Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	DA 06-1510
	)	
Comments Sought on the Missoula Intercarrier Compensation Reform Plan	)	
	)	
	)	

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION INITIAL COMMENTS

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)[1] submits these comments in response to the Federal Communications Commission's (Commission's or FCC's) Further Notice of Proposed Rule Making (FNPRM) seeking comment on the Missoula Intercarrier Compensation Reform Plan (Missoula Plan, Missoula or Plan).[2]

I. INTRODUCTION AND SUMMARY

NTCA would like to thank the Missoula Group, and in particular the Rural Alliance, for their hard work, dedication and cooperation to reach a negotiated intercarrier compensation (ICC) reform plan that addresses such complex and contentious industry issues as cost recovery, competition, and consumer benefits.[3] The Missoula Plan is a remarkable proposal forged through numerous negotiating sessions over several years among parties with a long adversarial

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.
[2] *In the Matter of Developing a Unified Intercarrier Compensation Regime, Comments Sought on the Missoula Intercarrier Compensation Reform Plan,* Public Notice, CC Docket No. 01-92 (rel. July 25, 2006) (Notice).
[3] AT&T, BellSouth, Cingular Wireless, Commonwealth Telephone Company, Consolidated Communications, Epic Touch, Global Crossing, Iowa Telecom, Level 3, the Rural Alliance representing 336 rural carriers, and Ray Baum, Commissioner, Oregon Public Service Commission, and Chair of the NARUC Task Force on Intercarrier Compensation.

history. It is the only industry negotiated intercarrier compensation proposal submitted in this proceeding that attempts to reconcile the differing interests of companies from many segments of the communications industry. These companies recognized that it is far more important to produce a plan that all could accept than to continue to fight for a plan that was "perfect in their own eyes." They deserve a tremendous amount of thanks and gratitude for taking great effort to find common ground on such a contentious subject. The Missoula Plan represents a significant step towards reforming intercarrier compensation and warrants thoughtful and thorough consideration by the Commission.

NTCA supports the Missoula Plan and provides the following recommendations to enhance the plan on issues where the plan is silent and on issues where the plan does not fully address rural carrier concerns.

1. The Restructure Mechanism (RM) should be classified as actual non-portable LEC access cost recovery under Section 201 of the Act and should not be classified as portable universal service support under Section 254 of the Act.

2. The rules concerning acquired exchanges should be modified to allow exchanges purchased by a rural carrier be designated as a Track 3 exchanges served by a Covered Rural Telecommunications Carrier (CRTC).

3. Specific rules should be included in the plan to allow for a rural CLEC that is declared a rural ILEC under Section 251(h)(2) of the Act to be designated as a Track 3 CRTC.

4. Specific rules for virtual NXXs and Extended Area Service (EAS) arrangements should be included in the plan.

5. Specific rules for rural CLECs should be included in the plan.

6. Specific rules should be included in the plan to expand the base of universal service fund (USF) contributors to include all cable, wireline, wireless and satellite providers of broadband Internet access service.

The Regulatory Flexibility Act (RFA) requires the Commission, when considering new rules, to consider less burdensome alternatives for small entities, to take steps to minimize any

significant economic impact on the small companies, and to describe what those steps are. The Missoula Plan and NTCA recommendations provide the FCC with a roadmap that will enable it to achieve its goal of reforming intercarrier compensation, sustaining universal service, and reducing the economic burden on small carriers and rural consumers. NTCA urges the Commission to embrace and build on the Missoula Plan.

II. THE MISSOULA PLAN PROVIDES A GOOD FRAMEWORK FOR INTERCARRIER COMPENSATION REFORM

The Missoula Plan is a strong, progressive step towards a coherent set of intercarrier compensation rules without abandoning proven mechanisms. The Missoula Plan proposes specific default rules that address the most egregious problems in the current rules while avoiding the dangers presented by a radical departure from the current access charge and reciprocal compensation concepts which could create instability and uncertainty.

The value of this approach is that tools exist to monitor and enforce the rules. These tools can be used by federal and state agencies to prevent abuse and to demand corrective action. These same tools can provide a reasonable assessment of the revenue requirements of rate-of-return (RoR) regulated local exchange carriers (LECs). This is very important because these LECs represent the heart of the Nation's public communications infrastructure.

In competitive markets, multiple carriers provide the consumer with a choice of carrier and technology platforms, including landline, cellular and cable telephony. Where there are concentrations of people there is wireless and cable infrastructure, but in the rural LEC service areas located outside cities and town centers both wireless and cable infrastructures are often missing. Indeed, rural LECs have built and maintain a nearly ubiquitous infrastructure that reaches homes and businesses throughout the more than 1,100 rural service areas which cover

approximately 40 percent of the geographic area of the United States, including Alaska and Hawaii.

An examination of the architecture of the network of interconnected networks reveals just how critical LECs are to wireless, cable, satellite, and competitive local exchange carriers (CLECs). These carriers are dependent upon access to the LEC's infrastructure for interconnectivity to interexchange carriers, the Internet backbone, and various transport and transiting services. Most cellular sites are linked to mobile switching centers by special access circuits provided by LECs.[4] The dependency of wireless carriers and others on this wired network is often taken for granted. It is presumed that the wired network will always be there and that it will be available at incremental cost. In the long run, the wired network will only be there if all carriers shoulder an appropriate share of the cost to build and maintain infrastructure needed by all communications providers to offer end-to-end services. The cost of this shared resource should be recovered through intercarrier compensation.

Any intercarrier compensation regime that fails to adequately compensate LECs will have long term adverse consequences for all. Arguments in favor of competition that do not also consider the reliance of competitors on the LEC infrastructure are short-sighted and incomplete. They offer promises of a free lunch that does not exist in the real world. Voice over Internet protocol (VoIP) services are an example of this. Once a customer has a broadband connection, VoIP providers can offer voice services at below cost prices because they do not pay for the underlying LEC infrastructure that carries VoIP calls. VoIP providers also do not pay for the cost they impose on the public communications network (PCN) when they terminate VoIP calls on LEC networks. For the PCN to continue to support a nationwide ubiquitous communications,

[4] *WIRELESS NEED WIRES – The Vital Role of Rural Networks in Completing the Call*, Rural Telecom Educational Series (March 3, 2006). See www.frs.org for a copy of the paper.

