Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF SPRINT NEXTEL CORPORATION

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Summary

The filing of the Missoula Plan represents an important opportunity for the Commission to establish a rational, pro-competitive, unified intercarrier compensation regime. While the Plan has positive aspects that would lead to some significant reforms to the current dysfunctional system, it also has numerous serious flaws that must be addressed before the Commission can adopt even a revised plan.

On the positive side, the Missoula Plan establishes a structure under which incumbent local exchange carriers ("ILECs") can derive a larger percentage of their revenues directly from their end user subscribers, thereby reducing their reliance on excessive access and reciprocal compensation charges assessed on other carriers/ competitors. It removes some of the current arbitrary regulatory distinctions, and moves much of the industry in the direction of more uniform rates. It establishes default interconnection arrangements, and adopts a simpler, numbers-based system for determining the jurisdiction of a call. It allows multi-use, multi-jurisdictional trunking facilities, and recognizes the interconnection rights of telecommunications carriers providing wholesale services to other service providers. These are all positive developments which should be enthusiastically endorsed.

Unfortunately, the Missoula Plan also contains numerous serious deficiencies. It completely ignores reform of excessively priced special access services, the largest component of intercarrier compensation and a market overwhelmingly dominated by soon-to-be two Regional Bell Operating Companies, Verizon and AT&T. It allows all ILECs to charge transit and transport rates which exceed economic costs by multiple orders of magnitude, and permits Track 2 and 3 ILECs to shift many of the costs of

originating their own traffic onto their competitors, and to charge inflated, asymmetric termination rates. It bloats federal support mechanisms to the breaking point, and showers hundreds of millions of dollars in windfall gains on ILECs, through mathematical errors in subsidy calculations, unwarranted increases to existing Universal Service Fund ("USF") support, and a lop-sided incentive regulation plan for covered rural telephone companies. It favors ILECs over their competitors in terms of rate levels, network edge definitions, "make whole" revenue guarantees, and track categorizations. Perhaps worst of all, the Missoula Plan apparently envisions a world in which multi-billion dollar subsidies wrung from other carriers/competitors continue to flow to the ILECs without end and without any dollar limits.

It is obvious that a plan containing so many severe deficiencies cannot be adopted. However, the Commission can revise the Missoula Plan in a manner which remedies, or at least mitigates, the flaws described above. The Plan should be amended as follows:

- **Incorporation of special access reform**: Special access rates must be recalibrated at levels that generate a reasonable rate of return, and made subject to price cap regulation; existing pricing flexibility rules must be revised to reflect actual market conditions.
- **Uniform rates**: Rates must be made more uniform by consolidating the number of tracks (Tracks 1 and 2 to be consolidated immediately, and Track 3 eliminated once there are two facilities-based competitors providing all designated USF services in the Track 3 market), and by reducing the number of implementation steps to 2 (resulting in symmetric traffic termination rates within one year).
- **Dedicated transport rates**: These rates must be capped at state-approved DS1 or DS3 TELRIC-based rates, and remain capped until the *Triennial Review Order* transport triggers are met.
- **Transit rates**: These rates must be capped at \$.00125 per minute until certain competitive thresholds are met. These minute- and route-based competitive thresholds would be determined in a future public proceeding.

- **SLC caps**: The residential/single line business subscriber line charge ("SLC") cap must be set at $10.00 for all ILECs, and increased with inflation beginning in step 5. SLC pricing flexibility must be limited to prevent anti-competitive pricing.
- **ILEC revenue guarantees**: The ILEC "make whole" revenue guarantees must be eliminated, or at a minimum, limited in scope and duration.
- **Restructure mechanism**: This proposed subsidy mechanism must be corrected to reflect not only revenue reductions and expense increases (as Missoula Plan proponents have already proposed), but also revenue increases and expense decreases (which Missoula Plan proponents have "overlooked").
- **Existing USF subsidies**: No expansion in existing USF subsidy mechanisms; existing USF subsidies to be reduced based on increases to SLC caps.
- **Incentive regulation for covered rural telephone companies**: The proposed incentive regulation option must be rejected because of its fatal flaws.
- **Track 2 special access revenue guarantee**: The proposed revenue guarantee must be rejected as unworkable and anti-competitive.
- **Rural transport rule**: This proposal must be rejected because it has no rational economic basis, is anti-competitive, and is likely to be costly.
- **Network edge definition**: Track 2 and 3 ILECs may not designate an end office as an edge if that end office subtends the ILEC's own tandem. Alternatively, if the end office is designated as the edge, interconnecting carriers are responsible for transport only to the tandem. Similarly, a carrier may not designate an interexchange carrier point of presence as an edge if it already has a tandem available and being used an interconnection point.
- **Tandem transit Extended Area Service exemption**: Must be made available to all interconnecting carriers, not just to other ILECs.
- **Termination rates**: All ILECs ultimately should charge the $.0005 termination rate. So long as Track 3 carriers are allowed to charge a higher termination rate, Track 1 carriers should be permitted to assess a symmetrical termination rate on Track 3-originated traffic. The Commission should also affirm that all carriers may charge the same tandem interconnection rate for local call termination based on geographic, not functional, comparability.
- **Traffic exchanges without an interconnection agreement**: An interim reciprocal compensation rate of $.0007 should apply to reciprocal compensation traffic that is exchanged when there is no interconnection agreement.
- **Clarification to numerous elements of the Missoula Plan**: The size and scope of the "Early Adopter Fund" must be specified; multi-use, multi-jurisdictional trunking should be explicitly and immediately allowed; interconnection by telecommunications carriers providing wholesale services to other carriers (including voice over Internet protocol ("VoIP") service providers) should be explicitly and immediately allowed.

These amendments and clarifications render the proposed Missoula Plan far more competitively neutral and economically efficient. Sprint Nextel's "enhanced Missoula Plan" would promote the public interest, and the Commission should implement it promptly.

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COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation, pursuant to the Public Notice released on July 25, 2006 (DA 06-1510),[1] hereby respectfully submits its comments on the "Missoula Plan" filed on July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation ("NARUC Task Force"). Although seriously flawed, the Missoula Plan represents an important step along the path to a unified intercarrier compensation regime. Many of the Plan's flaws can be remedied, or at least mitigated, in a manner which results in significantly greater competitive and public interest benefits. If the Commission incorporates the amendments and clarifications described below, Sprint Nextel would support adoption of the enhanced version of the Missoula Plan. The Commission should not adopt the Missoula Plan without making such changes.

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[1] The comment and reply comment dates in this proceeding were extended in an Order released on August 29, 2006 (DA 06-1730).

I. INTRODUCTION.

Sprint Nextel renews its call for immediate reform of the current anti-competitive and dysfunctional intercarrier compensation regime. The tangled, non-cost-based agglomeration of inconsistent compensation mechanisms in place today must be converted into a unified, rational system if the telecommunications industry is to provide consumers the full benefits of today's technology. Sprint Nextel appreciates the efforts of the sponsors and crafters of the Missoula Plan to help further the cause of reform, and we offer below amendments and enhancements to this Plan which will generate a range of competitive benefits not possible under either the existing intercarrier compensation regime or the Missoula Plan as proposed.

In evaluating any intercarrier compensation reform plan, the Commission should first reiterate the goals that any such plan should seek to foster:

(1) **The reform plan must promote competition.** Competition drives investment, innovation, and efficiencies, to the ultimate benefit of consumers.

(2) **The reform plan must eliminate all implicit subsidies.** Section 254(e) of the Act mandates that all universal service support payments "should be explicit."[2] Consistent with this imperative, the Commission has affirmed that any intercarrier compensation reform effort "should promote economic efficiency" by "encourag[ing] the efficient use of, and investment in, telecommunications networks, and the development of efficient competition."[3] In order to accomplish that, access and interconnection fees which continue to exceed the cost of providing access and interconnection must be reduced to cost-based levels.

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[2] 47 U.S.C. § 254(e).

[3] *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, 4701 (para. 31) (2005) ("*Intercarrier Compensation Further Notice*"). *See also Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8784 (paras. 10-12) (1997); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges,* 12 FCC Rcd 15982, 15994-98 (paras. 28-34) (1997).

(3) **The reform plan must reduce explicit subsidies and narrowly target any remaining explicit subsidies to those situations where and when they are truly necessary.** Reform that promotes competition must reduce, not increase, support, and must ensure that the distribution of support advances competition and deployment of efficient technologies. The Commission must strictly limit the size of any support mechanisms, such as the Universal Service Fund, and the proposed "Early Adopter Fund" and "Restructure Mechanism." "Revenue neutrality" is not a valid principle.

(4) **Any reform must be "competitively and technologically neutral."**[4] Reform cannot be based on, or biased towards, a given technology or market participant, and should neither disproportionately favor nor disproportionately burden any carrier or class of carriers.

(5) **Any reform plan must constrain the rates of services where market forces are unable to do so.** Where market forces are unable to check a dominant carrier's market power, targeted regulation must serve as a proxy. Incumbent Local Exchange Carriers ("ILECs") dominate the special access, transit, and dedicated switched transport markets, and any reform plan must address their market power in a pro-competitive manner.

These principles are consistent with the goals that the Commission articulated in its *Intercarrier Compensation Further Notice* as "appropriate . . . for intercarrier compensation regulation in a competitive market."[5]

The Missoula Plan takes some important steps towards rationalizing the intercarrier compensation system in a manner consistent with these principles. It establishes a structure under which ILECs can derive a larger percentage of their revenues directly from their end user subscribers, thereby reducing their reliance on excessive fees imposed on their co-carriers and competitors. It removes some of the arbitrary regulatory distinctions that characterize the current intercarrier compensation

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[4] *Intercarrier Compensation Further Notice,* 20 FCC Rcd at 4702.

[5] *Intercarrier Compensation Further Notice,* 20 FCC Rcd at 4700-02.

system, and moves much of the industry in the direction of more uniform rates, which may reduce arbitrage issues. It establishes default interconnection arrangements while allowing carriers the flexibility to negotiate alternative agreements, and explicitly recognizes the interconnection rights of telecommunications carriers offering service on a wholesale basis. It includes a simpler, numbers-based system for determining the jurisdiction of a call, obviating the increasingly difficult task of ascertaining the physical location of the calling or called parties, which should reduce jurisdictional reporting disputes. And, it encourages network efficiencies by allowing multi-use, multi-jurisdictional ("MUMJ") trunking facilities. All of these are positive developments which should be enthusiastically endorsed.

