BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

COMMENTS
OF THE MISSOURI SMALL TELEPHONE COMPANIES

W. R. England, III
Brian T. McCartney
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
telephone: (573) 635-7166
facsimile: (573) 634-7431

Craig S. Johnson, Attorney at Law
1648-A East Elm
Jefferson City, MO 65101
craig@csjohnsonlaw.com
telephone: (573) 632-1900
facsimile: (573) 634-6018

Attorneys for Missouri Small Telephone Companies

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I. INTRODUCTION

The Missouri Small Telephone Companies (MoSTC) are thirty-three (33) small rural telephone companies. (*See* Attachment A, List of Companies.) The MoSTC companies serve as few as 250 and as many as 16,500 access lines in predominantly rural, high-cost areas within the state of Missouri. The MoSTCs are rural telephone companies as defined by the Telecommunications Act of 1996 ("the Act")[1] and are "small entities" and "small businesses" as defined by the Federal Communications Commission ("Commission" or "FCC"). The MoSTCs are incumbent local exchange companies (ILECs) that are rate-of-return regulated and, under the Missoula Plan, would be designated as "Track 3" Carriers.

The MoSTCs generally support the Missoula Plan because it is a reasonable compromise that will address and resolve many of the intercarrier compensation issues facing the FCC. Specifically, the Missoula Plan will address the disparity in intercarrier compensation rates while preserving needed revenue streams for rural networks; it will establish rules to resolve phantom traffic issues; and it will clarify various other interconnection issues with an "Edge" interconnection architecture. The Missoula Plan recognizes that small rural carriers are different in size and regulatory treatment than other carriers, and it contains a separate path for small rural carriers. The Missoula Plan establishes a Restructure Mechanism to ensure that needed revenues are available to maintain high cost rural networks.

[1] 47 U.S.C. §153(37).

There are a few parts of the Missoula Plan that could be improved. For example, the Missoula Plan should clarify that the Restructure Mechanism support to replace lost access revenues for small rate-of-return ILECs is an access element and not portable. Also, the Missoula Plan should be modified to allow existing state commission-ordered expanded calling plans to continue operating under current rules through either specific language such as that already in place for Track 3 carriers or a grandfather provision.

II. COMMENTS

The Missoula Plan is a reasonable compromise that addresses many longstanding problems with intercarrier compensation and interconnection. First, the Missoula Plan will allow small rural carriers such as the MoSTCs to continue receiving compensation for the use of their networks, and this in turn will assure continued maintenance and upgrading of rural infrastructure that keeps America connected. Second, the Missoula Plan will address the problem of unidentified and uncompensated "phantom traffic" that lacks appropriate billing and jurisdictional information. Third, the Missoula Plan will address and resolve various lingering interconnection issues such as Virtual NXX and the treatment of voice over internet protocol (VOIP) traffic. The MoSTCs appreciate all of the hard work by the industry and NARUC that produced the Missoula Plan, and the MoSTCs generally support the plan as more fully described below.

A. RATES

The Missoula Plan will reduce or eliminate many of the disparities in today's system of various intercarrier rate levels. In Missouri, small rural companies are compensated at widely different rates for terminating calls depending on whether the originating carrier is a wireline or wireless carrier and whether the call is intrastate or interstate, even though the underlying termination service provided is essentially the same. This rate disparity has led to problems with arbitrage and required numerous proceedings before the Missouri Public Service Commission (Missouri PSC) to examine such matters as access rates, wireless termination rates, and phantom traffic. Rate disparities have also resulted in expensive and extended litigation between many of the carriers involved.

