Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF VERIZON WIRELESS

VERIZON WIRELESS

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SUMMARY

Verizon Wireless strongly opposes the Missoula Plan because it falls short of the Commission's objectives for reform in several significant respects. Despite its well-intentioned effort to eliminate arbitrage opportunities, it does not do so, as it (1) fails to unify all rates, (2) provides special treatment to certain carriers based on how they have traditionally been regulated and the technology they use to provide services, and (3) creates new loopholes for parties to "game" the intercarrier compensation regime.

Verizon Wireless opposes the Plan for a number of reasons. First, it creates a new obligation for all carriers, not just incumbent local exchange carriers ("LECs") that are subject to 47 U.S.C. § 251(c) of the Act, to permit direct connection at a location in every LATA. Second, the Plan provides a number of inappropriate benefits to rural carriers, shifting many costs of providing service to wireless carriers despite the fact that wireless carriers themselves also provide service in rural areas. Finally, the Plan introduces several new costs into the system by radically changing network architecture rules, creating the need for new billing systems, and shifting the contractual rights and obligations of parties seeking to interconnect.

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Verizon Wireless respectfully submits these comments in response to the *Public Notice*[1] in this docket seeking comments on the intercarrier compensation reform proposal (the "Missoula Plan" or the "Plan") filed by the National Association of Regulatory Utility Commissioners' ("NARUC") Task Force on Intercarrier Compensation. Verizon Wireless strongly opposes the Missoula Plan. Not only does it fail to fix the flaws in the current intercarrier compensation regime, it creates new ones that are likely to be even more problematic.

BACKGROUND

When the FCC sought comment on intercarrier compensation reform early last year, it set forth a number of principles that would govern its review of proposals for reform. These goals included: (1) economic efficiency; (2) preservation of universal service; (3) competitive and technical neutrality, and (4) consistency with the Commission's legal authority.[2]

The goal of the NARUC-sponsored Task Force was for industry representatives to develop a comprehensive plan for reforming inter-carrier compensation that would

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[1] Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, DA 06-1510, *Comment Sought on Missoula Intercarrier Compensation Reform Plan,* (WCB, Jul. 5, 2006).

[2] Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking,* 20 FCC Rcd 4685, 4701-03 ¶¶ 31-35 (2005) ("*Further Notice*").

simplify the complexities of intercarrier compensation, remove opportunities for arbitrage, and minimize disputes between carriers. It was to have been a consensus plan with support from a diverse set of players across the telecommunications sector. In addition to seeking broad industry support, because the plan would require preemption of the states, the assumption had been that any plan developed would have the endorsement of NARUC. In January 2006, the Task Force appointed a small group of 11 representatives from the industry to develop an intercarrier compensation reform plan. These representatives presented the Missoula Plan to the Task Force in March 2006.[3]

The Plan falls far short of the FCC's goals. It is overly complex and does not eliminate opportunities for arbitrage and dispute. Instead, it creates a steady stream of revenue for Track 2 and Track 3 local exchange carriers ("LECs") without reference to the cost of providing service, and protects these benefits, without any cap or sunset, in a new universal service fund called the Restructure Mechanism. The Plan also does not have broad support from all constituents in the industry. On the same day that the Task Force filed the Plan, a diverse group of entities, including the CTIA, NCTA, CompTel, the National Association of State Utility Consumer Advocates ("NASUCA"), and a number of individual cable companies and competitive LECs, issued a press release announcing their opposition to the Plan.

Verizon Wireless opposes the Missoula Plan for the following key reasons. First, it creates a new obligation for all carriers, not just incumbent local exchange carriers ("LECs") that are subject to 47 U.S.C. § 251(c) of the Act, to permit direct connection at a location in every LATA, even when such a requirement is not economically efficient.

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3 The Plan is called the Missoula Plan because the organizing meeting of the Task Force was held in Missoula, Montana in September 2004.