Unfortunately, the Missoula Plan does not go nearly far enough to achieve reform in a manner consistent with the principles noted above. In fact, several aspects of this Plan represent a step backwards: the Plan continues to insulate ILECs against competitive pressures to an excessive degree, and cements, for the foreseeable future, ILECs' position of dominance in the transport, transit, and special access markets. It contains significant mathematical errors and proposes unwarranted changes to existing high cost universal service mechanisms, which inflate the incremental support burden by hundreds of millions of dollars in windfall payments to certain ILECs. It does not "unify" intercarrier compensation rates, nor does it encourage a "bill-and- keep" regime, the most economically efficient intercarrier compensation system. (Indeed, several aspects of the plan seem designed to overturn recent FCC decisions on this point, for example, by imposing access charges on traffic that is now bill-and-keep under the *T-*

Mobile Order.[6]) It includes many features that benefit ILECs at the expense of non-ILEC carriers, in direct contravention of the competitive neutrality principle. And, it includes many new complexities and vague proposals which threaten to increase intercarrier disputes.

Sprint Nextel offers below several amendments that would correct or at least mitigate the deficiencies of the Missoula Plan. If the Commission modifies the Plan by incorporating these amendments, Sprint Nextel believes that such a modified version of the Missoula Plan would promote the public interest and should accordingly be implemented promptly.

II. THE MISSOULA PLAN FAILS TO ADDRESS NECESSARY REFORM OF INTERSTATE SPECIAL ACCESS.

Although described as a "comprehensive intercarrier compensation reform plan,"[7] the Missoula Plan focuses on only a portion of intercarrier payments -- reciprocal compensation and switched access rates, which together accounted for an estimated $11 billion in ILEC revenues in 2005 -- while ignoring the largest component of intercarrier compensation, special access.[8] At $16.1 billion,[9] the interstate special access market is growing rapidly, is hugely profitable, and is overwhelmingly dominated by the Regional Bell Operating Companies ("RBOCs"). Publicly filed data show that:

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[6] *Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*").

[7] "*NARUC Comments on Industry-Sponsored 'Missoula Plan' Filed Today at the FCC*," press release issued by NARUC on July 24, 2006.

[8] The Missoula Plan addresses special access rates only for covered rural telephone companies that elect incentive regulation (*see infra* Sections IV.D and E).

- The RBOCs' special access revenues have increased more than *six-fold* (512%) between 1991-2005.[10]

- RBOCs' earned rates of return for special access have been increasing over the past several years, and in one case exceeded 100% -- returns that are rarely, if ever, seen in truly competitive markets. Even if ARMIS accounting rules are not perfect, the sharp upwards trend in earned rates of return belies any claim of vigorous competition.

	2000	2001	2002	2003	2004	2005
AT&T	41.65%	61.18%	53.06%	60.28%	73.02%	91.73%
BellSouth	36.79%	46.31%	56.54%	69.14%	81.90%	98.37%
Verizon	15.26%	22.34%	24.08%	23.11%	31.64%	41.97%
Qwest	38.14%	44.70%	57.74%	65.84%	75.09%	109.42%

Source: ARMIS Report 43-01, Table 1

- The RBOCs retain an overwhelming market share in the special access market, particularly at the DS3 and below level. For example, despite aggressive efforts to diversify its special access vendors, Sprint Nextel still obtained 94% of its DS1 circuits and 81% of its DS3 circuits from the RBOCs as of the end of 2005.[11]

- Special access rates charged by ILECs that have received Phase 2 pricing flexibility generally have increased or remained flat over time, and in most cases are significantly higher than the rates charged for the same services under price cap regulation.[12] Again, this is a phenomenon rarely seen in competitive markets.

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[9] *See* ARMIS Report 43-01 filed by Tier 1 ILECs for calendar year 2005. The RBOCs accounted for over $15.1 billion (94%) of the $16.1 billion interstate special access market.

[10] *Id.* During this same timeframe, RBOC interstate switched access (common line, switching and transport) revenues declined by almost 14%; as of 2005, RBOC interstate special access revenues exceeded their interstate switched access revenues by $1.7 billion.

[11] Other parties have also indicated on the record that they continue to rely upon the RBOCs for the vast majority of their special access needs; *see, e.g.,* comments filed on June 13, 2005 by Broadwing/Savvis (pp. 7 and 9), Paetec (p. 6), and T-Mobile (p. 8) in WC Docket No. 05-25 (*In the Matter of Special Access Rates for Price Cap Local Exchange Carriers, AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* 20 FCC Rcd 1994 (2005) ("*Special Access Pricing NPRM*")).

[12] *See, e.g.,* comments filed by Sprint Corp. in WC Docket No. 05-25, pp. 4-5 and Attachment 1, June 13, 2005.

This information hardly paints a picture of a robustly competitive market. RBOCs should be prevented from using their dominance in the special access market to further raise special access rates in order to make up for "lost" switched access revenues. Furthermore, the Commission must ensure that the RBOCs are not able to retard the implementation of new competitive broadband networks, such as Sprint Nextel's planned 4G deployment, through their control of the special access bottlenecks (*e.g.*, through provisioning delays or exorbitant rates).

One of the goals of intercarrier compensation reform should be to ensure that rates are just and reasonable; on these grounds, it is clear that Commission action to address interstate special access rates is long overdue. If the Commission is not prepared to remedy this intercarrier compensation market failure in the instant proceeding, it should act immediately on its pending *Special Access Pricing NPRM* to revise the existing special access pricing flexibility rules, recalibrate special access rates at levels that generate a reasonable rate of return, and bring interstate special access back under the price cap regime. The Commission simply cannot reform "intercarrier compensation" without tackling the largest, and equally broken, intercarrier payment system in the telecommunications marketplace – special access.

III. INTERCARRIER COMPENSATION REFORM SHOULD GENERATE LOW UNIFIED RATES, AND ULTIMATELY ENCOURAGE BILL-AND-KEEP ARRANGEMENTS.

The Missoula Plan attempts to push the industry towards more unified reciprocal compensation and switched access rates, most importantly by (appropriately) allowing ILECs to derive an increasing percentage of their revenues from their end user customers. While this is an improvement over the current compensation scheme, the Missoula Plan does not encourage carriers to agree to the most economically efficient compensation system – bill-and-keep.[13] The Commission should adopt reforms that ultimately encourage greater use of bill-and-keep arrangements for reciprocal compensation and switched access traffic; where bill-and-keep is not appropriate or feasible for such traffic, the rates for traffic exchange must be reciprocal, symmetrical, and based on the efficient, forward-looking incremental cost of exchanging traffic.

A. True Reform Will Result in Greater Use of Bill-and-Keep Arrangements.

As the Commission has pointed out, bill-and-keep arrangements offer many advantages over other intercarrier compensation regimes.[14] This view has been resoundingly endorsed by many parties in the instant docket, and the record convincingly demonstrates that bill-and-keep is the most technology-neutral, pro-competitive pricing regime.[15] Bill-and-keep ensures that networks are self-sufficient; all carriers recover their own costs from their own retail customers rather than from other carriers/competitors.[16]

[13] Of course, bill-and-keep arrangements are not appropriate for every carrier-to-carrier transaction, such as wholesale arrangements that do not involve the mutual exchange of traffic between carriers.

[14] *Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking,* 16 FCC Rcd 9610, 9624-9644 (paras. 37-97) (2001); *see also* Jay M. Atkinson and Christopher C. Barnekov, *A Competitively Neutral Approach To Network Interconnection*, OPP Working Paper Number 34, released December 2000.

[15] *See, e.g., Intercarrier Compensation Further Notice*, Appendix C. As Wireline Competition Bureau staff correctly noted, "A bill-and-keep approach may be more technologically and competitively neutral than the current regimes because it moves the intercarrier compensation system away from traditional regulatory and jurisdictional classifications that are not based on actual economic cost differences" (p. 103, footnote omitted).

[16] *Cf. Intercarrier Compensation Further Notice* at para. 21 ("[I]f one type of carrier primarily recovers costs from other carriers, rather than its retail customers, it may have a competitive advantage over another type of carrier that must recover the same costs primarily from its own retail customers"); *see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier*

Footnote continued on next page

The customer understands the full economic cost of the service he is purchasing, and thus has the ability to make an informed choice between service offerings that reflect the true cost of service to that customer. Under bill-and-keep, "success in the marketplace will reflect a carrier's ability to serve customers efficiently, rather than its ability to extract payments from other carriers" (*id.*).

A bill-and-keep regime also is the most economically efficient system. It eliminates arbitrage spawned by regulation-based pricing differentials; reduces many of the substantial litigation and arbitration costs associated with developing compensation for different types of traffic; decreases the operating and administrative costs of measuring, reporting, and auditing traffic for intercarrier compensation purposes; and eliminates many intercarrier billing and collection expenses.

In light of the enormous benefits generated by a bill-and-keep regime, Sprint Nextel continues to urge the Commission to adopt an intercarrier compensation reform plan that encourages greater use of bill-and-keep arrangements for the exchange of all voice traffic.[17]

Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151, 9154 (para. 4) (2001) ("[G]iven the opportunity, carriers always will prefer to recover their costs from other carriers rather than their own end-users in order to gain competitive advantage.").

[17] The Commission unquestionably has authority pursuant to Sections 251(b)(5) and 252(d) of the Act to adopt a bill-and-keep regime for most traffic. 47 U.S.C. §§ 251(b)(5), 252(d)(2)(B). Congress explicitly foresaw adoption of a bill-and-keep regime. Section 252(d)(2)(B) states that the language in Section 252(d)(2)(A) regarding terms and conditions for mutual recovery of transport and termination of traffic shall not be construed "to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements)." 47 U.S.C. § 252(d)(2)(B)(i).

B. The Missoula Plan Should Be Revised to Achieve More Unified Rates.

The Missoula Plan does propose some important reforms to existing intercarrier compensation mechanisms, in particular by reducing certain inflated switched access rates. The Plan does not, however, result in a unified rate structure: rates will continue to vary by Track categorization; by geographic jurisdiction; by type of call (access vs. reciprocal compensation); and by direction of the call (origination vs. termination). These rate distinctions are the irrational remnants of previous intercarrier compensation mechanisms; they are not based on network engineering considerations or on the economic cost of handling the traffic; and they harm rather than benefit consumers. Rate distinctions require all interconnecting carriers to maintain costly call tracking, billing, and bill verification systems; inevitably generate billing disputes; may require time-consuming, resource-intensive arbitrations, negotiations and litigation; and introduce or exacerbate competitive distortions. Moreover, the uncertainty associated with continuing rate disparities can depress network investment and new service introductions.

To minimize these inefficiencies and harms, the Commission should unify rates as close to zero as possible. Two amendments to the Missoula Plan can contribute to the goal of unified rates: consolidation of the number of tracks, and fewer implementation steps.

