

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

<b>In the Matter of</b>	)	
	)	
<b>Developing a Unified Intercarrier Compensation Regime</b>	)	<b>CC Docket No. 01-92</b>
<b>The Missoula Intercarrier Compensation Reform Plan</b>	)	<b>DA 06-1510</b>

**Comments of  
The South Dakota Telecommunications Association**

The South Dakota Telecommunications Association (“SDTA”) on behalf of its member companies<sup>1</sup> respectfully submits these comments in response to the Commission’s Public Notice (“Notice”) released on July 25, 2006 in the above captioned proceeding. In the Notice the Commission seeks comment on the intercarrier compensation plan (the “Missoula Plan”) filed July 24, 2006 by the National Association of Regulatory Utility Commissioners’ Task Force on Intercarrier Compensation (“NARUC Task Force”).<sup>2</sup> SDTA member companies serve the most rural areas of South

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<sup>1</sup> SDTA member companies are Alliance Communications Cooperative, Armour Independent Telephone Company, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone, Cheyenne River Sioux Tribal Telephone Authority, Faith Municipal Telephone Company, Fort Randall Telephone Company, Golden West Telecommunications Cooperative, Hills Telephone Company, Interstate Telecommunications Cooperative, James Valley Telecommunications, Jefferson Telephone Company d.b.a. Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, McCook Cooperative Telephone Company, Midstate Communications, Inc., Mount Rushmore Telephone Company, RC Communications, Inc., Roberts County Telephone Cooperative, Santel Communications Cooperative, Inc. Sioux Valley Telephone Company, Splitrock Properties, Inc., Stockholm-Strandburg Telephone Company, Swiftel Communications, Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Venture Communications Cooperative, Vivian Telephone Company, West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company.

<sup>2</sup> See Letter from Tony Clark Commissioner and Chair, NARUC Committee on Telecommunications; Ray Baum Commissioner and Chair, NARUC Task Force on Intercarrier Compensation; and Larry Landis, Commissioner and Vice-Chair, NARUC Task Force on Intercarrier Compensation, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed July 24, 2006) (attaching the Missoula Plan).

Dakota including Native American lands. Network facilities include very long transport routes necessary to access the most remote areas of the state.

SDTA recognizes and supports the work of the NARUC Task Force and recognizes that the Missoula Plan is a framework of compromises by industry parties that were committed to the belief that a solution could be negotiated. The Missoula Plan filing shows that adoption of the Plan by the Commission and state regulators will bring benefits to consumers.<sup>3</sup> SDTA member companies believe that if the Commission adopts the Missoula Plan it cannot be done piecemeal. The Restructure Mechanism serves a critical purpose and should be implemented as proposed. SDTA also asserts that since the Restructure Mechanism dollars for SDTA member companies would be due to Plan reductions in state access charges and those charges are structured to recover state access costs, as defined by South Dakota Public Utility Commission (the “SDPUC”) rule, the Restructure Mechanism is necessarily a Section 201 legal construct and can not be implemented under Section 254. Also, SDTA believes the Commission has authority under section 201 to impose a charge to fund the Restructure Mechanism.

#### **I. The Missoula Plan has Significant Merits**

The Missoula Plan has several attributes that make it worthy of consideration by the Commission as a means to resolve many of the problems and disputes relative to intercarrier compensation and represents significant progress toward a unified compensation regime for like services.<sup>4</sup> First the Missoula Plan significantly reduces or eliminates the rate disparity between state and interstate access charges for all carriers. Generally, the greatest rate disparities, those that currently exist between each Track 3

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<sup>3</sup> See *Missoula Plan Exhibits 1 & 2*.

<sup>4</sup> See *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, para. 1-3, released March 3, 2005*.

carriers' state and interstate access charges will be entirely eliminated by Step 4 of the Plan and access rates will be uniform for any particular carrier. Track 3 reciprocal compensation rate levels under the Plan will continue to be governed by the Section 252 process and in many cases will be at least close to rates levels produced by the annual ratemaking process associated with interstate switched access charges. Because incentives to arbitrage are associated with substitution between services provided by the same vendor it is most important that rates are uniform within a particular carrier's palette of potentially substitutable services.

Second the Missoula Plan provides for a means for ROR carriers to recover revenues lost as a result of the Plan's rebalancing program. Subscriber line charge (SLC) cap increases and the institution of the Restructure Mechanism would afford carriers an opportunity to recover costs from alternative sources. A stable revenue structure is necessary for SDTA companies to continue to invest in infrastructure that is comparable to that in urban areas. Rural wireline infrastructure not only supports incumbent services but competitive wireless and IP services as well.

