BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of Missoula Intercarrier	)	
Compensation Reform Plan	)	CC Docket No. 01-92
	)	

COMMENTS OF THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Date: October 25, 2006

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I. SUMMARY

The Massachusetts Department of Telecommunications and Energy ("MDTE") hereby submits these Comments pursuant to the Public Notice issued by the Federal Communications Commission ("Commission" or "FCC") on July 25, 2006, and published in the Federal Register on August 9, 2006, seeking comment on the Missoula Intercarrier Compensation Reform Plan ("Missoula Plan" or "Plan").[1] The Public Notice states that the Missoula Plan, filed by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation ("NARUC Task Force"),[2] is "the product of a 3-year process of

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[1] The Public Notice stated that the deadline for comments was September 25, 2006 and reply comments was November 9, 2006. In the Matter of Missoula Intercarrier Compensation Reform Plan, CC Docket No. 01-92, Public Notice, DA 06-1510, at 1 (rel. July 25, 2006) ("Public Notice"). In response to an August 24, 2006 Motion for Extension filed by NARUC, the FCC extended the comment deadline to October 25, 2006 and the reply comment deadline to December 11, 2006. See Order Extending Comment Period, DA 06-1730, at 1-2 (rel. August 29, 2006).

[2] As stated in the Public Notice, members of the Task Force and NARUC have not taken a position on the Missoula Plan, even though the Plan was filed by the NARUC Task Force. Public Notice at 1, citing Letters from Tony Clark, Commissioner and Chair,

(continued...)

industry negotiations led by NARUC," and the Plan's supporters include AT&T Corp., BellSouth Corp., Cingular Wireless, Commonwealth Telephone Company, Consolidated Communications, Epic Touch, Global Crossing, Iowa Telecom, Level 3 Communications, Madison River Communications, and the Rural Alliance, an association of 336 small, rural incumbent local exchange carriers ("ILECs"). Public Notice at 1, citing Letters from Tony Clark, Commissioner and Chair, NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force (July 24, 2006) (attached to the Missoula Plan). The Public Notice also states that the supporters of the Missoula Plan contend that the Plan "unifies intercarrier charges for the majority of lines, and moves all intercarrier rates charged for all traffic closer together" and "would represent a major step forward in intercarrier compensation reform." Id. at 1.

The MDTE applauds the tireless efforts of the NARUC Task Force, particularly the NARUC leadership that worked to facilitate industry discussions and forge consensus on very complicated and contentious issues during the difficult three-year process that culminated in the filing of the Missoula Plan with the FCC, as well as the carriers, particularly AT&T Corp., that ultimately were able to agree on a Plan that had enough support to justify submission to

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[2](...continued)
NARUC Committee on Telecommunications, Ray Baum, Commissioner and Chair, NARUC Task Force, and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force (July 24, 2006) (attached to the Missoula Plan).

the Commission, thereby potentially moving the regulatory process forward in a way that may lead to meaningful industry reform. However, as set forth in greater detail below, the MDTE opposes the Missoula Plan because: (1) it is ill-suited to the characteristics of the Massachusetts telecommunications markets, which would benefit more from incremental, targeted reform to address the problems specific to Massachusetts rather than a wholesale overhaul of the intercarrier compensation system; (2) it would most likely increase telephone rates and the amount of universal service fund ("USF") charges Massachusetts consumers pay into the USF fund, rather than savings Massachusetts customers money on their telephone bills; and (3) it unfairly favors one segment of the industry – rural ILECs – at the expense of other carriers and their customers.

II. SUMMARY OF THE MISSOULA PLAN[3]

In basic terms, the Missoula Plan would is designed to unify intercarrier compensation for "the majority of lines" in the nation and "moves all intercarrier rates charged for all traffic closer together." In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Written Ex Parte Presentation by NARUC, Executive Summary at 1 (filed July 24, 2006) ("Executive Summary"). It addresses all types of traffic (e.g., local, ISP-bound, intrastate and interstate access traffic, and transit traffic). Executive Summary at 3. The Plan would significantly reduce intercarrier compensation rates (i.e.,

[3] Because of the complexity of the Plan, the MDTE only highlights its major aspects, particularly those that would have the most impact on Massachusetts.

switched access charges) for all carriers and replace that lost revenue "through supplemental sources of recovery," principally increases in end-user subscriber line charges ("SLC"). Id. at 1. The Plan would provide "a transition to the new regime" through a series of three one-year steps, with each step resulting in more rebalancing. After the third step, the FCC would conduct a proceeding to assess the results of the Plan and determine whether any changes are necessary. Id. at 2.