The Missoula Plan preserves the small rural rate-of-return ILECs' right to establish cost-based intercarrier compensation rates for the interconnection services that they provide. Other telecommunications providers benefit by using the Track 3 Carriers' rural networks to originate and terminate traffic, and intercarrier rates must recognize this value. Under the Missoula Plan, a small rural Track 3 carrier will reduce its intrastate access charges to its interstate levels and structure for both originating and terminating traffic. Reciprocal compensation rates will also be capped at interstate levels but will remain subject to existing rules and negotiated interconnection agreements. As a result, the Missoula Plan will unify intercarrier charges and move intercarrier rates charged for all traffic closer together, and it will also bring access and interconnection rates closer together. Thus, the Missoula Plan will eliminate intrastate/interstate rate arbitrage and eliminate many of the other rate disparities that have caused problems in Missouri. This will help ensure regulatory parity. Moreover, lower intercarrier compensation rates will allow carriers (including Rural ILECs) to offer expanded calling plans and also encourage carriers to make toll rate reductions for consumers.

B. SMALL RURAL COMPANIES ARE DIFFERENT.

The Missoula Plan is superior to previous proposals such as "bill and keep" because it recognizes the differences between large Regional Bell Operating Companies (RBOCs) that serve densely-populated, low-cost areas and small rural carriers serving in sparsely-populated, high-cost areas. The Missoula Plan recognizes that the RBOCs and Track 3 carriers are vastly different in size, and that it is more costly to serve in many of the remote rural areas served by small rural carriers. Missouri's small ILECs have invested substantial amounts of capital in their networks to provide service to rural Missouri and meet the high quality of service levels mandated by the Missouri PSC. The MoSTCs have carrier of last resort obligations, and they are required to serve all customers within their service area boundaries.

The Missoula Plan also recognizes that small carriers such as the MoSTCs continue to be regulated under traditional "rate base" rate-of-return regulation as opposed to price cap or competition-based mechanisms. Rate-of-return-regulated small ILECs have three main revenue streams: customer rates, intercarrier compensation, and universal service funding. These revenue streams are regulated by the FCC and/or the state public utility commissions, so any changes to one revenue stream must be examined closely in order to maintain a proper balance and to ensure that the rural carriers continue to receive the revenues needed to provide service in high-cost areas. The Missoula Plan defines small rural ILECs as “Track 3” carriers and establishes a separate path for those carriers to move towards intercarrier compensation reform.

C. RESTRUCTURE MECHANISM

1. The Restructure Mechanism is essential to provide revenue neutrality to small rate-of-return regulated companies such as the MoSTCs.

For small rate-of-return carriers such as the MoSTCs, it does not appear that increases in the subscriber line charge (SLC) will replace all of the intercarrier revenues that will be lost by reducing intrastate access rates. Therefore, the Missoula Plan establishes a Restructure Mechanism to replace those intercarrier revenues that are not recovered through increased SLC rates.   Specifically, a rate-of-return carrier’s Restructure Mechanism dollars will be determined by comparing its existing revenues with the revenue that the carrier will have under the Plan (including the permitted SLC increases). Any shortfalls will be recovered through the Restructure Mechanism. (*See* Missoula Plan, p. 74)

The Restructure Mechanism is essential to maintain revenue neutrality.   The MoSTCs are rural, rate-of-return telephone companies. As such, their intrastate access rates are established and regulated by the Missouri PSC and are prima facie lawful and reasonable until found otherwise in a suit brought for that purpose. *See* Missouri Revised Statutes, §386.270. Small rate-of-return ILECs have a constitutional right to the revenues generated by rates that have been lawfully approved by the Missouri PSC, so any regulatory change that deprives them of the existing revenue stream generated by lawful rates amounts to a taking of property (*i.e.*, the revenues) without due process of law in violation of the constitutions of the State of Missouri and the United States.[2] Therefore, outside of a rate case, regulatory agencies such as the FCC and Missouri PSC are obligated to make a rate base, rate-of-return regulated ILEC whole (*i.e.*, revenue neutral) if a regulatory change adversely affects the ILEC's agency-established revenue stream. Otherwise, the regulatory change would result in confiscation.

