup>

**11.4. Service/Technology Overlays:** To delay the exhaust of State Number Plan Areas, states should have the option of implementing area codes for certain services/technologies. The FCC should establish parameters for the implementation of service/technology overlays.<sup>103</sup>

**11.5. National Codes:** The FCC should authorize the establishment of one or more national non-service-specific area codes that would be available on a voluntary basis to service providers that do not require geographically specific “NXX” codes.<sup>104</sup>

**11.6. N-1-1:** Because of the scarcity of N-1-1 numbers, the FCC should maintain guidelines for the use of N-1-1 service codes on a nationwide basis.<sup>105</sup>

**11.7. 2-1-1:** 2-1-1 can have important social service uses, and states should continue to use 2-1-1 for that purpose, but no new purposes should be assigned to that number until the FCC develops guidelines for the use of N-1-1 service codes.<sup>106</sup>

<sup>99</sup>Adopted in an appendix to a resolution on number conservation at the 2000 Winter Meetings in Washington, D.C.

<sup>100</sup>This is a generalized restatement of a resolution adopted at the 2000 Summer Meetings in Los Angeles, which recommended expansion of the North American Numbering Council by three NARUC members.

<sup>101</sup>Adopted in an appendix to a resolution on number conservation at the 2000 Winter Meetings in Washington, D.C.

<sup>102</sup>Adopted in an appendix to a resolution on number conservation at the 2000 Winter Meetings in Washington, D.C.

<sup>103</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

<sup>104</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

<sup>105</sup>Adopted at the 2000 Winter Meetings in Washington, D.C.

<sup>106</sup>Adopted at the 2000 Winter Meetings in Washington, D.C.

## **12. Cable Telecommunications**

**12.1. Common Carrier Services:** Cable companies providing telecommunications services should operate under the same rules and bear the same responsibilities as CLECs and IXC.<sup>107</sup>

**12.2. Continued Regulation:** Cable companies should continue to be regulated to the extent they maintain monopoly power.<sup>108</sup>

**12.3. Cross Ownership:** A telephone company should not acquire a significant interest in a cable system within its telephone service territory unless it continues to be regulated by a State (and the FCC) or until consumers have sufficient choices for both their

telephone and cable services.<sup>109</sup>

**12.4. Audits:** States and the FCC should have the authority to conduct or cause to be conducted an audit of transactions between telephone companies and their affiliates providing video services and equipment in order to ensure that cross-subsidization does not occur.<sup>110</sup>

<sup>107</sup>The original version of this principle was included in a comprehensive 1994 resolution concerning proposed legislation. It has been narrowed to reflect the possibility that cable-based systems can support both traditional switched telephone service and broadband-based telecommunications.

<sup>108</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation and applied to both telephone and cable companies. The open access portion of this paragraph is deleted as obsolete.

<sup>109</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>110</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

### **13. Universal Service - Programs**

**13.1. Basic Principles:** Providing consumers with telecommunications services at reasonable and affordable rates is the cornerstone of universal service.<sup>111</sup> The purpose of federal high-cost funding is to preserve affordable local rates.

(a) Consumers in rural, insular and high cost areas should have access to a similar spectrum of telecom services as consumers in urban areas, and should have those services available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(b) Federal support to high-cost areas should be cost-based.

(c) Federal support must be compatible with the federal rules for jurisdictional separation of costs and revenues.

(d) Federal support for high cost areas should afford maximum respect to the separation of jurisdictions between the federal and State governments and in particular the duty of State commissions to set rates for intrastate telecommunications services.<sup>112</sup>

**13.2. Fund Size:** The federal universal service fund should not be any larger than is necessary to achieve the various goals of section 254.<sup>113</sup>

**13.3. Advanced services:** Americans should have access to advanced telecommunications and information services.<sup>114</sup>

**13.4. Incentives for Efficiency:** Incentives should be made available to increase efficiency of rural LECs.<sup>115</sup>

**13.5. Federal Incentives to Improve Access to Advanced Services:** Congress should encourage the deployment of broadband technology and advanced services to areas without affordable broadband deployment. Legislation should consider the following concepts:

(a) Low-interest loans should be available to those seeking to deploy broadband services to rural and under served communities. Loans should be neutral as to technology and carrier type.

