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

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

COMMENTS OF THE RURAL GROUP OF INDEPENDENTS

The Rural Group of Independents ("RGI"),[1] by counsel, hereby submits these comments in response to "The Missoula Plan for Intercarrier Compensation Reform" (the "Missoula Plan") filed July 24, 2006 with the Federal Communications Commission (the "Commission").[2] Foremost, the RGI applauds the efforts of the Rural Alliance (one of the signatories to the Missoula Plan) regarding an issue of critical importance to small incumbent local exchange carriers like the RGI members – intercarrier compensation. The scope and substance of the Missoula Plan reflect the significant amount of time, energy and effort by the members of the Rural Alliance to bring the proposal to this point. The RGI members believe that the Missoula Plan provides a rational, overall framework from which implementation steps can be made that will both properly define the rights of interconnecting carriers *and* properly reflect the financial and network responsibilities of such carriers, and with the requested confirmation and minor modification suggested herein, will achieve this result in an improved manner. Accordingly, consistent with these comments, adoption of the Missoula Plan provides the Commission with an opportunity to establish a rational framework by which intercarrier compensation can be

1 The RGI members are listed in Attachment A hereto.

2 *See In the Matter of Developing a Unified Intercarrier Compensation Regime, Order*, CC Docket No. 01-92, DA 06-1730, released August 29, 2006; *see also Comment Sought on Missoula Intercarrier Compensation Reform Plan, Public Notice,* CC Docket No. 01-92, DA 06-1510 (July 25, 2006).

addressed that fosters the benefits of a robust, facilities-based telecommunications marketplace in both rural and urban areas. That result, the RGI respectfully submits, clearly advances and serves the public interest.

I. <u>Action on the Missoula Plan Serves the Public Interest</u>

The RGI members are incumbent local exchange carriers ("ILECs") operating in rural areas of the country. Under the Missoula Plan, each of the RGI members would be considered a "Track 3 carrier." As such, each of these companies has a first hand understanding of the challenges of serving less densely populated, typically higher cost areas. Thus, the RGI fully supports the fundamental, bed rock principles that the RGI understands guided the Rural Alliance's efforts, and urges that any proposal applicable to the RGI (as a rate of return carriers) must incorporate the following principles:

Principle 1: Revisions to the existing intercarrier compensation framework must recognize distinctions applicable to ILECs subject to rate-of-return regulation;

Principle 2: Rural rate-of-return ILECs are entitled to establish cost-based intercarrier compensation rates that recognize the value other carriers receive when they utilize the rural networks to originate and terminate traffic;

Principle 3: To the extent that changes in the existing intercarrier compensation rates are imposed on rural rate-of-return ILECs, these rural carriers must receive recovery of the otherwise displaced interconnection revenue from a new sustainable access element that is only available to carriers that experience such imposed intercarrier rate reductions; and

Principle 4: To the extent that changes in the existing interconnection rules are undertaken, those rule changes must reflect the operational and legal realities which limit the obligations of rural ILECs to undertake financial responsibility for the transport of traffic beyond their networks.

From the RGI's perspective, the challenges of achieving these principles are heightened when, such as now, the viability of the existing framework associated with intercarrier compensation is unknown, and the public policy vacuum that exists in this area makes the maintenance of rational rate designs and cost recovery in rural areas that much more difficult to achieve. Coupled with increasing technological change, this uncertainty and existing public policy vacuum demand that the Commission and other public policy makers establish a logical, cohesive set of principles that will govern the two existing forms of intercarrier compensation in place today – exchange access and reciprocal compensation.

To this end, the RGI understands that the Missoula Plan is not perfect, and, as a series of compromises, the plan cannot be perfect. Nonetheless, the RGI members applaud the enormous efforts of the Rural Alliance in helping to forge a framework that begins to achieve a rational intercarrier compensation/network responsibility framework. The signatories to the Missoula Plan, including the Rural Alliance, have tackled some of the most controversial intercarrier compensation issues presented, and addressed those issues within a framework that begins to address the very policy vacuum that regulatory inaction has produced. Thus, the Missoula Plan provides an opportunity for the Commission to take action now, and avoid the possibility of creating additional incentives for undermining the continued deployment and development of the Public Switched Telephone Network ("PSTN") and the services for which it may be used.