As intercarrier compensation rates are reduced, the Restructure Mechanism will ensure that necessary revenues are available for small rural carriers to continue providing basic and advanced services in rural areas that are comparable to those provided in urban areas. This will allow the MoSTCs to invest in the rural infrastructure that is used by incumbent services, wireless, IP, and other services to keep the country connected. The Restructure Mechanism is an appropriate and legally essential component of the Missoula Plan to replace any shortfall in a small, rate-of-return regulated company's revenue requirement. By maintaining revenue stability, the Missoula Plan's Restructure Mechanism will encourage continued investment and support for rural telephone markets, and it will allow small carriers to continue providing advanced services at comparable prices.

The MoSTCs believe that the Restructure Mechanism is an inseparable and necessary component of the Missoula Plan. The Restructure Mechanism will maintain small company revenues that will be displaced when intercarrier compensation rate levels are reduced. These revenue streams are crucial to the maintenance and upgrading of rural networks and the promise of universally affordable and available telecommunications services. Without the Restructure

[2] *U.S. Const*. Amend. XIV and *Mo. Const*. Art. I, § 10. *See, Lightfoot v. City of Springfield*, 236 S.W.2d 348 (Mo. 1951).

Mechanism, the Missoula Plan simply will not work. Accordingly, the Restructure Mechanism must be predictable and sustainable, and the FCC should take steps to ensure that it is adequately funded and appropriately structured.

2. Legal Basis for the Restructure Mechanism

The MoSTCs agrees with the NTCA, the Rural Alliance, and numerous other commenters that the Restructure Mechanism is an access element under Section 201 of the Communications Act. Specifically, Restructure Mechanism support should flow to those rate-of-return carriers that reduce their access rates as a part of the Missoula Plan. The Restructure Mechanism is not a universal service element under Section 254 of the Act, so the Restructure Mechanism should only be available to carriers that have been required to decrease their access charges as a result of intercarrier compensation reform.

3. The Restructure Mechanism support should not be portable.

The MoSTCs do not believe that the restructure mechanism should be portable to other carriers. The present system of "portability" of universal service support for competitive eligible telecommunications carriers (CETCs) is flawed and problematic because there is no correlation between a CETC's need for support and the amount of support it receives. Rather, carriers with completely different cost characteristics and financial structures receive support based on the costs of small, rural rate-of-return carriers. As a result, if the costs of a CETC are substantially less than that of the rural ILEC, then the CETC receives a windfall. This system has led to a ballooning federal USF, and it should not be carried over to the Restructure Mechanism. Furthermore, when a new mechanism, such as the Restructure Mechanism, is specifically designed to replace revenues lost from mandated changes to intercarrier compensation rates, the appropriate recovery for competitive ETCs should be based upon their specific losses related to those mandated charges rather than tied to a competing carrier whose revenue changes will likely be different because of different rate changes and the level of traffic that they carry.

D. CONSUMER BENEFITS

The Missoula Plan will produce numerous consumer benefits. For example, reduced intercarrier compensation rates will make it easier and more attractive for carriers to offer expanded calling plans, "all you can eat" block-of-time plans, and/or toll rate reductions to consumers.[3] Also, the Missoula Plan may increase consumer choice and innovative offerings because it will allow companies to focus on offering plans rather than resolving intercarrier disputes.

E. PHANTOM TRAFFIC

1. The Problem of Phantom Traffic

For a number of years, the MoSTCs have sought relief from the problem of unidentified, or "phantom," traffic that is terminated on their networks, but for which no billing record is provided by the originating or transiting carrier that can be used by the small companies to bill for the traffic. In order for a terminating carrier to bill for a call that has been placed on its network, the terminating company needs to know the time the call is placed, the duration of the call, the jurisdiction of the call, and the carrier that should be billed. With phantom traffic,

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3 *See e.g. AT&T's Economic Benefits From Missoula Plan Reform of Intercarrier Compensation*, Clarke and

companies providing termination services have no way of identifying the originating calling party's number for calls that are terminated on their networks, or the carrier that is financially responsible for terminating those calls. This precludes the small companies from receiving compensation for the use of their networks, and it prevents identification of the appropriate jurisdiction of the calls and thus the appropriate rates to apply.