VoIP providers and others will need to share in the cost and maintenance of the PCN. All retail communications providers need to contribute to the cost of the underlying network they rely upon. This is what the Missoula Plan accomplishes.

The Missoula Plan provides a realistic way to compensate carriers for the use of their networks. It recognizes the crucial role that LECs perform in the nation's communication network, both now and in the future. It is therefore entirely appropriate that intercarrier compensation reform be designed to ensure that LECs are adequately compensated for the cost imposed on their networks by other facilities-based and non-facilities-based providers.

III. THE MISSOULA PLAN SERVES THE PUBLIC INTEREST AND PROVIDES SIGNIFICANT CONSUMER BENEFITS

The Missoula Plan serves the public interest. The plan provides significant consumer benefits in the form of regulatory certainty regarding future intercarrier compensation rules which will enable all providers to invest in and deploy new broadband facilities at a much faster pace throughout the United States. This regulatory certainty will provide investment stability which in turn will lead to more robust investment in IP-based, wireless and broadband technologies. This investment stability will assist the Commission in reaching its goal of providing affordable broadband to all Americans sooner rather than later.

The Missoula Plan also provides low-income/lifeline consumers rate consistency. Low-income subscribers will not face subscriber line charge (SLC) increases as a result of the plan. The plan provides low-income consumers with approximately $200 million in financial assistance to protect them from having to carry any financial burden resulting from unifying interstate and intrastate access charges as a result of the Missoula Plan.

In addition, the Missoula Plan provides benefits to consumers that live in States that qualify for the roughly $200 million in earlier adopter financial assistance. States that have

established explicit state intrastate access cost recovery mechanisms may use this additional federal assistance to reduce their access rates. This will provide substantial rate relief to these consumers. For consumers not in early adopter states, many will likely not see their SLCs increase to the SLC caps proposed in the Missoula Plan. The proposed SLC increases over the next five years will likely be lower than expected because of increasing competitive pressure in the communications marketplace.

IV. THE RESTRUCTURE MECHANISM (RM) SHOULD BE CLASSIFIED AS SECTION 201 NON-PORTABLE ACCESS COST RECOVERY AND RECOVERED ONLY BY CARRIERS THAT ARE REQUIRED TO REDUCE THEIR ACCESS CHARGES AS A RESULT OF THE MISSOULA PLAN

The Missoula Plan is silent on whether the restructure mechanism (RM) should be classified as non-portable Section 201 access cost recovery or portable Section 254 universal service support. Allowing LECs to recover these costs as non-portable access cost recovery under Section 201 of the Act is critical to the Plan's success. NTCA urges the Commission to exercise its authority and classify the RM as non-portable Section 201 cost recovery and not as portable Section 254 universal service support. Furthermore, the RM should be recovered only by carriers that actually reduce their access charges in accordance with the Missoula Plan.

Under the Missoula Plan, the new RM "is designed specifically to replace switched carrier-to-carrier revenues lost by carriers participating in the Plan and not otherwise compensated for that loss through end-user charges."[5] The Plan also provides for an RM designed to replace the revenues that are eliminated in connection with the Track 1, Track 2, and Track 3 transitions, to the extent such revenues are not recovered through restructured intercarrier charges or increased SLCs. The Plan Supporters estimate the RM size at the end of

[5] Missoula Plan Supporter Comments, (filed July 18, 2006) (Plan Supporters Comment), p. 1.

the transition to be approximately $1.5 billion.[6] The Plan Supporters anticipated that this figure will be updated in subsequent submissions to provide an estimate for the potential range of high and low figures.[7] The new RM would compensate LECs for the costs imposed on their networks by other carriers and makes up for the revenue lost through mandatory access charge reductions, not otherwise recovered through other sources of funding.[8]

Access costs that are not recovered through intercarrier compensation (i.e., reciprocal compensation charges, intrastate and interstate access charges), increased end-user local rates, and increased SLCs should not be classified as portable universal service support. Unlike universal service which is intended to provide consumers with affordable basic local service, access charges are used to compensate rural carriers for the legitimate costs associated with making their networks available for use by competing carriers.[9] Providing competitors access to a LEC's network is not the same as providing consumers with the nine listed services in the definition of universal service.[10] Any residual access costs not recovered through intercarrier compensation, increased end-user rates and SLCs are lawful LEC access costs recoverable through the RM from carriers who use and benefit from access to LEC networks, not universal service support.

[6] Plan Supporters Comment, p. 13.
[7] *Ibid.*
[8] Missoula Plan, p. 55.
[9] *See*, 47 U.S.C. §§ 151and 254, and 47 CFR § 54.101.
[10] The nine supported services listed in the definition of universal service can be found at 47 C.F.R. §54.101.

A. The Commission Has The Legal Authority Under Sections 201 and 205 To Create And Mandate A Non-Portable Restructure Mechanism (RM).

The Commission has rulemaking authority to carry out provisions of the Communications Act of 1934, as amended.[11] The supervisory power of the FCC is not limited to rates and services, but extends to charges, practices, classifications, and regulations in connection with communication service.[12] Section 201 specifically provides the Commission with ample authority to operate the RM as a non-portable cost recovery mechanism. Pursuant to Section 205, the Commission has the authority "to determine and prescribe what will be the just and reasonable charge" for the interconnection services it requires pursuant to Section 201. The drafters of the Act clearly contemplated that there would be a form of compensation for access and termination. The Commission's authority to establish the appropriate recovery mechanisms for costs associated with LECs making their networks available for use by competing carriers is derived from Section 201 of the Act. Section 201(a) specifically states:

> It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefore; and in accordance with the orders of the Commission, in cases where the Commission, after an opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

Section 201(a) grants the FCC explicit authority to establish charges and the division of such charges so that competing carriers can establish physical connections to complete calls. Section 201(b) further states that the Commission may prescribe rules and regulations as

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[11] *AT&T Corp. v. Iowa Utilities Bd.* (1999), 119 S.Ct. 721, 525 U.S. 366, 142 L.Ed.2d 835, opinion after remand 1999 WL 156020, on remand 219 F.3d 744.

