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

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

Comments of Frontier Communications on Missoula Plan

Kenneth F. Mason
Director – Federal Regulatory

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
585-777-5645
KMason@czn.com

Gregg C. Sayre
Associate General Counsel – Eastern Region

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
(585) 777-7270
gregg.sayre@frontiercorp.com

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SUMMARY OF COMMENTS OF FRONTIER COMMUNICATIONS

Frontier recognizes that access charges, and particularly intrastate access charges, need to decrease, but there are better ways to make up the loss than through the mechanisms proposed in the Plan. As proposed, the plan would, thought SLC increases, place a disproportionate burden of recovery on ILEC end users to the detriment of universal service. In addition, SLC increases would damage ILECs competitively. Frontier proposes that the Commission should:

(1) take much more aggressive action against phantom traffic, by requiring all calls to be labeled with the Jurisdiction Indicator Parameter ("JIP") and by establishing real penalties for terminating long distance traffic as local, not just requiring carriers to pay what they should have paid in the first place;

(2) to the extent that end user recovery is required, give ILECs the flexibility to recover the lost access revenues on any revenue-neutral basis rather than imposing large SLC increases that would burden the customers least able to afford them;

(3) provide a better solution for customers and mid-sized carriers in Track II such as Frontier by merging Track II and Track III; and

(4) slow down the transition to protect carriers and consumers to better recognize the impact of rates, which vary across the country. Frontier's intrastate access rates range from 2 cents per minute to 8 cents per minute and more, and in one case, 15 cents. These differing rate levels should be thoughtfully and thoroughly evaluated to minimize the impact on the consumer and rural carriers.

TABLE OF CONTENTS

Before the
Federal Communications Commission
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In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service; High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	

COMMENTS OF FRONTIER COMMUNICATIONS ON MISSOULA PLAN

INTRODUCTION AND SUMMARY

Frontier Communications ("Frontier")[1] hereby submits its comments in the above captioned matter pursuant to the Commission's Public Notices, DA 06-1510 (July 25, 2006) and DA 06-1730 (Aug. 29, 2006). Frontier cannot support the Missoula Plan (the "Plan") as it is currently structured. In competitive territories such as Frontier's, the Plan has the potential of creating devastating impacts on consumers, and the revenues and earnings of Incumbent Local Exchange Carriers ("ILECs"). Although the Plan has protections for the smallest interstate rate-of-return ILECs, coupled with potentially huge benefits to the largest ILECs in the form of access charge reductions for their affiliated carriers, it offers little to mid-sized ILECs like Frontier except an erosion of their revenue at the expense of ratepayers.[2] By replacing access charges with

[1] Frontier is a mid-size holding company with incumbent local exchange carrier (ILEC) operations in 24 states under the common ownership of Citizens Communications Company. As an ILEC, Frontier operates in one of the most competitive (both residential and business) urban markets in the country (Rochester, NY), but the balance of its ILEC operations are located in several small, high cost rural markets throughout the United States. In most of its ILEC markets, Frontier operates under federal price cap regulation, but operates under NECA Average Schedules in some of its smallest rural markets; on an intrastate basis, Frontier operates under a mix of traditional rate-base, rate-of-return regulation and alternative forms of regulation. This somewhat unique mix of size, industry segment, geographic scope and business conditions allows Frontier special insights into the major issues confronting the Federal Communications Commission (the "Commission") and the industry in regard to intercarrier compensation and universal service.

[2] While this plan has been presented as a consensus plan, it has garnered only a small amount of support from mid-sized Track 2 ILECs.

Subscriber Line Charge ("SLC") increases, the Plan would: (1) place a large percentage of the burden of intercarrier reform on the end-user, specifically the residential end-user who would see the largest increase to the SLC charge under the plan; (2) effectively raise the rates of ILECs now competing against unregulated intermodal carriers – giant Cable TV MSOs, nationwide cellular carriers and price-cutting Voice over Internet Protocol ("VoIP") providers – who have already taken away thousands of Frontier's customers and lines; (3) thereby cause an increased competitive erosion of access lines; and (4) thereby eliminate not only the attempted recovery of the lost access revenue (because SLCs and the access replacement fund are tied to and therefore would be lost with access lines), but also all other revenues and earnings from the departing customers.