Second, the Plan provides a number of inappropriate benefits to rural carriers, shifting many costs of providing service to wireless carriers despite the fact that wireless carriers themselves also provide service in rural areas. By discriminating in favor of wireline technologies, the Plan creates several new opportunities for arbitrage and stifles competition in rural areas. Finally, the Plan unsettles a number of industry practices that will result in added network, systems, and administrative costs with no benefit to consumers.[4]

I. CONTRARY TO THE ACT, ESTABLISHED COMMISSION PRECEDENT, AND SOUND PUBLIC POLICY, THE PLAN WOULD REQUIRE ALL CARRIERS TO PERMIT DIRECT CONNECTION

Despite the fact that Section 251(c) imposes on incumbent LECs — and only incumbent LECs — the duty to permit direct interconnection at any technically feasible point on their networks, *see* 47 U.S.C. § 251(c)(2), the Plan attempts to extend this duty to non-incumbent LECs, by requiring *all carriers* to "permit other carriers with the financial obligation for interconnection to physically interconnect at its Edge for the purpose of *direct* interconnection."[5] This radical shift is contrary to law and the public interest.

A. The Act Authorizes Wireless Carriers to Interconnect Directly or Indirectly

As an initial matter, the Commission must ensure that any intercarrier compensation reform plan complies with the Communications Act. The Missoula Plan's direct interconnection rules, which would apply to all carriers, conflict with the "three-tiered hierarchy of escalating obligations based on the type of carrier involved" that

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[4] Verizon Wireless endorses comments filed by Verizon in this docket.

[5] Plan at 41. This includes tandem transit providers that can be either incumbent LECs or competitive carriers. *Id.* at 49, 51.

Congress established in Section 251.[6] The first tier, Section 251(a), "imposes . . . duties on *all* telecommunications carriers,"[7] including the duty to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1).

Contrary to reply comments that AT&T filed in WC Docket No.06-159, Section 251(a)(1) does not provide any carrier with the "right to choose to connect directly or indirectly with . . . other telecommunications carrier[s]."[8] Instead, by its plain terms, Section 251(a)(1) speaks exclusively of *duties*, not *rights*. Thus, Section 251(a)(1) imposes on "[e]ach telecommunications carrier . . . the *duty* to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1) (emphasis added).

In the *Local Competition Order*, the Commission explained that Section 251(a)(1) gives telecommunications carriers a choice of "provid[ing] interconnection" to other carriers "either directly or indirectly, based upon their most efficient technical and economic choices."[9] Moreover, the Commission has explicitly held that a carrier subject to Section 251(a)(1) "satisf[ies] its Section 251 *duties* simply by indirectly interconnecting [with other carriers] via an ILEC tandem." The fact that two telecommunications carriers might wish to fulfill their respective duties in different

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6 Guam Public Utilities Commission Petition for Declaratory Ruling Concerning Sections 3(37) and 251(h) of the Communications Act, *Declaratory Ruling and Notice of Proposed Rulemaking,* 12 FCC Rcd 6925 ¶ 19 (1997).

7 *Id.* (emphasis added).

8 AT&T Reply Comments, WC Docket No. 06-159, at 2.

9 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 ¶ 997 (1996) (subsequent history omitted) ("*Local Competition Order*").

manners — one through indirect connection, the other through direct connection[10] — does not give either carrier the right to impose its choice on the other; instead, each must independently ensure that it fulfills its respective duty.

This interpretation of Section 251(a)(1) is bolstered by the fact that, in Section 251(c)(2), Congress explicitly imposed a "duty" only on one set of carriers (incumbent LECs) to provide "requesting telecommunications carriers" with direct interconnection at any technically feasible point within the incumbent LECs' network. 47 U.S.C. § 251(c)(2). Even assuming that this duty imposed on incumbent LECs in Section 251(c)(2) creates a "right" on the part of requesting telecommunications carriers, the contrast between Sections 251(a)(1) and 251(c)(2) refutes any suggestion that Congress granted *all* telecommunications carriers the right to insist on direct connection with all other telecommunications carriers. There is even less basis to find that Congress granted such a right only to originating telecommunications carriers — such a limitation on this purported right has no basis in the statutory text. Section 251(a)(1) does not invest telecommunications carriers of any stripe with a "right" or "entitlement" to insist on direct connection with any other telecommunications carrier. As AT&T concedes,[11] the Commission has never held that Section 251(a)(1) obligates non-ILECs to connect directly with other telecommunications carriers, and the Commission cannot do so here.