[12] *Ambassador, Inc., v. U.S.*, U.S. Dist. Col. 1945, 65 S.Ct. 1151, 325 U.S. 317, 89 L.Ed. 1637, rehearing denied 65 S.Ct. 1561, 325 U.S. 896, 89 L.Ed. 2006.

necessary to serve the public interest to carry out the provisions of the Act. Rural LEC intrastate and interstate access charges are based on each rate of return (RoR) carrier's cost of providing interexchange carriers (IXCs), wireless carriers, and VoIP providers access to rural LEC networks. The RM created as a result of this proceeding would be designated to recover a part of the revenue requirement attributable to a RoR carrier's cost. A new non-portable RM falls squarely within the Commission's Section 201 authority to establish charges, rules and regulations for the recovery of costs associated with the provision of network access to other carriers.

Approaching the RM as a cost recovery mechanism, rather than as universal service support, is by far the more appropriate approach. The purpose of the RM is to allow affected carriers to recover their lost revenues associated with reductions in the originating and terminating access charges and modifications to the interconnection rules.[13] Any amount of recovery that cannot be obtained through the SLC will come via the RM. The heart of this recovery mechanism is that it is designed to make whole those carriers who lost revenues because they reduced their access charges.

From a public interest standpoint, these costs are caused by other carriers accessing the LEC network, not as high-cost support to end users. The recovery of these costs, therefore, should be borne as access charge cost recovery under Section 201. In the Commission's 1983 *Access Charges Order*,[14] the Commission established the initial access structure that combined both carrier charges and end-user charges, and reflected its now long-standing principle with respect to the rate design to recover interconnection revenues: "If instead all end users are expected to bear the costs of all plant in their exchange area used to provide access service to

[13] Missoula Plan, p. 64.
[14] Third Report and Order, *MTS and WATS Market Structure*, 93 F.C.C.2d 241, ¶¶ 42 *et seq.* (1983) (Access Charges Order).

interstate carriers … almost certainly that approach will result in costs being recovered from customers who have not caused the exchange carrier to incur those costs. In particular, end users will be subsidizing the use of their local facilities by those terminating calls in their exchange area. Such an unfair result cannot be in the public interest."[15] If the RM is established pursuant to Sections 201 and 205, the Commission could establish a rule under Part 69 that would prescribe the assessment, collection, and distribution of the RM consistent with the Plan. Therefore, the Commission should properly characterize the RM as a non-portable Section 201 access cost recovery mechanism.

B. Assessing The RM As Portable Universal Service Support Will Unjustifiably Increase The Size Of The USF.

Section 254(b)(3) states, "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar service in urban areas." Section 254(b)(5) of the Act restricts the Commission's ability to impose the obligation of recovering universal service costs from other services. It provides that "[t]here should be specific, predictable and sufficient … mechanisms to preserve and advance universal service." Section 254(b)(5) thus binds the Commission to the obligation of designing a mechanism that provides "sufficient" support whenever it reallocates to universal service or characterizes it as implicit subsidies costs legitimately attributable to interstate or intrastate services. Much has already been documented regarding the increasing size of the USF and abuses of USF monies. By creating a portable RM under Section 254, rather

[15] *Access Charges Order*, ¶ 209.

than as an access cost recovery system under Section 201, the Commission will unnecessarily aggravate the existing USF problems.

Establishing a non-portable RM would be in the public interest. Many wireless competitive eligible telecommunications carriers (CETCs) currently requesting rural high-cost universal service support are not required to follow Commission accounting rules and are not subject to price regulation, service quality standards and carrier of last resort (COLR) obligations. Wireless CETCs are not required to account for their costs and do not collect access charges, and will face no regulatory mandates as a result of this proceeding to reduce their rates to consumers. Mandatory rural LEC access and reciprocal compensation rate reductions would reduce the per-minute rates that wireless CETCs pay to rural ILECs to connect to their networks, but without mandatory wireless CETC rate reductions passed through to consumers. If the RM were considered USF support under Section 254 and made portable to competing carriers, wireless CETCs would receive an unwarranted windfall and the size of the high-cost universal service fund would unjustifiably increase.[16] The Commission should ensure this does not happen by lawfully establishing a non-portable RM under Section 201 of the Act.

[16] The Commission's existing universal service portability rules are currently under review by the Federal-State Joint Board on Universal Service (Joint Board). *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 04-125, FCC order asking the Joint Board to review the Commission's rules relating to high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order, (rel. June 28, 2004). As part of this review, the Joint Board is considering the elimination of the "identical support rule" which allows every unregulated wireless CETCs the ability to receive the same per-line support of a rural ILEC based on the rural ILEC's costs, and not the wireless CETC's costs. 47 CFR § 54.307. Since this rule was adopted in 1997, it has become abundantly clear that providing the ILEC's per line support to all wireless CETCs, regardless of the wireless carriers cost structure or their regulatory status, defeats the Commission's guiding principle of "competitive neutrality." *In the Matter of the Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 97-157, First Report and Order, ¶¶ 47-50 (rel. May 8, 1997). The Commission defined competitive neutrality to mean that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."

C. If The RM Is Treated As Portable Universal Service Support, It Will Create An Avenue For Arbitrage And Provide An Unfair Competitive Advantage For CETCs.