To address this problem on a statewide level, the Missouri PSC has ordered that industry standard call records be provided to Missouri's small companies, and it has also established an "Enhanced Record Exchange (ERE) Rule" to address the problem of phantom traffic. *See* Missouri PSC Rule 4 CSR 240-29.010 *et seq*. However, phantom traffic is a nationwide problem, and at least some wireless carriers operating in Missouri claim that they are not subject to the Missouri PSC's rule. Therefore, it is appropriate for the Missoula Plan to address the problem of phantom traffic on a nationwide level for all types of carriers.

2. The Missoula Plan Phantom Traffic Solution

The Missoula Plan will address the problem of phantom traffic by requiring all carriers to provide accurate signaling information to facilitate call identification and proper application of intercarrier compensation charges. Specifically, the Missoula Plan will require the delivery of accurate telephone number signaling information to both intermediate and terminating providers to ensure that traffic can be properly identified and classified for purposes of the intercarrier compensation provisions of the Plan." (Missoula Plan, p. 56.) These rules will apply to all traffic originating on the Public Switched Telephone Network (PSTN), transiting the PSTN, or destined

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Makarewicz, dated July 18, 2006 and filed with Missoula Plan.

for the PSTN from other networks. The Missoula Plan will require tandem transit providers to supply call-detail records to any terminating provider to which it hands off traffic directly, such as the MoSTCs, at no additional charge. (Missoula Plan, p. 60.) These records will be formatted according to Exchange Message Interface (EMI) industry standards, and they will contain the jurisdictional information necessary for terminating carriers to bill other providers for the termination of their traffic. (Missoula Plan, p. 61.) One essential piece of information of this jurisdictional information is the Calling Party Number.

3. The Calling Party Number must be passed in records and in real time for all telecommunications traffic, including wireless.

In order to bill an originating carrier for a call that is terminated on its network, the terminating carrier needs to know the jurisdiction of the call, which is derived from both the calling and the called party numbers. The terminating carrier also needs to know which carrier is financially responsible for the call, as the true originating carrier is not always the carrier that is financially responsible for paying other carriers whose facilities they use to complete the call. Although the Calling Party Number (CPN) for most traffic is received in real time through the network during the call, the responsible carrier is only identified in the subsequent billing record. Thus, the terminating carrier does not have all of the information it needs in one place, and at one time, to accurately and properly bill the call unless the CPN is reported in the billing record. This is why it is important for the CPN to be captured and recorded in a manner that facilitates billing, as is required in the EMI record format for Category 11-01 records, not just as information that is passed at the time of the call.

If a terminating carrier does not receive the CPN with billing records, then it has no way to identify "phantom" traffic or to determine the call's jurisdiction (and thus whether the traffic received should be billed under reciprocal compensation rates or access rates). In Missouri, CPN is already captured and placed in the billing records for most calls, including wireless calls, when it is delivered over the Feature Group D (FGD) or interexchange (IXC) network. CPN is also captured and placed in the billing records for all landline calls (ILEC and CLEC) that are transmitted over the Feature Group C (FGC) LEC-to-LEC network. The only billing records where CPN is currently not included is in the records for wireless traffic placed on the FGC LEC-to-LEC network. It is just as important, if not more so, for the CPN to be included in the Category 11 records for wireless calls. Accordingly, the MoSTCs urge the FCC to require that CPN must be passed in both real time and in billing records as a part of any Phantom Traffic solution adopted.