B. The Commission Has Appropriately Never Required Wireless Carriers to Connect Directly to Any Carrier

The Commission has *never* required wireless carriers to interconnect directly with

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10 *See* AT&T Reply Comments, WC Docket No. 06-159, at 2.

11 *See id.* at 2-3, 7-8.

any other carriers.[12] In the *CMRS Interconnection Order*, the FCC held that market forces, rather than regulatory intervention, should determine where and when commercial mobile radio service ("CMRS") carriers directly connect with other carriers.[13] Four primary rationales underpinned the FCC's decision to refrain from imposing direct connection obligations on CMRS carriers.

First, the Commission noted that there was no logic to imposing a "specific form of interconnection" on CMRS providers, because the FCC has never regulated CMRS providers as "dominant carriers."[14] Second, the Commission observed that there has been "steady growth of competition in CMRS markets" and found that "imposing a new interconnection obligation on facilities-based CMRS providers is not required to overcome competitive barriers."[15] This competition has continued to flourish since the release of the *CMRS Interconnection Order*, as the Commission has routinely noted in its annual competition reports.[16] This rationale is even more compelling today, where far more competition exists than when the Commission issued the *CMRS Interconnection*

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12 Interconnection and Resale Obligations Pertaining to Commercial Radio Services, *Fourth Report and Order,* 15 FCC Rcd 13523, 13531-32 ¶¶ 19-22 (2000) ("*CMRS Interconnection Order*").

13 *Id.* at 13534 ¶ 28.

14 *Id.* at 13531 ¶ 20.

15 *Id.*

16 *See, e.g.,* Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, *Tenth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 20 FCC Rcd 15908, 15911 (2005) (noting that "97 percent of the total U.S. population lives in counties with access to three or more different operators offering mobile telephone service, the same level as in the previous year, and up from 88 percent in 2000, the first year for which these statistics were kept."); Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, *Ninth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 19 FCC Rcd 20597, 20609-11, 20683-88 ¶¶ 23-28, 211-21 (2004).

Order. In fact, that very growth in competition proves the wisdom of the Commission's decision not to intervene in CMRS interconnection.

Third, the Commission found that a direct connection requirement "would raise a number of technical issues relating to possible potential for degraded service to CMRS consumers, controversies about the type and quality of interconnection that would have to be provided, or both."[17] That would be no less a concern today.

Finally, the Commission reasoned in the *CMRS Interconnection Order* that imposing connection requirements by administrative fiat would require compensation, and determining the relevant costs "involves a substantial administrative burden."[18] As a result, the Commission ruled that the public interest did not support requiring CMRS providers to connect directly to third-party switches.[19]

The Commission has also unfailingly rejected other proposals to require CMRS providers to establish direct connections to an intervening switch. For example, in the *CMRS Order on Reconsideration*, the agency denied a request under Sections 201 and 332 for direct connections with a third-party switch because the *CMRS Interconnection Order* had already determined that "there was no right to mandatory interconnection and

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17 *CMRS Interconnection Order*, 15 FCC Rcd at 13532 ¶ 21.

18 *Id.* at 13532 ¶ 22.

19 The Commission also declined to impose a direct interconnection requirement between CMRS carriers in the *CMRS Interconnection Order*. *CMRS Interconnection Order*, 15 FCC Rcd at 13534 ¶¶ 28-29. The Commission explained that direct connections were not necessary to exchange traffic because carriers can rely on a tandem for indirect interconnection and that "[i]n view of the growth of competition in the CMRS market . . . we continue to believe that the best way of achieving interconnection is through voluntary private agreements." *Id.* at 13534 ¶ 28.

[that] the proposals were not in the public interest").[20] In *Cellnet v. Comcast Cellular*, the Commission dismissed complaints because, among other reasons,"[t]he Commission has recently held that (1) Sections 201 and 332 do not require mandatory interconnection between CMRS networks and resellers' switches and (2) that resale switch interconnection is not required by the public interest."[21] Similarly, in *Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, Inc.,* the Commission noted that the parties agreed that the *CMRS Interconnection Order* disposed of complainant's claims under Sections 201, 251, and 332 of the Act and accordingly dismissed those claims.[22]

C. A Direct Connection Requirement Would Impose Substantial Costs on Wireless Carriers

The Plan's direct connection requirement would impose substantial implementation costs on wireless carriers. As an initial matter, carriers reasonably relied on the existing legal regime to construct their networks. Under the existing regime, wireless carriers are required only to "interconnect directly *or* indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a)(1) (emphasis added). Wireless carriers have therefore had no reason to build their networks with sufficient capacity to accommodate direct interconnection with every other carrier with which they exchange traffic.