Neither universal service nor competition will be advanced by converting a rate element designed to recover revenue deficiencies into a universal service support mechanism available to any CETC serving an LEC congruent area. It would be disastrous to superimpose a new portable mechanism on the high cost support regime which is already burdened with portability rules that have ballooned the fund and that contain little or no means to verify the relationship between the support received and the costs for service to rural areas served by certain CETCs. That regime is presently under review on several fronts and adding a new portable mechanism will only exacerbate the high cost issues that remain to be resolved in other proceedings pending at the Commission.

Unlike universal service which is intended to provide consumers with affordable basic local service, the RM is intended to compensate rural carriers for the legitimate costs associated with making their network available for use by other carriers.[17] It, therefore, should be targeted to LECs that reduce their access charges under the Missoula plan or any other Intercarrier compensation reform plan. A new RM should not be made portable to CETCs that do not have the same access costs. Rural LEC revenue requirements are derived from their actual costs of providing switching, transport and termination services to competing carriers and customers. Wireless CETCs do not offer equal access to IXCs[18] and do not have the same access costs as

[17] *See*, 47 U.S.C. §§ 151and 254, and 47 CFR § 54.101.
[18] Section 332(c)(8) states that CMRS providers shall not be "required to provide equal access to common carriers for the provision of toll service." 47 U.S.C. § 332(c)(8).

LECs.[19] There is no legitimate reason for wireless CETCs to be compensated via an identical support mechanism based on a LEC access cost recovery RM.

Rural LEC intrastate and interstate access charges are based on each RoR carrier's cost of providing IXCs, wireless carriers, and VoIP providers access to rural ILEC networks. A RM created as a result of this proceeding would be designated to recover a part of the revenue requirement attributable to a RoR carrier's cost, not a CETC's costs. It is the regulated RoR carrier's cost information and its operation in a scrutinized regulatory environment that provides the FCC and the Universal Service Administrative Company (USAC) with the means to verify their cost to provide service. The same is not true for CETCs that do not account for their costs, do not file access charges and provide no verifiable cost information or data to the FCC or USAC.

LEC costs are recognized in the interstate and intrastate jurisdictions and recovered in rates. In the current regulatory environment, existing accounting rules and the maintenance of access tariffs and reciprocal compensation arrangements ensure that RoR carriers' access charges recover these costs. If an RM is implemented, existing accounting, separations, and tariff filing rules will allow the Commission to ensure that this new residual recovery mechanism is sized to recover costs for facilities and services used by RoR rural LECs in the provision of access transport and termination.

Exemption from rate and state entry regulation allows wireless CETCs to avoid the substantial costs associated with cost-studies, tariff filings, rate cases, accounting obligations, separations requirements, audit reviews, and other state and federal regulatory mandates. Wireless CETCs also do not use the same type of facilities to provide the services or incur the

[19] It is not possible to determine what the access costs of wireless CETCs are since their arrangements with other carriers are not tariffed but instead are contained in contracts that are not generally available to the public.

same costs for providing the services as rural ILECs. Wireless CETCs do not provide ubiquitous local service.

Furthermore, if the Commission treats RM revenues like universal service support, it will not be able to determine that RM revenues/support distributed to wireless CETCs are being used "for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[20] Support on the basis of another carrier's cost inherently violates Section 254(e) since neither carriers' costs nor services are identical. Further, as stated above, wireless CETCs do not make their access costs available and are not required to do so under FCC rules. The lack of appropriate wireless CETC cost verification procedures to safeguard against improper distributions of RM revenues would also further exacerbate the current USF growth and distribution problems, result in further regulatory arbitrage, and provide unfair competitive advantage to wireless CETCs. The Commission will only be able to guess whether an unregulated wireless CETC is using RM support for the services "intended" and whether the support is "sufficient" and not "excessive."[21]

Establishing a portable RM would only further exacerbate the wireless CETC gaming problem and unjustifiably increase the size of the high-cost universal service fund. The public interest therefore would be best served by the Commission establishing a non-portable RM in this proceeding and eliminating the identical support rule as part of its review of the universal service portability rules.

[20] Section 254(e).
[21] *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5th Cir. 1999).

V. THE RULES CONCERNING ACQUIRED EXCHANGES SHOULD BE MODIFIED TO ALLOW EXCHANGES PURCHASED BY A TRACK 3 RURAL CARRIER TO BE DESIGNATED AS A TRACK 3 EXCHANGES SERVED BY A COVERED RURAL TELECOMMUNICATIONS CARRIER (CRTC).

The Missoula plan proposes that a LEC is a CRTC in a particular study area only if it meets the plan's definition of a CRTC as of August 1, 2006.[22] Although the plan permits CRTCs to acquire exchanges from other carriers, acquired exchanges would retain the Track designation of the former owner. For example, when a Track 3 CRTC acquires a Track 1 or Track 2 non-CRTC exchange, the acquired exchange would not be treated as a Track 3 CRTC exchange.[23] This provides a disincentive for small carriers to upgrade unserved or underserved areas in newly acquired exchanges long neglected by larger carriers. Not only does the plan dissuade rural carriers from purchasing exchanges and building their business, it dooms consumers in historically underserved areas to poor service.

The Missoula plan proposes different tracks for carriers in recognition of the differences among carriers. The smallest rural carriers are offered certain protections and incentives in recognition of their unique situation and cost characteristics. The uniqueness of rural carriers and the areas they serve should be the only criteria by which carriers are declared CRTCs. There is no rational reason to create dividing lines between exchanges on the sole criteria that the previous incumbent, or previous owner, was not a CRTC.

Not only is there an economic disincentive for a CRTC to serve a Track 1 or Track 2 exchange, a CRTC serving a Track 1 or Track 2 exchange would face several challenging administrative issues. If a CRTC seeks to serve the newly served or acquired exchange as part of a single study area, there will be different access rates, subscriber line charges and RM calculations for access lines within a single study area. The different rules for different access

[22] Missoula Plan, p. 5.
[23] Missoula Plan, p. 6.

lines within a single study area will be difficult to administrate, costly to implement, cause customer confusion and are not workable. The Missoula Plan makes no allowance for acquired lines to participate in the National Exchange Carrier Association (NECA) process.