The Plan divides carriers into three categories, or tracks, based on their size and regulatory classification and has different rules for each track. Id. Track 1 includes Regional Bell Operating Companies ("RBOCs") and other non-rural carriers, such as competitive local exchange carriers ("CLECs"), interexchange carriers ("IXCs") and wireless carriers. The majority of ILEC access lines in the country – 146.2 million – would be governed by the rules of Track 1. Id. Track 2 would include most mid-sized rural carriers, covering 12.5 million lines. Id. Track 3 carriers would be "the smallest rate-of-return regulated rural carriers," and would cover 7.3 million lines. Id. Carriers in Tracks 1 and 2 would ultimately achieve a unified intercarrier compensation structure and unified rates, while Track 3 carriers, whose access rates would be reduced to interstate levels, would not. Id.

The Plan rules are "default rules," and carriers can negotiate their own intercarrier compensation arrangements. Id. at 2. In addition, while state commissions have the discretion to participate in certain parts of the Plan (e.g., increasing SLCs for Track 1 carriers), the majority of the rules under the Plan would be mandatory upon states. Id.

Under Tracks 1 and 2, intercarrier charges (both originating and terminating) would be reduced and terminating charges would be unified, although the specifics of how this would be done are different for these two tracks. Id. at 3. Carriers could eliminate originating charges altogether. Id. For example, from Step 1 through 3, Track 1 carriers would reduce intrastate and interstate terminating access rates to $0.0007 and unify all terminating traffic rates at that level; by Step 4, the unified rate would be further reduced to $0.0005. By Step 3, Track 1 carriers would be required to reduce originating access charges, and by Step 4 both interstate and intrastate originating access charges would be unified at the current interstate level. Id. In contrast, Track 3 carriers would only be required to reduce intrastate access charges to interstate levels by Step 4 (but leaves interstate access charges unchanged), and those rates would "remain distinct from reciprocal compensation levels, which will be capped at interstate access levels." Id. at 4.

To recover lost access charge revenue for Track 1, carriers could increases the SLC to a cap of $10.00 by Step 4. Track 2 and 3 carriers could increase the SLC over three years by $2.25. Id. at 7. To the extent SLC increases and restructured intercarrier charges are not sufficient for carriers to recover lost access revenue, the Plan allows carriers to get additional revenue recovery from a $1.5 billion Restructure Mechanism. Id. at 12-13. Further, the Plan creates an Early Adopter Fund of a minimum of $200 million, "to provide support for states that have reduced access rates through an explicit state fund by the time the Plan is adopted" so that consumers in those states are not "disproportionately burdened" by the Plan. Id. See also

Missoula Plan: Interconnection and Intercarrier Compensation, Presentation by Missoula Plan Proponents to the National Association of State Utility Commissioners at 15 (September 14, 2006) (available at http://www.nrri.ohio-state.edu/Telecom/hot-topics-links/intercarrier-compensation/state-workshops/naruc-workshop/missoula-plan-interconnection-for-naruc-webinar-final.ppt/view).

The Plan also includes adjustments to the high-cost fund that will increase the fund by $300 million, and an increase in the Lifeline/Linkup fund by $225 million to ensure that low-income customers are not harmed by the Plan. Id.

III. DISCUSSION

The MDTE did not actively participate in the NARUC Task Force activities, however, Commissioners and staff from the MDTE kept informed about developments throughout the three-year process by participating in NARUC Telecommunications Committee and Staff Subcommittee meetings, conference calls, and through review and comment on documents that were distributed during the development of the Plan. In preparation for drafting and filing Comments in this proceeding, the MDTE informally had discussions to gather input from stakeholders, including Plan supporter AT&T; Verizon; CLECs, such as One Communications and XO Communications; and Comcast. The MDTE also reviewed various position papers provided by stakeholders and NARUC to obtain the broadest cross-section of viewpoints, including the perspective of consumer advocates, the wireless industry, and other stakeholders.

It is this information as well as the Plan documents themselves upon which the MDTE bases its opposition.