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[20] Interconnection and Resale Obligations Pertaining to Commercial Radio Services, *Memorandum Opinion and Order on Reconsideration,* 16 FCC Rcd 10009, 10012 ¶ 7 (2001).

[21] *Cellnet Communications, Inc. v. Comcast Cellular Communications*, Inc., 15 FCC Rcd 13814, 13817 ¶ 8 (Jul. 26, 2000).

[22] *Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, Inc.*, 16 FCC Rcd 22887, 22888 ¶ 2 n.4 (2001).

Verizon Wireless, for example, exchanges most traffic through the local ILEC's tandem (in most cases, an ILEC other than a Verizon entity) and only connects directly with another carrier when traffic volume with that carrier and other network considerations warrant the establishment of direct connection. Under the Plan, those other carriers would have the right "to physically interconnect at [Verizon Wireless's] Edge for the purpose of direct interconnection."[23]

As a result, the Plan would require carriers like Verizon Wireless to build into their networks the equipment necessary to permit direct connection with untold numbers of carriers, even when direct connections would be inefficient because there is insufficient traffic to justify such connections. In today's wireless marketplace, interconnection involves a "buy versus build" decision. According to sound engineering principles, when carriers exchange fewer than 500,000 minutes of use between two switch points, indirect interconnection is typically more economical than incurring the cost of facilities to connect two switches. Under the Plan, Verizon Wireless would be required to establish such Edges in every LATA served by Verizon Wireless and, further, Verizon Wireless would be responsible under the Rural Transport Rule discussed in Section II for(a) the delivery of traffic originating from Verizon Wireless and terminating to the Track 2 and 3 carrier's Edge, and (b) the delivery of traffic originating from the Track 2 and 3 carriers and terminating on the Verizon Wireless Edge(s). The rearrangement of network configurations required by the Plan bear no relationship to sound economic and technical parameters, and would, contrary to the Commission's

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[23] Plan at 41. Under the Plan, and "Edge" is "the location on a carrier's network where it receives traffic for routing within its network and where it performs the termination function for traffic received from other carriers." *Id.* at 42.

admonitions in the *Further Notice,*[24] contribute to network inefficiencies that are driven by regulation as opposed to market factors. This would come at substantial cost, yet would provide no benefit.

II. THE PLAN DISCRIMINATES IN FAVOR OF TRACK 2 AND 3 RURAL ILECS AT THE EXPENSE OF WIRELESS CARRIERS AND RURAL CUSTOMERS

In addition to complicating intercarrier compensation by requiring inefficient network architecture requirements, the Plan is directly contrary to the FCC's desire in the *Further Notice* to be competitively and technologically neutral because it discriminates between carriers based on size, traditional regulatory distinctions, and technology. It increases the costs of Track 1 carriers to provide service to subscribers, despite the fact that Track 1 carriers themselves often serve the same customers as Track 2 and Track 3 rural carriers. These new implicit subsidies would disrupt the market, harm competition, and ultimately harm consumers, particularly those in rural areas.

A. The Plan Relegates Wireless Carriers to Track 1 Despite the Fact that Wireless Carriers Provide Service in Rural Areas

The Plan arbitrarily places carriers in Tracks according to distinctions that are not competitively or technologically neutral. Wireless carriers today serve the same rural customers as Track 2 and Track 3 carriers, yet even in those areas, wireless carriers are designated as Track 1 carriers.[25] The result of this designation is that wireless carriers would subsidize Track 2 and Track 3 carriers, both directly as demonstrated below because the Plan shifts virtually all transport costs from Track 2 and Track 3 carriers to Track 1 carriers, and indirectly through the Restructure Mechanism.

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24 *Further Notice,* 20 FCC Rcd at 4702 ¶ 31.

25 *See* Plan at 5 ("All non-ILECs fall into Track 1.").