The Missoula Plan proposes 3 tracks, with tracks 2 and 3 reserved exclusively for ILECs. Competitive carriers that exchange traffic with the Track 2 and 3 ILECs are disproportionately burdened with interconnection transport costs and asymmetric rates – an inherently discriminatory and anti-competitive situation. Sprint Nextel is aware of the concerns expressed by the smallest ILECs about their special needs. While the validity of Track 3-designated carriers' concerns may be open to question, there is no doubt that these same concerns do not apply to Track 2-designated carriers. Track 2 carriers, which include major corporations such as Embarq (market capitalization of $7.14 billion in mid-October 2006, 7.3 million access lines), Century Telephone (market cap $4.64 billion, 2.2 million access lines), and Citizens/Frontier (market cap $4.57 billion, 2.5 million access lines), have significant financial and managerial resources and state-of-the-art networks; dominate the markets they serve; and seek to compete head-to-head with cable companies and CMRS providers in the provision of wireline and wireless voice, video, and high-speed Internet access services. Indeed, these S&P 500 corporations are significantly larger than many of the non-ILEC carriers included in Track 1, such as Time Warner Telecom (market capitalization of $2.37B), Vonage (market cap $1.2 billion), RCN (market cap $1.07B), XO Communications (market cap $692M), or US LEC (market cap $269M).. It is feasible and sound public policy to combine Tracks 1 and 2 (that is, Track 2 carriers become Track 1 carriers), so that all but the smallest rural ILECs are treated consistently.

The Missoula Plan also proposes to reform intercarrier compensation gradually, with the major changes to be implemented in 4 steps. This transition period is far too long, particularly for unifying traffic termination rates. The Commission initiated the instant docket in April 2001; the industry has had 5+ years to develop plans to accommodate a unified intercarrier compensation regime, and it would be counter-productive to prolong reform for another 4 or 5 years. Reform should specifically target the achievement of low, uniform, reciprocal, and symmetric traffic termination rates within one year (that is, in two steps).

C. Dedicated Transport Rates Are Excessive And Must Be Reduced.

The Missoula Plan requires carriers to deliver their originating non-access traffic to the terminating carrier's edge, using their own transport facilities; transport facilities obtained from a third party; or transport services from the terminating carrier (p. 31). Dedicated transport services obtained from the terminating carrier are assessed the applicable interstate dedicated switched transport rates. The Plan's proposal to allow ILECs to charge grossly inflated dedicated transport rates is ill-advised, and it must be amended to ensure that transport customers pay just and reasonable rates.

Transport is not an optional service; service providers must interconnect with the terminating carrier in order to complete their customers' calls. Interconnecting carriers use their own or third party transport facilities to reach a terminating carrier's edge for a relatively small portion of their traffic. They must rely upon the ILEC for the vast majority of their transport needs – for example, approximately 92% of Sprint Nextel's dedicated switched transport expense is for ILEC facilities or service. ILECs should not be allowed to abuse their position of market control in the dedicated switched transport market by charging excessive and uncapped rates.

Like special access, the dedicated switched transport market suffers from a lack of competitive alternatives, and allowing ILECs to continue to assess inflated dedicated switched transport rates is clearly contrary to the public interest. Instead of interstate access rates, ILECs should charge cost-based rates (*i.e.*, unbundled network element ("UNE") transport rates) for dedicated transport facilities. Interconnection facility rates, like UNE rates, should be based on forward-looking economic costs, including a profit element. The Act, FCC rules, state rulings, and court decisions all require/affirm cost-based interconnection transport facilities.[18]

The Commission also should cap the rates that ILECs may charge for dedicated transport under the Missoula Plan at the state-approved DS1 or DS3 TELRIC-based rates. For ILECs that do not have state-approved DS1 or DS3 TELRIC rates, the dedicated transport rate should be capped at the lower of the existing state or interstate tariffed rate until such time as a cost-based transport rate is developed and adopted by the state. These caps should remain in effect until such time as the dedicated switched transport market is effectively competitive, as measured by the *Triennial Review Order* high capacity transport triggers.[19] The ILECs currently enjoy virtually unfettered pricing flexibility for dedicated switched transport, and, in light of their continued dominance in this market, Sprint Nextel re-iterates the need to subject ILEC transport services to meaningful regulation and cost controls.

D. Transit Rates Are Excessive and Must Be Reduced.

There are well over 2500 ILECs, wireless service providers, competitive local exchange carriers, and long distance carriers in the United States. Direct interconnection between each of these parties is completely impractical from both a financial and a

[18] *See, e.g.*, Section 252(d)(1) of the Act (providing for cost-based interconnection rates); 47 C.F.R. § 51.503(b)(1); *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, 2611 (para. 140) (2005) ("*Triennial Review Order*") (reaffirming CLECs' right to obtain interconnection facilities at cost-based rates pursuant to section 251(c)(2)); *Southwestern Bell Telephone v. Mo. PSC*, E.D. Mo., 2006 U.S. Dist. LEXIS (Sept. 14, 2006). ** 48-49 ("For these reasons, the Arbitration Order should be affirmed to the extent it determined that CLECs are entitled to entrance facilities as needed for interconnection pursuant to [Section] 251(c)(2), and that TELRIC is the appropriate rate for these facilities.")
[19] *Triennial Review Order*, 20 FCC Rcd at 2575.

network engineering perspective -- traffic volumes do not justify direct interconnections to every carrier even for a nationwide carrier of Sprint Nextel's size. Therefore, interconnecting carriers rely upon third party tandem transit services to achieve universal termination and to ensure that all of their subscribers' calls are completed.[20] In the overwhelming majority of cases, it is the RBOC that provides the tandem transit service (Sprint Nextel, for example, obtains 92% of its transit service from the RBOCs) because the smaller carriers (smaller LECs, CMRS providers, and CLECs) almost always connect to an RBOC access tandem. In only rare instances is there an alternative tandem transit carrier that can provide service in competition with the RBOC – the tandem transit service market remains a virtual RBOC monopoly.[21]

Under the Missoula Plan, a carrier "may satisfy its financial transport obligation by using a third party's Tandem Transit Service" (p. 49). Tandem transit rates for reciprocal compensation traffic[22] are capped at $.0025 per minute of use beginning at Step 2, and will increase annually by inflation starting at Step 5 (p. 51). The cap will be

[20] *See Intercarrier Compensation Further Notice,* 20 FCC Rcd at 4740 ("The record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act. It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other") (citation omitted).

[21] There is only one independent tandem service provider in the United States, and its operations are very limited. *See In the Matter of Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless, Inc.,* WC Docket No. 06-159 (August 2, 2006), p. 2.

[22] Once jointly provided tandem switched transport service for access traffic has been converted to tandem transit service (for Track 1 and 2 tandem owners, in either Step 3 or 4), tandem transit service for such traffic will also be subject to the $.0025 rate cap (pp. 51 and 54).

lifted for tandem transit service provided entirely within an MSA beginning in Step 4 (p. 52).

The proposed tandem transit rate is grossly excessive and would violate both the just and reasonable test of Section 201(b) and the Section 252(d) costing provisions of the Act.[23] The economic cost-based rates for tandem transit functionality (tandem switching and common transit) approved by state commissions are far lower than the $.0025 per minute Missoula Plan rate – as low as $.00029 in Georgia, and approximately $.00115 nationwide.[24] The Commission should give substantial weight to these functionally equivalent unbundled economic cost rates, since such rates have been developed with painstaking effort and with the Section 252(d) cost-based pricing standard in mind. Given the economic costs developed in UNE cost proceedings, and the statutory mandate for cost-based rates, Sprint Nextel recommends that the federally prescribed tandem transit rate be capped at $.00125 (a rate well above nationwide average costs), and that the cap remain in place until the transit market is effectively competitive. Capping the rate at $.00125 is reasonable, as the rate is both above the average national transit rate and well above the lowest state-determined transit rate.

Allowing ILECs to charge a tandem transit rate more than twice the nationwide average cost is unreasonable on its face. The $.0025 rate also has serious competitive repercussions, since the major tandem transit service providers (the RBOCs) also happen to compete against Sprint Nextel and other carriers that rely upon their tandem transit

[23] 47 U.S.C. §§ 201(b) and 252(d).
[24] *See* Attachment. Sprint Nextel computed this nationwide average figure using the UNE prices for the largest LECs in each state, weighted by access lines.

services in the provision of local, toll and wireless services.[25] The RBOCs derive a competitive advantage through their ability to assess an inflated tandem transit rate, because such ability allows them to affect their competitors' costs. While the RBOCs may charge their own affiliates the same $.0025 rate they charge unaffiliated entities, such transaction is virtually meaningless, since it is merely an internal transfer payment – the money goes from one pocket to another pocket of the same coat. Moreover, an excessive transit rate, when coupled with the rural transport rule, imposes a double burden on independent CMRS and CLEC service providers (that is, those not affiliated with an ILEC that is a monopoly transit provider), because the Missoula Plan would require non-ILECs to pay the excessive transit fee for traffic that is originated by both their own customers and the rural ILECs' customers.[26] To avoid serious anti-competitive consequences, the Commission must ensure that the tandem transit rate is cost-based.

In addition to charging a more cost-based rate of $.00125, ILECs also should be prohibited from lifting the tandem transit rate cap in Step 4. As described above, there are few, if any, competitive tandem transit service providers, and the prospect of competition in this market developing in the near future (by Step 4) is highly questionable. Therefore, the $.00125 rate should remain in effect until the ILEC can demonstrate that the transit market in a given tandem area is effectively competitive -- for

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[25] The Commission has recognized that "[a]s competition has increased, the ability to shift costs to competitors through intercarrier charges increasingly distorts the competitive process" (*Intercarrier Compensation Further Notice,* 20 FCC Rcd at 4694).
[26] As discussed *infra,* Sprint Nextel objects to the latter requirement.

example, by showing that X% of tandem transit minutes in a given tandem service area, involving Y% of routes, is being carried by transit providers unaffiliated with the ILEC.[27]

Lifting the rate cap when there are insufficient competitive forces in place to check the rate charged by the monopoly carrier has already proven to be a mistake in the special access market, and it would be foolhardy in the extreme to extend that error to the tandem transit market as well. The Commission therefore should mandate keeping the cap in place for the life of the Plan, or, at a minimum, should evaluate the level of competition in the tandem transit market before making any decision about removing the cap.

Adopting a $.0025 tandem transit rate and removing the cap in Step 4 could eviscerate the benefits of the plan; violate the statutory imperative of cost-based interconnection; entrench even more firmly the RBOCs' position of dominance; and give ILEC-affiliated interexchange carriers ("IXCs"), CMRS providers, and CLECs an unwarranted competitive advantage over independent carriers. These elements of the Missoula Plan are clearly contrary to the public interest, and should be rejected.

E. SLC Cap Increases Should Be Implemented in A Competitively Neutral Manner That Ensures Recovery From End Users Without Overburdening the Universal Service Fund.

The Missoula Plan gradually increases the cap on primary residential/single line business subscriber line charged (SLC) to a maximum of $10 for Track 1 carriers, and $8.75 for Track 2 and 3 carriers, by Step 4 (Missoula Plan, p. 19). Track 1 SLC caps will be permitted to increase with inflation beginning in Step 5; however, there is no inflation adjustment for Track 2 or 3 SLC caps (pp. 20-21).