F. INTERCONNECTION RULES

The Missoula Plan addresses a number of outstanding and unresolved interconnection issues such as Virtual NXX and the treatment of VOIP-to-PSTN traffic. These issues have led to numerous industry disputes that have been pending before the FCC and state commissions, and they have consumed enormous resources of carriers, regulatory commissions, and courts. A nationwide solution is essential.

1. The Missoula Plan "Edge" Rules

Under the Missoula Plan, a carrier must allow other carriers to physically interconnect and receive traffic for termination at defined points or "Edges" in the carrier's network. (*See*

Missoula Plan, p. 41.) Originating carriers will have the option to choose direct or indirect interconnection for termination of local traffic with a carrier's Edge. Originating carriers generally must bear the transport obligation to deliver originating traffic to the terminating carrier's Edge. However, when competing carriers choose to locate their switching facilities at locations well outside the local calling area and choose to use indirect connections for their network efficiency benefits, rural carriers should not be responsible, even when originating traffic, to pay the cost of transporting traffic to these distant, non-local locations. The "Rural Transport Rule" that is incorporated in the Missoula Plan appropriately places the responsibility for the cost of this transport on the Track 1 carrier that locates its "local switching" facilities outside the local calling area. As a result, small rural ILECs will not be obligated to carry traffic outside of their local network boundaries.

Unlike the large RBOCs, many of the small rural Track 3 carriers simply offer local exchange service and have no facilities or agreements that would allow them to carry calls outside of their exchange boundaries. However, recent arbitration and litigation have created uncertainty as to whether small rural carriers may be required to bear the expense for carrying calls outside of their service areas. The MoSTCs support the Missoula Plan's Rural Transport Rule provisions and believe that interconnection rules should reflect the legal and technical issues which limit a small Missouri ILEC's obligation to pay for or transport traffic beyond their local rural networks.

2. Existing State-Approved Expanded Calling Plans

In Missouri, the Public Service Commission has mandated an expanded Metropolitan Calling Area (MCA) Plan in the state's three largest metropolitan areas (St. Louis, Kansas City, and Springfield). Those members of the MoSTC that participate in the MCA Plan support it and believe that it should be preserved.

Under the MCA Plan, traffic between MCA customers is exchanged on a bill-and-keep basis, so none of the participating carriers charge for termination or transport of traffic. Instead, the participating carriers charge their end user customers for the service. The Missoula Plan contains specific provisions for expanded local calling area plans between Track 3 ILECs and other ILECs. (*See* Missoula Plan, p. 37, Section II.E.6.c.) Specifically, in an optional calling area arrangement where a Track 3 ILEC exchanges expanded calling plan traffic with another ILEC on a bill-and-keep basis, the Track 3 ILEC must offer to exchange traffic with CLECs and wireless carriers on a bill-and-keep basis for the transport and termination of traffic from the CLECs' or wireless providers' telephone numbers associated with the rate centers in the mandatory or optional local calling area. Thus, it appears that the MCA Plan would not conflict with the Missoula Plan's provisions for Track 3 Carriers.

Some CLECs have expressed concern that Track 1 and Track 2 carriers might be able to impose "transit" charges on MCA traffic under the Missoula Plan. The MoSTC participants in the MCA believe that the MCA Plan should be preserved in its current state, including the bill-and-keep intercarrier compensation provisions that address transit of MCA traffic for carriers in all three Tracks. Therefore, the Missoula Plan should allow existing state commission-ordered expanded calling plans to continue according to current rules (*e.g.* bill-and-keep for MCA). The FCC should consider express language to either address bill-and-keep transit for existing state commission-ordered plans or a specific provision to allow such plans to be grandfathered in under the Missoula Plan.