The Missoula Plan's strict cut off date of August 1, 2006 also creates problems for carriers currently in the process of acquiring exchanges. The acquisition process typically takes several years. The cut off date is unfair to companies who began acquisition discussions well in advance of the Missoula Plan's genesis.

Small telephone companies will suffer the greatest burden if forced to obtain waivers from the Commission or administer combinations of Track 3, Track 2 and Track 1 access lines. The rigid classifications of Tracks and arbitrary applications of dates and rules are unfair to consumers and the carriers who serve them. NTCA therefore urges the Commission to amend the Missoula Plan so that when a CRTC purchases rural exchanges from a Track 1 or 2 LEC, that CRTC and the newly acquired exchanges are automatically treated as Track 3 exchanges serviced by a CRTC.

VI. THE MISSOULA PLAN SHOULD BE AMENDED SO THAT WHEN NON-RURAL-ILEC EXCHANGES SERVED BY A RURAL CLEC ARE DECLARED RURAL ILEC EXCHANGES UNDER SECTION 251(H)(2), THE NEW RURAL EXCHANGES ARE AUTOMATICALLY TREATED AS TRACK 3 EXCHANGES SERVICED BY A CRTC.

A rural CLEC may seek to overbuild unserved or underserved exchanges of a Track 1 or Track 2 ILEC and then seek rural ILEC status.[24] The Missoula plan, however, offers no mechanism by which a Track 3 rural CLEC, later declared a rural ILEC, may be classified as a Track 3 CRTC for the new rural ILEC exchanges. CRTCs, by definition, have no urban areas over which to spread costs. They will depend on the distinctions created by the Missoula Plan

[24] *In the Matter of Petition of Mid-Rivers Telephone Cooperative, Inc., for Order Declaring It to be an Incumbent Local Exchange Carrier in Terry, Montana Pursuant to Section 251(h)(2),* WC Docket No. 02-78, Order (rel. Oct. 11, 2006).

and its restructure mechanism to continue to provide quality service to previously undeserved or underserved consumers. Few rural CLECs, later declared rural ILECs, will be able to absorb the costs associated with overbuilding an area to the point where it may be declared an incumbent, if the overbuilt exchanges must continue to be classified as Track 1 or Track 2. Rural consumers living in the non-rural-ILEC exchanges would likely continue to be neglected by the non-rural-ILEC. NTCA therefore urges the Commission to amend the Missoula Plan so when non-rural-ILEC exchanges served by a rural CLEC are declared rural ILEC exchanges under section 251(h)(2), the new rural ILEC exchanges are automatically treated as Track 3 exchanges serviced by a CRTC.

VII. THE COMMISSION SHOULD ADOPT SPECIFIC RULES FOR VIRTUAL NXXS AND EXTENDED AREA SERVICE (EAS) ARRANGEMENTS AS PART OF INTERCARRIER COMPENSATION REFORM.

The rules in the Missoula Plan that govern the determination of traffic subject to EAS and the obligations for processing and transporting calls must be clarified before implementation. In certain limited circumstances, a CMRS provider should be required to order a trunk group directly from the LEC before dialing parity is required.

According to the Missoula Plan, traffic from a wireline LEC to a CMRS provider will be reciprocal compensation traffic subject to applicable terminating reciprocal compensation charges when the calling telephone number of the wireline subscriber and the called telephone number of the wireless subscriber are associated with rate centers within the same Metropolitan Trading Area (MTA), or the calling telephone number of the wireline subscriber and the called telephone number of the wireless subscriber are associated with different rate centers, but the rate centers are covered by a LEC EAS arrangement.[25] The Missoula Plan should specifically state that if the LEC is a CRTC, then the Rural Transport Rule applies. The plan further requires

[25] Missoula Plan, Section II, D, 3, b, ii, 1.

dialing parity in such a circumstance so that such wireline LEC-to-CMRS traffic will not require the dialing of additional digits.[26]

In certain circumstances, a rural carrier will be unable to comply with these rules. When a LATA is served by multiple tandems rather than a single LATA tandem, an EAS relationship could exist between rate centers that are associated with different tandems. It is unlikely that a 7-digit route from a tandem to a rate center homed on another tandem exists. EAS traffic between the two LECs would be carried by a direct trunk group between the wire centers, providing 7-digit routing between the ILEC wire centers. But this direct group would not provide a 7-digit route for traffic bound to a virtual number associated with the same rate center. The traffic bound for the Virtual NXX (LEC to CMRS traffic) would normally flow from the originating LEC to the tandem it is homed on to the Virtual NXX using 1+ routing, thus violating the dialing parity requirements in the Missoula Plan.

Rather than impose a dialing parity requirement that is not feasible, the Missoula Plan should be modified to accommodate Virtual NXXs in areas covered by EAS arrangements. When dialing parity cannot be achieved because exchanges covered under an EAS agreement are homed on different tandems and the originating ILEC is a CRTC, then the CMRS provider should be required to order a direct connect trunk group to accommodate traffic from the CRTC to the CMRS provider. The Plan should provide that until such trunk group is established, the ILEC is under no obligation to provide 7-digit dialing.[27]

[26] Missoula Plan, Section II, D, 3, ii. 2.
[27] This modification is consistent with the transport obligations of CRTCs. If the ILEC is a CRTC, responsibility for transport and transiting for the EAS traffic beyond the meet point rests with the non-CRTC carrier.

VIII. THE COMMISSION SHOULD ADOPT SPECIFIC RULES FOR RURAL CLECS AS PART OF ANY INTERCARRIER COMPENSATION REFORM IN ORDER TO MAINTAIN THE CONSUMERS BENEFITS THAT RURAL CLECS HAVE BROUGHT TO NEGLECTED AREAS SERVED BY NON-RURAL-ILECS.