II. THE RESTRUCTURE MECHANISM WITHIN THE MISSOULA PLAN SHOULD BE ESTABLISHED AS AN "INTERCONNECTION ELEMENT" AND NOT "UNIVERSAL SERVICE"

Of critical importance to the overall viability of the Missoula Plan is the establishment of the Restructure Mechanism ("RM"). The RM provides the basis for recovering the reduction of revenue associated with migrating higher intrastate access rates to lower interstate rate levels. Consistent with principle 3 noted above, the RGI members support the Rural Alliance's efforts that recognize that the *use* of a rural ILEC's network is an event subject to intercarrier compensation while, at the same time, also recognizing that revenue dislocations and reduction do not mean that the costs of the underlying network somehow goes away.[3] Accordingly, the RGI also supports the Rural Alliance's efforts to ensure that the recovery from the RM is properly identified as arising from the use of the small and rural ILECs' networks and is targeted to those small and rural ILECs *actually* making the reductions in intrastate access charges to their corresponding interstate access rate levels.

To this end, the RGI also agrees with the Rural Alliance that the RM should be established as an interconnection/access element under the Commission's traditional Title II jurisdiction and, in particular, Section 201 of the Communications Act of 1934, as amended (the "Act"). Since the RM reflects the reduction in intrastate access revenue, the distributions from the RM are not "universal service" revenue but, rather, revenues associated with the other carriers' use of a Track 3 carrier's network. Thus, treatment of the RM as an interconnection/access element is entirely consistent with, and therefore should be properly treated under, the Commission's fundamental authority "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." 47 U.S.C. § 201(a).

The RGI respectfully submits that this conclusion is not only consistent with the Act, but is also supported by rational public policy. At the heart of any interconnection policy must be the recognition that connectivity to the PSTN benefits all users since they have the ability to call and be called by all other users. The RGI believes that the Commission's existing Section 201

[3] As general supporters of the Missoula Plan, the RGI recognizes that there may be some interests opposing aspect of the Missoula Plan while other parties (like the RGI) may propose improvements to the Missoula Plan. *See, e.g.*, Section III, *infra*. Accordingly, the RGI reserves its right to respond to any and all submissions in this proceeding and to participate fully in the resolution of the issues addressed by the Missoula Plan.

interconnection policies reflect this fact (and particularly those associated with small and rural ILECs), and the treatment of the RM under Section 201 will advance those policies.

Further, the RGI supports the Rural Alliance's view that the RM should be implemented through a collaborative process between federal and state regulators. With the agreement of a state regulatory authority to expeditiously establish intrastate access rates in a manner consistent with that set forth in the Missoula Plan, the RM will create a new recovery mechanism resulting in new *interstate* revenues that offsets reductions in intrastate access rates. As such, state regulators' agreement with the use of the RM should not impede their rights under state law to oversee the rates and quality of intrastate services provided to consumers.

III. CONFIRMING ONE ASPECT AND MODIFYING, IN A MINOR WAY, ANOTHER ASPECT OF THE MISSOULA PLAN WILL IMPROVE THE PLAN

As indicated above, the RGI understands that the Missoula Plan represents a series of compromises. However, to ensure that the Missoula Plan can be implemented in a manner consistent with the Act as well as the realities of the network obligations and responsibilities of the RGI members, the RGI members seek confirmation of their duties/obligations and rights in Section III.A – Interconnection, and a minor modification in Section II.E.3.e associated with the Rural Transport Rules. For the reasons provided below, the RGI respectfully submits that its requests improve the Missoula Plan and, therefore, should be adopted.