G. REGULATORY BENEFITS

The Missoula Plan will produce many regulatory benefits. First, it will simplify state access ratemaking procedures, and it may decrease the numerous intercarrier compensation disputes that are currently being presented to the FCC and state commissions. Second, it may eliminate any requirement to establish and maintain a separate state funding mechanism for equalizing access rates. State commissions have historically been reluctant to reduce access rates because of the impacts on customers. The MoSTC's preliminary analysis indicates that Missoula Plan access reductions for small Missouri companies could total over $27 million, with minimal consumer impacts (*i.e.* $2.25 SLC increase over three years). If the same $27 million access reduction were to be recovered through local rate increases to small Missouri ILEC customers, it would result in an average increase of approximately $21.00, per line, per month, with a high of over $58.00 per line, per month and a low of nearly $4.00 per line, per month. Third, lower state toll rates should stimulate demand and cause more efficient use of ILEC networks. Finally, it will create regulatory certainty by establishing new nationwide guidelines for interconnection and record exchange.

H. POTENTIAL MODIFICATIONS

The MoSTCs generally support the Missoula Plan, but there are a few places where the Plan needs further modification. This is consistent with the representations made at the time the Plan was filed because it was indicated that the Plan was still a work in progress.

First, on page 29 of the Plan, Section II.D.3.b.ii outlines provisions related to the treatment of wireline to CMRS traffic as non-access traffic. Subparagraph 1) in this section describes three different circumstances where such traffic would be non-access traffic. Subparagraph 1.c is a description of traffic within the MTA, but outside the LEC local calling area, that would be subject to non-access treatment. Subparagraph 2 and 3 then describe additional limitations that apply to the traffic defined in Subparagraph 1. The MoSTCs believe that the reference in Subparagraphs 2 and 3 should be modified from "Section II.D.3.b.ii.1" to "Section II.D.3.b.ii.1.a and Section II.D.3.b.ii.1.b". The limitations that are listed in Subparagraphs 2 and 3 correctly apply to traffic within the local calling area, but should not apply to intraMTA toll traffic directed to a CMRS provider that would, under today's provisions, be dialed as "1+" toll calls in most circumstances.

Second, while no MoSTC members are CLECs, the MoSTCs recognizes that there are differences between the circumstances faced by urban and rural CLECs and that a "one-size-fits-all" treatment of CLECs as Track 1 carriers in all instances may not be appropriate. The MoSTCs recommend that the Commission review carefully proposals that may be made to treat rural CLECs as Track 3 carriers rather than Track 1 carriers.

III. CONCLUSION

The MoSTCs generally support the Missoula Plan because it is a reasonable compromise to address intercarrier compensation reform, and it also resolves a number of other outstanding interconnection issues such as phantom traffic. The Missoula Plan recognizes that small rural ILECs serving in high-cost, low density areas have different cost structures and are rate-of-return regulated in Missouri. Therefore, the Restructure Mechanism should be treated as an access element under Section 201 of the Act, and it should not be portable. Rather, Restructure Mechanism support should only be made available to rate-of-return ILECs that have actually reduced their access rates as a result of intercarrier access reform. Finally, the Missoula Plan should be clarified with language to allow existing state commission-ordered expanded calling plans to continue under their present terms and conditions.

Respectfully submitted,

/s/ Brian T. McCartney

W. R. England, III Mo. #23975
Brian T. McCartney Mo. #47788
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
trip@brydonlaw.com
bmccartney@brydonlaw.com
telephone: (573) 635-7166

Craig S. Johnson, Attorney at Law
1648-A East Elm
Jefferson City, MO 65101
craig@csjohnsonlaw.com
telephone: (573) 632-1900

Attorneys for Missouri Small Telephone Companies

ATTACHMENT A

Alma Communications Company, d/b/a Alma Telephone Company
BPS Telephone Company
Chariton Valley Telephone Corporation
Citizens Telephone Company
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corp.
Green Hills Telephone Corp.
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
McDonald County Telephone Company
Mark Twain Rural Telephone Company
Mid-Missouri Telephone Company (Otelco)
Miller Telephone Company
New Florence Telephone Company
New London Telephone Company
Northeast Missouri Rural Telephone Company
Orchard Farm Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Co., Inc.
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company