The Missoula Plan does not provide specific rules for rural CLECs concerning their access rates and access cost recovery under the Missoula Plan. The issue of the continuation of the rural CLEC exemption has not been raised by the Commission in Docket 01-92. The Missoula Plan also does not propose to extend the current rural exemption under 47 C.F.R. §61.26(e) to rural CLECs as defined in 47 C.F.R. §61.26(a)(6). NTCA believes the Commission should extend the rural CLEC exemption as part of specific rural CLEC rules in the Missoula Plan.

In 2004, the Commission established the rural exemption to the benchmark access rate scheme available to a CLEC competing with a non-rural ILEC.[28] Under the rural exemption, qualifying rural CLECs may tariff rates up to the highest NECA rate band minus the NECA tariff's carrier common line (CCL) charge if the competing ILEC is subject to the CALLS access rates.[29] Specifically, the rural exemption is available to a rural CLEC competing with a non-rural ILEC, where no portion of the CLEC's service area falls within: (1) any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (2) an urbanized area, as defined by the Census Bureau."[30]

Facilities-based rural CLECs have traditionally obtained very high penetration rates in the rural exchanges of large ILECs. This has enabled rural CLECs to completely over-build many large LEC rural exchanges. This achievement is due in part because large LECs have

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[28] 47 C.F.R. § 61.26(e).

[29] *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eight Report and Order and Fifth Order on Reconsideration, CC Docket No. 96-262, FCC 04-110, ¶ 33, (rel. May 18, 2004).

[30] *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, FCC 01-146, ¶¶ 73-76, (rel. April 27, 2001).

failed to maintain and update their infrastructure for many years and in some instances decades and because large LECs typically do not provide their rural exchanges with local customer service or local points of contact. This achievement is also a result of the rural exemption.

The Missoula Plan currently does not recognize the distinct characteristics of small rural CLECs and the adverse impact the Missoula Plan would have on those carriers and the rural consumers they serve. The Missoula Plan treats small rural CLECs in the same way it treats large multi-billion dollar ILECs that operate in major urban centers. Without important clarifications and modifications to the Missoula Plan would have an unfavorable impact on rural CLECs and the rural areas they serve. The Commission therefore should recognize and guard against this potential negative impact on rural consumers by modifying the Missoula Plan with the following safeguards:

1. Extend the rural exemption under 47 C.F.R. §64.26(e), as part of the Missoula Plan; and
2. Ensure rural CLECs have access to the RM established under the Missoula Plan to offset any revenue losses resulting from required rate reductions and other ICC reform mandates imposed on rural CLECs under the Plan.[31]

NTCA urges the Commission to extend the rural exemption and allow rural CLECs access to the RM as part of specific CLEC intercarrier compensation rules in the Missoula Plan. By including specific CLEC rules in the Missoula Plan the Commission will establish an equitable and non-discriminatory ICC reform plan and maintain the significant consumer benefits that rural CLECs have brought to exchanges long neglected by large non-rural-ILECs.

[31] Rural CLEC access to the RM will have a minimal incremental impact on the size of the RM. The Missoula Plan supporters estimate that, with all CLECs included, the size of the RM will be approximately $1.5 billion at the end of the transition. Rural CLECs would receive only a small fraction of this amount. Hence the RM dollars flowing to Rural CLECs would have no noticeable impact on the size of the mechanism. Moreover, as discussed above, the impact of Rural CLEC access to the RM can be further minimized by modifying the rate reductions that apply to rural CLECs in a way that reflects their comparatively small size and rural cost characteristics.

IX. THE COMMISSION SHOULD EXPAND THE BASE OF UNIVERSAL SERVICE FUND CONTRIBUTORS TO INCLUDE ALL CABLE, WIRELINE, WIRELESS AND SATELLITE PROVIDERS OF BROADBAND INTERNET ACCESS SERVICE.

The Missoula Plan supports expanding the base of universal service fund contributors to include all broadband Internet access providers.[32] The Missoula Plan states that it will be impossible to sustain a robust USF based on contributions from only a narrow class of carriers and services and that only a broad-based contribution methodology can achieve the Act's requirements that universal service support mechanisms be equitable and nondiscriminatory. The Missoula Plan further recommends that there should be a uniform contribution rule for all providers of facilities-based, broadband information services, regardless of the specific technology they use.

NTCA urges the Commission to modify the existing revenue-based USF contribution mechanism by expanding the pool of USF contributors to include all cable, wireline, wireless, electric, and satellite broadband Internet access providers. Section 254(d) specifically provides the Commission with permissive authority to require any provider of interstate "telecommunications" to contribute to universal service. Requiring all broadband Internet access providers to contribute will provide sufficient universal service support and sustain long-term stability to the USF contribution methodology.

In *Brand X*, the Supreme Court stated "the Commission reasonably concluded a consumer cannot purchase Internet service without also purchasing a connection to the Internet and the transmission always occurs in connection with information processing."[33] In the *Wireline Broadband Classification Order*, the Commission concluded that wireline broadband

[32] Missoula Plan, CC Docket No. 01-92, Appendix B, pp. 88-89 (filed July 24, 2006).
[33] *NCTA v. Brand X*, slip op. at 20, (June 27, 2005). A copy of the *Brand X* Opinion can be found at http://www.fcc.gov/ogc/documents/opinions/2005/04-277-062705.pdf.