Finally, implementation of the Missoula Plan would serve as a basis to equitably resolve interconnection rules<sup>5</sup> disputes that continue to consume the resources of both carriers and commissions throughout the country. The Plan proposes that the appropriate compensation regime be determined by rate centers associated with the originating and terminating telephone numbers associated with a particular call (the "Telephone Numbers Rule"). The use of this approach reflects a compromise between Missoula Plan supporters and provides a practical means to classify traffic to the appropriate regime,

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<sup>5</sup> See C.F.R. 47 51 Subpart H.

access or non-access and to the appropriate jurisdiction. If traffic is classified as non-access then the Missoula Plan assigns financial responsibility for transport. The Rural Transport Rule<sup>6</sup> appropriately assigns transport responsibility to Track 1 carriers for Covered Rural Telephone Company (CRTC) originated traffic. CMRS carriers design their networks to minimize the number of switches in their networks. As a trade-off for lower switching costs, CMRS carriers require long transport routes in order to interconnect to RLEC networks. Therefore CMRS carriers should logically bear the financial responsibility for transport outside of the CRTC network. This Rule is consistent with federal law<sup>7</sup> and by avoiding an unfair shift of transport costs to Track 3 carriers, works to limit the size of the Restructure Mechanism. With the institution of the telephone-numbers rule and the determination of financial obligations for transport, the Missoula Plan will resolve disputes associated with the MTA Rule<sup>8</sup> and with different rating and routing points.

**The Plan resolves disputes associated with the intra-MTA rule.**

In the intercarrier compensation *FNPRM*, the Commission sought comment on whether it should eliminate the intraMTA rule.<sup>9</sup> The Commission also sought comments on how parties should determine which LEC-CMRS calls are subject to reciprocal compensation in the absence of the intraMTA rule.<sup>10</sup> Under the Plan, for calls that originate on a LEC network, the intraMTA rule is modified as the basis for determining which compensation regime is to be applied to the call. The telephone-numbers rule is

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<sup>6</sup> See *Missoula Plan*, p. 33.

<sup>7</sup> See U.S.C. 47 section 251(c)(2)(B).

<sup>8</sup> See C.F.R. 47 51.701(b)(2).

<sup>9</sup> See *In the Matter of Developing a Unified Intercarrier Compensation regime*, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking* (“*FNPRM*”) (rel. Mar. 3, 2005) at para. 135.

<sup>10</sup> *Id.* at para. 136.

invoked and the telephone numbers of the calling and the called subscribers are used as the basis for determining the compensation regime that will be applied to the call. Therefore, the location of the wireless subscriber when the call was originated will no longer need to be identified. Under the telephone-numbers rule, when the numbers of the calling and called parties are associated with the same rate center, reciprocal compensation applies. When the numbers of the calling and called parties are not associated with the same rate center, access charges apply. This compromise works to address several problems that have arisen as a result of the intraMTA rule.

First, LECs generally do not have knowledge of the location of the wireless subscriber when the call is originated. Therefore, often the correct compensation regime is unknown for any particular call. Under the intraMTA rule, LECs must conduct traffic studies to determine the location of the wireless subscriber when a call was originated. These studies determine the ratio of intraMTA to interMTA minutes and the quantity of minutes to bill under the proper compensation regime. With the elimination of the intraMTA rule and adoption of the telephone numbers rule the location of the wireless subscriber, when a call is originated, will no longer need to be determined<sup>11</sup> and thus will eliminate the need to perform traffic studies for this purpose, saving time and money associated with conducting and defending the results of the studies.

Second, replacing the intraMTA rule with the telephone-numbers rule will properly align LECs' dialing parity requirements and end-user billing with the appropriate compensation regime. Under the new rule, telecommunications traffic that is subject to reciprocal compensation will be treated as a local call for dialing parity

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<sup>11</sup> See *FNPRM*, at para. 136, where the Commission sought comment on how the end-point of a mobile call (i.e. the cell-site in use at the beginning of the call) be determined in the absence of the intraMTA rule.

purposes and end user billing. Telecommunications traffic that is not subject to reciprocal compensation would be treated as a toll call for toll dialing parity purposes and will be routed to an interexchange carrier.<sup>12</sup> Instead of the disputes that occur under the intraMTA rule as often promoted by the wireless industry, the telephone-numbers rule will provide consistent treatment of all LEC originated traffic for intercarrier compensation purposes.