(b) Additional financial incentives, such as tax credits, should be available to carriers that deploy advanced services where existing incentives and support, including high cost loop support, are inadequate,

(c) Effective enforcement tools should ensure that carriers meet their obligations with respect to broadband deployment.<sup>116</sup>

**13.6. Expanding Needs:** As technology enhances telecommunications capabilities, the package of basic services that are universally available must continue to meet



expanding customer needs.<sup>117</sup>

**13.7. Rate Averaging:** Toll rates should be geographically averaged in all areas of the country.<sup>118</sup>

**13.8. Low-Income Programs:** Programs such as Lifeline and LinkUp are valuable and should be supported. Improved utilization of Lifeline programs among low-income households is desirable.<sup>119</sup> These programs should be both effective and accountable, and funding should be efficiently targeted to consumers.<sup>120</sup> Eligibility for the Lifeline and LinkUp programs should be expanded.<sup>121</sup>

**13.9. Federalism:** States and the FCC should work cooperatively to develop universal service criteria and standards. States must be permitted to continue developing and redefining universal service policies that best meet the needs of State and regional telecommunications subscribers, as long as those policies are not inconsistent with federal statutes.<sup>122</sup> States must have the ability to ensure that high quality service is provided in markets that are less competitive or attractive for investment.<sup>123</sup> States should be encouraged to adopt federal eligibility standards and verification procedures, but these standards and procedures should not be imposed on states that currently provide Lifeline/LinkUp support.<sup>124</sup>

**13.10. Depreciation:** Depreciation represents a significant portion of access charges and plays a major role in universal service funding levels. FCC depreciation oversight is appropriate, protects consumers, and should continue as long as depreciation represents a significant portion of access charges and universal service funding levels.<sup>125</sup>

**13.11. Effects of Competition:** Existing retail rate structures may not be sustainable in the competitive marketplace Congress envisioned. State and federal regulators should work together to address the effect that such structures, and the modification of such structures, may have on the development of competition and the provision of universal service. Where traditional supports are removed, explicit support mechanisms must be implemented to preserve universal service.<sup>126</sup>

<sup>111</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. (“Magna Carta” Resolution.)

<sup>112</sup>Adopted at the 1997 Annual Convention in Boston (#9.) It endorsed policies recommended by an ad hoc working group on the high cost fund.

<sup>113</sup>Adopted at the 2001 Winter Meetings in Washington, D.C.

<sup>114</sup>Adopted at the 1999 Summer Meetings in San Francisco.

<sup>115</sup>Adopted at the 2001 Winter Meetings in Washington, D.C. in a resolution concerning the “Multi-Association Group” (MAG) plan for small LECs.

<sup>116</sup>Adopted at the 2000 Summer Meetings in Los Angeles (Legislative Proposals on Broadband.) Text amended to reflect approval of BOC 271 applications in all States.

<sup>117</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>118</sup>Adopted at the 2001 Winter Meetings in Washington, D.C. in a resolution concerning the “MAG” plan for small LECs.

<sup>119</sup>Adopted at the 2000 Summer Meetings in Los Angeles.

<sup>120</sup>Adopted at the 2001 Winter Meetings in Washington, D.C.

<sup>121</sup>Adopted at the 2003 Summer Meetings in Denver.

<sup>122</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>123</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>124</sup>Adopted at the 2003 Summer Meetings in Denver.

<sup>125</sup>Adopted at the 2000 Winter Meetings in Washington, D.C.

<sup>126</sup>Adopted at the 1999 Winter Meetings in Washington, D.C. (“Magna Carta” Resolution.)

## **14. Universal Service and Access Charges – Collections and Distribution of Support**

**14.1. Equitable Shares:** All service providers should equitably share in the responsibility for maintaining universal service.<sup>127</sup>

**14.2. Competitive Neutrality:** Collection and distribution of high cost support should be competitively neutral.<sup>128</sup>

**14.3. Internet Usage:** Congress should not prohibit states from imposing universal service charges on telecommunications services used to access the Internet, as long as those State charges apply uniformly to Internet and non-Internet uses.<sup>129</sup>

<sup>127</sup>This principle was included in a comprehensive 1994 resolution concerning proposed legislation.