Frontier recognizes that access charges, and particularly intrastate access charges, need to decrease, but there are better ways to make up the loss than through the mechanisms designed in the Plan. Rather than competitively hamstringing the mid-sized ILECs with rapidly eroding SLC increases, the Commission should:

(1) take much more aggressive action against phantom traffic, by requiring all calls to be labeled with the Jurisdiction Indicator Parameter ("JIP") and by establishing real penalties for terminating long distance traffic as local, not just requiring carriers to pay what they should have paid in the first place;

(2) give ILECs the flexibility to recover the lost access revenues on any revenue-neutral basis rather than imposing large SLC increases that would burden the customers least able to afford them;

(3) provide a better solution for customers and mid-sized carriers in Track II such as Frontier by merging Track II and Track III; and

(4) slow down the transition to protect carriers and consumers to better recognize the impact of rates, which vary across the country. Frontier's intrastate access

rates range from 2 cents per minute to 8 cents per minute and more, and in one case, 15 cents. These differing rate levels should be thoughtfully and thoroughly evaluated to minimize the impact on the consumer and rural carriers.

I. THE PLAN PLACES A DISPROPORTIONATE BURDEN OF RECOVERY ON THE ILEC'S RESIDENTIAL END-USER

Under the Plan, the method under which ILECs would recover revenues that are removed from the intercarrier compensation through the proposed rate changes would be through an increase to the SLC and through an access recovery fund, which has been estimated to be as much as approximately $2 billion. Both of these methods would require distinct increases to end-users and would have a negative impact on affordability of rates to residential end-users.

The SLC increase under this plan would raise the SLC cap $3.50 in Track 1 and $2.25 in Track 2 and 3 for residential and single line business end-users while only putting an $0.80 increase on the multi-line business SLC in Track 1 and 2. The residential end-user, who generates a smaller percentage of access minutes on a per-line basis, would be responsible for replacing a significantly larger percentage through a SLC increase that is 281% larger than the multi-line business customer.

Additionally, it has been projected that the access replacement fund could cause the current Universal Service funding requirement to grow by $2 billion annually. The plan does not provide a solution to the current funding mechanism, which means that consumers will also see a sizeable increase in the universal service surcharge on their bill.

The Commission should carefully evaluate changes to the Plan to limit these consumer impacts. It is critical that the Commission, in its quest to reform intercarrier compensation, not forget the Universal Service principles to provide access to quality telecommunications at reasonable and affordable rates. Any plan that places the burden of reform on the residential and rural consumer will fail to accomplish those principles.

II. THE PLAN'S SLC INCREASES ARE POTENTIALLY DEVASTATING TO MID-SIZED CARRIERS.

As a Track II Carrier, Frontier would experience a $2.25 increase in its SLCs in three steps over two years. This would produce major rate increases in one of the most competitive locations in the United States, Rochester, New York, where Frontier is already competing head-to-head and dollar-for-dollar with Time Warner Cable. Frontier and Time Warner both offer triple-play bundles (voice, high speed data and television) at low prices, and continually strive to match and, if possible, beat each other's offers. One of Frontier's current Rochester offerings provides local service, enhanced features, unlimited New York State voice calling, High Speed Internet with download speeds up to 6 Mbps, and DISH Network's most popular satellite TV package, all for only $59.99 per month (plus taxes, surcharges and a small equipment fee) for the first year of a two year commitment. Competitive low prices such as these are reflective of a fiercely competitive market. Frontier would not want to be forced to put a $2.25 increase on the SLC, and thereby raise its price of its bundle in this competitive marketplace. Frontier would either have to "swallow" the revenue loss, or become significantly less competitive in pricing compared to Time Warner. The former result would be a straightforward loss of the reduced access charge revenue. The latter result would be a loss of an increasing share of Frontier's customer base leading potentially not only to the same result, but also quite certainly to the loss of the profits from the lost customers. These are the kinds of choices that mid-sized ILECs would face under the Missoula Plan.

Similar levels of competition, particularly from large cable MSOs, are emerging throughout Frontier's territories, particularly in New York State where more than 1/3 of Frontier's total access lines are located. Where cable MSOs are not already offering competitively priced triple plays, it is a certainty that they will be doing so in the very earliest years of any access restructuring plan that the Commission may adopt.