[27] These competitive triggers should be determined in a public proceeding.

Sprint Nextel believes that lifting the SLC cap appropriately allows ILECs to derive more of their revenues directly from their end user customers instead of imposing excessive costs on their co-carriers and competitors. However, to ensure that any remaining support payments are appropriately sized and targeted, we recommend three changes to the SLC provisions of the Missoula Plan.

First, the SLC cap should be raised to $10.00 for all ILECs. ILECs should use revenues generated by higher SLCs to reduce (and ultimately eliminate) their dependence on federal high-cost Universal Service Fund ("USF") support, and to reduce termination rates.

Second, there should be an inflation adjustment to all SLC caps (residential, single line business and multi-line business), for all tracks, beginning in Step 5. Since divestiture, SLC caps have tended to change in clumps – they are adjusted over a 2-4 year period according to a schedule developed in a reform proceeding, but remain unchanged for several year periods in between. Residential SLCs, for example, have remained capped at $6.50 per month since July 2003, when they were last changed as part of the CALLS plan;[28] prior to implementation of the *CALLS Order,* the SLC caps had remained frozen since 1989. To keep SLCs level in real terms, and to reduce the size of the restructure and other support mechanisms, all of the SLC caps should, at a minimum, be increased annually to reflect the impact of inflation. As the SLC rate caps increase, the ILECs' universal service support from the high-cost fund programs should be reduced by

[28] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"). The Coalition for Affordable Local and Long

Footnote continued on next page

the amount of money the ILECs can recover from the increase in the SLC rate cap. The ILEC would not be required to increase the SLC rate to the cap, but its high-cost support would be computed as if the ILEC were charging the full capped rate.

Third, any SLC pricing flexibility should be available only to ILECs that are no longer receiving federal high cost support, and the SLC price cap baskets should be structured to ensure that cross-subsidization between customer groups is minimized. Under the Missoula Plan (pp. 24-25), ILECs have the flexibility to price SLCs based on geographic zones, customer purchase choice, customer segment, or bundles or service packages. ILECs should not be allowed to offset low SLCs in markets where they face some competition with higher SLCs in markets where there is limited or no competition. To prevent such cross-subsidization, the Commission may wish to consider establishing subcategories and/or pricing bands within each SLC service category.

IV. ILECs WILL RECEIVE EXTRAORDINARY WINDFALL GAINS UNDER THE MISSOULA PLAN.

Under the Missoula Plan, ILECs are to recover any revenue shortfall associated with lower intercarrier compensation rates (1) by increasing end user charges; and (2) to the extent that those increases are insufficient, through a new restructure mechanism. Reform can be a financially painful process, and Sprint Nextel would reluctantly concede that a limited phased-in approach for some carriers might be necessary to avoid end user rate shock. However, granting ILECs 100% revenue guarantees extending indefinitely into the future, financed by parties that do or may offer service in direct competition to ILECs, is obviously contrary to the public interest. To offer ILECs support *in excess* of

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Distance Service (CALLS) proposed gradual increases in SLCs that went into effect from

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the revenue guarantee amount – as the Missoula Plan in fact does -- is simply incredible. Universal service support mechanisms,[29] to the extent they are truly necessary, must be appropriately sized and targeted.[30]

The Missoula Plan fails to meet this standard in several ways. First, the new restructure mechanism (which is available only to ILECs)[31] is based on a formula that ignores many of the ILECs' new revenue streams and reduced expense streams under the Missoula Plan. Second, the Plan proposes increases to the existing safety valve and high-cost loop support mechanisms that are completely unjustified. Third, the new incentive regulation option for covered rural telephone companies allows those companies to keep all of the benefits of efficiency gains, sharing none with their customers. These factors bloat the support mechanisms or otherwise generate hundreds of millions of windfall gains to recipient ILECs.

A. The ILEC Revenue Guarantee Is Unreasonable.

The Missoula Plan offers full revenue guarantees to ILECs: to the extent that any intercarrier revenues lost by ILECs are not recovered through increased SLC rates or

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July 2000 – July 2003.

[29] Regardless of what the restructure mechanism is titled, it is a universal service mechanism funded by competing carriers. As such, it must comply with the requirements of 47 U.S.C. § 254.

[30] Furthermore, as Sprint Nextel has urged in previous comments, the Commission should establish "rate benchmarks to ensure that high-cost funds are used to provide rates that are 'affordable' and 'reasonably comparable' to the rates offered in non-rural areas, and not as subsidies that allow certain LECs to charge below-market rates." Comments of Sprint Nextel Corp., CC Docket No. 96-45, filed September 30, 2005.

[31] Although the restructure mechanism purportedly "will be available to other carriers in circumstances to be determined in the future" (p. 74), the Missoula Plan as currently fashioned makes restructure funds available only to ILECs. Sprint Nextel does not speculate as to the possible future circumstances under which restructure funds might be made available to "other carriers."

restructured intercarrier charges, the ILEC may obtain funds from the new restructure mechanism to be made whole (*see, e.g.*, Missoula Plan, p. 63). In addition to this new restructure mechanism, the Missoula Plan proposes that ILECs receive enhanced support from existing USF mechanisms as well. As if these subsidies were not remarkable enough, the Plan includes no provision for (indeed, does not even mention) the eventual elimination of the restructure mechanism – ILEC competitors would be required to continue their multi-billion dollar support payments to the ILECs for the indefinite future.

The ILECs have aggressively asserted in many proceedings that their service markets are competitive and that they are in desperate need of additional regulatory relief.[32] Assuming *arguendo* that these assertions are correct, it would be ironic to an extreme to provide the incumbent carriers with a revenue guarantee financed by the very competitors cited by the incumbents in other proceedings.

It is also ironic that the existing intercarrier compensation regimes, flawed as they are, do not include a revenue guarantee. Today, for example, an ILEC that experiences a revenue decline because one of its access customers bypasses the ILEC network (by self-provisioning or by switching to a CLEC) is not entitled to additional USF support to offset those lost revenues in their entirety. Intercarrier compensation reform should lead the industry to more rational cost recovery, not take it backwards to even greater subsidies, whether implicit or explicit.

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[32] *See, e.g.*, the petitions for forbearance from Title II and Computer Inquiry rules filed by AT&T (July 13, 2006), BellSouth (July 20, 2006) and Qwest (June 13, 2006) (WC Docket No. 06-125); by Embarq (July 26, 2006) and Frontier/Citizens (August 4, 2006) (WC Docket No. 06-147); and by ACS of Anchorage (May 22, 2006) (WC Docket No. 06-109). *See also* six petitions for forbearance of almost all regulations filed by Verizon

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The Commission must firmly resist efforts to handicap the competitive process in favor of ILECs, and must accordingly reject any proposal that provides an open-ended make-whole revenue guarantee to one industry segment. However, if the Commission does conclude that some sort of restructure mechanism is necessary to help ensure universal service, it must make clear from the start that this mechanism will be limited in scope and duration, and targeted only where necessary to accomplish the Act's universal service goals. ILECs must be weaned from their expected dependence on this subsidy; providing them with a specific transition timeline for the phase-out of the restructure mechanism (at most, 4 or 5 years) should give them adequate time to prepare to stand on their own feet.

B. The Restructure Mechanism Is Bloated Because of Mathematical Errors.

The proposed new restructure mechanism has been sized by proponents of the Missoula Plan at approximately $1.5 billion (Missoula Plan Executive Summary, p. 13). Setting aside for the moment any debate over the merits of an open-ended make-whole/revenue guarantee vehicle, the new restructure mechanism in its current form must be rejected because of major errors in the formula used to size the fund and to determine the amount an ILEC may claim from the fund. The proposed restructure mechanism will be significantly bloated because it ignores new revenue streams collected and lower expenses incurred by the ILECs under the Missoula Plan.

(September 6, 2006) (WC Docket No. 06-172), and petition for forbearance of dominant carrier regulation filed by Verizon (February 28, 2006) (WC Docket No. 06-56).

Assuming *arguendo* that it is appropriate to make an ILEC whole by means of a restructure mechanism, and that the Commission adopts the plan as proposed, the restructure mechanism should reflect the following elements:

All intercarrier compensation revenue reductions
- Originating and terminating access charge reductions

All intercarrier compensation revenue increases
- Higher transit service revenues (transit rates under the Missoula Plan are higher than current rate levels and will eventually be uncapped)
- Increased high cost universal service support
- Increased safety valve I and II universal service support
- New transport and termination rates for Extended Area Service ("EAS") traffic
- New USF to price cap carriers that obtain non-rural high cost support
- Higher dedicated switched transport revenues
- Increased compensation from elimination of phantom traffic
- Increased compensation from elimination of the intra-MTA rule in Step 1
- Increased reciprocal compensation from higher termination rates
- Increased revenues from elimination of any bill-and-keep arrangements

All intercarrier compensation expense increases
- Additional dedicated transport cost as a result of the grandfathered point of interconnection ("POI") rule
- Additional charges due to modifications of the rules for transport and termination of EAS traffic

All intercarrier compensation expense reductions
- Reductions to reciprocal compensation expense
- Reductions in transport costs resulting from modified and full transport exemptions
- Reduced access expense for intraLATA toll settlements arrangements

The Missoula Plan (pp. 64-65, 69-70) includes only two of the above categories in the restructure mechanism: ILEC revenues losses and expense increases. The excluded categories – revenue increases and expense reductions – are, perhaps coincidentally, items that benefit the ILECs and would *decrease* the size of the restructure mechanism. These items (and any other relevant revenue increases and expense reductions) must be reflected in the restructure mechanism to prevent unwarranted windfall gains to recipient

ILECs, and to prevent additional undue burdens on parties that will be required to fund the restructure mechanism.

To ensure that the restructure mechanism includes all relevant elements, Sprint Nextel recommends that recipient ILECs be required to submit and make publicly available semi-annual reports detailing their intercarrier compensation revenue and expense flows under the Missoula Plan. The report should also include information demonstrating that net intercarrier compensation per line from all sources for any given year is no greater than the per line amount for the base period (the year prior to adoption of the Missoula Plan). By requiring such reports, the Commission will be in a better position to take actions necessary to ensure that the restructure mechanism is not excessively sized, and that ILECs do not receive windfall gains or unnecessary explicit or implicit support.

C. Increases to the Existing Safety Valve and High-Cost Loop Support Mechanisms Are Unwarranted and Should Be Rejected.

The Missoula Plan proposes (pp. 77-79) changes to the rural High-Cost Loop Fund ("HCLF") and the safety valve support mechanisms. Specifically, the Plan would re-index the HCLF based on the (higher) current nationwide average cost per loop; increase the HCLF annually based on the rural growth factor; eliminate the rules (in 47 C.F.R. § 36.631) that base a carrier's rural high-cost loop support on the size of the carrier's study areas; and establish a new non-rural high-cost loop support option for certain price cap covered rural telephone companies ("CRTCs"). The Plan also "supplements" the safety valve I and II mechanisms by increasing USF support to carriers that acquire rural exchanges.