A. The Plan is Ill-Suited to the Reform Needs of the Massachusetts Market

While some intercarrier issues may need to be addressed in Massachusetts, because of the characteristics of the state's telecommunications industry, there is not the same need for wholesale overhaul of the intercarrier compensation system. Instead, Massachusetts has in the past and will continue to be best served by incremental, targeted reform that takes into account the specific needs of carriers and consumers in the Commonwealth.

Although described as an industry-wide solution,[4] the Plan is designed in large part to address the unique financial and competitive issues of rural ILECs, that is, to prepare rural ILECs for the fundamental changes in the industry, principally the transition to an Internet Protocol ("IP") world. Rural ILECs, most of which have not done sufficient rate rebalancing, rely heavily on access revenue to fund their operations and, therefore, are vulnerable to Voice over IP ("VoIP")-induced access bypass. The Plan would gradually rebalance their rates

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[4] Were it so attractive to the industry as a whole, one would expect a wider cross-section of industry support for the Plan. Only AT&T (and its current wireless and soon-to-be RBOC affiliates), a few mid-sized ILECs, two transport providers, and a huge group of small ILECs support the Plan. The majority of the industry and entire industry segments oppose the Plan. These include the two other RBOCs – Verizon and Qwest, all other large and mid-sized ILECs, the cable industry, the wireless industry, the CLEC community, and consumer interests.

(lower some access charges and increase end-user rates) on a revenue-neutral basis. It also proportedly would improve the economics for rural ILECs to deploy broadband.[5]

The Massachusetts telecommunications market has very different characteristics than those of most other states. Massachusetts has virtually no rural ILEC presence. From a geographic and ILEC access line basis, Verizon serves almost 100 percent of the state.[6] Even though a large part of Massachusetts is rural in nature, particularly western Massachusetts, for purposes of the federal high-cost USF, Verizon is considered a non-rural ILEC, because it has comparatively low geographically-averaged rates. There are four other ILECs that operate in Massachusetts, all of which are very small and serve a single rural town or portions thereof. Combined, these four rural ILECs have about 5,000 access lines, less than one-quarter percent of the ILEC lines statewide. Three of them – Granby Telephone Company ("Granby"), Taconic Telephone Corp. ("Taconic"), and Richmond Telephone Company ("Richmond") – serve small towns or portions thereof in western Massachusetts. The fourth rural ILEC, Sentinel Tree Telephone Company, provides telephone service to privately-owned Elizabeth Island.

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[5] To the extent that the Plan is funded through increases in the USF, any contribution made by an intermodal provider (e.g., wireless carrier, cable company, VoIP provider, satellite company) would constitute an inter-industry and intermodal subsidization.

[6] Of course, from a competitive standpoint, Verizon's share of the Massachusetts telecommunications market is considerably less than 100 percent.

In addition, unlike many ILECs, particularly small and medium-sized ILECs, Verizon's rates in Massachusetts have undergone significant rebalancing, so there is much less of an access charge problem here than in other states. Thus, the Missoula Plan, which focuses heavily on reducing access charges, has much less relevance to Massachusetts. The MDTE reduced Verizon's access charges to interstate levels in July 2003, as part of an ongoing rebalancing process that began in 1989. At the same time, the Department increased the basic exchange rate (dialtone line) by $2.45 (from $9.91 to $12.36).[7] At the start of rebalancing in 1989, the dialtone line rate was $1.19. Although the MDTE has not calculated the average access rates charged by CLECs in Massachusetts, it is our understanding that on average they are somewhat higher than Verizon's (i.e., where Verizon's combined originating and terminating charges are $0.0105, the CLEC's rates are about $0.015). Among the three western Massachusetts ILECs, Granby and Richmond charge roughly $0.07 for combined per minute originating and terminating charges; Taconic about $0.01. While the MDTE may in the future consider reductions to LECs' switched access charges to bring them closer to, or unify them with other rates[8] such as reciprocal compensation rates (which are set at long-run

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[7] Subsequently, the MDTE increased the rate for the dialtone line to the current level of $12.70, but that increase was unrelated to access charge rebalancing.