Eliminating the intraMTA rule and replacing it with the telephone-numbers-based approach will eliminate many intercarrier disputes and will allow carriers to concentrate on the operations of their business instead of tending to disputes.

**The Plan represents a compromise that would resolve disputes regarding the application of toll versus local dialing parity, create a rule for indirect interconnection, and provide CLECs and CMRS carriers with access to EAS agreements.**

The Missoula Plan represents a compromise that would allow wireless carriers to receive local calling arrangements without requiring a direct connection, as has been requested by the wireless industry. And, through the development of the Rural Transport Rule, a Track 3 carrier is not strapped with the financial burden for transporting traffic beyond the boundaries of its network. SDTA member companies also believe that the Plan also resolves a long standing dispute, particularly between ILECs and CMRS providers, over what calls are subject to local dialing parity requirements versus what calls are subject to toll dialing parity requirements. Additionally, the Plan resolves an ongoing dispute between ILECs and CMRS carriers concerning calling arrangements between numbers in different exchanges that are covered under EAS agreements. Under

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<sup>12</sup> See *FNPRM*, at para. 138 where the Commission recognized its rules require intraMTA calls dialed on a 1+ basis be routed through an IXC. The telephone-numbers rule resolves disputes regarding which calls are to be routed to an IXC and resolves disagreement over the proper compensation mechanism for calls routed to an IXC.

the Plan, if EAS traffic is exchanged between Track 3 ILECs and other ILECs under a bill and keep arrangement, the Track 3 ILEC will offer to exchange traffic with CLECs and CMRS providers at bill and keep for those carriers' telephone numbers assigned to Track 3 rate centers in the mandatory or optional local calling area.

Given the Plan's significant merits and given the number of disputes the Plan appears to resolve, SDTA urges the Commission to adopt the foregoing interconnection rules.

## **II. The Restructure Mechanism is an Essential Component of the Missoula Plan and Rate Changes Should Not be Implemented Independently**

The Missoula Plan introduces a new source of recovery designed to replace most of the intercarrier revenues lost by carriers due to the Plan's rate rebalancing program.<sup>13</sup> For each rate of return carrier, the Restructure Mechanism amount will be determined by comparing the revenues that a carrier has under the existing system with the revenues that a carrier will have under the Plan. Any shortfall in these revenues will be recovered through the Restructure Mechanism.<sup>14</sup> For SDTA member companies, revenues from state switched access charges represent a significant portion of those companies total revenue. SDTA member company state switched access rates are currently subject to SDPUC rate regulation and supporting cost and demand studies are required. The SDPUC rules determine how a carrier recovers the cost of state switched access.

The Missoula Plan would transfer significant revenues from state switched access charges to the Restructure Mechanism over the transition period.<sup>15</sup> SDTA estimates that in excess of \$25 million of annual state access revenue will be displaced for SDTA

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<sup>13</sup> See *Missoula Plan* at p. 63.

<sup>14</sup> *Id.* p. 73.

<sup>15</sup> Current average intrastate switched access rate is approximately \$.13495 per mou.

member companies by Step 4 if the Missoula Plan is adopted by the Commission. If the Commission would choose to pursue a course of preempting the SDPUC to mandate the planned reduction in state switched access rates and not implement the Restructure Mechanism as described in the Plan there would be devastating implications for SDTA member companies. Further, if the Commission would chose to distribute the Restructure Mechanism dollars on a block grant basis, individual companies could be subject to significant displacement. SDTA member companies encourage the Commission to create the Restructure Mechanism as proposed and authorize the distribution of dollars as specified in the Missoula Plan.

**III. The Restructure Mechanism Largely Recovers Revenues Currently Derived from Access Charges and, Therefore, Should be Established Under Sections 201 & 205 of the Act. It is not a USF Mechanism.**

Exchange access charges were initiated in the Third Report and Order on MTS and WATS Market Structure<sup>16</sup> (“Third Report and Order”) under the Commission’s authority in federal statute. Under Section 201 the Commission has authority to require every common carrier to establish physical connections with other carriers and to establish routes and charges for those connections.<sup>17</sup> Section 205 gives the Commission the authority to prescribe just and reasonable charges, classifications, regulations and practices for any carrier or carriers.<sup>18</sup>

In the Third Report and Order the Commission established an access charge structure that included two types of charges. The first access charge component was to be levied to other carriers for physical access to end user customers for the provision of end

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<sup>16</sup>See *Third Report and Order, MTS and WATS Market Structure*, 93 F.C.C. 2d 241, para. et seq. (1983).

<sup>17</sup> See U.S.C. 47 section 201(a).