These changes should be rejected because they are unjustified and costly. There is nothing to suggest that support under the existing mechanisms is insufficient. Proponents of these changes offer no information to demonstrate (indeed, do not even claim) that rural LECs and certain non-rural price cap CRTCs need additional high-cost support to adequately maintain or upgrade their networks, or to provide reliable, high quality service at affordable rates to their subscribers. (Individual carriers that can demonstrate unique circumstances may always request a waiver of the Commission's rules to seek additional USF support.) Increasing HCLF and safety valve support when there has been no demonstrated need to do so is unwarranted and certainly contrary to the public interest.

The proposed changes will increase the USF burden by unspecified hundreds of millions of dollars at a time when the viability of the USF under existing rules is already threatened. Piling on more USF dollars for no justifiable purpose is precisely the situation the Commission must avoid.

D. The New Incentive Regulation Option for Covered Rural Telephone Companies Is Fatally Flawed.

In addition to full revenue guarantees, the Missoula Plan allows CRTCs currently operating under a rate-of-return regime to switch to an incentive regulation plan under which the CRTC is able to retain all of the financial benefits associated with any efficiency gains. The incentive regulation plan caps the revenue per subscriber line at the level earned immediately prior to election to incentive regulation, but excludes key elements which would otherwise properly extend any of the benefits of productivity gains to interconnecting carriers. The resulting windfall gains to CRTCs are unreasonable, and the incentive regulation option, as currently structured, must therefore be rejected.

As an initial matter, Sprint Nextel would emphasize its support for properly designed incentive regulation. As the Commission found some 16 years ago, rate-of-return regulation "lacks incentives for carriers to become more productive."[33] In contrast, price cap regulation, properly designed, encourages growth in productivity by permitting incumbent LECs that increase their productivity to earn higher profits, and, "by limiting the amount carriers can charge…and continually exerting downward pressure on those price ceilings, … requires LECs to share the benefits of increased productivity with ratepayers in the form of lower rates."[34]

Unfortunately, the incentive regulation model included in the Missoula Plan contains numerous flaws that result in windfall gains to the participating CRTC. For example:

- CRTCs are allowed to choose which of their study areas will be subject to incentive regulation (Missoula Plan, p. 80), affording them an opportunity to shift costs from their incentive regulation operations to their rate-of-return operations. Rather than allowing this type of self-selection, the Commission should require CRTCs to elect incentive regulation on an "all or nothing" basis (for all of their affiliates, and for all of their study areas).

- There is no sharing mechanism for "over earnings." CRTCs are allowed to retain all of the benefits of their efficiency gains, regardless of their earned rate of return. Ironically but unsurprisingly, the Missoula Plan incentive option does include a lower formula adjustment mechanism (p. 82) to protect the CRTC from "under earning," as well as a mid-course special access recovery mechanism (p. 83) in case actual demand declines after the Plan takes effect, or if the CRTC is unable "to find alternative uses for its special access facilities."

  Protecting on the downside while refusing to share on the upside is patently unreasonable, and minimizes if not eliminates any consumer

[33] *Policy and Rules Concerning Rates for Dominant Carriers,* 5 FCC Rcd 6786, 6789 (para. 22) (1990) ("*LEC Price Cap Order*").
[34] *Id.* at 6790 (para. 30).

benefit that would normally accrue from a properly designed incentive regulation plan. The Commission should require CRTCs to flow through some percentage of their earnings to their interconnection customers to the extent that the CRTC earns above a specified rate of return.[35] History has shown that price cap LECs have routinely earned rates of return far in excess of what would be earned in a competitive market (and above the 11.25% rate of return allowed under cost-of-service regulation), and CRTCs are virtually guaranteed to increase their earned rates of return because of the many features of the Missoula Plan that will result in significant cost reductions for the CRTCs (*e.g.*, the new rural transport rule, which will eliminate much of the CRTCs' existing transport expense). Thus, it is clear that a sharing mechanism is necessary to ensure just and reasonable rates.

- The productivity factor for special access is inadequate.[36] The Missoula Plan proposes to set the productivity factor equal to inflation (p. 82), even though the Commission has found that productivity in the telecommunications industry historically has outpaced productivity in the overall economy by a significant percentage.[37] Sprint Nextel recommends that the Commission mandate an annual productivity factor of at least 5.3%, the last productivity factor to be judicially upheld.

In addition to the design flaws listed above, it appears that the proposed incentive regulation model includes mathematical errors as well. CRTCs choosing the incentive regulation option are to compute their expected revenue per line based on "all revenue expected to be collected in the coming period through intercarrier charges (consistent with the categories above), subscriber charges (as specified in this Plan) and continued receipt of support such as ICLS [Interstate Common Line Support] and LSS [Local Switching Support]" (Missoula Plan, p. 81). Because the intercarrier charge revenues are

[35] The original LEC price cap plan allowed the LEC to retain all earnings up to 12.25%, and mandated 50% sharing for returns between 12.25 – 16.25%, and 100% sharing for returns above 16.25%. *See LEC Price Cap Order*, 5 FCC Rcd at 6801 (paras. 123-125).
[36] Any productivity-based adjustments appear to be limited to price capped special access services.
[37] The Commission has previously mandated an annual productivity factor as high as 6.5% for price cap LECs (*see, e.g., Price Cap Performance Review for Local Exchange*

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framed in reference to baseline access revenues and baseline net reciprocal compensation revenues, it does not appear that the expected revenue calculation captures all of the new revenue streams generated under the Missoula Plan, such as revenues associated with enhanced safety valve and HCLS USF, or allowing ILECs to choose funding under the non-rural high cost methodology if that methodology increases their USF support. By incorrectly depressing the expected revenue calculations, CRTCs will overstate their claimed restructure mechanism support, and thereby bloat this new fund.

In summary, the proposed incentive regulation plan offers many benefits for CRTCs, but none for their carrier or end user customers, or for parties that must contribute to the various support mechanisms. This aspect of the Missoula Plan is fatally flawed and must be rejected. If, contrary to Sprint Nextel's recommendation, the Commission determines that it should adopt an incentive plan for CRTCs, it should do so only with the following parameters:

- An all or nothing election basis;
- A minimum productivity factor of 5.3%;
- A sharing mechanism; and
- A method for capturing accurate per line revenues.

E. The Track 2 Special Access Revenue Recovery Guarantee Should Be Eliminated.

The Missoula Plan provides an additional special access revenue guarantee for a Track 2 carrier that demonstrates that "actual demand for its special access offerings is significantly less after the Plan takes effect; the decline in demand for special access was not due to losses to competitors; and the carrier has not been able to find alternative uses

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Carriers, 12 FCC Rcd 16642, 16645 (para. 1) (1997)), and CALLS plan participants voluntarily agreed to a 6.5% productivity factor (*CALLS Order*, 15 FCC Rcd at 13021).

for its special access facilities" (p. 83). The Track 2 ILEC may "seek to recoup under-recovered special access revenues for the period beginning with day 1 of the Plan through the date of the filing for a mid-course adjustment" (*id.*).

This proposal should be rejected. As an initial matter, it simply cannot be dispositively demonstrated that any special access shortfall will have been entirely attributable to implementation of the Missoula Plan. For example, an ILEC may experience a decline in special access demand because a major customer relocates or goes out of business; because of a general downturn in the economy; or because the quality of service is so poor or the rates are so high that a customer chooses to do without special access service completely. None of these factors is related to implementation of the Missoula Plan, yet under the Plan, the Track 2 ILEC would be allowed to recoup any special access shortfall attributable to such factors. Nor is it clear how the ILEC could prove that there were no "alternative uses" for the unused special access facilities, as such a showing would require access to its presumably confidential business plans, marketing efforts, and network engineering/traffic studies, as well as intimate knowledge of the local economy – none of which is likely to be made available to the Commission or other interested parties.

Moreover, the proposal smacks of retroactive ratemaking, a practice the Commission has historically eschewed. Although the details of this proposal have not been provided, it is clearly unreasonable to expect that existing or future customers pay some additional fee to make the Track 2 ILEC whole, particularly if this proposal involves changes to previously agreed-upon (through contracts or tariffs with volume or term discounts) rates.

Third, this proposal is anti-competitive on its face. The mid-course recoupment option is specifically limited to Track 2 carriers and is not available to any alternative providers of special access services. This is a blatant attempt to protect a certain class of competitors (or potential competitors) at the expense of competition. Protecting competitors at the expense of competition is neither the Commission's responsibility nor an appropriate use of its authority.[38] More precisely, it is not the responsibility of the parties that would pay for this revenue guarantee mechanism to protect Track 2 ILECs or any other carrier from any possible revenue shortfall. This type of revenue guarantee is unsound economic and public policy, and should be rejected.

V. THE MISSOULA PLAN DISPROPORTIONATELY BENEFITS ILECs AT THE EXPENSE OF OTHER COMPETITORS.

The Commission has correctly emphasized that any intercarrier compensation reform must be competitively and technologically neutral, and the Missoula Plan does include important elements that have a positive competitive impact. For example, by establishing default interconnection rules, the Plan can, if clarified as recommended herein, reduce the need for carriers to litigate and arbitrate various interconnection issues. This results in administrative cost savings as well as a greater degree of certainty, which in turn encourages carriers to make the kind of network investments which enable them to provide innovative, economically priced services to consumers.

[38] *See Allenco Communications, Inc. v. FCC,* 201 F.3d 608 (5th Cir. 2000). ("The Act does not guarantee all local telephone service providers a sufficient return on investment; quite to the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete.")

On the other hand, the Missoula Plan suffers from an unfortunate amount of ILEC hubris – it remains excessively tied to the outmoded regulatory regime and network assumptions which have developed over the decades around the ILEC wireline network, transferring many of its inefficiencies and implicit subsidies to the new compensation system. The Missoula Plan includes numerous asymmetric rights and obligations which clearly fail the competitive neutrality test. For example, the Plan:

- Provides a revenue guarantee as well as higher USF subsidies (safety valve, HCLF, and new non-rural high-cost loop support) to ILECs, but not to other carriers. (See Section IV *supra*.)

- Categorizes all wireless carriers, CLECs, and IXCs as Track 1, while maintaining different tracks for ILECs depending on their size and rural status (Missoula Plan, p. 5). Track 1 carriers are subject to more burdensome obligations than are Track 2 or 3 carriers.

- Includes proposals that shift transport and transit obligations from Track 2 and 3 carriers to non-ILEC carriers: the "Rural Transport Rule" (p. 33), the Edge designation rule (p. 46), and the tandem transit exemption (p. 38).

As discussed below, these asymmetries must be addressed if intercarrier compensation reform is to be achieved in a competitively neutral manner.

