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	)	
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	)	
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COMMENTS OF
FAIRPOINT COMMUNICATIONS

October 25, 2006

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I. INTRODUCTION AND SUMMARY

FairPoint Communications, Inc. (FairPoint) hereby submits these comments in response to the Public Notice released by the Commission on July 26, 2006seeking comment on an intercarrier compensation reform plan (the "Missoula Plan") filed July 24, 2006 by the National Association of Regulatory Utility Commissioners' Task Force on Intercarrier Compensation. The Missoula Plan is the product of a 3-year process of industry negotiations led by NARUC and offers a comprehensive solution to a myriad of problems and issues related to intercarrier compensation and the interconnection of telecommunications networks.

FairPoint provides telecommunications services to 293,000 rural access lines equivalents in 18 states across the country. FairPoint's operations consist of 29 rural study areas serving customers through a total of 149 rural wire centers. FairPoint's smallest study area consists of 348 access lines served by a single wire center, and its largest study area serves 37,000 access lines through four wire centers. In FairPoint's service territory 8o percent of consumers have access to broadband services. FairPoint currently receives approximately 28 percent of its revenues from intercarrier compensation and thus effective intercarrier compensation reform is critically important for FairPoint and the rural consumers that it serves. FairPoint participated in the NARUC Task Force process and is an active member of the Rural Alliance.

The Missoula Plan was negotiated by a diverse group of telecommunications providers through a multi-year collaborative process overseen by NARUC. While certainly not perfect, the Plan represents the best combination of intercarrier compensation solutions that could be developed in a collaborative fashion by parties representing diverse segments of the telecommunications industry. In FairPoint's opinion, the Plan addresses the key intercarrier compensation issues in need of reform in a fair and comprehensive fashion, will assist in the sustainable recovery of the costs of FairPoint's rural telecommunications network, and will provide substantial benefits to all consumers, and in particular rural consumers. The Commission should thus proceed immediately with implementation of the Missoula Plan.

II. THE MISSOULA PLAN ADDRESSES INTERCARRIER COMPENSATION REFORM IN A COMPREHENSIVE MANNER THAT WILL BENEFIT RURAL CONSUMERS

The current intercarrier compensation regime is broken and badly in need of repair. The current system assess different charges depending on the jurisdiction of the call (interstate or intrastate), the nature of the call/technology (local, long distance, Internet), and the type of carrier (LEC, IXC, CMRS, ISP, end-user). This system evolved over time and is neither economically rational nor sustainable. In an era of rapidly evolving technologies and service bundles, these disparities leading to arbitrage, Phantom Traffic, and other issues that make it more difficult for companies such as FairPoint to serve their customers.

The Commission has been attempting to deal with the issue of the recovery of network costs through minutes-of-use charging mechanisms for some time. Access charges had their origin in the 1980s when the AT&T divestiture forced the industry to establish explicit charges for the cost recovery that had previously flowed through the Division of Revenue process, and the emergence of competitive long distance providers (such as MCI and Sprint) required the offering of tariffed services for the use of the ILEC's network to originate and terminate calls. In the late 1980s the Commission began to move the recovery of some of the fixed loop costs initially contained in access charges to IXCs to flat-rated charges to end users. Initially set at $1 per line per month, what we now know as the SLC has increased over the years and is currently capped at $6.50. As a result the gradual increase in SLC charges and other reform initiatives (such as the CALLS and MAG plans) access charges that for the largest carriers were once stated in cents per minute are now tenths of a cent and soon will be measured as hundredths of a cent per minute. At the same time, enabled by these access reduction and driven by intense marketplace competition, the cost of long distance services has fallen dramatically.

In 2000, the Commission released two staff white papers that proposed to transform intercarrier compensation to a "Bill and Keep" system where carriers would terminate traffic delivered to them at no charge to the originating carrier.[1] In the comment round that followed, many parties – and particularly the rural ILEC (RLEC) industry – strongly opposed Bill and Keep. The reason is simple – RLECs like FairPoint operate under rate-of-return regulation, and recover a substantial portion of the cost of building and operating their high-cost rural networks from intercarrier charges. FairPoint currently receives 28 percent of its revenues from interstate and intrastate access charges. A rural carrier only has three sources for the recovery of its network costs 1) end users, 2) other carriers that use its network, and 3) the universal service fund. Totally eliminating intercarrier charges would thus place upward pressure on end user rates and/or the universal service fund that would have serious negative consequences for rural consumers.

The Missoula Plan represents the most recent – and perhaps the last – step in the evolution of cost recovery from high and unsustainable minutes of use charges to more sustainable rates and recovery mechanisms. It reforms intercarrier compensation in a measured and sensible fashion. Among the important elements in the Plan are:

- It establishes three "Tracks" for carriers, including Track 3 which recognizes the unique challenges faced by RLECs operating under rate-of-return regulation.