When complicated monetary arrangements are proposed, it is always useful to follow where the money goes. In the case of the Missoula Plan, some of the smaller ILECs, as opposed to most mid-sized ILECs, come out whole, and the Plan creates a transfer of wealth from one class of their customers to another – from their dial tone line customers to carrier customers. Tier I and Tier II ILECs, looked at individually, are not likely to stay whole. Who, then, benefits? It appears to Frontier that the Plan hands interexchange carriers an enormous windfall, funded for the most part by residential and small business customers paying higher SLCs and by mid-sized carriers, to the extent that they cannot competitively afford to charge the SLC increases. There is absolutely no guarantee that the interexchange carriers will ever pass the windfall through to their customers, and it is highly likely that it would take significantly longer than the Plan's two-year transition for the bulk of this windfall to be passed through to customers in the competitive marketplace. The primary beneficiaries of the Plan are obviously the large interexchange carriers. Even if the entire windfall erodes due to competition, large interexchange carriers would still potentially benefit from the stimulation of business caused by the lower interexchange prices. From the roster of the companies supporting the Plan, an inference may be drawn that any losses to some of the large Track I ILECs caused by the Plan must be more than outweighed by the benefits accruing to their affiliated interexchange carriers. No investor-owned company could be expected to support a plan that has a negative impact on the enterprise taken as a whole.

Mid-sized carriers that do not own their own long distance networks are overlooked. Unlike some of the Track I carriers that will benefit from the access charge windfall, and unlike many of the Track III carriers that are protected by the mechanisms of the Plan, mid-sized carriers are left with a highly problematic recovery of their losses. The recovery is problematic because the SLC and the access replacement fund[3] are tied to the number of access lines that an ILEC serves. Access lines are already eroding faster than access charge revenues in percentage terms for Frontier, and presumably for the other mid-sized ILECs. This means that the mechanism of the Plan would only serve to accelerate the revenue losses already being borne by the mid-sized ILECs, by increasing the prices of the very services that are now most competitive in our markets.

Overall, Frontier recognizes the importance of reforming intercarrier cost recovery mechanisms, but the Missoula Plan is simply not the right mechanism to apply to mid-sized ILECs. The remaining sections of these Comments offer alternatives to existing Plan revenue restructuring mechanisms that would be more effective and fairer than the Plan presently recommends.

III. THE COMMISSION SHOULD MORE AGGRESSIVELY ADDRESS PHANTOM TRAFFIC.

As access charges are reduced, one simple and straightforward source of some of the necessary replacement revenue is to require all carriers to follow the intercarrier compensation rules and pay the charges that they owe. Phantom traffic is traffic on ILEC networks of questionable ultimate sources and for which the ILECs cannot bill. The volume of this traffic is constantly increasing given the increased complexity of the interconnected networks that feed into the Public Switched Telephone Network ("PSTN").

[3] The access replacement fund may itself be funded by increased SLCs, leading to potentially a further

Every ILEC has had experiences with phantom traffic, but they only have knowledge of situations where the illegal traffic was later identified. For example, several years ago a large cellular carrier stopped using the local interconnection trunks established between Frontier and the carrier under an Interconnection Agreement for the termination of local traffic subject to reciprocal compensation. After an alert employee caught the drop in reciprocal compensation billing and after extensive research, Frontier located the "missing" inbound wireless traffic coming into Frontier's network over unmeasured Extended Area Service ("EAS") trunks between Frontier and an adjoining ILEC. These trunks were (and are) unmeasured because they are designed solely to carry ILEC-to-ILEC EAS calls on a bill-and-keep basis. When confronted with the situation and presented with an estimated bill for reciprocal compensation, the cellular carrier paid the bill and the traffic started flowing normally again. The situation has recurred once or twice in the last several years, perhaps due to inadvertence on the part of the cellular carrier and perhaps not, but Frontier now knows to look for decreases in the volumes of incoming reciprocal compensation traffic from this carrier and any recurrence has been quickly rectified.

Frontier has also been approached by an interexchange carrier to participate in the same kind of scheme, pursuant to which the carrier would deliver long distance traffic to Frontier destined for customers of an adjoining ILEC. The proposed scheme was that Frontier would deliver the traffic to the ILEC over bill-and-keep EAS trunks and would split with the carrier the savings achieved by avoiding the payment of terminating access charges.

In the process of (in a good light) "least cost routing" or (in a bad light) access charge avoidance schemes, some long distance carriers hand off traffic multiple times to many intervening carriers before it finally arrives at the terminating ILEC with insufficient information to identify or bill it. In one such case, Frontier became aware of an arrangement where Carrier "A"

$1 per month increase in Frontier's access line rates, exacerbating the problems discussed above.

handed off to Carrier "B" which handed off to Carrier "C" which handed off to Carrier "D" which in turn handed off to Carrier "B", thus throwing the traffic into an infinite loop until the carriers figured out what they had done. If the long distance carriers themselves cannot determine where their traffic is coming from and going to, it is little surprise that the ILECs on the terminating end of these complex arrangements are not receiving the access charges that they are properly due.