Congress enacted the 1996 Act "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[26] The Commission specifically stated in the *Further Notice* that "it is imperative that new rules accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers."[27] As the Commission has recognized in another context, subsidization harms consumers, as "payments from other carriers may enable a carrier to offer service to its customers at rates that bear little relationship to its actual costs, thereby gaining an advantage over its competitors."[28] Compensation should be provided with reference to the cost of providing service, not serve as an uncapped, unending revenue source for certain carriers by requiring their competitors to subsidize them. Adopting the Missoula Plan, which protects certain classes of carriers, would re-establish the subsidized environment that existed prior to the Telecommunications Act of 1996.

The supporters of the Plan simply ignore the fact that wireless carriers have customers that live and work in the same geographical regions served by Track 2 and Track 3 carriers. In many cases, wireless carriers provide the only facilities-based competition in these areas, and thus bring alternative telecommunications service to rural consumers at market-based prices. When Verizon Wireless provides service to rural

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[26] Pub. L. No. 104-104, 110 Stat. 56, 56 (1996).

[27] *Further Notice,* 20 FCC Rcd at 4702 ¶ 33.

[28] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *Order on Remand and Report and Order*, 16 FCC Rcd 9151, 9182 ¶ 68 (2001).

areas, many of its customers are also customers of a Track 2 or Track 3 carrier. Therefore, the exchange of traffic between wireless and Track 2 and 3 carriers' networks mutually benefits rural consumers, who are subscribers of both wireless and wireline services. However, if wireless carriers are forced to increase their costs to provide transport in rural areas, such costs will likely be borne by rural consumers who are also Track 2 or 3 carrier subscribers, discouraging intermodal competition in markets that are already subject to fewer facilities-based competitors. Competition cannot flourish when one competitor is forced to subsidize another.

There is in fact no need to provide added regulation-based incentives to rural carriers or create two new classes of rural LECs. Section 251(f)(2) of the Act, 47 U.S.C. § 251(f)(2), already provides rural carriers, and carriers with less than 2 percent of the nation's lines, the ability to seek a suspension of the reciprocal compensation obligations through a petition process at the state commission level. Pursuant to this provision, each rural carrier has the regulatory flexibility it requires to avoid any undue economic burden reciprocal compensation reform could impart. The Missoula Plan's added relief is entirely unnecessary.

B. The Plan's Transport Rules Provide Unjustified Benefits to Track 2 and 3 Carriers

The proposed transport regime includes unwarranted benefits to Track 2 and 3 carriers by reducing and in some cases eliminating their obligations to pay for the transport and termination of traffic originated by their customers. The Plan proposes, as a general matter, to require an originating carrier to deliver local traffic to the terminating carrier's "Edge."[29] However, the plan effectively exempts Track 2 and 3 carriers that are subject to the "Rural Transport Rule" from this obligation to carry traffic to the point of termination designated by their own customers. The net result of the exemptions is to allow Track 2 and 3 carriers to deliver traffic to a network demarcation point on the "Edge" of *their own network*, and thus receive free transport from their network "Edge" to the "Edge" of a terminating Track 1 carrier's network. This is contrary to the principle of cost causation that is behind existing rules today. The Missoula Plan proposes to shift the costs associated with transporting LEC-originated traffic to the called party's network. Further, under either the "full" or "modified" Rural Transport Rule scenario, as described below, the Track 1 carrier must bear all third-party transit costs for traffic in both directions when traffic is exchanged indirectly. Such a result is inconsistent with the mutual recovery of costs provided by the current reciprocal compensation regime that the Commission adopted in implementing the 1996 Act.[30]

Track 1 carriers are required to subsidize the transport costs of Track 2 and 3 carriers through the so-called "full" and "modified" Rural Transport Rules. Under the "full" Rural Transport Rule, a Track 1 carrier bears all of the cost of transporting traffic to a Track 2 carrier's Edge, as well as all of the cost of transporting the Track 2 carrier's traffic from a meet-point to the Track 1 carrier's Edge.[31] As a result, the Track 1 carrier could bear three-quarters or more of the transport costs involved in the exchange of traffic between the two carriers. The "modified" Rural Transport Rule differs in only one respect from the "full" rule. Under the modified rule, a Track 2 or 3 carrier bears half the

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29 Plan at 41-42.

30 *See* 47 U.S.C. §§ 251(b)(5), 252(d)(2).

