**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| **In the Matter of** | ) | |
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| **Developing a Unified Intercarrier Compensation Regime** | ) | **WC Docket No. 01-92** |
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**COMMENTS OF THE**
**SOUTH CAROLINA OFFICE OF REGULATORY STAFF**

## I. INTRODUCTION

The South Carolina Office of Regulatory Staff ("SCORS") hereby files these comments in response to the Federal Communications Commission (FCC) Public Notice released on July 25, 2006.[1] ORS has the responsibility to represent the public interest of South Carolina before the South Carolina Public Service Commission ("SCPSC or SC Commission") and before federal regulatory agencies. The Office of Regulatory Staff also has the responsibility for administering the South Carolina Intrastate Universal Service Fund and the South Carolina Interim Local Exchange Carriers Fund, both of which reduce access charges and implicit costs in local service rates in South Carolina. While the SCORS agrees that the current intercarrier compensation regime is in need of reform and that the Missoula Plan is a step forward in addressing this issue, we have concerns and questions regarding 1) the suggested rate structure; 2) the viability and appropriateness of the restructure mechanism; 3) the details of the early adopter mechanism to assist states like South Carolina that have taken a proactive approach to

[1] FCC, Public Notice. *Comments Sought on Missoula Intercarrier Compensation Reform Plan.* CC Docket No. 01-92. DA 06-1510. Released July 25, 2006.

reducing access charges and rebalancing local service rates; 4) the preemption of the states in determining access charges; 5) how benefits of the Plan will be passed on to consumers; and 6) the intermingling of intercarrier compensation with interconnection issues.

## II. RATE UNIFICATION

The Missoula Plan ("Plan") attempts to utilize a phased approach to reduce and unify intercarrier charges in each phase or "track."[2] SCORS would be more supportive of a plan that includes further unification of rates. If local reciprocal compensation is used as a model for intercarrier compensation schemes, the calling party would pay transit and terminating charges while originating usage-based charges would not be assessed as these costs are covered in local service rates. While the Plan allows Track 1 and Track 2 carriers to eliminate their originating access charges, it also gives them the option of continuing to charge a maximum of $0.002/minute. No specific pricing goal is given for Track 3 carriers. Similarly, the Plan sets goals for terminating access rates for Track 1 and Track 2 carriers, but does not set specific price targets for rural or Track 3 carriers. Consideration should be given to unifying the rate structure for all tracks and eliminating originating, usage-based charges for all classes of carriers. Reducing the incentive to classify traffic differently would eliminate other concerns the Plan addresses such as arbitrage.

Of more specific concern to South Carolina is the fact that the state has already addressed access charge reductions. In 1996 South Carolina's General Assembly enacted legislation that addressed the significant differences which existed between intrastate and

[2] "Tracks" are defined on p. 4 of the Missoula Plan for Intercarrier Compensation Reform issued July 18, 2006

interstate switched access charges. One of the legislative plans created was the Interim Local Exchange Carriers Fund ("ILF") which, based on revenue neutrality, allowed participating small carriers to reduce their switched access charges to the level of the regional bell operating company's ("RBOC's") rates. The intrastate switched access rates of this RBOC consistent with but not identical to interstate switched rate levels. The ILF was (and continues to be) supported by the carriers receiving the benefit of the reduced intrastate switched access rates. The plan also had a local rate rebalancing element which allowed the small carriers to transition their residential local rates to a statewide average over a five year period. The business rate could not be set higher than two times the residential rate. Revenues associated with the local exchange rates were used to offset the size of the ILF. Additional reductions in intrastate switched access charges by the RBOC have generally been mirrored by the small local exchange carriers and the revenues associated with any additional rate reductions were recovered through the ILF.

Today, most incumbent local exchange carriers' residential rates average $14.35 per month and the composite terminating intrastate switched access charges are less than $0.01 per minute of use. This composite rate for small carriers in South Carolina is much less than the Plan's proposed Track 3 carrier terminating rates of $0.0171 per minute of use. SCORS feels that the Plan will negatively impact rural telephone users in South Carolina because the Plan's proposed increase of the federal subscriber line charge ("SLC") will further increase the total cost of local exchange service for telephone consumers in rural areas in South Carolina. In fact, if the Plan is approved, consumers in South Carolina will be funding access reductions in other states through the increase in the SLC.