It is particularly easy to abuse interconnection arrangements between ILECs and CLECs. In many cases the ILEC and CLEC have agreed to exchange local traffic on a "bill and keep" basis without payment of reciprocal compensation. If a third party carrier engages the CLEC to terminate its traffic, otherwise subject to access charges or reciprocal compensation, over the CLEC-to-ILEC trunks, the traffic will escape all terminating charges unless the ILEC can identify the traffic that is actually originating on the network of the third party carrier.

Frontier commends the steps that the Missoula Plan proposes to deal with phantom traffic. However, the steps are insufficient to deal effectively with the problem. Frontier proposes two additional measures.

First, all carriers should be required to populate and pass the Jurisdictional Information Parameter ("JIP") whenever it is technically feasible. The Plan only requires intermediate carriers to pass the JIP when they receive it, and only requires originating carriers to populate and pass originating telephone number records, subject to many exceptions.[4] With the JIP, terminating carriers should be able to identify clearly where a call is coming from, and should much more readily be able to bill for it properly.

Second, the Commission should establish strong enforcement penalties for the intercarrier compensation rules. When a carrier is caught negligently not labeling or improperly labeling its traffic, it should pay a penalty on top of the charges it should have paid in the first

[4] Plan, pp. 56-57.

place. Frontier proposes a penalty of an additional 25% of the improperly avoided charges.[5] It is hardly a disincentive to cheating if the only penalty is to require the carrier to pay the appropriate charges. This is like making the penalty for shoplifting nothing more than paying for the shoplifted goods if the perpetrator is caught. Frontier submits that there is widespread misrepresentation, and the only effective remedy against a carrier engaging in such actions is to assign punitive damages.

IV. THE COMMISSION SHOULD ELIMINATE TRACK II.

As shown above, the Plan would be exceedingly hard on mid-sized ILECs, who are relegated to a Track II without the protections of Track III and without the access charge reduction windfall enjoyed by the interexchange affiliates of the Track I carriers. Almost no mid-sized carrier has signed on to support the Plan, except where the Plan offers some unique benefit. Frontier submits that the Plan leaves the Track II carriers without an appropriate solution. The remedy for this problem is relatively simple. There is no good reason to treat the mid-sized carriers any differently than the carriers in Track III. The mid-sized carriers face more competition than most Track III carriers, and lack the resources of the Track I carriers to diversify into nationwide cellular networks or to build fiber-to-the-premises in order to provide a landline alternative to the giant cable MSOs. Additionally, companies are arbitrarily placed into Tracks 2 or 3 based on whether the holding company operates any interstate regulated study areas. Yet the majority of the intercarrier revenue replacement that will occur under this plan will come from the intrastate jurisdiction. In many case the Track 2 company will have similar intrastate rates as a Track 3 carrier and therefore will need to shift into the plans recovery

[5] The Plan provides for possible forfeitures and damages, but only after a Commission proceeding and only on an individual case basis. Plan, p. 59. Frontier submits that a simple, straightforward penalty of 25% would have a far greater deterrent effect than the potential of sanctions after a long, drawn-out Commission proceeding.

mechanisms a larger percentage of current access dollars. This would create a greater dependency on its ability to find recovery from the plan's mechanisms and jeopardize the long-term political viability of the access replacement fund. Accordingly, it is reasonable to give the Track II carriers the same treatment under this plan as Track III carriers.

The appropriate cutoff between the two remaining tracks should be the distinctions established by the Telecommunications Act itself – the threshold of whether the ILEC study area meets the definition of rural or the ILEC serves fewer than two percent of the Nation's subscriber lines. 47 U.S.C. §251(f)(2). This threshold is far simpler and fairer than the complex definition of Track II in the Plan that depends on the form of interstate price regulation applicable to the ILEC and the size of each study area.[6]

Frontier therefore proposes that Track II be eliminated, and that Track II ILECs be moved into Track III.