31 *See* Plan at 34-35.

cost for the facilities used to transport their traffic from the meet point to the Track 1 carrier's Edge, instead of foisting all of those costs onto the Track 1 carrier, as under the "full" rule.[32] Thus, even under the modified rule, the Track 1 carrier will bear well over half of the transport costs incurred in exchanging traffic with a Track 2 or 3 carrier. Further, under both scenarios, the Track 1 carrier must bear all tandem transit costs for traffic in both directions when traffic is exchanged indirectly. The Plan offers no rationale for these exceptions to the general rule that requires the costs of transport be allocated proportionately with the relative benefits derived by each carrier to the traffic exchange.

The Plan's designation of permissible Edges similarly provides unwarranted benefits to Track 2 and 3 carriers. For example, a Track 1 carrier "*cannot* designate one of its End Offices as an Edge if that End Office subtends the carrier's own access tandem," *id.* at 45, while Track 2 and 3 carriers "may declare *any* eligible End Office to be an Edge, even if the End Office subtends the carrier's own access tandem," *id.* at 46. And while Track 2 and Track 3 carriers "may designate an eligible Trunking Media Gateway location that performs end office functionality, or a POP location that extends this trunking media gateway functionality, to be an Edge," *id.*, Track 1 carriers may do so only "for traffic terminating to its end offices that subtend its access tandem, in lieu of that access tandem itself," *id.* at 45. As a result, Track 2 and 3 carriers have far more choices about which points in their networks to designate as their Edges, which are the places to which other carriers must bear the expense to transport traffic. In most cases

[32] *Id.* at 33.

this will require new construction or lease of equipment to the "Edges" designated by the Track 2 and 3 carriers.

The arbitrary designation of traffic delivery points that bear no relationship to the costs of such facilities to the designating carrier provides an arbitrage opportunity for Track 2 or 3 carriers to raise a competing carrier's costs. Track 2 and 3 carriers can select Edges that materially increase the extent to which Track 1 carriers must bear the cost of transporting all the traffic they exchange with Track 2 and 3 carriers. Designation of Edges by Track 1 carriers, in contrast, is significantly more limited. For example, Track 1 carriers are precluded from using their local tandems as Edges, even though many carriers currently interconnect at local (rather than access) tandems. *See id.* at 43-44. Also, even though Track 1 carriers must designate at least one Edge per LATA, Track 2 and 3 carriers would not be responsible for the delivery of their originated traffic to the Track 1 carrier's Edge.

C. The Plan Would Erode the MTA Rule

The Plan uniquely benefits rural carriers when they exchange calls with Track 1 wireless carriers. When a wireless customer originates an interLATA, intraMTA call that reaches a rural wireline carrier's network, such traffic is subject to the rural carrier's reciprocal compensation rate.[33] But when the same call goes the other way — that is, when the rural wireline customer calls the wireless carrier's customer — the call is routed via a long distance carrier, and the Plan limits the wireless carrier to receiving only the Track 1 reciprocal compensation rate, instead of rates equivalent to wireline access charges, from the long-distance carrier. *See id.* at 29. In other words, calls in one

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33 *Id.* at 28-29.

direction are subject to Track 2 or 3 reciprocal compensation rates (paid to the rural carrier by the CMRS carrier), and calls in the other direction are subject to the Track 1 reciprocal compensation rate (paid to the CMRS carrier by the IXC).

In effect, the Plan provides an asymmetrical compensation mechanism that does not appropriately compensate wireless carriers for transport and termination services they provide to the customers of Track 2 and 3 LECs. Whereas existing rules are consistent with the requirements of section 251(b)(5) of the Act and the related pricing provisions of 252(d)(2), because they ensure the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," the Plan's exemptions from transport costs for Track 2 and 3 carriers violate this principle, allowing Track 2 and 3 carriers to shift originating transport costs to CMRS providers.