Internet access service provided over a provider's own facilities is an "information service."[34] The Commission also determined that "wireline broadband Internet access service, like cable modem service, is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission such that the consumer always uses them as a unitary service."[35] The Commission further held that "consistent with *Brand X*, such a transmission component is mere telecommunications."[36]

The regulatory classification of cable[37] and wireline broadband Internet access service as an information service does not preclude the Commission requiring all providers of broadband Internet access service to contribute to the USF mechanisms based on the revenues derived from these services. The underlying transmission component of all broadband Internet access services is "telecommunications" as defined by the Act.[38] Section 254(d) specifically provides the

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[34] *In the Matter of Appropriate Frameworks for Broadband Access to the Internet over Wireline Facilities*, CC Docket 02-33, *Universal Service Obligations of Broadband Providers*, CC Docket No. 01-337, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10; *Conditional Petition of the Verizon Telephone Companies for Forbearance Under Section 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises*, WC Docket No. 04-242, Consumer Protection in the Broadband Era, WC Docket No. 05-271, FCC 05-150, ¶ 9 (rel. Sept. 23, 2005). (*Wireline Broadband Classification Order*).

[35] *Id.*, ¶ 12. The Commission limited this order to wireline broadband Internet access service and its underlying broadband transmission component whether the component is provided over copper loops, hybrid copper-fiber loops, fiber to the curb or fiber to the premise (FTTP) network, or any other type of wireline facilities, and whether that component is provided using circuit switched, packet-based, or any other technology. ¶¶ 112-113. After a transition period established by the order, ILECs that choose to offer broadband Internet access on a common carrier basis will continue to be liable for USF contributions based on the revenues from those offerings. ILECs that choose to offer broadband Internet access on a private carriage basis after the transition, their revenues from the offering would not be subject to USF contribution assessments. ¶ 9, footnote 15.

[36] *Id.*, ¶104.

[37] *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling*, GN Docket No. 00-185; *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, FCC 02-77, ¶ 7 (rel. March 5, 2002). (cable-modem high-speed Internet access service, as it is currently offered, is classified as an interstate information service).

[38] Telecommunications is defined as the transmission, between or among points specified by the user, of information of the user's choosing, without change in form or content of the information as sent and received. 47 U.S.C. § 153(43). Information service is defined as the offering of a capability for generating acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications. 47 U.S.C. § 153(20).

Commission with permissive authority to require any other provider of interstate "telecommunications to contribute to universal service."

On August 14, 2006, facilities-based wireline broadband Internet access service providers that choose to provide broadband transmission on a non-common carrier basis will no longer be required to contribute to the USF based on the revenues derived from that transmission service.[39] Apparently, the Commission believes that resulting reductions in USF contributions from these carriers will be offset by increased USF contributions from wireless carriers and interconnected VoIP providers.[40] The Commission, however, provided no studies or data as part of its Interim USF Contribution Order to support such a result. If the additional contributions from wireless and VoIP providers do not offset the lost USF contributions from wireline broadband providers, then there will be a universal service support shortfall which will require an increase in the USF contribution factor. Requiring all broadband Internet access providers to contribute will provide long-term stability to the USF contribution methodology.

The future public communications network will require universal service funding to provide affordable and comparable voice and broadband services to all Americans, urban and rural, high-cost and low-income. It will also require a USF contribution methodology that is able to evolve with the future public communications network that will rely on IP-based transmission services.[41] If USF contributions are limited to traditional wireline and wireless voice services

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[39] *Wireline Broadband Classification Order*, ¶113. See also, Universal Service Contribution Methodology Interim Order, WC Docket No. 06-122, fn. 206 (rel. June 27, 2006).

[40] Universal Service Contribution Methodology Interim Order, WC Docket No. 06-122, (rel. June 27, 2006). Commissioner Copps and Commissioner Adelstein, in their separate statements to the Contribution Order, expressed concern over the lack of certainty as to whether the new contributions from interconnected VoIP providers and wireless carriers will offset the funds lost by wireline broadband's non-participation.

[41] The Commission's most recent data on broadband subscribership demonstrates that high-speed connections continue to grow rapidly. During 2005, high-speed Internet access lines grew from 37.9 million to 50.2 million lines, an increase of 33 percent (or 12.3 million lines). *High-Speed Services for Internet Access: Status as of December 31, 2005*, Industry Analysis and Technology Division, Wireline Competition Bureau, p. 1 (July 26,

only, the inevitable migration away from these services could potentially eliminate all future universal service funding. NTCA, therefore, urges the Commission to keep pace with how competitors use different facilities and technologies as substitutes for traditional circuit switched telecommunications services and wireline broadband Internet access services and recommends that the FCC require all cable, wireline, wireless, electric and satellite broadband Internet access providers to contribute to the federal universal service fund.

X. THE MISSOULA PLAN COMPORTS WITH NTCA'S BLUEPRINT PRINCIPLES FOR INTERCARRIER COMPENSATION REFORM

In December 2004, NTCA filed its Blueprint Principles for Intercarrier Compensation Reform.[42] The blueprint identifies five criteria NTCA considers to be essential in a proposal to reform intercarrier compensation. These criteria are:

1. Rules that include a different set of regulatory policies for rural telephone companies to ensure that their networks remain viable.

2. Rules for rural LECs that include some charge that provides for carriers to compensate each other for the use of one another's network.

3. Rules that preserve and sustain universal service.

4. Rules that preserve rural LECs' option to operate under rate-of-return regulation.

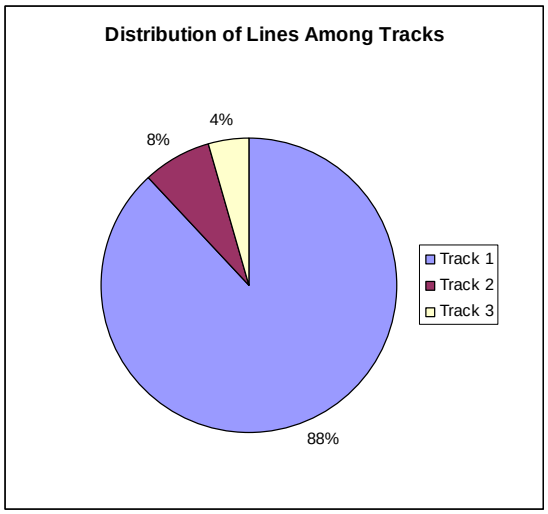
5. Rules that encourage investment in a network infrastructure capable of delivering high quality broadband services in all areas of the nation.