[8] Although the Plan speaks of unifying intercarrier rates, in fact the Plan does that for only certain carriers. Track 1 and 2 carriers would have unified rates among carriers in those tracks but not between them, while Track 3 carriers continue to have different rates for different types of traffic. As a result, the Plan does not eliminate the rate

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incremental cost), or consider other targeted, incremental changes, the current intercarrier compensation regime in Massachusetts has not been an impediment to competition. Carriers have been able to negotiate agreements on how to treat new types of traffic, such as traffic bound to Internet service providers (see, e.g., Amendment No. 2 to the Interconnection Agreement between Verizon-Massachusetts and Level 3 Communications, LLC (approved January 28, 2005)), and when disputes arise, the MDTE has resolved them (see, e.g., Global NAPs Petition for Arbitration, D.T.E. 02-45 (2002) (determined that VNXX traffic was subject to access charges)), aff'd Global NAPs, Inc. v. Verizon New England, Inc., 444 F.3d 59 (1st Cir. 2006). Any reform plan should rely on negotiated solutions, however, and the Missoula Plan would override many existing interconnection agreements and replace them with mandatory regulator-imposed rules, and would create disincentives for carriers to negotiate new agreements.[9] The Plan would also disrupt the current system of interconnection among carriers, put in place by carrier negotiation or state commission decision-making, and require carriers to create new interconnection arrangements, which likely would not be as efficient as the current system and would be very costly.

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[8](...continued)
arbitrage opportunities of the current system.

[9] The Plan includes a provision that carriers could negotiate their own intercarrier compensation arrangements outside of the confines of the Plan. However, because of the unequal treatment of different carriers under the plan, those that are treated more favorably will have less incentive to negotiate a deal outside of the Plan. Also, the Plan might permit some carriers to negotiate discriminatory arrangements.

B. The Plan Would Likely Increase Rates for Massachusetts Consumers

The Plan supporters contend that regardless of the services purchased, whether wireline, wireless, DSL, cable modem, VoIP, or combinations of each, customers nationwide will see a decrease in their bills of an average of $2.76 per month.[10] We are not aware, however, of any examination of the Plan's impact on individual states. The MDTE has not been able to quantify the impact on Massachusetts, given the complexity, many variables, and open questions of the Plan. However, based on a general examination of the major components of the Plan in relation to the specific characteristics of the Massachusetts telecommunications market, the MDTE is almost certain that the Plan would increase rates for Massachusetts consumers.

First, though the access rate and other intercarrier compensation reductions may lead to lower end-user rates, because those rates in Massachusetts, including access rates, are already relatively low, the margin for savings is considerably narrowed compared to other states. In addition, there is no guarantee that carriers will pass on those savings, because the Plan does not require it. On the other hand, customers of non-rural ILECs and CLECs would see a substantial increase in local rates through the SLC cost recovery mechanism. Verizon's

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[10] The average decrease is derived by taking the expected decrease of a representative customer of different services, usage levels, and combinations of services. See In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Notice of Written Ex Parte Presentation by NARUC, at Exhibit 1, Summary Matrix (filed July 24, 2006).

current SLC is $6.40 per month. The Plan allows Track 1 LECs, which includes Verizon, to increase the SLC to $10.00 over four years. It also gives ILECs the right to deaverage their SLC rates. Verizon and CLECs may find that they are unable to increase their SLCs in competitive areas, although through the deaveraging flexibility, Verizon might be able to increase the SLCs in less competitive areas of the state. Nevertheless, these carriers will look to recover their costs somehow, and if it can not be done through SLC increases, then it may be done through increases to other rates, to the detriment of their customers.[11]

Second, Massachusetts ratepayers will experience additional rate increases in the form of higher USF fees. Under the Plan, the cost of the Restructure Mechanism, increases to the high-cost fund, increases to the low–income fund, and the cost of the Early Adopter Fund would increase the current $7 billion USF by $2.25 billion, or to $9.25 billion – a 32 percent increase.[12] See Missoula Plan: Bad for Customers, Bad for Competition, Bad for the Market, Presentation by Missoula Plan Opponents to the National Association of State Utility Commissioners at 14 (September 25, 2006) (available at

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[11] Carriers that do not increase their SLCs to the maximum level do not qualify for the Restructure Mechanism. Given the characteristics of the Massachusetts market, it is unlikely that Verizon will increase its SLC to the maximum level, so it would have to forgo Restructure Mechanism funding, to the extent it had not recovered all lost revenue from access and other mandatory rate reductions. In addition, it is not clear whether CLECs are eligible for Restructure Mechanism funding.