A. Section III.A – Interconnection for Non-Access Traffic

The RGI seeks confirmation that Section III.A (pages 41 and 42) is not intended to alter, in any way, the Section 251(b) framework under the Act (or the FCC's implementation regulations). The Section 251(b) framework establishes both the duties that any Local Exchange Carrier ("LEC") owes to a specific type of requesting telecommunications carrier, as well as the type of telecommunications carrier that can trigger those duties of the LEC. The RGI understands from discussions with the Rural Alliance that this is the intent of Section III.A in the Missoula Plan. Accordingly, confirmation of this intent will ensure compliance of the Missoula Plan with the structure of the Act and avoid the potential for any disagreement as to how the Missoula Plan should be interpreted.[4] This result, in turn, will ensure a rational implementation of the Missoula Plan and should be adopted.

B. Section II.E.3.e.i.4 – The Rural Transport Rule

The RGI also requests the removal of the financial obligation associated with the 10 mile rule (the "10 mile rule") included in the "rural transport structure" portion of the Missoula Plan. *See* Section II.E.3.e.i.4 (page 33). By removing this aspect of the rural transport rule, the treatment of network responsibility associated with direct connection arrangements will mirror those associated with indirect interconnection (*i.e.*, at a network point on the serving area boundary of the a rural ILEC). *See* Section II.E.3.e.i.2 and Section II.E.3.e.i.3 (page 33). Likewise, removing the 10 mile rule will reflect the real world fact that the network of the rural ILEC and the financial responsibility for transport by it should be based upon that rural ILEC's state commission-defined certificated area. This conclusion is supported by the Act, which requires that interconnection (and the resulting financial obligations associated with it) must be at a point within the ILEC's network (*see, e.g.,* 47 U.S.C. § 251(c)(2)) or as the Missoula Plan states at the "edge." Thus, the applicable law and controlling facts should drive the treatment of any direct connection scenarios for non-access traffic with respect to originating non-access

[4] By way of example, therefore, it is also the RGI view that nothing in the Missoula Plan is intended to prejudge the outcome of current proceedings filed by Time Warner Cable regarding state actions addressing various assertions of telecommunications carrier status and Section 251(b) rights. *See* Public Notice, DA 06-534, WC Docket No. 06-55, released March 6, 2006.

traffic. When this is accomplished, it is entirely rational and appropriate to eliminate the Missoula Plan's 10 mile rule for direct connections made with a Track 3 carrier.

Moreover, modification of the Missoula Plan in this respect is supported by state decisions that have also recognized the fact that the network responsibility for a small rural ILEC ends at its boundary. *See Order Establishing Requirements for the Exchange of Local Traffic,* Case 00-C-0789, issued and effective December 22, 2000 (N. Y. PSC) at 6, 9 (Ordering Clause No. 1). Thus, eliminating the 10 mile rule as requested by the RGI would avoid Commission action interfering with this decision and other state commission decisions that reached the same result.

IV. <u>CONCLUSION</u>

The RGI applauds the efforts of the Rural Alliance to bring forth a consensus framework for Track 3 carriers in the highly contentious area of intercarrier compensation. The confirmation and the slight modification suggested herein advance those efforts and improve upon them in a manner consistent with the Act and the facts. Accordingly, the RGI respectfully requests that the Commission take action on the Missoula Plan in a manner consistent with that requested herein.

Respectfully submitted,

Rural Group of Independents

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ATTACHMENT A

The Rural Group of Independents

Armstrong Telephone Company – New York
Cassadaga Telephone Corporation
Crown Point Telephone Corporation
Delhi Telephone Company
Dunkirk & Fredonia Telephone Company
Empire Telephone Corporation
Germantown Telephone Company, Inc.
Nicholville Telephone Company
Ontario Telephone Company, Inc.
Pattersonville Telephone Company
Southeast Nebraska Telephone Company
State Telephone Company
Trumansburg Telephone Company, Inc.