Pursuant to the current reciprocal compensation regime, wireline carriers, including rural and small independent LECs, are required to compensate CMRS providers for traffic that these carriers exchange within a single MTA at symmetrical reciprocal compensation rates.[34] The FCC chose the MTA as the relevant reciprocal compensation scope for CMRS providers based on the wide area-licensing scheme implemented by the FCC.[35] The Commission correctly rejected a definition of reciprocal compensation traffic that would have forced CMRS providers to implement the legacy

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[34] See *Atlas Tel. Co. v. Corp. Comm'n of Okla.*, 400 F.3d 1256, 1264 (10th Cir. 2005); WWC License, LLC v. Boyle, 459 F. 3d 880, 891 (8th Cir. 2006). The 8th and 10th Circuits have upheld the FCC's application of symmetrical reciprocal compensation to all traffic exchanged indirectly between CMRS and LECs within a single MTA.

[35] See *Local Competition Order* at ¶ 1043. ("As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local services areas.")

architecture of landline carriers, and instead adopted a market-based approach to implement the reciprocal compensation obligations set forth in the 1996 Act. However, the Plan would erode the MTA as the appropriate boundary for LEC-CMRS reciprocal compensation, by requiring CMRS providers to pay for transport and transit costs associated with telecommunications traffic originated by Track 2 and 3 LECs.

In addition, the Plan's prohibition against LECs using an IXC to exchange traffic with a CMRS provider is very narrow,[36] only where the call is intraMTA *and* one of the following applies: (1) the calling and called numbers are associated with the same rate center; (2) the calling and called numbers are in different rate centers that are covered by an ILEC EAS arrangement; or (3) the LEC has the retail toll relationship with the calling party.[37] The Plan thus creates artificial distinctions where LECs use an IXC for some intraMTA traffic and not other intraMTA traffic.

The Plan further erodes the MTA by creating arbitrage opportunities in mandating a telephone-number based methodology "that will rely on the calling and called telephone numbers to determine" whether a call is access or non-access traffic. Plan at 25. Although the industry has before used telephone numbers for this purpose, that was when those numbers correlated with customers' geographic locations. Geographic location is no longer easy to determine with explosion of wireless traffic. To account for this, the industry has turned to billing factors and other proxies instead of telephone numbers.

Telephone numbers will be consistently *inaccurate* in determining jurisdiction for intercarrier compensation purposes when, for example, a wireless customer roams into a neighboring MTA, because the call between a landline customer in the neighboring

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36 Plan at 29

37 *Id.*

market and the wireless handset will always appear to be interMTA, even when the calling and called parties are within the same block. Because the Plan maintains distinctions between inter- and intrastate access charges, and between access charges and reciprocal compensation, particularly for Track 3 carriers, a switch to a pure telephone-number based system will encourage manipulation of telephone numbers to obtain more favorable rate treatment.

D. Transit Rules Also Disproportionately Benefit Rural Carriers

Even where the Plan appears to propose a meaningful reduction in rural carriers' rates — as with the proposed inflation-adjusted cap on tandem transit rates, *see* Plan at 51 (proposing a cap of $0.0025 per MOU) — that appearance is deceiving. In fact, wireless carriers send most of their transit traffic through Track 1 and some Track 2 carriers, which today typically have very low transit rates. Although Track 3 rates are often higher than the cap, and the cap would therefore be beneficial in bringing these high rural rates down, only a nominal amount of wireless transit traffic traverses rural carriers' switches. In addition, some rural carriers' transit services are not subject to the cap, because the Plan exempts "[t]andem owners in Track 3" that offer "jointly provided tandem switched transport for access traffic." *Id.* at 54. The "benefits" of the transit proposal are therefore entirely illusory.

Finally, the Plan also doubles the cap — to $0.0050 — on *all* traffic that triggers the Plan's "Traffic Volume Limitation" – namely traffic that exceeds the volume threshold of 400,000 minutes of use per month between two switch points -- not merely the traffic above the volume limitation. *Id.* The application of this "premium" transit rate per minute-of-use is up to twice the regular transit rate. Not only is consideration of any volume threshold a topic that should be left to negotiation, but the Plan ignores the fact that there are other items besides traffic volume that must be considered, including but not limited to anticipated growth in traffic volume, the cost of connecting facilities, and the availability of alternative transport providers, when determining whether to interconnect directly or indirectly. Clearly, the Plan attempts to change the economics of the direct versus indirect interconnection decision in a way that would encourage establishment of significantly more direct interconnections, when such direct interconnections will often not provide the most efficient interconnection approach.