A. The Commission Should Maintain Separate Tracks Only Where Truly Necessary.

The Missoula Plan assigns Track 1 status to all non-ILECs and the largest ILECs. Mid-sized and smaller ILECs are assigned Track 2 or 3 status, and are granted numerous exemptions from various interconnection obligations to which Track 1 carriers are subject. Although universal service considerations may give rise to differential treatment for customers in high cost areas with no (or very few) alternative telecommunications service providers, the Commission should remain keenly aware that the subsidies inherent in the track differentiations may actually discourage the development of competition. Subsidies given to Track 2 and 3 ILECs confer a potent double advantage – their own rates are subsidized, and the rates charged by other carriers/competitors are inflated to pay for the ILEC subsidies. If such subsidies are excessive, or remain in place for an extended or indefinite period of time, facilities-based competitive alternatives are unlikely to emerge.

Sprint Nextel urges that any differential treatment be limited to the greatest extent possible. Upon implementation, the Missoula Plan should have no more than two tracks (see Section III.B *supra*, advocating combination of current Tracks 1 and 2), and the entire track system should be eliminated once a competitive trigger is met. For example, the Commission may wish to classify all service providers as Track 1 carriers as soon as there are two facilities-based competitors providing all of the designated USF services[39] in the small LEC (currently Track 3) market. Minimizing the track system as much as possible will yield significant competitive benefits, and thus is in the public interest.

B. Track 2 and 3 Carriers Should Not Be Allowed To Shift Their Transit and Transport Obligations to Non-ILEC Carriers.

The Missoula Plan appropriately requires the originating carrier to accept financial responsibility for transporting non-access traffic to the terminating carrier's edge. Unfortunately, the Plan also includes proposals which allow Track 2 and 3 carriers to shift these transit and transport obligations to their competitors (CMRS, interexchange

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[39] Currently, these core services include single party service; voice grade access to the public switched network; dual tone multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low income consumers.

and CLEC service providers). The "rural transport" rule, the edge designation rule, and the tandem transit exemption are all anti-competitive, and should be revised.

Rural Transport Rule: Under this rule, a Track 1 carrier has the financial obligation to transport traffic in both directions between its edge and the meet point with a Track 2 or 3 ILEC (pp. 33-34). In other words, the Track 1 carrier must pay the cost of transporting not only its own originating calls, but also calls that originate from a Track 2 or 3 carrier. To add insult to injury, Track 3 ILECs set the rates that the Track 1 carrier must pay to exchange traffic with the Track 3 ILEC.

There is no rational economic justification for the proposed rural transport rule, and such rule runs counter to the basic principle that subsidies should be made explicit. Track 2 and 3 carriers already receive massive explicit subsidies through USF high cost funds and the new funding mechanisms created under this Plan. Shifting the responsibility for paying the cost of originating traffic to competitors is simply another form of implicit subsidy. Shifting implicit subsidies from "access charges" to "transport charges" is a shell game, not reform.

The Missoula Plan proponents have not provided any estimate of the cost involved in this wealth transfer, nor have they adjusted their subsidy payments to address this new benefit. Allowing one class of carrier to shift its transport expense (whatever the level) to another class of carriers is anti-competitive. Furthermore, the proposed rural transport rule is contrary to the Commission's rules prohibiting a LEC from "assess[ing] charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network,"[40] State commission findings,[41] and Court decisions.[42] Sprint Nextel accordingly urges the Commission to reject this proposal, and uphold the general proposition that each carrier must bear the financial obligation of transporting its own originating traffic to the terminating carrier's edge. If, contrary to Sprint Nextel's recommendation, the Commission does decide to implement some version of the rural transport rule, it should make this subsidy available only to Track 3 ILECs that do not have CMRS or CLEC affiliates in order to minimize the anti-competitive impact, and require the Track 2 and 3 ILECs to be financially responsible for transport at least between their end office and their access tandem. The Commission also should establish a low, reasonable, cost-based transport rate to control the size of the subsidy required.

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[40] 47 C.F.R. § 51.703(b); *see also* 47 C.F.R. § 51.709(b) ("The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network").

[41] *See, e.g., Order of the Indiana Utility Regulatory Commission*, Cause No. 43052-INT-01 (Sept. 6, 2006), p. 30 ("We also find that each party shall be responsible for any charges incurred in delivering traffic originated by its customers to the other party. We find this conclusion is consistent with the public interest because it requires competitively neutral terms for interconnection by placing symmetrical traffic delivery obligations on both parties."); *Illinois Commerce Commission, Arbitration Decision*, Docket No. 05-0402 (Nov. 8, 2005), p. 28 ("When indirectly interconnecting through a third party ILEC switch each party should be financially responsible (that is financially responsible for its own installed facilities or for compensating another carrier for facilities it uses) for interconnection facilities on its side of the third party ILEC switch. Costs associated with tandem switching should be paid by the carrier sending the traffic."); *In re Arbitration of Sprint Communications Co., L.P., Petitioning Party, vs. Ace Communications Group et al.*, Docket Nos. ARB-05-2, ARB-05-5, ARB-05-6, *Arbitration Order* dated March 24, 2006 ("*Iowa Arbitration Order*") ("The Board agrees with the decisions of the various state commissions cited above [referencing decisions by the Illinois, Pennsylvania and Tennessee commissions] and finds that it is most appropriate for each party to pay the cost of delivering traffic to the other party.")

Network edge definition – Under the Missoula Plan, Track 2 and 3 carriers may declare any eligible end office to be an edge, even if that end office subtends the carrier's own access tandem (p. 46). This proposal, if adopted, would force Track 1 interconnecting carriers to duplicate existing transport routes or, in the alternative, subsidize the operation of Track 2 and 3 carrier networks. This is, again, simply another mechanism to shift Track 2 and 3 carrier costs onto Track 1 carriers without making these subsidies explicit.

This network edge definition should be rejected. It is inefficient from a network engineering perspective, and has anti-competitive consequences for the Track 1 carriers forced to subsidize the Track 2 or 3 carrier. The Commission should therefore require that where an ILEC end office subtends the ILECs' own tandem, interconnecting carriers are responsible for transport only to that tandem.

Tandem transit EAS exemption – Under the Missoula Plan, the rules governing the exchange of EAS traffic between a Track 3 ILEC and another ILEC (often bill-and-keep arrangements) do not apply to tandem transit arrangements used by CLECs and CMRS providers to indirectly connect with a Track 3 ILEC (p. 38). Therefore, a CLEC or CMRS provider must connect directly with a Track 3 ILEC in order to be placed on the same footing as a neighboring ILEC. Because direct connection to a Track 3 ILEC is often more costly than an indirect connection (because of insufficient traffic volumes and excessive interconnection facility rates), this EAS exemption clearly favors ILEC-to-ILEC traffic exchanges over ILEC-to-non ILEC traffic exchanges. The Commission

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[42] *See, e.g., Atlas Telephone Company v. Corporation Commission of Oklahoma*, 400 F.3d 1256 (10th Cir. 2005); *Mountain Communications v. FCC*, 355 F.3d 644 (D.C. Cir. 2004).

should prohibit such asymmetric and discriminatory arrangements, and require Track 3 ILECs to extend equivalent EAS arrangements to all other carriers.

C. Termination Rates Should Be Symmetrical.

The Missoula Plan caps the termination rate for Track 1 carriers at $0.0005, yet establishes a cap of "interstate access" for traffic terminated to Track 3 carriers that Sprint Nextel estimates to average approximately $0.01 per minute. This creates an incredible 20:1 asymmetry for traffic termination. In fact, because of the high transit rate and the rural transport exemption, Track 1 carriers that are eligible to receive compensation will become *net payors* for traffic they receive from Track 3 ILECs. Specifically, if the Track 1 carrier receives $0.0005 for terminating the traffic, but must pay the transit provider $0.0025 to receive the traffic, the Track 1 carrier will lose $0.002 for each minute originated by a Track 3 customer to a Track 1 customer.

Once again, ILECs are simply replacing the implicit subsidy of access with a new implicit subsidy. Sprint Nextel urges the Commission to move all carriers, no matter what their track, to the $0.0005 termination rate as soon as possible. However, so long as the Commission allows Track 3 carriers to charge the higher termination rate, Track 1 and Track 2 carriers should be permitted to assess a symmetrical termination rate on Track 3-originated traffic. Any other result is anticompetitive and contrary to the public interest.

D. The Commission Should Prohibit the Assessment of Access Charges On Reciprocal Compensation Traffic Where Carriers Are Exchanging Traffic Without An Interconnection Agreement.

Under the Missoula Plan (p. 37), Track 3 carriers can charge interstate switched access rates for reciprocal compensation traffic if it is exchanging traffic without an interconnection agreement. This provision is nothing more than a direct reversal of the Commission's *T-Mobile Order* and the Commission's determination in that proceeding that the default arrangement between carriers should be bill-and-keep absent contract negotiations.[43]

Because access rates are higher than reciprocal compensation rates, this proposal imposes a significant financial burden on the interconnecting carrier. Such a rule makes no economic sense, and serves only to enrich the Track 3 ILEC at the expense of interconnecting carriers. Sprint Nextel also is concerned that Track 3 ILECs will use their ability to charge excessive access rates as a lever to strong-arm carriers into entering into an otherwise-objectionable interconnection agreement.

Rather than allowing Track 3 ILECs to assess excessive access rates for this traffic, the Commission should adopt an interim reciprocal compensation rate of $.0007 per minute. This is the same as the interim transport and termination rate that Track 1 and 2 carriers are allowed to charge in Steps 1 and 2 (Missoula Plan, p. 37). Where there is no interconnection agreement in place, all ILECs should charge the $.0007 interim rate on reciprocal compensation traffic, since this rate is closer to cost, and has fewer anti-competitive consequences than does assessing inflated access charges on this traffic.

VI. VARIOUS ASPECTS OF THE MISSOULA PLAN NEED TO BE CLARIFIED.

The Missoula Plan is unnecessarily complex and creates many areas of ambiguity. To ensure full understanding and evaluation of the Plan, several elements must be clarified.

[43] See *T-Mobile Order*, 20 FCC Rcd at 4863 (fn. 57).

A. The Early Adopter Fund

The Missoula Plan calls for establishment of a new federal "Early Adopter Fund" for states "that have reduced intrastate access charges through explicit State funds by the time the Plan is adopted" (p. 63). The Early Adopter Fund would "defray the costs of compensating carriers for access rate reductions made prior to the Plan's adoption" (p. 77), and would be "at least $200 million or whatever greater amount [the Commission] determines to be...appropriate..." (p. 76).