[12] It is not clear from the Plan how the funds would be distributed among industry segments or individual companies within those segments.

http://www.nrri.ohio-state.edu/Telecom/hot-topics-links/intercarrier-compensation/state-workshops/naruc-workshop/missoula-opposition-slides.ppt/view). Some estimates put the growth of the size of the USF at $4 billion to $5 billion, because of pressure to increase the size of the Restructure Mechanism and the Early Adopter Fund. This will mean significant increases in the USF charges on customers bills. As a net payor state, most of the additional USF charges collected from Massachusetts customers would be used to subsidize high-cost states. Verizon, as a non-rural ILEC, receives no high-cost funding support. The three western Massachusetts rural ILECs received a total of $3,158,045 in high-cost support in 2005. Universal Service Monitoring Report, CC Docket 98-202, at 3.26, Table 3.14 (rel. December 2005) ("Monitoring Report"). In contrast, Massachusetts consumers paid $140,153,000 into the USF in 2004.[13] Id. at 1-38, Table 1.12 (estimated data). Even accounting for some additional low-income funding under the Plan, the size of the wealth transfer to high-cost states will increase greatly. As mentioned earlier, it is not certain that Verizon or CLECs will qualify for funding under the Restructure Mechanism – funds that could be used to offset the net payments from Massachusetts customers to the USF. Further, because Massachusetts did

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[13] The FCC does not break down state contributions to the USF high-cost fund, only aggregate USF contributions, which are spread among the various USF programs (e.g., the high-cost fund, the low income fund, the rural healthcare fund). Massachusetts' contributions are offset not only by the small amount of high-cost funding but also by low-income and rural healthcare support, which totaled about $30 million in 2004. See Monitoring Report at 1-38, Table 1.12 (estimated data). The overall subsidy, after accounting for support received and contributions payed, was roughly $109 million in 2004. Id.

its rate rebalancing through increases to Verizon's basic exchange rates rather than through a state USF, it is unlikely that Verizon will qualify for any Early Adopter funds.

C. The Plan Unfairly Favors One Segment of the Industry

Although framed as a reform mechanism for the entire industry, the Plan is heavily weighted in favor of rural ILECs, which account for less than 15 percent of the ILEC access lines in the country. The Plan protects rural ILECs from the financial effects of competition by essentially guaranteeing them full cost recovery from any access charge or other rate reductions. Although their access charges are the highest by far of any LECs, the Plan only requires partial reductions in those charges. In addition, these carriers do not have to increase SLCs as high as other LECs, thereby making it easier for them to draw from the Restructure Mechanism, which is largely funded by ratepayers from low-cost states, like Massachusetts. Rural ILECs are the least likely to have rebalanced their rates, but the Plan rewards them for their failure to prepare for competition and does so at the expense of all other industry segments that have responded to competitive pressures. Moreover, the Plan dramatically increases the size of the USF, which historically, and under the Plan, benefits rural carriers the most, at the expense of carriers and customers in net payor states. The Plan would perpetuate and increase the subsidies to customers of rural ILECs, instead of finally putting an end to the multi-billion dollar "gravy train."

Sponsors of the Plan seek to distract attention from this inequity by contending that the Plan will better position rural carriers to deploy broadband. To the extent that it creates new

revenue streams for rural carriers, that may be true. However, there is no requirement in the Plan that rural ILECs deploy broadband, and by shielding these companies from the effects of competition, the Plan actually creates disincentives for them to roll out broadband to their customers. Perversely, by reducing existing revenues and creating a tenuous recovery scheme for non-rural ILECs, the Plan will make it very difficult for them to extend broadband to rural areas in their territories. In Massachusetts, there are approximately 35 communities without broadband access via cable or DSL.[14] The Plan will make it much harder for Verizon or other carriers in Massachusetts to deploy advanced services to those communities.

IV. CONCLUSION

In conclusion, the MDTE opposes the Missoula Plan because (1) its "one size fits all" design is not appropriate for the specific conditions in the Massachusetts telecommunications market, where targeted reform would work better, (2) it would increase telephone rates and

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[14] See Western Massachusetts Underserved Communities Pilot Project, Broadband Availability Database (March 2006) (available at http://image.zenn.net/REPLACE/CLIENT/1000169/application/pdf/Bconnecttownsfile.pdf).

USF charges, and perpetuate the wealth transfer to high-cost states, and (3) it is weighted heavily in favor of one small segment of the industry – rural ILECs – at the expense of other carriers and their customers.

Respectfully submitted,

Commonwealth of Massachusetts
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By:

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