BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF THE IOWA ASSOCIATION OF MUNICIPAL UTILITIES ON THE MISSOULA PLAN

COMES NOW, the Iowa Association of Municipal Utilities ("IAMU") and files the following comments in opposition to the Missoula Plan:

INTRODUCTION

IAMU represents nearly 550 cities. IAMU's members operate 137 electric utilities, 47 gas utilities and 13 telecommunications systems--all operate municipal water utilities. IAMU works to protect the rights of citizens to keep control of these vital utility services close to home.

IAMU represents the interests of 13 municipal facilities-based full service telecommunications utilities in the state of Iowa.[1] Each of these municipal utilities overbuilt the incumbent's existing infrastructure and, except in one city[2], now serves as the sole facilities based competitive local exchange carrier in their respective exchanges.

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[1] Grundy Center, Algona, Manning, Alta, Laurens, Osage, Harlan, Mapleton, Coon Rapids, Reinbeck, Hawarden, Spencer, The Community Agency (including the cities of Paulina, Primghar, Hartley, and Sanborn).

[2] Harlan

In the late 1990's, investor owned utilities ("IOUs") providing communications services in Iowa launched both legal and political challenges to the right of municipal utilities to provide reasonably-priced state-of-the-art communications services to low-population-density areas in Iowa. The Iowa Supreme Court concluded that municipal utilities were authorized by law to provide such services. *Iowa Telephone Ass'n v. City of Hawarden,* 589 N.W.2d 245, 254 (Iowa 1999). However, the IOUs achieved political success which resulted in adoption of § 388.10, Code of Iowa, pursuant to which municipal telecoms were forced to operate under very strict rules that put them at a competitive disadvantage from the outset. Municipal telecoms were strictly prohibited from receiving any form of cross-subsidies or financial support from either the cities or the other municipal utilities with which they were associated. Accordingly, they were required to function entirely as self-sufficient fiscal entities.

IOUs, however, like IowaTelecom[3] may cross-subsidize in a host of ways to the disadvantage of their small-town competitors. For example, IOUs can cross-subsidize between service areas, different services, corporate divisions and even, potentially, between commonly-owned but entirely unrelated industries.

All of Iowa's municipal telecoms are limited to providing local exchange service in a single service area. IOUs typically provide both local exchange and long-distance service in much larger geographical areas that may even extend across state borders.

The shear economic size and power of IOUs compared to muni telecoms gives them the ability to achieve economies of scale and employ other market powers that are unavailable to Iowa's municipal telecoms that are still very much in their economic infancy.

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[3] Iowa Telecom is a supporter of the Missoula Plan. *See* Missoula Plan, Appendix C.

In all but one[4] of the exchanges served by Iowa's municipal utilities, there is only the traditional ILEC and the relatively new municipal CLEC. These markets have traditionally not been lucrative enough to attract additional CLECs to make the kind of investment necessary to provide modern telecommunications services. Accordingly, most of these markets will likely remain duopolies because investor owned CLECs looking to launch or expand will seek larger markets where they can expect a more favorable return on investment.

Without the investment of city owned municipal utilities in Iowa, these small communities would not have modern communications facilities. Investor owned CLECs can not make enough money by coming to these small towns in Iowa, and ILEC's like Iowa Telecom have no incentive to upgrade decades-old systems without the spur of some competition. Municipal CLECs like those already launched in the aforementioned cities, and now under construction or under active consideration in some forty other small towns in Iowa, are simply the only alternative to being left behind in the digital age. As expensive as it is to launch a not-for-profit municipal CLEC, it is more feasible than launching an investor owned CLEC that must return an acceptable profit to investors. Municipal CLECs only have to recover their costs. They are the only hope for closing, and keeping closed, the "digital divide" in Iowa.

MISSOULA PLAN COMMENTS

The Missoula Plan favors legacy landline companies at the expense of other telecommunications providers and consumers. Intercarrier compensation rates ("ICC") of legacy landline companies have been declining at five percent per year. However, Missoula Plan

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[4] In Harlan, service is provided by an ILEC, serving almost 300 exchanges in Iowa, a local farmers cooperative, and the city utility.

freezes ICC revenues at past year level and ensures recovery of these revenues from other telecom providers (through increased USF contributions) and consumers (through higher SLCs and USF contributions). In essence, the Missoula Plan becomes a revenue preservation mechanism for the legacy landline companies, insulating ICC revenues from competition.

The Missoula Plan improperly preempts the authority of the states over intrastate ICC rates. Although the Plan is cast as having "optional elements," the basis of the plan is complete FCC preemption of authority over ICC rates, both interstate and intrastate. There is no basis in law for such an abrogation of power. Sections 152(b) and 251(d)(3) of the Telecom Act specifically reserve to the States authority over in-state rates.

RURAL CLECS SHOULD NOT BE CLASSIFIED AS TRACK 1 CARRIERS.

IAMU joins in the Comments of the South Dakota Rural CLEC Coalition regarding the Plan's failure to distinguish between CLEC entities that operate in urban versus rural markets. Rural CLECs should not be classified as Track 1 carriers.[5]

Under the Plan, all non-ILECs will be treated as "Track 1" carriers. According to the Plan, "Track 1" covers 92 ILEC study areas and 146.2 million ILEC loops of all Regional Bell Operating Companies (RBOCs), CLECs, wireless providers and other non-rural carriers. No distinction is made between facilities based and non-facilities based CLECs. The plan's definition of Track 1 carriers does not take into consideration the fact that facilities based municipal CLECs have entered the market in a very limited number of rural exchanges as the only competition to the incumbent legacy landline companies.

The Plan's proposed reduction of Track 1 carriers' termination rates to the ultimate

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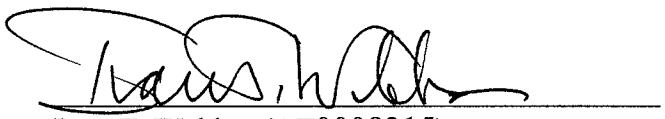
[5] *See* Comments of the South Dakota Rural CLEC Coalition at pp. 8-9.

unified termination rate of $0.0005 would devastate Iowa's municipal CLECS, some of whom rely on access charges for greater than 50% of their revenue.

The Plan provides that all subscriber line charges ("SLCs") for Track 1 companies may increase to $10 in the fifth step of the Plan, and rise by the rate of inflation thereafter, regardless of the revenue loss caused by reductions in ICC rates. This amounts to backdoor deregulation of local rates and unjust enrichment of legacy landline companies. The increase in the SLC to $10 and above will most impact rural customers in states with low SLCs currently, such as Iowa.

Implementation of the Missoula Plan would ultimately serve to undermine existing competition and chill contemplated competition by municipal facilities based CLECs in rural exchanges in Iowa.

WHEREFORE, the Iowa Association of Municipal Utilities urges the Commission to reject the Missoula Plan.



Ivan T. Webber (AT0008315)
James R. Wainwright (AT0008236)
AHLERS & COONEY, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309
Telephone: (515) 243-7611
Facsimile: (515) 243-2149
E-mail: jwainwright@ahlerslaw.com
ATTORNEYS FOR THE IOWA ASSOCIATION OF MUNICIPAL UTILITIES

JWainwri\512260.1\WP