<sup>128</sup>Adopted at the 1997 Annual Convention in Boston (No. 9.) It endorsed policies recommended by an ad hoc working group on the high cost fund.

<sup>129</sup>Adopted at the 1997 Annual Convention in Boston (No. 11.)

## **Appendix A – Goals For A New Intercarrier Compensation System<sup>130</sup>**

### **I. INTRODUCTION:**

Portions of the current inter-carrier compensation system are rapidly becoming unsustainable. There is disagreement among stakeholders over the appropriate solutions. Various industry groups have been working separately to develop inter-carrier compensation proposals. The proposals are reportedly designed to replace some or all of the existing intercarrier compensation mechanisms, and are expected to be submitted to the FCC.

"Intercarrier compensation" controls how various carriers compensate one another for handling calls or for leasing dedicated circuits. "Reciprocal compensation," the fee for handling local traffic, has increasingly flowed from the Incumbent Local Exchange Carriers ("ILECs")<sup>131</sup> to the CLECs by virtue of such developments as CLECs terminating an increasing share of ISP traffic. "Access charges" are intercarrier fees for handling toll traffic. "Long distance" or toll compensation between carriers existed for decades under the old AT&T Bell System monopoly, and it supported a portion of the cost of common wires and facilities. Following divestiture, "access charges" were created for toll traffic.

The emergence of new communications technologies has placed stress on the current compensation system. Because it was assembled piecemeal over time, the current intercarrier compensation system has inconsistencies that can result in discriminatory practices, arbitrage or "gaming" of the current system, and other unintended outcomes.

In hopes of leading to a balanced solution, a group of the NARUC's commissioners and staff has drafted this set of guiding principles against which the various proposals can be measured and evaluated. These principles address the design and functioning of, and the prerequisites to, a new intercarrier compensation plan. They do not address the amount or appropriateness of costs recovered by particular carriers through intercarrier compensation.

<sup>130</sup>Approved by NARUC Executive Committee May 5, 2004.

<sup>131</sup>A "local exchange carrier" is defined generally by the Telecommunications Act of 1996 as any entity engaged in the provision of telephone exchange service or exchange access. In this document, it refers to both the traditional local providers of wire-line telephone service, referenced as the Incumbent Local Exchange Carriers or ILECs, and their competitors/any competing service, referenced in this document as Competing Local Exchange Carriers or CLECs.

## **II. APPLICABILITY:**

- A. An integrated intercarrier compensation plan should encompass rates for interconnecting CLEC and ILEC local traffic as well as access charges paid by interexchange carriers.
- B. CLECs, IXC's, ISPs, VoIP, wireless, and any other companies exchanging traffic over the Public Switched Telecommunications Network should be covered ("Covered Entities").
- C. No Covered Entity should be entitled to purchase a service or function at local rates as a substitute for paying intercarrier compensation.

## **III. ECONOMICALLY SOUND:**

- A. The compensation plan should minimize arbitrage opportunities and be resistant to gaming.
- B. Intercarrier compensation should be designed to recover an appropriate portion of the requested carrier's<sup>132</sup> applicable network costs. At a minimum, this will require compliance with the jurisdictional separations and cost allocation rules, applicable case law in effect at any point in time, and 47 U.S.C. 254(k).
- C. A carrier that provides a particular service or function should charge the same amount to all Covered Entities to whom the service or function is being provided. Charges should not discriminate among carriers based on:
  - 1. the classification of the requesting carrier<sup>133</sup>;
  - 2. the classification of the requesting carrier's customers;
  - 3. the location of the requesting carrier's customer;
  - 4. the geographic location of any of the end-users who are parties to the communication;or,
  - 5. the architecture or protocols of the requested carrier's network or equipment.
- D. Intercarrier compensation charges should be competitively and technologically neutral and reflect underlying economic cost.
- E. The intercarrier compensation system should encourage competition by ensuring that requested carriers have an economic incentive to interconnect, to carry the traffic, and to provide high-quality service to requesting carriers. In limited circumstances, carriers may voluntarily enter into a bill and keep arrangement.
- F. Volume of use should be considered when setting intercarrier compensation rates. Available capacity may be used as a surrogate for volume of use.
- G. Any intercarrier compensation system should be simple and inexpensive to administer.