Sprint Nextel applauds those States that have taken or are in the process of taking steps to rebalance their local and intrastate access rates. Although the economic benefits of a more rational, competitively neutral cost recovery system surely are sufficient rewards unto themselves, Sprint Nextel recognizes that some States may respond favorably to supplemental federal incentives. However, before any decision about the Early Adopter Fund can be made, the proposal first needs to be made more explicit. A firm dollar cap on the fund should be set, a clear list of reimbursable costs and their coverage percentage(s) should be developed, and a firm timeline for phase-out of any such fund should be established,[44] to enable interested parties to weigh the relative costs and benefits of the proposal. The potential burden imposed on fund contributors and their customers resulting from mandatory support of an open-ended or poorly defined fund is significant, and, as has become clear from the experience with the existing high cost USF, the lack of a cap can threaten the overall viability of the fund. A firm cap, with clearly defined reimbursement parameters and phase-out timeframe, also would be

[44] Consistent with the Administrative Procedures Act, 5 U.S.C. §§ 511-599, these funding parameters should be the subject of public comment prior to their adoption.

critical to helping States to size any remaining explicit state funding mechanism appropriately.

Also unclear is the relevant time period of eligible intrastate access rate reductions, or the degree of reform necessary to trigger eligibility for participation in the Early Adopter Fund. While all pre-Missoula rate rebalancing actions are welcome and sorely needed, the Commission should consider whether reimbursement on a sliding scale might encourage earlier or more aggressive reform.[45] Finally, the Commission should clarify that any supplemental state reforms undertaken after the Missoula Plan has been adopted would not be eligible for reimbursement from the Early Adopter Fund.

B. Multi-Use, Multi-Jurisdictional ("MUMJ") Trunking

One of the greatest deficiencies in the current intercarrier compensation mechanisms is that non-ILEC carriers are often forced by the interconnecting ILEC to obtain separate facilities for traffic in different regulatory categories – access vs. reciprocal compensation, and wireless vs. wireline vs. VoIP – even if the traffic all passes through a common facility (*e.g.*, an interexchange carrier point of presence).[46] These separate trunking requirements are extremely inefficient from a network engineering and administrative perspective: they increase the number of interconnection trunks required (resulting in lower capacity utilization of the individual trunks than if the traffic were

[45] For example, the Early Adopter Fund might offer a higher percentage reimbursement to a state that rebalances its rates several years prior to implementation of the Missoula plan, and a somewhat lower percentage for rebalancing only one year prior; or, offer higher reimbursement for an aggressive reform plan (specifically defined) than for a more modest one.

[46] In contrast, rural LECs have long enjoyed the efficiencies of co-mingling all of their traffic over meet-point facilities.

aggregated over MUMJ facilities), increase the number of trunk ports on both carriers' switches, and often increase the number or size of the pipes on which those segregated trunks ride (*e.g.*, forcing the carrier to obtain multiple DS1s or a DS3 to accommodate segregated trunks, rather than a less-expensive single DS1). Requiring multiple separate trunks also increases the carrier's administrative burden (ordering and paying for multiple facilities).

Although these network and administrative inefficiencies also negatively affect the ILECs, they continue to impose segregated trunking requirements so that they can assess the differing intercarrier compensation charges to the various categories of traffic in a transparent fashion, and because they apparently mistrust the accuracy of any traffic identification performed by their customers. The current rate differentials are the result of regulatory and political factors, not economic cost differentials or engineering considerations: a minute is a minute regardless of the type of retail service involved or the originating and terminating points. It is past time for this network reality to be reflected in unified rate levels, and past time to actively encourage the use of efficient multi-use, multi-jurisdictional trunks.

There is no specific discussion of multi-use, multi-jurisdictional trunks in the Missoula Plan, but it does appear that the Plan eliminates separate trunking requirements and appropriately permits mixed-use facilities.[47] Allowing mixed-use interconnection trunks and facilities is one of the most significant benefits of the Missoula Plan, and is a

[47] *See, e.g.,* Missoula Plan at p. 48 ("If the facility is used for switched access (prior to achieving unified termination rates), special access, or UNE traffic…"; "If one carrier uses a portion of the trunk capacity for other purposes [other than non-access traffic],

Footnote continued on next page

reasonable accommodation in an environment of progressively more uniform intercarrier compensation rates and technological convergence. As the rates for all types of traffic converge, there is less and less of a need to track different types of traffic separately. Moreover, the Missoula Plan relies upon a much simpler traffic categorization standard -- the home rate centers associated with the originating and terminating numbers, regardless of the geographic location of the handsets at the time of the call. Thus, to the extent that rate differentials remain, interconnecting carriers will be able to identify the nature of the traffic at issue, and thus the applicable intercarrier compensation rate, with greater confidence.

Given the overwhelming benefits of allowing mixed-use trunks, the Commission should explicitly require that multi-use, multi-jurisdictional trunks and facilities be allowed for purposes of interconnecting with all carriers (irrespective of their designated track), immediately, whether or not the Commission adopts a reform plan. In this regard, the Commission should follow the lead of the Indiana Utility Regulatory Commission, which recently issued an order finding, among other things, that Sprint should be allowed to combine different types of traffic -- wireline, wireless, IP-PSTN, reciprocal compensation and access charge traffic -- on the same interconnection trunks.[48] As the

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such as for interconnecting with the other carrier's Edge for switched access or access to a special access termination…").

[48] *In the Matter of Sprint Communications Co. L.P.'s Petition for Arbitration Pursuant to Section 252(B) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms and Conditions of Interconnection with Ligonier Telephone Co., Inc.,* Cause No. 43052-INT-01, approved September 6, 2006, pp. 16 and 22 ("*Indiana Order*"). *See also Iowa Arbitration Order* dated March 24, 2006, pp. 13-16 (Iowa Utilities Board approving language that Sprint may commingle various types of traffic on individual trunks).

Indiana Commission correctly stated, "there are no technical impediments to implementing a clearly more efficient network solution" (*Indiana Order*, p. 22).

C. VoIP/Wholesale Interconnection

The Missoula Plan states (p. 41) that carriers are obliged to permit other carriers with the financial obligation for interconnection to physically interconnect at their Edge either directly or indirectly through a transit carrier. The Plan defines "carrier" as "any telecommunications carrier, as defined in 47 U.S.C. § 153(44), regardless of whether it offers telecommunications services on a retail basis, a wholesale basis, or both" (*id.*). The Commission should clarify that this provision means that wholesale telecommunications carriers are entitled to interconnect with ILECs for the purpose of exchanging traffic on behalf of other service providers (including VoIP service providers), and that ILECs may not impose their arbitrary interpretations as to whether the wholesale carrier is providing a "telecommunications service." Such clarification, whether or not the Commission adopts comprehensive intercarrier compensation reform, will help to foster the development of facilities-based competition in local markets throughout the Nation, including rural markets.[49]

[49] The Commission has repeatedly made clear that "telecommunications services" include wholesale services. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* 11 FCC Rcd 15499, 15599 (para. 191) (1996); *Federal-State Joint Board on Universal Service,* 12 FCC Rcd 8776, 9177-8 (para. 785) (1997); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* 20 FCC Rcd 14853, 14901-2 (para. 91) (2005).

The issue of interconnection by wholesale carriers currently is before the FCC[50] as well as numerous state venues. Sprint Nextel, acting as a wholesale telecommunications carrier, has sought to obtain interconnection agreements with various ILECs so that our cable company customers may provide competitive local services. Several states have correctly affirmed Sprint Nextel's right to interconnect for the purpose of providing wholesale telecommunications services to a cable operator providing VoIP-based services.[51]

Unfortunately, certain ILECs -- most often, the very same ILECs that would enjoy the anti-competitive protections guaranteed by the Missoula Plan -- continue to resist competitors' efforts to enter their local markets, in part by refusing to enter into interconnection arrangements unless the requesting carrier transmits traffic to or from its

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[50] *See In the Matter of Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, filed March 1, 2006.

[51] *See, e.g., Arbitration of Sprint Communications Co. v. Ace Communications Group, et al., Order on Rehearing,* Iowa Utilities Board Docket No. ARB-05-02, released November 28, 2005; Cambridge Telephone Co., C-R Telephone Co., El Paso Telephone Co., Geneseo Telephone Co., Henry County Telephone Co., Mid Century Telephone Cooperative, Inc., Reynolds Telephone Co., Metamora Telephone Co., Harrisonville Telephone Co., Marseilles Telephone Co., Viola Home Telephone Co., *Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties Under Section 251(b) and (c) of the Federal Telecommunications Act; ALJ Recommendation*, Illinois Commerce Commission Case Nos. 050259, 050260, 050261, 050262, 050263, 050264, 050265; 050270, 050275, 050277, and 050298, released August 23, 2005; *Petition of Sprint Communications Co., L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies, Order Resolving Arbitration Issues*, New York PSC Case 05-C-0170, released May 18, 2005; *Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., the Germantown Independent Telephone Co., and Doylestown*

Footnote continued on next page

own retail end-user customers.[52] State and Federal regulators should prohibit such anti-competitive ILEC tactics, and the FCC should explicitly endorse the wholesale interconnection principle described above as a basic competitive tenet, in both the instant proceeding and in WC Docket No. 06-55.

The Plan appears to eliminate the effect of the section 251(f) rural exemption.[53] For example, it clarifies that all interconnection negotiations are subject to section 252 arbitration, not just interconnection agreements under section 251(c).[54] Sprint Nextel supports the elimination of the section 251(f) rural exemption. At a minimum, the Commission should affirmatively clarify that the section 251(f) rural exemption applies only to section 251(c) obligations, and does not apply to section 251(a) and (b) interconnection. Specifically, rural carriers, despite their assertions to the contrary, are obligated to negotiate interconnection arrangements pursuant to sections 251(a) and (b)

Telephone Co., Finding and Order, Ohio PUC Case Nos. 04-1494-TP-UNC, 04-1495-TP-UNC, 04-1496-TP-UNC, 04-1497-TP-UNC, released January 26, 2005.

[52] *See, e.g., In re Sprint Communications Company L.P. and MCC Telephony of Iowa, LLC, vs. Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom*, Docket No. FCU-06-49; *Sprint v. Nebraska Public Service Commission, et al.* No. 4-05 CV 03260; *Iowa Telecommunications Services, Inc. v. Iowa Utilities Board et al.*, Case Number: 4:06-cv-291 (lead case consolidated with 4:06-cv-00376); *Harrisonville Telephone Company v. Illinois Commerce Commission, et al. and Sprint Communications , L.P.*, Civil Action No. 06-73-WDS; *Petition of MCImetro Access Transmission Services, LLC for Arbitration with Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Co., Inc. and PBT Telecom, Inc., Concerning Interconnection and Resale Under the Telecommunications Act of 1996,* Order Denying and Dismissing Petition to Intervene, Docket No. 2005-67-C (South Carolina PSC May 23, 2005); *Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc.. Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996,* Order Ruling on Arbitration, Docket No. 2005-67-C (South Carolina PSC Oct. 7, 2005).

[53] 47 U.S.C. § 251(f).