V. ILECS SHOULD BE GIVEN MORE FLEXIBILITY TO RECOVER LOST ACCESS REVENUES.

The Plan funds a percentage of lost access revenues by increasing SLCs. As shown above, the SLC increases in the plan hit mid-sized carriers hardest in the very category of service -- the access line -- that is most quickly eroding due to competition. SLC increases would only make mid-sized ILEC competitive and financial situations worse. Additionally, from the point of view of universal service, the SLC increases under this plan are greater for the customers least able to pay them, the residential and small business customers. The SLC increases also create a burden on these same customers because SLCs currently make up a far larger share of the telephone bill for these customers in comparison to larger business customers. Rural customers would suffer the most, because urban customers would, at least at

[6] Plan, p. 7.

first, have more opportunities to obtain their dial tone service from unregulated intermodal providers such as cable television companies and cellular carriers.

SLC increases are not the only potential source of new revenues for ILECs to use to attempt to replace lost access charges. There is no particular policy reason requiring a nearly exclusive use of SLCs for this purpose, and universal service considerations actually militate against the use of large SLC increases. To the extent that it is determined by the Commission that some level of end-user recovery is appropriate, Frontier proposes that ILECs should be given the flexibility to make any revenue-neutral change in their end-user rate structures to make up the lost access revenue that is not recoverable from the access replacement fund. ILECs can be expected to understand their own markets and customers better than the drafters of a nationwide plan. Revenue-neutral pricing flexibility would therefore not only lead to a more socially beneficial result but would also give the ILECs a better chance actually to recover the lost revenues.[7]

VI. THE TRANSITION PERIOD SHOULD BE LENGTHENED.

In some states Frontier's intrastate access charges are 8 cents per minute or more, and in one area they are 15 cents per minute. It would not be possible to achieve the target access charges in these areas in the two-year period proposed by the Plan without severe dislocations. In light of the amount of time that the Commission has already taken to consider these matters, a two-year transition is unduly aggressive. Frontier therefore proposes a cap on the annual amount by which intrastate access rates must be reduced. Frontier suggests a cap of the smaller of 25 % or 2 cents per year, which would produce a minimum transition period of 3

[7] Frontier recognizes that giving ILECs pricing flexibility for intrastate services would probably require federal legislation. Frontier, however, submits that many aspects of the Plan would also require federal legislation, given the Plan's proposed overhaul of intercarrier compensation for intrastate traffic.

years (25% at the initiation of the plan and 25% each year thereafter) and a maximum period varying by the size of the current rates. Moving faster than this is likely to produce either massive rate increases or massive unanticipated replacement funding requirements. A longer transition would also make it more likely that the windfall to interexchange carriers will erode due to the competitive marketplace in the same time frame as access charges are reduced.

CONCLUSION

The Missoula Plan is a worthy attempt to address the problems of intercarrier compensation, but it is flawed in the details. It would produce massive windfalls for the largest interexchange carriers while severely damaging the ability of most of the Nation's mid-sized carriers to compete with the increasingly aggressive unregulated intermodal competitors in the marketplace. The regulatory playing field is already severely tilted against the ILECs in this situation, and the Plan would make it much worse.

Frontier therefore urges the Commission to take a number of alternative steps:

(1) Take steps to eliminate phantom traffic by requiring the use of JIP and by establishing penalties for non-compliance;

(2) Reduce the unfairness of the Plan for mid-sized carriers by eliminating Track II and moving the Track II carriers into Track III;

(3) Limit end-user increases under this plan but to the extent it is necessary give the ILECs pricing flexibility to recover lost access revenues not recoverable from the access replacement fund through any revenue-neutral end –user rate restructure; and

(4) Lengthen the proposed transition period, particularly in areas where intrastate access charges are starting from a very high level.

Respectfully Submitted,

Kenneth F. Mason
Director – Federal Regulatory

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
585-777-5645
KMason@czn.com

Gregg C. Sayre
Associate General Counsel – Eastern Region

Frontier Communications
180 South Clinton Avenue
Rochester, NY 14646-0700
Tel: (585) 777-7270
Fax: (585) 263-9986
gregg.sayre@frontiercorp.com

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CERTIFICATE OF SERVICE

I, Gregg C. Sayre, do certify that on October 25, 2006, the aforementioned ***Comments of Frontier Communications on Missoula Plan*** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were electronically mailed to the following:

Best Copy and Printing, Inc. (BCPI)
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554
fcc@bcpiweb.com

Victoria Goldberg
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-A266
Washington, DC 20554
Victoria.Goldberg@fcc.gov

By: Gregg C Sayre

Gregg C. Sayre