<sup>132</sup>"Requested carrier" means a carrier that receives a request for telecommunications service. An example would be a LEC that receives traffic for termination on the loop of one of the LEC's customers.

<sup>133</sup>"Requesting carrier" means a carrier that requests another carrier to transport, switch, or process its traffic.

#### **IV. COMPETITIVE INTERCARRIER MARKETS NOT PRICE-REGULATED:**

A. Market-based rates should be used where the market is determined to be competitive. A rigorous definition of "competitive market" is needed in order to prevent abuses.<sup>134</sup>

<sup>135</sup>Markets that have been competitive can become non-competitive, requiring the re-imposition of regulation to protect consumers.

#### **V. NON-COMPETITIVE INTERCARRIER MARKETS PRICE-REGULATED:**

A. An intercarrier compensation system should ensure that telecommunications providers have an opportunity to earn a reasonable return and that they maintain high- quality service. It should also encourage innovation and promote development of competitive markets.

B. Government should limit the ability of carriers with market power to impose excessive charges.

C. Where charges are restricted by government action, carriers have the protections of due process, and confiscation is not permitted.

D. If any ILEC property or operations in the future could give rise to a confiscation claim, in a rate case or otherwise, then a practical way should be defined to exclude property and operations that are in competitive markets.

#### **VI. APPROPRIATE FEDERALISM:**

A. The reciprocal compensation system should ensure that revenues, cost assignment, and the risk of confiscation are jurisdictionally consistent for all classes of traffic.

B. State commissions should continue to have a significant role in establishing rates and protecting and communicating with consumers.

C. To avoid creating harmful economic incentives to de-average toll rates by some interexchange carriers, the FCC should have the authority to pool costs within its defined jurisdiction whenever intercarrier compensation rates are high in some areas.

D. State commissions should retain a role in this process reflecting their unique insights, as well as substantial discretion in developing retail rates for services provided by providers of last resort, whether a dual or unified compensation solution is adopted.

E. A proposal preserving a significant State role that fits within the confines of existing law is preferable.

#### **VII. UNIVERSAL SERVICE AND CONSUMER PROTECTION:**

A. The transition to a new intercarrier compensation system should ensure continuity of existing services and prevent significant rate shock to end-users. Penetration rates for basic service should not be jeopardized.

B. A new intercarrier compensation system should recognize that areas served by some rural

local exchange carriers are significantly more difficult to serve and have much higher costs than other areas.

C. Rural customers should continue to have rates comparable to those paid by urban customers. End-user basic local exchange rates should not be increased above just, reasonable, and affordable levels.

D. Any intercarrier compensation plan should be designed to minimize the cost impact on both federal and State universal service support programs.

### **VIII. ACHIEVABILITY AND DURABILITY:**

A. A new intercarrier compensation system should not only recognize existing circumstances but should also anticipate changes at least over the intermediate term, and should provide solutions that are appropriately resilient in the face of change.

### **IX. PREREQUISITES FOR PLAN IMPLEMENTATION:**

A. The estimated cost impact on a carrier-by-carrier basis, by State, must be computed before a decision is made whether to adopt a new intercarrier compensation plan.

B. The FCC should identify, quantify, and evaluate the total of all federal high cost universal service fund payments received by each company today. The federal universal service support mechanisms should be revisited as an intercarrier compensation plan is implemented to ensure that telecommunications services remain accessible and affordable to all Americans.

C. The FCC should be required to regularly revisit its cost allocation rules for regulated/nonregulated services. Costs that should not be recovered through regulated rates ought to be excluded from the computation of intercarrier compensation rates.

D. Before any new intercarrier compensation plan is implemented, the effect of the plan on local exchange rates, including both interstate and intrastate SLCs, should be computed.

E. Even when a referral to a Joint Board is not mandated by law, in order to ensure State input the FCC should make a referral, and the Joint Board should act on that referral, in an expedited manner. Similarly, referrals to Joint Conferences should be handled on an expedited basis.