## III. RESTRUCTURE MECHANISM

The Plan establishes a model whereby carriers can recover revenue lost from reduced access charges through increasing end-user rates via a gradual increase in the Subscriber Line Charge. Where lost revenues are not fully recovered, the Plan creates a "Restructure Mechanism" that will fund these lost revenues. To a large degree, this aspect of the Plan mirrors the Interim Local Exchange Carriers Fund (ILF) adopted in 1996 in South Carolina. As a result of our experience in administering both an intrastate high cost Universal Service Fund and an "access reduction fund," the SCORS would encourage the FCC to maintain the restructure mechanism separate and distinct from the federal Universal Service Fund. SCORS believes this is necessary because of the differing purposes of the two funding mechanisms – one is for high cost support of universal service and the other is for intercarrier compensation reform. SCORS also believes that there should be sunset provisions associated with any cost support mechanism. The goal should be to move toward the intercarrier compensation framework without continuous financial support. Without a sunset provision, carriers will base their business plans on a revenue stream that is not founded on true competition.

## IV. EARLY ADOPTER FUND

The ORS is concerned about the limited information contained in the Plan regarding the Early Adopter Fund. Over the last ten years South Carolina has implemented the ILF, a fund that reduced intrastate access rates to equal that of the RBOC, the largest LEC operating in the state (discussed above in Section II). This plan was implemented pursuant to state statute and SC Public Service Commission Order. Currently, over $32 million is redistributed annually to those carriers realizing revenue

losses due to the access rate reductions. Without knowing how many states will qualify for the fund, the magnitude of the fund, the requirements for receiving reimbursement from the fund, and a variety of other details, the SCORS finds it impossible to fully assess the impact of the Early Adopter Fund on the state.

## V. CONSUMER IMPACT

The SCORS is also concerned that the consumers may be the last to benefit from rate reductions described in the Missoula Plan. In South Carolina intrastate access charges have already been reduced so an increase in the SLC would result in South Carolina consumers paying more without commensurate benefit. The Plan also makes assumptions about consumer usage. While all consumers will see an increase in the SLC, only those that pay significant amounts in access charges will benefit from an access charge reduction. Also while access charges are required to be reduced for intercarrier compensation purposes there is no requirement to pass these reductions through to consumers. For South Carolinians this means funding other states' access reductions through increases in the SLC charge, while receiving little or no benefit from access rate reductions in other states

## VI. JURISDICTION

The Plan preempts state ratemaking authority over state access and intercarrier compensation rates. State and federal entities have long shared the regulatory authority over telecommunications services with states having jurisdiction over intrastate services and federal entities having jurisdiction over interstate services. Under the 1996 Federal Telecom Act, state and federal entities continue this shared authority. The case of *Louisiana Public Service Commission v. FCC,* 476 U.S. 355, 106 S.Ct. 1890 (1986)

reinforced this state and federal sharing of authority. In the *Louisiana* decision, the Supreme Court explained that Section 152(b) contained "express jurisdictional limitation on FCC power" and that "[b]y its terms, this provision fences off from FCC reach or regulation intrastate matters." *Id.* at 370. Further, the Supreme Court stated "a federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority ...[and] ... an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it." *Id.* at 375. The FCC does not have authority over regulation for or in connection with intrastate communications services. *See* 47 U.S.C. § 152(b). The Plan also contravenes state authority explicitly provided by Sections 251 and 252 of the 1996 Federal Telecom Act. Under Section 252(c), state commissions are authorized to establish rates for interconnection, services, or network elements in resolving arbitrations, and under Section 252(d)(2), state commission are authorized a role on reciprocal compensation. Thus Congress has not conferred upon the FCC the power to preempt state access charges or other intrastate charges over which the state commissions have jurisdiction.

## VII. SCOPE OF THE PLAN

Intercarrier compensation reform is a complex issue when addressed in isolation. When addressed with other issues such as phantom traffic and interconnection agreements, the task of rewriting all of these rules becomes cumbersome in its complexity. SCORS is concerned that the Plan goes beyond the traditional intercarrier compensation issues and attempts to address interconnection issues of non-access traffic, transit traffic and phantom traffic. In fact, it appears that an appropriately structured

unified intercarrier compensation arrangement for all forms of traffic may even eliminate the need to address the non-intercarrier compensation issues in the Missoula Plan. SCORS notes that the FCC has an ongoing proceeding to address the issue of phantom traffic. Addressing it in the Missoula Plan, as well, creates a redundant point of contention.

## VIII. CONCLUSION

One of the most complex issues facing our nation's telecommunications industry today is intercarrier compensation reform. SCORS believes that while comprehensive reform is crucial, it is very important to address all of the concerns within the industry. Well crafted reform of intercarrier compensation could assure the United States of continuing to have the most robust and technologically advanced telecommunications infrastructure in the world. The Missoula Plan is only one of several plans before the Commission. In consideration, of the technological changes being deployed by communications carriers, it appears that any plan which may be adopted by the Commission should be forward looking in light of these changes and should present a single simplified rate structure.

Respectfully Submitted,

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October 25, 2006