[1] Patrick DeGraba, "Bill and Keep at the Central Office as the Efficient Interconnection Regime," FCC Office of Plans and Policy – Working Paper No. 33, (December 2000), and Jay M. Atkinson and Christopher C. Barnekov, "A Competitively Neutral Approach to Network Interconnection," FCC Office of Plans and Policy – Working Paper No. 34, (December, 2000).

- The Plan retains cost-based access charges for Track 3 carriers. Over a four-year period Track 3 intrastate access charges will transition to the interstate access rate levels and structure.
- In the fourth year the FCC will conduct a review to determine if these rate transitions are achieving the desired goals, and make any adjustments that may be necessary.
- After a modest $2.25 increase in the SLC cap that will be phased in over three years, carriers will recover any revenue losses that result from rate unification from the Restructure Mechanism (RM). The RM is one of the more critical portions of the Missoula Plan, and it is essential that it be defined and established in a reasonable and sustainable manner.
- A comprehensive Phantom Traffic solution will assure that all traffic is appropriately labeled and that carriers receive the compensation they are due for the origination and termination of traffic for other carriers. The Phantom Traffic solution contains both interim and long term solutions. No matter what the Commission does with the remainder of the Plan, it is critical that the interim Phantom Traffic solutions be implemented immediately.
- The interconnection provisions of the Plan provide effective solutions for many issues that have been sources of controversy for many years, allowing RLECs to spend more of their time and energy on focusing on serving their customers, and less on protracted interconnection and compensation disputes.
- The Early Adopter Fund provisions of the Plan assure equity among the states.

The most important beneficiaries of the Missoula Plan will be rural consumers. By assuring that revenue contribution from intercarrier compensation is maintained and sustainable, rural consumers will continue to be able to enjoy affordable telecommunications services that are reasonably comparable to those available in urban areas. RLECs such as FairPoint will have the ability and incentive to invest in rural telecommunications infrastructure that will allow the continued delivery of these services. By further reducing intercarrier charges, consumers will also benefit from a wider array of local and long distances services at lower prices delivered from a more competitive telecommunications industry. The Commission should immediately proceed with the important reforms contained in the Missoula Plan.

III. THE RESTRUCTURE MECHANISM SHOULD BE TREATED AS AN ACCESS ELEMENT UNDER SECTION 201 OF THE ACT AND NOT AS A UNIVERSAL SERVICE ELEMENT UNDER SECTION 254

The Restructure Mechanism (RM) is an essential part of the Missoula Plan, and allows rural carriers such as FairPoint to preserve the revenue contribution that access charges have historically made to providing affordable basic and advanced services to consumers in our rural service areas. Simply because the RM allows FairPoint to meet its universal service obligations and goals under the Communications Act, however, does not mean that the RM should be administered in the same manner as other elements of the universal service fund. The purpose of the RM is to replace intercarrier revenues lost as a result of mandated rate decreases that are part of the rate unification process that are not otherwise recovered through end user (i.e., SLC) rate increases. Carriers that do not experience such mandated rate decreases should not receive funding under from the RM. There is simply no logical reason why they should.

If the RM were to be treated similarly to other elements of the universal service fund then, under current Commission rules, all Competitive Eligible Telecommunications Carriers (CETCs) designated by state commissions or this Commission would be eligible to receive RM funding at the same per-line level of the ILEC in the service territory.[2] This would be true regardless of the technology the CETC utilizes, regardless of the costs that carrier incurs, and regardless of whether that carrier experiences any mandated rate reductions as a result of the rate unification process. In other currently active proceedings, this Commission is attempting to find solutions to recent dramatic growth in the universal service fund. In comments filed on October 10, 2006 in WC Docket 05-337, FairPoint clearly documented that virtually all growth in the high-cost universal service fund since 2002 has be as a result of the designation of wireless CETCs.[3] Wireless carriers do not assess access charges, are not rate-regulated by this or any other Commission, will not experience mandated reductions as a result of rate unification, and do not require RM funding. Providing RM funding to wireless CETCs would represent an unwarranted windfall to these carriers, and would add significant and unnecessary burden to an already stressed universal service fund. The Commission's rules implementing the Missoula Plan should clearly state that RM funding is available only to carriers that experience mandated rate reductions resulting from rate unification under the Plan that are not otherwise offset by allowed end-user rate increases.

VI. CONCLUSIONS

The current system of intercarrier compensation is broken and in need of reform. The Missoula Plan is the product of years of intensive negotiations, is the only comprehensive plan for intercarrier compensation reform currently before the Commission, and will bring significant benefits to all consumers, including rural consumers. For these and the other reasons described above, FairPoint recommends that the Commission expeditiously proceed with implementation of the Missoula Plan.

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[2] FairPoint believes that the current equal per-line support rule is fundamentally wrong, however this matter is not the subject of this proceeding.

[3] WC Docket 05-337, *Comments of FairPoint Communications* at page 3.

Respectfully submitted,

FAIRPOINT COMMUNICATIONS

(via electronic filing) .

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