<sup>18</sup> See U.S.C. 47 section 205(a).

to end long distance services. The Commission ultimately determined, for interstate access, these charges should recover the traffic sensitive costs associated with provision of long distance services. The second access charge component was to be levied to the end-user and targeted to recover common line costs.

With respect to intrastate access, the South Dakota statutes and SDPUC administrative rules define specifically what constitutes intrastate access costs and establish the rate structure that is utilized to recover such costs. The SDPUC rules, relating to intrastate access charges, differ from the Commission rules in permitting the recovery of both traffic sensitive and non-traffic sensitive exchange access costs within the state switched access rates. Thus, the current South Dakota access charge structure does not include a separate end user common line charge element. Despite these differences, however, and because the Restructure Mechanism is intended to recover revenue that is lost through reductions in established state switched access charges the only supportable approach is to classify the Restructure Mechanism as a mechanism based in Sections 201 and 205 of the Federal Act. The network costs being shifted to the Restructure Mechanism for SDTA member companies are, under South Dakota law, costs that are associated with state exchange access cost.<sup>19</sup> Accordingly, only carriers that have access charge reductions should be eligible to receive Restructure Mechanism funding. Certainly, there is no legal support for taking all intrastate access costs, irregardless of whether they are traffic sensitive or non-traffic sensitive, and moving them in total to a federal universal service mechanism that is open to all potential ETCs.

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<sup>19</sup> See South Dakota Public Utilities General Rules of Practice, 20:10:27:01-21

The Commission has authority under Section 201 and 205 to establish carrier or end user assessments to fund the Restructure Mechanism just as was done to for the establishment of the initial carrier or end-user charges in the Third Report and Order. If the SDPUC would authorize Track 3 carrier access rate changes under the Missoula Plan, SDTA member companies will receive interstate revenue in order to support the state cost of exchange access not unlike the federal matching funds support of state highway systems. The Commission should not preempt SDPUC access charge rules and define the Restructure Mechanism as having a Section 254 universal service funding purpose.

#### **IV. The Missoula Plan Recognizes Differences Associated with Rural ILECs**

The Missoula Plan contains provisions that are a function of classifications assigned to carriers with differing operating, market, and regulatory characteristics. The Plan proposes intercarrier compensation rate reduction programs and SLC caps in different ways and on different schedules depending on track classifications. The Plan imposes different financial obligations for non-access transport depending on a carrier's classification as a CRTC. Finally, the Plan contains different formula for the calculation of the Restructure Mechanism depending on whether a carrier is under rate of return regulation or price cap classification. The classification structures contained in the Plan are largely the result of recognition that carriers that only serve customers in rural market areas and are under rate of return regulation have unique production and financial challenges and do not benefit from scale or scope economies. In the areas served by the SDTA member companies, facilities based wireline competition for universal service is a

rare occurrence. Rural ILECs in South Dakota serve an average of 2.17 access lines per square mile served.<sup>20</sup> This is not generally attractive for a competitive business plan.

SDTA member companies are subject to rate of return regulation for both state and interstate access charges. The Missoula Plan appropriately maintains a cost based ratemaking premise for both exchange access and reciprocal compensation for Track 3 carriers<sup>21</sup>. In addition the Restructure Mechanism calculation for rate of return carriers will limit SDTA member companies to cost only recovery based on Commission and base period SDPUC cost rules.<sup>22</sup>

The changes in the interconnection rules proposed by the Missoula Plan reflect the operational realities of optimal wireline network engineering design under state local service regulations. These regulations typically require local exchange carriers to design networks to certain availability and survivability standards.<sup>23</sup> As discussed above these engineering constraints are different than those adopted by wireless carriers in their network design. Wireless carriers trade switching costs for transport in order to minimize costs under their own design criteria. A single CMRS carrier's MTSO typically serves vast areas of rural territory covering many local exchange areas. This engineering choice represents a different tradeoff between cost and network availability and reliability. The rural ILEC should not be responsible for the transport cost associated with network engineering designed to avoid costs. Those benefits already flow to the CMRS carriers in

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<sup>20</sup> From U.S. Census Bureau and South Dakota Public Utilities Commission.

<sup>21</sup> See *Missoula Plan* p. 18.

<sup>22</sup> See C.F.R. 47 pt. 64, 36, 69, 51, and South Dakota Public Utilities General Rules of Practice, 20:10:27:01-21.

<sup>23</sup> See Dakota Public Utilities General Rules of Practice, 20:10:33 Service Standard For Telecommunications Companies.