The Missoula plan is compatible with all five criteria in NTCA's blueprint.

First, the Missoula Plan includes specific features that are appropriate for rural LECs. Track 3 specifically applies to small rural providers, which represent only 4% of ILEC access lines.

2006). Requiring this evolving segment of the communications industry to contribute to universal service will significantly lower the USF contribution assessment.

[42] NTCA *Ex Parte* Letter to Marlene H. Dortch, December 9, 2004, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.



Also the Covered Rural Telecommunication Carrier (CRTC) designation and Rural Transport Rule are designed specifically for rural carriers. These provisions take into consideration the unique differences between large, medium and small local exchange carriers and provide a way to treat small rural carriers differently than urban, metropolitan and suburban carriers.

Second, under the Missoula Plan rural providers are compensated by other carriers for usage of their network. Interstate and intrastate access rates are unified at interstate rate levels, reciprocal compensation is capped at interstate access rates, existing extended area service (EAS) plans continue, and phantom traffic and virtual number problems are addressed.

Third, the Missoula Plan contains provisions to preserve and sustain universal service by retaining the current universal service mechanisms and re-indexing the cap on the High Cost Loop Fund.

Fourth, the Missoula Plan permits rural LECs with total regulated revenues that are cost-based to earn the allowed rate-of-return and to recover investment made to provide service throughout their service areas.

Fifth, adoption of the Missoula Plan will provide a reasonable degree of regulatory certainty which will eliminate a major source of financial uncertainty. A stable regulatory

environment will enable communications providers to make sound business decisions and encourage investment in rural infrastructure.

XI. THE REGULATORY FLEXIBILITY ACT REQUIRES THE COMMISSION TO SPECIFICALLY CONSIDER ALTERNATIVES TO MINIMIZE THE BURDEN OF ANY RULE CHANGES ON SMALL CARRIERS.

The Regulatory Flexibility Act (RFA) requires the Commission to consider alternatives for small carriers, which may include an exemption from coverage of a rule, or adopting a separate set of rules for small entities, such as rural ILECs and rural CLECs.[43] As the Commission acknowledges, the rules will have a significant economic impact on a significant number of small entities, including NTCA's members.[44] The Commission prepared a Supplemental Initial Regulatory Flexibility Analysis (IRFA) as part of the FNPRM. The Commission requests that comments in response to the Supplemental IRFA be so identified. NTCA requests that its entire filing be considered as part of a response to the Supplemental IRFA.

The Regulatory Flexibility Act also requires that the Commission prepare a final regulatory flexibility analysis in conjunction with any final rules it adopts in this proceeding.[45] The final analysis must contain a description of the projected reporting, recordkeeping and other compliance requirements of the rule, and a description of the steps the Commission has taken to minimize the significant economic impact on small entities, including a statement of the reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rules which affect the impact on small entities was rejected. Incorporated in NTCA's comments and summarized in the conclusion below are several proposed rules and

[43] 5 U.S.C. § 603.
[44] FNPRM, ¶¶ 152-190.
[45] *See*, 5 U.S.C. § 604.

recommendations that will enable the Commission to lessen the significant economic impact of inter-carrier compensation reform on small carriers.

XII. CONCLUSION

Based on the above stated reasons, NTCA urges the Commission to adopt the Missoula Plan with NTCA's proposed enhancements that address issues where the plan is silent and issues where the plan does not fully address rural carrier concerns.

1. The Restructure Mechanism (RM) should be classified as actual non-portable LEC access cost recovery under Section 201 of the Act and should not be classified as portable universal service support under Section 254 of the Act.

2. The rules concerning acquired exchanges should be modified to allow exchanges purchased by a rural carrier be designated as a Track 3 exchanges served by a Covered Rural Telecommunications Carrier (CRTC).

3. Specific rules should be included in the plan to allow for a rural CLEC that is declared a rural ILEC under Section 251(h)(2) of the Act to be designated as a Track 3 CRTC.

4. Specific rules for virtual NXXs and Extended Area Service (EAS) arrangements should be included in the plan.

5. Specific rules for rural CLEC intercarrier compensation should be included in the plan.

6. Specific rules should be included in the plan to expand the base of universal service fund (USF) contributors to include all cable, wireline, wireless and satellite providers of broadband Internet access service.

The Nation's communications network is a network of networks. The free flow of communications among these networks is a national resource benefiting all. Adequate compensation is needed to build and maintain the infrastructure that all use. The public interest is served when consumers have access to a national network offering access to advanced communication services at comparable rates. This will not happen without providing the means to pay for the necessary infrastructure.

Today's telephone network did not happen without government programs such as the Rural Utility Service (RUS) loan program, originally the Rural Electrification Administration (REA), the commitment to public utility average pricing concepts, and the commitment to universal service for all. Only 50 years ago many rural areas did not have telephone service and where there was service it was antiquated – eight to twenty party telephone service was common. Where will we be a few decades from now? Will rural America have comparable telecommunications? Competition is selective; it only appears if there is enough business to sustain multiple providers. Competition is good as far as it goes, but competition will not produce ubiquitous service.

Rural community-based companies have a proven record of service to the communities they serve. Large companies are known for innovation and for providing service in major metropolitan areas, but have an abysmal record in rural areas. Large companies go where the money is. Rural carriers bring modern telecommunications to the areas they serve, so they need policies that make it financially possible for them to build and maintain the necessary telecommunications infrastructure in their community. Indeed, serving their community is the rural carriers' reason for existence. Intercarrier compensation is a key part of their economic

well being. The Missoula Plan with NTCA's proposed enhancements will enable rural communications providers to serve their communities with modern telecommunications, including broadband, for years to come.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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