III. THE PLAN WOULD CREATE MYRIAD NEW COSTS AND ADMINISTRATIVE BURDENS

The Commission was clear in the *Further Notice* that "any new plan should be simple to administer."[38] Yet instead of simplicity, the Plan would establish a number of new requirements that impose unnecessary costs on the industry, the very kinds of transaction and administrative costs that the Commission should attempt to avoid.

As demonstrated above in Section I, the Plan would force wireless carriers to permit direct connection at an Edge in every LATA from all carriers, including transit providers. In addition to the costs that this would impose on wireless carriers that have not constructed their networks with a direct connection requirement in mind, the Plan would also force wireless carriers to connect with Track 1 carriers at their access tandems instead of local tandems, and to connect with Track 2 and 3 carriers pursuant to the full or modified Rural Transport Rule discussed in Section II above. The likely effect of these requirements taken together would be for carriers to engage in wholesale network

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[38] *Further Notice,* 20 FCC Rcd at 4715 ¶ 61.

reorganization, not because it is efficient or beneficial for consumers, but because of the incentives that the Plan provides for these rearrangements.

A second example of needless expenses that would result from the Plan are related to billing. For example, under the out-of-balance transport rules for Track 1 carriers, the Track 1 carrier terminating the larger amount of traffic would have the financial obligation for *all* transport to interconnect the two carriers in both directions.[39] Most interconnection agreements between wireless and wireline carriers establish traffic balance factors because wireless carriers do not have billing systems that enable them to measure traffic. It would be impossible for a wireless carrier in this circumstance to prove that the balance of traffic between the wireless and wireline carrier was greater than a 3:1 ratio without implementing a costly billing system, and there would be no incentive for wireline carriers to agree otherwise. Despite 10 years of successful reliance upon traffic factors to exchange traffic with wireline carriers and bill reciprocal compensation, the Plan would force wireless carriers to purchase costly billing system or be required to bear unfairly all transport in both directions when they exchange traffic with Track 1 carriers.

Third, the Plan would impose substantial administrative burdens because it would interfere with existing agreements and provide carriers with rights under Section 252 that do not today have such rights. The Plan would apply if (i) the party's "agreement is silent [about rates] or permits alteration in relevant part in accordance with changes in law," (ii) "if there is no agreement," or (iii) "if an agreement is in an evergreen period."[40] The Plan would therefore only *not* apply when an agreement precludes changes in rates

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39 Plan at 31.

40 *Id.* at 4.

and is in its initial term. Such a result is unfair because carriers often spend large sums of money negotiating and in some cases arbitrating disputes that have resulted in agreements. The Commission should not needlessly interfere with the settled expectations of contracting parties.

Similarly, while Congress imposed an obligation to enter interconnection agreements pursuant to the terms of Section 252 on incumbent LECs only,[41] the Plan would require all carriers to enter into interconnection agreements under Section 252 of the Act.[42] Although the Commission expanded the Section 252 process recently in the *T-Mobile Order* to permit incumbent LECs to request to negotiate, and, if necessary, arbitrate against wireless carriers,[43] the Commission took this action to correct a perceived imbalance, providing incumbent LECs with a means to obtain compensation from wireless carriers.[44] The Commission also coupled this decision with a prohibition against wireless termination tariffs.[45]

Despite any real or perceived imbalance between competitive carriers, however, the Plan would expand Section 252 to require carriers to negotiate, arbitrate before state commissions, and litigate in federal court agreements with a multitude of other carriers with which they have never before had any obligation to enter into such agreements. The Act does not require this, and this would generate massive costs for all carriers. Absent a showing that there has been a failure, the Commission should continue to rely upon the

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41 *See* 47 U.S.C. §§ 251(c)(1), 252(a)(1).

42 Plan at 54.

43 *See* Developing a Unified Intercarrier Compensation Regime, *Declaratory Ruling and Report and Order,* 20 FCC Rcd. 4855 (2005) ("*T-Mobile Order*")

44 *Id.,* 20 FCC Rcd at 4864.

45 47 C.F.R. § 20.11(d).

marketplace to dictate the terms of agreements between carriers not currently subject to the Section 252 process.

IV. CONCLUSION

For the foregoing reasons, Verizon Wireless urges the FCC to reject the Missoula Plan.

Respectfully submitted,

VERIZON WIRELESS

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