[54] 47 U.S.C. § 251(c).

that permit carriers to enter the market, including recognizing that carrier's telephone numbers, supporting number portability, and exchanging traffic, either directly or indirectly.[55] Affirming these already existing-statutory rights and obligations will ensure rapid deployment of competitive services to consumers in rural and underserved areas.

D. Costs Covered By Termination Charges

The Missoula Plan states (p. 36) that for traffic exchanged between an ILEC and a non-ILEC, the non-ILEC "will charge the same reciprocal compensation rate charged by the ILEC for performance of comparable functions." The Commission should clarify that this proposed "comparable functions" standard is not a wholesale replacement for the existing geographic comparability requirement. Section 51.711(a)(3) of the Commission's Rules requires geographic, not functional, comparability – a CLEC is entitled to assess the same tandem interconnection rate for local call termination as an ILEC so long as the CLEC's switch serves the same geographic area as does the ILEC access tandem.[56] This interpretation has been affirmed by the Courts.[57]

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[55] *See* 47 U.S.C. §§ 251(a), (b).

[56] "AT&T's MSCs serve a comparable geographic area as that served by U.S. West's tandem switches. Therefore, under the FCC's regulations, AT&T is entitled to the tandem rate because its MSCs serve a comparable geographic area to U.S. West's tandem switches.

A recent FCC letter supports our conclusion. In a letter dated May 9, 2001, the FCC determined the following:

> With respect to when a carrier is entitled to the tandem interconnection rate, the Commission stated that section 51.711(a)(3) of its rules requires only that the comparable geographic area test be met before a carrier is entitled to the tandem interconnection rate for local call termination. It noted that although there has been some confusion stemming from additional language in the text of the Local Competition Order regarding functional equivalency, section 51.711(a)(3) requires only a geographic area test. Therefore, a carrier demonstrating that its

Footnote continued on next page

In the limited circumstances where a functional comparability test may be relevant, the Commission should clarify that an ILEC is not the entity that defines "comparable functions." The ILEC may not, for example, refuse to pay the reciprocal compensation rate charged by an interconnecting CLEC by alleging that the CLEC is not performing transport or termination functions "comparable" to those performed by the ILEC. To the extent that a dispute arises between an ILEC and a non-ILEC in this regard, the Commission or the appropriate state regulatory body should be the party to resolve the dispute.

> switch serves "a geographic area comparable to that served by the incumbent LEC's tandem switch" is entitled to the tandem interconnection rate to terminate local telecommunications traffic on its network.

Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau of the FCC, and Dorothy T. Attwood, Chief, Common Carrier Bureau of the FCC, to Charles McKee, Senior Attorney, Sprint PCS (May 9, 2001) (internal citations omitted)."

U.S. West Communs. v. Wash. Utils. & Transp. Comm'n, 255 F.3d 990 (9th Cir. 2001).

[57] "Accordingly, the *Order Under Review* clearly explained that the FCC decided that a CLEC's newer technology switch is considered the functional equivalent of an ILEC's tandem switch if the geographic area served by the CLEC's newer switch is comparable to the area served by the ILEC's tandem switch. However, a functional equivalency test is still required when, and only when, the CLEC's newer technology switch does not serve a geographic area comparable to that served by the ILEC's tandem switch. Therefore, reading the *Local Competition Order* in conjunction with the regulation does not produce the result SBC advocates.

We conclude that the *Order Under Review* is thoroughly consistent with the *Local Competition Order*, the regulation, and the *Intercarrier Compensation NPRM*. The *Order Under Review* did not modify or substantively change the FCC's prior interpretation of the regulation or impose new duties upon regulated parties, and therefore the APA's notice and comment requirements do not apply. The *Order Under Review* is, at most, interpretative. It simply clarified, and explained, an existing rule."

SBC Inc. v. FCC, 414 F.3d 486 (3rd Cir. 2005).

Finally, the Commission should clarify that this "comparable function" standard does not alter the types of costs to be recovered by the termination charges. The Missoula Plan states (p. 35) that for Track 1 carriers (which includes the largest ILECs as well as all non-ILEC carriers), termination charges shall cover "[t]he components of any dedicated transport, common transport or tandem switching used to terminate traffic within a carrier's network[,] and…[e]nd office switching, or equivalent functionality." The "comparable function" provision does not imply or require any downward adjustment to the reciprocal compensation rate charged by a non-ILEC for the transport and termination services it provides.

E. Interconnection Framework for Non-Access Traffic

The Missoula Plan states (p. 41) that "[c]arriers may connect directly or indirectly," and that "[c]arriers providing transit on the first day of the Plan must continue to do so through the life of the Plan as outlined in Section III.D." The Commission should clarify that this provision applies not only to individual transit carriers, but also to transit consortia such as Iowa Network Services.[58] Transit providers should not be allowed to evade their interconnection obligations by claiming that consortia are exempt from this provision.

F. Designation of an IXC Point of Presence ("POP") as an Edge

Under the Missoula Plan (p. 46), a Track 1 carrier may "designate an eligible IXC POP location as its Edge." To prevent unnecessary and anti-competitive network reconfigurations, the Commission should clarify that an ILEC may not designate an IXC

POP as its edge if there is already a tandem available and being used as an interconnection/access point.

VII. CONCLUSION.

The filing of the Missoula Plan represents an important opportunity for the Commission to establish a rational, pro-competitive, unified intercarrier compensation regime. While the Plan includes some significant reforms to the current dysfunctional system, it also inappropriately ignores special access; raises competitors' transit and transport costs; excessively increases federal support mechanisms; and favors ILECs over their competitors. Because of these severe deficiencies, the Commission should not accept the Missoula Plan as filed. Instead, the Commission should seize this opportunity to implement meaningful intercarrier compensation reform by adopting the recommendations set forth above. Sprint Nextel's "enhanced Missoula Plan" will generate substantial competitive benefits and economic efficiencies, and the public interest demands its prompt implementation.

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[58] Iowa Network Services, established in 1989, is a group of 147 independent telephone companies in Iowa that jointly provides telecommunications, Internet and network services to consumers, businesses, and other carriers.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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October 25, 2006

ATTACHMENT

Economic Cost of Transit Services as Approved by State Regulatory Commissions

	Information of the Largest LEC			
	Access Lines	Tandem Switching	Common Transport	TOTAL
AL	1,774,375	$ 0.00010	$ 0.00032	$ 0.00042
AK	151,826	$ 0.00471	$ 0.00042	$ 0.00513
AZ	2,365,023	$ 0.00055	$ 0.00082	$ 0.00137
AR	919,866	$ 0.00079	$ 0.00020	$ 0.00099
CA	16,509,867	$ 0.00045	$ 0.00125	$ 0.00170
CO	2,468,886	$ 0.00069	$ 0.00111	$ 0.00180
CT	2,110,570	$ 0.00611	$ -	$ 0.00611
DC	791,292	$ 0.00253	$ 0.00046	$ 0.00299
DE	546,439	$ 0.00067	$ 0.00014	$ 0.00081
FL	6,063,101	$ 0.00013	$ 0.00044	$ 0.00057
GA	3,727,530	$ 0.00010	$ 0.00019	$ 0.00029
HI	664,194	$ 0.00126	$ 0.00027	$ 0.00153
ID	514,983	$ 0.00069	$ 0.00111	$ 0.00180
IL	6,183,446	$ 0.00022	$ 0.00030	$ 0.00052
IN	2,143,137	$ 0.00030	$ 0.00051	$ 0.00081
IA	985,834	$ 0.00069	$ 0.00111	$ 0.00180
KS	1,133,026	$ 0.00079	$ 0.00020	$ 0.00099
KY	1,091,285	$ 0.00019	$ 0.00075	$ 0.00094
LA	2,080,847	$ 0.00011	$ 0.00037	$ 0.00048
ME	662,838	$ 0.00122	$ 0.00075	$ 0.00198
MD	3,598,762	$ 0.00025	$ 0.00134	$ 0.00159
MA	3,775,033	$ 0.00004	$ 0.00027	$ 0.00031
MI	4,732,342	$ 0.00020	$ 0.00083	$ 0.00103
MN	1,887,050	$ 0.00112	$ 0.00061	$ 0.00173
MS	1,232,062	$ 0.00017	$ 0.00045	$ 0.00063
MO	2,362,597	$ 0.00123	$ 0.00025	$ 0.00148
MT	332,734	$ 0.00069	$ 0.00111	$ 0.00180
NE	367,505	$ 0.00069	$ 0.00111	$ 0.00180
NV	366,617	$ 0.00171	$ 0.00727	$ 0.00898
NH	697,781	$ 0.00074	$ 0.00057	$ 0.00130
NJ	5,764,974	$ 0.00077	$ 0.00010	$ 0.00087
NM	794,410	$ 0.00085	$ 0.00127	$ 0.00213
NY	10,176,986	$ 0.00048	$ 0.00020	$ 0.00068
NC	2,246,305	$ 0.00060	$ 0.00034	$ 0.00094
ND	179,077	$ 0.00069	$ 0.00111	$ 0.00180
OH	3,721,182	$ 0.00021	$ 0.00063	$ 0.00084
OK	1,384,536	$ 0.00096	$ 0.00050	$ 0.00146
OR	1,255,243	$ 0.00069	$ 0.00104	$ 0.00173
PA	5,435,861	$ 0.00012	$ 0.00031	$ 0.00043
RI	491,107	$ 0.00027	$ 0.00029	$ 0.00057
SC	1,368,409	$ 0.00016	$ 0.00041	$ 0.00057
SD	201,450	$ 0.00069	$ 0.00139	$ 0.00208
TN	2,395,844	$ 0.00098	$ 0.00038	$ 0.00136
TX	8,778,111	$ 0.00079	$ 0.00014	$ 0.00094
UT	964,276	$ 0.00069	$ 0.00104	$ 0.00173
VT	342,946	$ 0.00092	$ 0.00063	$ 0.00155
VA	3,153,885	$ 0.00055	$ 0.00011	$ 0.00066
WA	2,248,631	$ 0.00069	$ 0.00076	$ 0.00145
WV	808,623	$ 0.00024	$ 0.00067	$ 0.00091
WI	1,848,578	$ 0.00023	$ 0.00049	$ 0.00071
WY	244,238	$ 0.00069	$ 0.00111	$ 0.00180
NAT. AVE.	126,045,520	$ 0.00058	$ 0.00057	$ 0.00115

NOTES:
1) If transport structured as a fxed and per mile, charges for 10 miles was added to the fixed charge.
2) If a range of rates were given, the highest value was chosen.
3) If several rates were given, a simple average was calculated.

SOURCE: A Survey of Unbundled Network Element Prices in the United States (Updated March 2006)
Billy Jack Gregg, Director Consumer Advocate Division, Public Service Commission of West Virginia

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of Sprint Nextel Corporation were delivered by electronic mail or first class mail, postage prepaid on this 25th day of October, 2006, to the parties listed below.

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